



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **BIR/00CU/HNA/2020/0001**

Property : **32 Florence Street, Walsall WS1 2LG**

Applicant : **Ms Asifa Majid**

Respondent : **Walsall Metropolitan Borough Council**

Dates of Application : **6th January 2020**

Type of Application : **Appeal against a Financial Penalty –
Section 249A & Schedule 13A to the
Housing Act 2004**

Tribunal : **Judge JR Morris
Mr R Chumley-Roberts MCIEH, JP
Judge D Barlow**

Date of Hearing : **11th March 2020**

Date of Decision : **9th June 2020**

DECISION

Decision

1. The Tribunal varies the Financial Penalty to £5,000.00.

Reasons

Background

2. The application relates to 32 Florence Street, Walsall, West Midlands WS1 2LG (the Property) and is in respect of a Financial Penalty issued on 6th December 2019 to the Applicant by the Respondent under section 249A of the Housing Act 2004 for failure to comply with an Improvement Notice served on 10th September 2019 requiring works to be completed by 18th October 2019, contrary to section 30 of the Housing Act 2004.
3. Following an inspection of the Property carried out by the Respondent's Officers on 24th October 2019 it was established that the notice had not been complied with, as the specified remedial works were not carried out.
4. A Notice of Intention to issue a Financial Penalty under paragraph 1 of Schedule 13A of the Act was served on 28th October 2019 giving 28 days in which to make representations. The Final Notice of the issue of the Financial Penalty was served on 6th December 2019. The total amount of the penalty is £7,500.00 payable within 28 days subject to appeal.
5. An appeal was lodged on 6th January 2020 and Directions were issued on 7th January 2020. The Appeal was objected to by the Respondent in a letter to the Tribunal dated 14th January 2020. The Respondent was under the impression that Schedule 1 Paragraph 10 of the Housing and Planning Act 2016 applied, which states that an appeal must be brought within 28 days beginning with the day on which the final notice was sent. This was the time limit stated in its notes attached to the Final Notice. In addition, it was believed that under Rule 27 of the Tribunal Procedure (First-tier Tribunal) Property Chamber) Rules 2013 (the 2013 Rules) an appeal had to be made within 28 days.
6. The Procedural Judge in a letter dated 15th January 2020 stated that Schedule 1 Paragraph 10 of the Housing and Planning Act 2016 applies to banning orders and that the provision that a tribunal may allow an appeal to be made to it after the expiry of the 28 day period if it is satisfied that there is good reason for the failure to appeal before the end of that period (and for any delay since then in applying for permission to appeal out of time) is applicable to appeals against Improvement Notices but is not applicable to Financial Penalties.

7. As no time limit to appeal a Financial Penalty appears in Paragraph 10 of Schedule 13A to the 2004 Act the tribunal must apply Rule 27(2) of the 2013 Rules. Under those rules, and applying the overriding objective, the tribunal may extend time under Rule 6(3)(a).
8. As the appeal was only 3 days late and the Applicant was misled by the notices attached to the Final Notice the Procedural Judge extended the time for the making of this appeal.
9. The Tribunal heard the Appeal on 11th March 2020 following an inspection. Those attending the hearing were Mr Appollonaris Fonka, Team Leader for Housing Standards, and Mrs Carol Jones Housing Standards Officer for the Respondent.
10. The start of the hearing was delayed due to the Tribunal being caught in traffic due to an accident on the M6 while travelling from the inspection to the hearing venue. The Applicant did not attend the hearing and it was later found that while waiting for the hearing to start the Applicant had an anxiety attack and was unable to appear.
11. The Tribunal found from the documents supplied that there were two grounds for appeal.
 1. The first ground was that the work required by the Improvement Notice had been carried out notwithstanding that it appeared that much was done belatedly. The Tribunal considered that having viewed the property and read all the documentation it has sufficient evidence from both the parties on this ground.
 2. The second ground was that the Applicant may have had a reason, whether justifiable in the circumstances or not, for failing to either comply with the Improvement Notice or make representations following the service of the notice of intention to impose a Financial Penalty.
12. The second ground was not overtly stated by the Applicant but was identified by the Tribunal from the following:
 - In a brief interview on 18th December 2019 recorded by Mr Appollonaris Fonka, Team Leader for the Respondent's Housing Standards, after the issue of the Final Penalty Notice, the Applicant said that "she had been dealing with some personal issues and had also been out of the country". Mr Fonka correctly advised her at that stage, to pay the fine or appeal.
 - In an email to the Tribunal dated 28th February 2020, Sophie Akhtar, a relative assisting the Applicant, requested a postponement because Ms Majid had suffered a bereavement and this had had an adverse effect on her health. Details were not provided to the Respondent as the request was refused because an extension of time had already

been given to enable her to provide her statement of case and a postponement would cause undue delay.

- The Applicant was present at the inspection and attended the hearing venue but in an email to the Tribunal after the hearing the Applicant stated that she had had an anxiety attack while waiting for the hearing to begin.

13. From its Statement of Case the Respondent considers that, in maintaining housing standards, it is important that landlords engage with the Respondent and, in the present circumstances, failure to do so incurs an additional penalty. The Tribunal considered that to ensure a fair determination the Applicant should be given an opportunity to address this second ground in written representations, giving details, which the Tribunal would have asked her to do had she been able to attend the hearing.

14. Therefore, the Applicant was directed to serve on the Tribunal and the Respondent, a statement giving her reasons for:

- a) her failure to comply with the Improvement Notice by 18th October 2019; and
- b) failure to make any representations following the service of the notice of intent to serve a Financial Penalty with regard to her non-compliance.

In addition, she should provide satisfactory evidence of her income if it is less than £440.00 per week.

