FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

HMCTS code (audio, video, paper)		**A: BTMM REMOTE**
Case Reference	**:**	**CAM/12/UD/HNB/2020/0002**
Property	**:**	**Flat B, Furriers Warren, Alexandra Road, Wisbech, Cambs PE13 1HQ.**
Applicant	**:**	**Paul Coulten**
Representative	**:**	**In person**
Respondent	**:**	**Fenland District Council**
Representative	**:**	**Miss R Parekh of Counsel**
Type of Application	**:**	**Appeal against the imposition of a financial penalty, pursuant to s.249A and Schedule 13A of the Housing Act 2004**
Tribunal Members	**:**	**Tribunal Judge S Evans** **Mr C Gowman BSc MCIEH MCMI**
Date and venue	**:**	**1 October 2020, by telephone (BT Meet Me)**
Date of Decision	**:**	**22 October 2020.**

DECISION

Covid-19 pandemic: description of hearing

This was a remote audio hearing which was not objected to by the parties. The form of remote hearing was A:BTMMREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents we were referred to were in an unpaginated bundle from the Applicant, a bundle running to 182 pages from the Respondent plus some additional documents, and a skeleton argument, the contents of which we had read in full in advance of the hearing.

DECISION

The Tribunal determines that the Appeal by is dismissed, and the final notice imposing a financial penalty of £4550 on the Applicant is confirmed.

INTRODUCTION

1. By an application dated 13th February 2020 made under section 249A and Schedule 13A of the Housing Act 2004 ("the Act"), the Applicant appeals the imposition of a financial penalty of £4550 imposed by the Respondent Council, the latter having been satisfied that the Applicant had committed an offence pursuant to section 30(1) of the Act, in so far as it found that on 28th March 2019 the Applicant had failed to comply with an Improvement Notice served on him in respect of Flat B, Furriers Warren, Alexandra Road, Wisbech, Cambs PE13 1HQ ("the Property").

BACKGROUND

2. The brief facts are as follows:

3. In or about 1993 the Applicant converted redundant commercial premises into 3 one-bedroom flats in a joint enterprise with the Respondent. The Property which is the subject of this application is one of those three flats.

4. On or around the 4th May 2018 the Respondent wrote to the Applicant giving him notice of an inspection of the building, which duly took place on 10th May 2018. The officer who conducted the inspection was a Mr Brown.

5. The Respondent wrote a letter dated 24th May 2018 to the Applicant setting out its findings, but receipt of this letter is denied.

6. In any event, it would appear that on 7th August 2018 Mr Brown conducted a re-inspection of the lobby and front door communal area of the building.

7. Similarly, on 9th November 2018 Mr Brown conducted a further inspection of those areas, and he took some photographs.

8. On 11th December 2018 the Respondent served a series of Improvement Notices, requiring the Applicant to undertake certain works to the Property and the building, to be started no later than 4th January 2019 and to be completed by 28th March 2019.

9. One of those notices was a Notice under section 11 of the Housing Act 2004 in respect of the Property. The principle hazards which the Respondent identified in this notice were excess cold and falls.

10. The Notice set out the defects contributing to the alleged hazards as follows:

    a. Juliette balcony timber doors are worn and degraded and require replacement / repair to prevent cold ingress.

    b. Large timber window sills are deteriorating and require refurbishing to prevent cold ingress.

    c. Timber window frames and sills in the bedroom are worn and degraded with unsecured panes that result in cold ingress. The window openings are hard to open and close, requiring replacement or repair.

    d. Juliette door balustrade barrier is loose on its fixings to external wall.

11. The works required to be completed were stated in the Notice as follows:

    a. Thoroughly overhaul all windows and frames where possible. Repair or replace all members found to be defective, to include provision of new timbers, putties, glazing and furniture as necessary. On completion, make good all works disturbed and leave the whole in proper working order.

    b. Where repair is not possible then take out the defective or unsuitable windows. Provide and hang new windows and frames of suitable construction within the existing openings. Works are to include provision of glazing, and associated putties and window furniture. On completion, make good all works disturbed internally and externally, to include decoration of all new timbers. Leave the whole sound, weathertight and capable of operating as designed. All replacement windows must satisfy current Building Regulations and the appropriate applications be made to the Council's conservation department. Where practical, windows are to be of a design to match existing and all work shall be agreed with Fenland District Council’s conservation department.

    c. Make good Juliette balustrade said that it complies with building regulations, BS6180 and the loadings in BS 6399 using locking nuts so that fixings remain secure and by repairing fixings into external wall.

12. On 16th January 2019 Turner Contracting Limited, at the request of the Applicant, gave a quote for all works in the Improvement Notices in the sum of £6500 Plus VAT.

13. The Applicant's case is that he asked those contractors to proceed, and on the following day, he informed the Respondent that he had obtained a quote.

14. On 25th January 2019 the Respondent contacted the Applicant to ask if there was a timescale for the works to be completed. We have seen no evidence of any response from the Applicant.

15. On 30th May 2019 the Respondent emailed the Applicant to request an update on the progress of certain window works. On the following day, the Applicant responded in an email, in which he admitted that he had no idea of the timeframes for the execution of those works, as the matter was in the hands of his contractor.

16. On 3rd June 2019 the contractor emailed the Respondent to state that he had been let down by a joiner (meaning the works would be further delayed).

17. On 17th July 2019 the Respondent was informed by the contractor that the windows and doors in the Property would be fitted that week.

18. On 8th August 2019 the Respondent emailed the contractor to ask him to confirm what work was still outstanding at Furrier's Warren.

19. On the same day the contractor responded to state that all work was completed except the entrance doors, which he had been told would be delivered the next week.

20. On 15th August 2019 the Respondent's officer Mr Brown re-inspected and came to the conclusion that the Applicant had failed to comply with the Improvement Notice relating to the Property, save as regards the fixing of the Juliette balcony.

21. On 20th September 2019 the Housing Director of the Respondents signed off 5 civil penalty notices in respect of the building, including 2 for the Property.

22. On 26th September 2019 the Respondent served by first class post various notices of intent to impose a civil penalty upon the Applicant, including a notice in respect of the Property alleging a breach of section 11 of the Housing Act 2004, in the sum of £4550.

23. On 23rd October 2019 the Respondent received representations from the Applicant dated 22nd October 2019 against the civil penalty notices.

24. On 7th January 2020 the Respondent's Head of Housing reviewed all the evidence and decided to uphold the Council's decision to serve the notices, in accordance with its housing enforcement policy.

25. On 16th January 2020 final notices were signed off by the Head of Housing, which again included a notice in respect of the alleged breach of section 11 of the Housing Act 2004 at the Property. This notice was served by first class post.

26. On 4th February 2020 the Applicant wrote to the Respondent in respect of the notices.

27. On 13th February 2020, the Tribunal received the application made under s.249A of the Housing Act 2004. The grounds for appeal are set out in section 9 of that form