15. The time limits were initially set at 30th March 2020 and 13th April 2020. These were extended at the request of the Applicant on the grounds of her health to 27th April and 21st May 2020 respectively. The extensions were longer than the tribunal might usually give to take account of the new methods of working required due to the Government's action in respect of the coronavirus outbreak.

16. Both parties responded and their representations are set out under their respective cases.

Grounds of Appeal

Ground 1

17. The work required by the Improvement Notice had been carried out.

Ground 2

18. The Applicant's health precluded her from:

- i) Ensuring that the Improvement Notice was complied with within the specified time scale and
- ii) Making representations following the service of the notice of intention to impose a Financial Penalty.

Improvement Notice

19. Details of the Improvement Notice are stated here as the Applicant submits as one of her Grounds for Appeal as being that all the works were completed although not necessarily all within the time scale set in the notice.
20. The Notice was dated 10th September 2019 and required works to remedy the category 1 hazards identified to be begun not later than 11th October 2019 being not less than 28 days from the date of service of the Notice and to be completed by 18th October 2019.
21. Schedule 1 of the Notice set out the Defect and Schedule 2 set out the remedial action. The content is paraphrased and précised in the table below.

	Schedule 1	Schedule 2
1	Damp and Mould Growth <ul style="list-style-type: none"> • Water leak through the ceiling on first floor landing when it rains • Mould growth on rear bedroom walls • Defective mechanical extractor fan in the bathroom • Mould growth on ceiling above rear exit door 	<ul style="list-style-type: none"> • Investigate cause of leak and remedy • Remove and treat mould growth on walls in the rear bedroom • Repair or replace extractor fan • Remove and treat mould growth near door
2	Excess Cold <ul style="list-style-type: none"> • Broken and missing handles to the bedroom windows 	<ul style="list-style-type: none"> • Fit new handles to bedroom windows
3	Un-combusted Fuel Gas <ul style="list-style-type: none"> • No gas safety record available 	<ul style="list-style-type: none"> • Provide gas safety record
4	Domestic Hygiene Pests & Refuse <ul style="list-style-type: none"> • Accumulated rubbish in rear garden and shed 	<ul style="list-style-type: none"> • Remove rubbish
5	Food Safety <ul style="list-style-type: none"> • Missing and loose wall tiles in kitchen • Defective work surface adjacent the kitchen sink • Hole in the wall above rear exit door 	<ul style="list-style-type: none"> • Fix tiles • Replace the wok surface • Fill hole
6	Personal Hygiene, Sanitation and Drainage <ul style="list-style-type: none"> • Bathroom sink leaks • Loose wall tiles in the bathroom • Waste water pipe to bath detached and water does not discharge into 	<ul style="list-style-type: none"> • Investigate cause of leak and remedy • Re-fix tiles in bathroom • Re-join the waste pipe

	drain	
7	Falls on Level Surfaces	
	<ul style="list-style-type: none"> Flooring in the lounge is lifting Concrete paving stones between rear yard and garden uneven 	<ul style="list-style-type: none"> Repair/replace flooring and paving
8	Falls Associated with Steps & Stairs	
	<ul style="list-style-type: none"> Concrete paving stone on front step broken and loose 	<ul style="list-style-type: none"> Replace paving stone
9	Electrical Hazards	
	<ul style="list-style-type: none"> Lounge light fitting defective Number of electrical sockets do not work Under stairs cupboard light defective Light in corridor to kitchen defective Rear bedroom light switch broken No Front bedroom light fitting Wires visible in box on stairs 	<ul style="list-style-type: none"> Electrician to check installation making sure all light fittings and sockets work correctly Provide light fitting in front bedroom Remove box with visible wires on stairs
10	Fire	
	<ul style="list-style-type: none"> No smoke detectors 	<ul style="list-style-type: none"> Fit battery type smoke detectors on kitchen corridor and first floor landing ceilings
11	Structural Collapse and Falling Elements	
	<ul style="list-style-type: none"> Part of first floor middle bedroom ceiling cracked and loose Loose plaster on wall in under-stairs cupboard Meter cupboard door fallen off in lounge 	<ul style="list-style-type: none"> Remove loose areas of ceiling and re-plaster Remove loose plaster from walls and re-plaster under-stairs Re fix meter cupboard door

Inspection

22. The Tribunal inspected the Property on 11th March 2020 in the presence of Ms Asifa Majid, the Applicant and Mr Appollonaris Fonka, Team Leader for Housing Standards, and Mrs Carol Jones Housing Standards Officer for the Respondent.

23. The Property is a three-bedroom Victorian terraced house in a row of similar houses. It is constructed of brick under a pitched roof. It has upvc doors and double-glazed windows. The front door opens directly into the living room from which there is a door into the yard and garden at the rear of the house. From the living room there is a corridor to the kitchen. From this corridor there is a flight of stairs to the first floor. There is an under-stairs cupboard. Beyond the kitchen is the bathroom. There is a door from the kitchen to the rear yard and garden. On the first floor there are three bedrooms.
24. The overall condition of the house was fair. The kitchen and bathroom were dated.
25. A list of items which were to be remedied under the Improvement Notice was provided and the Tribunal checked these off as it went around the Property as per the table below:

Item	Comment
Ground Floor	
Concrete paving stone on front door step broken and loose	Repaired
No smoke detectors within Property No gas safety record Number of electrical sockets not working	Detectors now present Gas Safety record available All sockets appear to be operational
Light fitting in front room defective Meter cupboard door fallen off	Light fitting repaired Cupboard door replaced
Flooring in front room lifting	Repaired
Lighting kitchen corridor defective	No bulb but working
Light under-stairs defective Loose plaster under-stairs	Light fitting not working Plastering not done.
Tiles missing or loose in kitchen Work surface in kitchen defective Hole in wall above rear exit door Mould on ceiling above rear exit door	Tiles replaced or re-fixed Work surface replaced Hole repaired. Mould still present.
Bathroom sink leaks Tiles missing or loose in bathroom Bathroom extractor fan defective	Sink repaired. Not all tiles replaced or re-fixed. Bathroom extractor fan working.
First Floor	
Box with exposed wires on stairs wall	Box removed
Water leak on landing Mould growth in rear bedroom Middle bedroom ceiling cracked	There was no indication for the inspection whether the leak had been repaired. Mould growth removed. Ceiling repaired although section of board was still loose.
Light switch in rear bedroom broken No light fitting in front bedroom Broken and missing handles on	New light switch in rear bedroom Front bedroom light fitting installed.

windows in bedrooms	All windows could be secured Some had double handles but only one was operational.
External	
Waste water pipe in two parts and does not discharge into drain	Waste water pipe now discharges into drain
Concrete paving stones between yard and garden uneven	Still uneven
Accumulation of rubbish	Rubbish has been removed

26. Overall, the works identified in the Improvement Notice have been carried out to the extent that in the opinion of the Tribunal they are no longer a Category 1 hazard.

Respondents' Case

27. The Respondent provided a Statement of Case supported by the Witness Statement of Ms Carol Jones, which was confirmed and elaborated upon by oral representations at the hearing.
28. A copy of the Official copy of Entry Number WM454025 at HM Land Registry was provided which identified the freehold interest in the Property as belonging to Orang Zeb.
29. The Landlord and therefore the “person having control of the property” is Ms Asifa Majid and is the Applicant. The Tenant is a woman receiving assistance from the Black Country Women’s Aid and the property is occupied by her and her six children.

The Improvement Notice

30. A Family Support Practitioner contacted Ms Carol Jones, one of the Respondent’s Housing Standard Officers by email on 2nd and 5th August 2019 identifying problems with the condition of the Property. A copy of the email was provided which stated:
“the family have contacted the landlord on several occasions regarding repairs and nothing has been done. [The Tenant] has 6 children ranging from 18 years to 4 years, one of which is registered blind, from a recent visit to the hospital her eye sight has deteriorated.”
The repairs referred to in the email are not itemised here as the relevant description is set out in the Improvement Notice.
31. On 6th August 2019 Ms Jones sent an informal letter to the Applicant referring to the defects which the Family Support Practitioner identified requiring the Applicant to investigate and remedy them within 14 days. If this was not done a formal inspection would be carried out which may result in formal notices, failure to comply with which could result in prosecution or civil penalty.

32. As Ms Jones received no response, she formally obtained contact details for the Landlord from the appropriate department of the Respondent under the Data Protection Act 1984 section 28(3).
33. Ms Jones said that on 4th September 2019 she was informed by the tenant occupying the Property that no repairs had been carried out. Therefore, on 5th September as a suitably qualified and experienced Environmental Health Officer she carried out a formal inspection under the Housing Health and Safety Rating System and identified 10 Category 1 hazards subsequently listed in the Improvement Notice served on 10th September 2019. The Notice required the remedial works to be started on 11th October 2019 and finish by 18th October. A copy of the Notice was sent to all parties with an interest in the Property including the freehold owner.
34. The Tribunal made two points with regard to the Improvement notice. Firstly, the Tribunal said that the time allowed to carry out the work seemed very short. Ms Jones said that the remedial work was not extensive and, in her experience, where landlords had difficulty in meeting the deadline set in an Improvement Notice they invariably contacted the Respondent to discuss the matter. It was also open to a landlord to appeal the Notice. Secondly in the knowledge and experience of its members the Tribunal commented that it was exceptional to find that there were 10 Category 1 hazards. Also, having viewed the photographs of the defects prior to remediation and having inspected the Property after remediation it felt at least some of the defects identified may have contributed to Category 2 hazards and not Category 1.
35. On 16th October 2019 Ms Jones sent a letter to the Applicant informing her of a planned formal re-inspection of the Property under section 239 of the Housing Act 2004 to ascertain whether the Improvement Notice had been complied with. No reply was received.
36. On 24th October 2019 Ms Jones said that she re- inspected the Property and established that none of the works specified in the Improvement Notice had been undertaken. It was concluded that the Improvement Notice had not been complied with and the Applicant had committed an offence contrary to section 30 Housing Act 2004.

Financial Penalty Notice

37. On 28th October 2019 the Respondent served a Notice of Intent to issue Financial Penalty of £7,500.00 on the Applicant under Schedule 13A Housing act 2004. The Applicant had 28 days to make a written representation to the Respondent but none were received.
38. On 6th December 2019, in the absence of any representations the respondent issued a Final Notice imposing a Financial Penalty of £7,500.00. The Applicant had 28 days in which to appeal the Notice.

39. On 18th December 2019 the Appellant visited the Respondent's Office and saw Mr Apollinaris Fonka. She said that she had been out of the country and had been dealing with some personal issues which had distracted her from complying with the Improvement Notice and making representations in respect of the Penalty Notice. Mr Fonka advised her that at that stage her options were either to pay the Penalty or to appeal to the tribunal. On 8th January 2019 the Respondent heard that the Applicant had appealed to the tribunal.

Financial Penalty Policy

40. The Housing Act 2004 as amended by the Housing and Planning Act 2016 enabled local housing authorities to impose Financial Penalties, also referred to as civil penalties, for certain offences, instead of prosecuting. The legislation gave the authority, set out the procedure for imposing penalties and provided rights of appeal. However, apart from setting a maximum amount of the penalty the legislation did not provide details as to how the Penalty was to be determined. Instead under Government Guidance it was for each local housing authority to set out a policy for determining the amount in any particular set of circumstances. The Respondent had in common with other Local Housing Authorities adopted a Financial Penalties Policy (the Policy).
41. The Policy is in the form of two Appendices approved on 24th October 2018. Appendix 1 to the Policy sets out a series of factors which should be considered when determining the appropriate course of action in deciding whether a civil penalty or prosecution should be applied as follows:
- The severity of the offence and the resulting potential harm;
 - The offending history of the alleged offender;
 - If the offence was committed by mistake or with knowledge;
 - The health and capacity of the alleged offender;
 - The public interest in taking the alleged offender into court where the offence will be publicised and the individual held to account in public;
 - The likely impact of court action versus a civil penalty in deterring further offending.
42. The Policy suggests that the following situations are where the issuing of a civil penalty may be appropriate:
- No history of previous non-compliance with relevant legislation.
 - No previous convictions of relevant offences.
 - The offence was committed as a result of a genuine mistake or understanding. This must be balanced against the seriousness of the offence.
 - Prosecution is likely to have a serious adverse effect upon the offender's physical or mental wellbeing, but this must be balanced against the seriousness of the offence.

43. The Policy refers to the matters set out in the Government Guidance (which are not exclusive) to be used in assessing a penalty when applying a matrix. These are:
- The penalty should act as a deterrent to repeating the offence and to others from committing similar offences;
 - The penalty should remove any financial benefit obtained as a result of the commission of the offence;
 - The severity and seriousness of the offence;
 - The culpability and past history of the offender;
 - The harm, or potential harm, caused to the tenant and the impact in the wider community.

The penalty is determined by a charging table and guidance notes which are set out in Appendix 2.

44. The Charging Table is divided into sections according to the offence that is committed. The section applicable to the failure to comply with an Improvement Notice under section 30 Housing act 2004 is as below.

A. Failure to comply with an Improvement Notice under Section 30 Housing Act 2004	
1 st offence	£5,000
2 nd subsequent offence by same person/company	£15,000
Subsequent offence by same person/company	£25,000
Premiums	
The following additional charges will be added to the charges above. All relevant charges will be applied i.e. more than one premium can be applied if relevant.	
Acts or omissions demonstrating high culpability	+£2,500
Housing portfolio of 10 or more units of accommodation	+£2,500
Multiple category 1 or high Category 2 Hazards	+£2,500
Vulnerable occupant and/or significant harm occurred as a result of housing conditions	+£2,500
Perpetrator demonstrates to the satisfaction of the Council that their income is less than £440 per week	-50% of overall charge

45. The Notes state that the starting point for a Financial Penalty is based on the type of offence, number of previous convictions or imposition of the same type of offence in the previous four years. After the starting point has been determined, relevant Premiums are added to the starting point to determine the full Financial Penalty to be imposed. More than one premium can be added, where relevant.
46. The Notes state that the imposition of the premium relating to vulnerable occupants and/or significant harm occurred as a result of housing conditions was based on the classes of harm under the Housing Health and Safety Rating System. Under these vulnerable persons in respect of the relevant hazards are those aged 14 and under for Damp and Mould Growth, 65 or over for Excess Cold and Carbon Monoxide, under 5 years for Personal Hygiene, Sanitation and Drainage and Electrical Hazards

and 60 or over for Falling on Level Surfaces, Falling on Stairs etc and Fire.

47. In the present circumstances the Respondent had determined that a Financial Penalty rather than a prosecution was the right course of action for this offence. This determination was on the basis that even though the offence was serious there was no imminent risk of serious injury or loss of life and the Respondent has no evidence that the Appellant had committed similar offences in the past. Nevertheless, it was in the public interest to pursue this matter as a breach of an Improvement Notice.
48. The amount of the penalty was calculated applying the Charging Table. This was a first offence and therefore the starting point was £5,000.
49. The Respondent was of the opinion that the Applicant had shown a high level of culpability by not responding to the correspondence from the Respondent prior to the Improvement Notice or to the Improvement Notice itself or to make representations following the issue of the Notice of Intention to Issue a Financial Penalty and by recklessly failing to comply with the Improvement Notice. Therefore, an additional £2,500 premium was added.
50. It was also submitted that a further premium of £2,500 could have been added as the Improvement Notice contained multiple Category 1 hazards.
51. The other premiums were not considered to be appropriate as the occupants were not known to be vulnerable or to have suffered significant harm due to the condition of the Property under the Housing Health and Safety Rating System.
52. The total Financial Penalty assessed was £7,500.00.
53. The overall Financial Penalty could have been reduced by 50% had the Applicant made written representations within 28 days of the Notice of intent being issued and provided evidence to the satisfaction of the Respondent to demonstrate that their income was less than £440.00 per week. However, no representations were received within the prescribed period.
54. The Tribunal commented at the hearing that the starting figure of £5,000 according to the Charging Table was a minimum as there was no allowance made for mitigating factors other than the reduction of the Financial Penalty by a half if the landlord's income was £440.00 per week or less. In addition, the premiums for aggravating factors rose in sums of £2,500 without any provision for mitigation. For example, the mere fact there were two or more category 1 hazards would increase the penalty by £2,500 without any account being taken of the how many category 1 hazards there were or the seriousness of those hazards.

55. The Tribunal said that in its experience other local authorities had a much more sophisticated charging table which balanced harm and culpability when setting a starting point and which had a range of mitigating and aggravating circumstances with more closely stepped increases and reductions to achieve a Financial Penalty that reflected the specific offence.
56. Mr Fonka said it was accepted that the Charging Table before the Tribunal was open to criticism and that a newer version had been prepared and was in the process of being agreed by the Council. However, at the time the decision was being made in respect of the Financial Penalty in this case the Charging Table before the Tribunal was applicable.

Ground 1

Applicant's Case

57. In written Representations the Applicant submitted the following statement in respect of Ground 1 which is paraphrased below.

1. Smoke Alarms

58. The Applicant stated that smoke alarms had been fitted to the Property. Initially the Tenant had been approached about having alarms fitted for her safety but the Tenant refused because her husband and friends smoke in the Property and she was concerned that the smoke alarms would be set off.

2. Meter Cupboard Door

59. The Applicant said that the meter cupboard door had been re-fitted having been kicked off during a domestic argument between the Tenant and her husband.

3. Laminate Floor

60. The floor has been levelled and laminate flooring has been re-laid. The tenant does not manage the Property adequately. She allows her children to ride bikes inside the Property. She and her daughter are also informal childminders and mind children of her friends and neighbours for which they are paid. When I have visited the Property, I have not been allowed in but I have been informed by neighbours that there is sometimes up to 15 children in the Property during school holidays.

4. Kitchen Table

61. The kitchen table [worktop] has been replaced which was intact when the Tenant moved in. The Applicant said that the Tenant had told her that it had become loose several times due to her children climbing on the work surfaces.

5. Electrical Work

62. An electrician has fixed all the non-working sockets. The Applicant said that maintenance workers often have to visit the Property several times to obtain access due to the Tenant not being at home and the children say the mother has instructed them not to open the door. This results in the Applicant being billed for call out charges.

6. Extractor Fan and Tap in Bathroom

63. The Applicant stated that the extractor fan and tap in the bathroom had been replaced or repaired.

7. Garden Rubbish Removed

64. The Applicant stated that the garden had been cleared seven times for the Tenant who said that she did not know where the rubbish was coming from although it was pointed out that the rubbish contained letters addressed to the Tenant.

8. Kitchen Tiles have been Replaced

65. The Applicant stated that the kitchen tiles had been replaced or re-fixed.

9. Water Leak to Landing Ceiling

66. The Applicant stated that the roof tiles where the water was coming though on the landing have been replaced to stop the leak.

10. Missing Handles

67. The Applicant stated that the missing handles on the windows have been replaced to stop the excess cold. The Applicant said that the Tenant had said that the damage was caused when her husband was arguing with her and the young children in the house became scared and were trying to open the windows in a panic and the handles were broken as they did not know how to operate the windows.

11. Replacement of Front Step

68. The Applicant said that the front step has been replaced with a new concrete paving slab. The Applicant said that this had been replaced

twice and was broken by the Tenant's husband when he came to the Property and domestic violence has broken out.

Respondent's Reply

69. In written Representations confirmed at the hearing the Respondent submitted the following statement in respect of Ground 1 which is paraphrased below.
70. At the time of the written representations the Respondent had not been able to confirm that the work had been carried out and so stated that if it had been undertaken it was outside the timeframe of the Improvement Notice. From the inspection it was accepted by the Tribunal and the Respondent that generally the required works had been done. However, the Respondent submitted that the works were all done after the date specified in the Improvement Notice and therefore the Notice had not been complied with. As a result, the Financial Penalty was justified.
71. With regard to specific works the Respondent stated as follows:

1. Smoke Alarms

With effect from 1st October 2015 regulations require landlords to fit at least one smoke alarm on every storey at the start of each tenancy. Where there are no alarms the Respondent must make a judgement as to whether there is sufficient evidence to show that the regulations were complied with at the commencement of the tenancy. In the absence of smoke alarms being observed on an inspection the Respondent requires evidence of their existence at the commencement of the tenancy in the form of an inventory signed and dated by the tenant confirming that the alarms are fitted and working/tested.

2. Meter Cupboard Door

If the Tenant or her spouse had caused the damage to the meter cupboard door it was for the Tenant to repair the damage or for the Applicant to have the door replaced and to re-charge the cost to the Tenant or deduct it from the Tenant's deposit. The Respondent can enforce against structural disrepair identified at an inspection. The cause is an incidental matter for the Applicant and the Tenant to resolve.

5. Electrical Works

In respect to the Applicant's claim that trades persons were not always able to obtain access, a landlord has a statutory obligation under section 11 of the Landlord and Tenant Act 1985 to provide an electrical service to the Property and has a commensurate right of entry to carry out works to maintain it on giving the tenant at least 24 hours written notice to enter at a reasonable time.

9. Water Leak to Landing Ceiling

In respect to the Applicant's claim that trades persons were not always able to obtain access, with regard to the replacement of the roof tiles, it was not necessary for the Applicant to obtain internal access to the Property. The leak could have been repaired from outside the house at any time.

Overall

The Applicant seeks to blame the Tenant for the state of repair identified at the property. If this were the case the Applicant would have recourse under the terms of the tenancy against the tenant for breach. A tenant's breach does not absolve the landlord from dealing with the hazards present at the Property.

Ground 2

Applicant's Case

72. The Applicant provided a written statement in two sections. Firstly, she made submissions as to why she had failed to comply with the improvement notice by 18th October 2019 as follows:

- She said that the last 18 months had personally been very difficult for her with events which had a huge impact on both her physical and mental health. Due to her husband having an affair she impulsively committed a criminal offence for which she appeared before a criminal court in London charged with a knife crime for which she was sentenced to a 12 month Suspended Sentence Order and probation (copy of a letter from the Reducing Reoffending Partnership dated 29th July 2019 was attached).
- Over the last two years she said that she had received support from Roshni Women's Organisation based in Birmingham due to her leaving home with her two young daughters and separating from her husband. (copy of a letter from Roshni Women's Organisation dated 11th October 2018 explaining her circumstances presumably in respect of the above-mentioned court case was attached).
- She added that she had suffered emotional depression for which she had received medication from a doctor in Pakistan on 14th July 2017. Her GP, Dr Maqsood Ahmad, had written a letter explaining her physical and mental condition presumably in respect of the above-mentioned court case.
- The Applicant said her mother has been very ill over the last two years and had passed away in December. She said that she had to travel to Pakistan numerous times. She said that as she is from Pakistan and

has no relatives in the UK her mother was her sole support in times when she was at her lowest. Due to her mother's death she had to fly to Pakistan. (copies of Applicants passport number F[number redacted by Tribunal] and flight tickets and visas on passport C [number redacted by Tribunal] for entry to Pakistan and dated 6th December 2019 and for entry back into the UK on 9th December 2019 was attached).

- She said that English is not her first language, so she had to rely on help from friends and organisations to respond to formal letters.
 - Furthermore, she said that attempts to resolve issues at the Property had often been hampered by the Tenant who has either not let people in to do the work inside the house or who often was not home when she has said that she would be home. She said that with her personal circumstances it had been very difficult to get to Walsall and coordinate work especially as the Tenant wanted everything done to a timeframe that suited her and her children.
73. Secondly, she made submissions as to why she had failed to make representations following the service of the notice of intent to serve a financial penalty with regards to non-compliance.
- She said that the requirement to make representations was at a time when she was in difficult situation with her two daughters as she had to attend numerous court proceedings and meet with her solicitor.
74. She attached a bank statement for the period 18th January to 18th February 2020, as proof of the benefits she received. These were found to be £137.50 and £135.34. She requested the tribunal to look at her case with some leniency and not to put her into any situation that would cause her further hardship and stress. She said that she was just about managing her anxiety.

Respondent's Reply

75. The Respondent referred to the correspondence provided by the Applicant in evidence.
76. With regard to the Reducing Reoffending Partnership letter dated 29th July 2019, the Respondent said that it had been written whilst the Applicant was serving the 12-month term and although it was not clear when the Order commenced it could be inferred that it was nearing its completion. It was submitted that the letter preceded the Improvement Notice on 10th September 2019.
77. With regard to the letter from Roshni Women's' Organisation dated 11th October 2018 the incidents referred to occurred earlier in 2018 and approximately a year before the Improvement Notice.

78. With regard to the letter from Dr Maqsood Ahmad the Respondent said that the assessment date is at least 2 years prior to the Improvement Notice. If the Applicant's condition had not improved the Respondent would have expected evidence of a more recent assessment.
79. Whereas the Respondent was sympathetic to the Applicant with regard to the loss of her mother nevertheless the Respondent did not believe from the evidence provided, that the Applicant had travelled to Pakistan on the dates stated. The flight tickets and visas provided corresponded to such a journey but the visa stamps were on the pages of a passport numbered C [Number redacted by Tribunal] which was different from the passport number F [number redacted by Tribunal] on the copy provided of the identification page of the Applicant's passport. In any event the date of travel was after the date required for completion of the works stated on the Improvement Notice.
80. The Respondent accepted that it may be difficult for a person to respond to a legal notice which is why a period of 28 days is given before the Notice takes effect. Also, on top of all the respondent's legal notices recipients are advised to contact the Citizens Advice Bureau if they do not understand the content of the notice.
81. In respect of the Applicant's claim that the Tenant was obstructive in getting the work done the Respondent referred to its earlier response that there is a right of entry to carry out maintenance on the Property on giving the tenant at least 24 hours written notice to enter at a reasonable time under the Housing Act 1988. The Applicant also has a recourse against the tenant for breach of the Agreement. It was therefore submitted that without additional evidence of emails, letters or texts substantiating the claim against the tenant this was not a justifiable excuse for not complying with the Improvement Notice.
82. With regard to the Applicant failing to make representations following the Notice of Intention to impose a Financial Penalty due to her involvement in court proceedings, the Respondent stated that no evidence of attendance at these proceedings between the service of the Notice of Intention to impose a Financial Penalty on 28th October 2019 and the issue of the Final Notice on 6th December 2019 was provided.
83. Overall, the Respondent did not contest that the Applicant had suffered emotional depression from her domestic circumstances and that she had suffered personal and domestic difficulties in the past. Nevertheless, it was submitted that the evidence she had adduced did not show any particular issues either between the service of the Improvement Notice on 10th September 2019 and its compliance date of 18th October 2019 or between the service of the Notice of Intention to impose a Financial Penalty on 28th October 2019 and the issue of the Final Notice on 6th December 2019. At either of these times the Applicant could have approached the Respondent to explain her situation.

84. In addition, the Respondent noted that the Applicant had still not completed all the works specified in the Improvement Notice, namely loose tiles in the bathroom were not secured, broken slabs in the rear garden had not been replaced and at the inspection the Applicant said that the investigation and repair of the roof could not be carried out until the Property was empty.
85. The Respondent submitted that notwithstanding the Applicant's difficulties the Tenant has difficulties of her own. It was stated that a landlord is obliged to provide a safe and secure place for a tenant to live and that this was not provided in the present case.
86. Finally, the Respondent stated that it was not satisfied with the evidence of income. Only one page of the bank statement was provided for the month 18th January to 18th February 2020. The statement shows a figure of £11,187 being paid in which appears a lot of money for one month if she is receiving less than £440.00 per week. The statement also did not show payments of £150.00 per week for housing benefit payments of the Property.

Decision

87. The Tribunal noted Schedule 13A of the Housing Act 2004 which sets out the provisions relating to appeals against Financial Penalties as follows:
 - (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.*
88. In applying this provision, the Tribunal had regard to the decision in *London Borough of Waltham Forest and Allan Marshall & London Borough of Waltham Forest and Huseyin Ustek* [2020] UKUT 0035
89. In this decision, Judge Elizabeth Cooke referred to the Guidance of the Secretary of State issued in 2016 and again in 2018 with regard to Financial Penalties. At paragraphs 1.2 and 6.3 of the Guidance both local

authorities and tribunals are to have regard to the guidance. At paragraph 3.5 the guidance says that local authorities should develop and document their own policy on determining the appropriate level of civil penalty in a particular case; it adds that “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”. The paragraph goes on to set out the matters that a local authority “should consider” to “help ensure that the civil penalty is set at an appropriate level”. These are:

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.

90. The learned judge went on to state that given a policy, neither the local authority nor a tribunal must fetter its discretion but “must be willing to listen to anyone with something new to say” (as per Lord Reid in *British Oxygen Co Ltd v Minister of Technology* [1971] AC 610 at page 625) and “must not apply to the policy so rigidly as to reject an applicant without hearing what he has to say” (per Lord Denning MR in *Sagnata Investments Ltd v Norwich Corporation* [1971] 2 QB 614 page 626).
91. In referring to the approach a tribunal should take in applying a policy, Judge Cooke referred to *R (Westminster City Council) v Middlesex Crown Court, Chorion plc and Fred Proud* [2002] EWHC 1104 (Admin) as being particularly apt. In that case a local authority sought a review of the decision of the Crown Court which allowed an appeal by rehearing of the decision of the authority to refuse an entertainment licence in accordance with policy. Scott Baker J said at paragraph 21:

“How should a Crown Court (or a Magistrates Court) [or in this case presumably a tribunal] approach an appeal where the council has a policy? In my judgement it must accept the policy and apply it as if it was standing in the shoes of the council considering the application.”
92. However, it is added that the cases confirm that accepting the policy does not mean the tribunal may not depart from it provided it gives reasons taking into account the objective of the policy; the onus being on the Applicant to argue such departure.
93. Judge Cooke then considered what weight should be given to the local authority’s decision under its policy. The justification for giving weight to a local authority’s policy is, as expressed in *Sagnata Investments Ltd v Norwich Corporation* [1971] 2 QB 614, because it is an elected body and therefore its decisions deserves respect.

94. It was submitted that case law supported a view that a tribunal should not depart from the decision of the local authority unless it is “wrong”. Judge Cooke made it clear that this did not mean wrong in law (what might be termed “illegal”). A tribunal is not “reviewing” the local authority’s decision but “rehearing” it. It is entitled to substitute its own reasoned decision, perhaps having information not available to the local authority when it made its decision or in exercise of the tribunal’s own specialist knowledge.
95. Taking into account the above the Tribunal then considered the Policy with regard to the imposition and amount of the Financial Penalty. It should be noted that the procedure carried out by the Respondent in issuing the Financial Penalty was not challenged by the Applicant and the Tribunal saw no reason to question it or suggest that it had not been carried out correctly.
96. In line with other policies the Respondent’s Policy was in two stages. In the Tribunal’s experience most Authorities have enumerated three considerations:
 - a) whether to prosecute;
 - b) whether to issue a financial penalty;
 - c) whether to warn, give guidance or to take similar non punitive action.This Policy only considered whether or not to prosecute or impose a Financial Penalty. Having determined that a Financial Penalty is the most appropriate action the second stage is to assess the amount of the Penalty.

Ground 1

97. Firstly, the Tribunal considered whether a Financial Penalty should be imposed. The reason given for the imposition of a Financial Penalty in the Final Notice dated 6th December 2019 was the failure to comply with an Improvement Notice. This addressed Ground 1 in that the Applicant had submitted that she had carried out the works and so complied with the Improvement Notice. The Improvement Notice had not been appealed and so was taken as being valid.
98. So far as the claim that the work had been carried out, the Applicant did not dispute that at least some of the works to remedy the hazards identified in the Notice had not been carried out and therefore the Improvement Notice had not been fully complied with by the time specified in the Notice, even if most of the works had subsequently been completed. Any consideration by the Tribunal of the Improvement Notice is limited to the extent to which the failure to comply with the Notice should affect the imposition and amount of the Financial Penalty.
99. The Tribunal considered all the evidence. In particular it was found that:

- the smoke alarms had been installed, the front step, meter cupboard door, flooring, kitchen worktop, extractor fan, tap, waste pipe, electrical sockets, lights (except in the under stairs cupboard) and extractor had been repaired;
 - the waste had been removed from the garden; and
 - most of the tiling had been done.
100. Nevertheless, the Tribunal found at the inspection that there was still some tiling to be done. It was not clear to the Tribunal that the roof had been repaired (the Respondent submitted that it had not). The window handles were not fixed to a standard to ensure easy repeated use, the under stairs light fitting was inoperative and the garden slabs were still broken and uneven.
101. The Tribunal found that landlords had an obligation to maintain premises and that the law made provision for landlords to carry out those obligations. The Applicant did not adduce evidence to demonstrate that the Tenant had been so obstructive as to prevent the Applicant carrying out the obligations of a landlord. The Tribunal therefore did not accept this as a defence to failing to comply with the Improvement Notice.
102. The Tribunal did find from the Gas Certificate that the gas installation had been inspected within the specific time.
103. On the basis of these findings the Tribunal determined that the work required by the Improvement Notice had not been carried out in accordance with the Notice and the Tribunal was satisfied beyond a reasonable doubt that an offence had been committed under section 30 Housing Act 2004 and so confirms the Respondent's imposition of a Financial Penalty.

Ground 2

104. Secondly, the Tribunal considered the amount of the Financial Penalty. This addressed Ground 2 of the appeal in considering whether there was any justification for the Applicant's failure to comply with the Improvement Notice within the specified time scale or her failure to make representations following the service of the notice of intention to impose a Financial Penalty.
105. The Tribunal was of the view that Parliament required tribunals to differentiate between offending landlords when determining the amount of a Financial Penalty and to grade the Penalty accordingly. On this basis a higher Penalty is to be imposed upon those landlords who flagrantly disregard the safety, health and welfare of their tenants. In contrast a lesser Penalty is to be imposed against those landlords where there are mitigating circumstances.

106. The Tribunal was of the opinion that having due regard to the Government Guidance with particular reference to paragraph 3.5, a Charging Table or matrix and Guidance Notes must balance harm and culpability when setting a starting point and apply carefully graduated sums to take account of both mitigating and aggravating circumstances to ensure a Financial Penalty that reflects the specific offence.
107. In the Tribunal's experience Authorities usually compile a charging table or matrix which identifies sums on a scale that allows the Authority to set a penalty that balances the relative level of harm and culpability e.g. a figure for low harm and culpability; another for low harm and medium culpability and so on. Having determined the starting point on the scale a further adjustment might be made to reduce or increase the penalty to take account of the mitigating or aggravating factors.
108. In this case the Respondent had set a starting point of £5,000.00 for a first offence of failure to comply with an Improvement Notice. From this point the Penalty could only be increased by increments of £2,500.00 for aggravating circumstances. Of the five increments two could be ascribed to culpability ("acts or omissions demonstrating high culpability" and "housing portfolio of 10 or more units and so should know better") and two to harm ("multiple category 1 or high Category 2 Hazards" and "vulnerable occupant and/or significant harm occurred as a result of housing conditions")
109. Although the Charging Table was basic when compared with those of other Authorities the Tribunal sought to apply it. In the Tribunal's opinion the penalty of £5,000 reflected medium level of culpability and medium harm. The Tribunal considered that this was a fair reflection of the offence.
110. With regard to the level of harm although the Respondent had assessed the hazards as being category 1 the Tribunal found from the photographs taken at the time of the assessment and its own inspection of the Property that there was a medium risk of harm to the Tenants. The Tribunal considered that the Respondent was quite correct in not applying the premium of "multiple category 1 or high Category 2 Hazards" which needed to be reserved for generally higher risk Category 1 hazards. The Tribunal wishes to make it clear that merely because the particular hazards posed a medium risk of harm to the Tenant this does not in any way denigrate from the Improvement Notice or the need for it to be complied with.
111. With regard to the culpability the Respondent had added a premium of £2,500.00 therefore, in effect raising the offence to one of high culpability.
112. The Tribunal then considered the evidence adduced by the Applicant by way of mitigation to assess whether any reduction or negation in the basic sum of £5,000.00 and/or the additional sum of £2,500.00 was

justified. The Tribunal noted firstly the Respondent's non-compliance with the Improvement Notice and secondly the evidence she had provided to support her submission of mitigation.

113. The Applicant claimed that she had carried out the remedial works required by the 12th December 2019. There was no inspection by the Respondent to verify this before the Tribunal's inspection at which it was found that the vast majority of work had been completed, although not all.
114. The Applicant claimed that at the time she received the Improvement Notice she was still suffering from a series of incidents which had seriously affected her mental and physical health. The Improvement Notice was served on 10th September 2019 and was to be complied with by 18th October 2019. The letters submitted by the Applicant showed that from July 2017 to the end of 2019 she had been diagnosed with depression; that her husband had had an affair which it appears had prompted her to commit a criminal offence for which she received a 12 month suspended sentence and probation; and that her mother had died following a long illness. In addition, there appear to have been some further domestic issues.
115. The Tribunal finds that notwithstanding the work was carried out after the date specified in the Improvement notice, the fact it was for the most part done goes to show the culpability is less than high.
116. With regard to the Applicant's state of health the Tribunal notes the discrepancies with regard to the passport and visas and places little weight on them. The Tribunal found that there was a number of unanswered questions. For example, it is not clear what the relationship is between the Applicant and the freeholder, who presumably is a head landlord and so may receive a rent. Nevertheless, overall, the letters show and the Respondent accepts that the Applicant has suffered depression and has had a stressful time. To what extent this has affected her failure to comply with the Improvement Notice is unclear. What the Tribunal does find is that the events itemised go to show the culpability of the Applicant is less than high.
117. The Tribunal therefore determines that the added premium of £2,500.00 should not be charged and the Financial Penalty is varied to that extent.
118. The Tribunal considered whether the Applicant's plea of mitigation justifies a reduction in the basic £5,000.00 penalty. The Tribunal referred to paragraph 3.5 of the Guidance upon which the Policy is based which states that "landlords are running a business and should be expected to be aware of their legal obligations". Notwithstanding her personal problems the Applicant as a landlord is not released from her legal obligations. There were hazards at the Property, an Improvement Notice was served, which was not complied with in the time specified.

The Tribunal therefore confirmed the basic Financial Penalty of £5,000.00.

119. With regard to the issue of whether the Applicant had an income of less than £440.00 per week and so was entitled to a reduction of 50% the Tribunal examined the bank statement provided. The income said to be received is stated as being £137.50 and £135.34, presumably per week. The Respondent added that a further £150.00 per week is paid in housing benefits payments for the Property which should be taken into account. There was no narrative with the statement explaining what the Applicant's income actually is especially as the account shows £11,187.13 being paid in and £10,333.24 being paid out. The Tribunal needed more information if the Applicant wished to use the statement to show her weekly income was less than £440.00.
120. Therefore, the Tribunal found the bank account statement insufficient evidence to justify the reduction of the Financial penalty by 50%.
121. The failure by the Applicant to make representations following the service of a Notice of Intent to Issue a Financial Penalty meant that she lost an opportunity to put forward any mitigation to reduce the Penalty. Whereas these proceedings do not give the same opportunity. They allow the Respondent's original decision to be reconsidered taking into account the Applicant's mitigation and a determination being made accordingly.

Summary

122. The Tribunal varies the Financial Penalty to £5,000.00.

Judge JR Morris

ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.

4. 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.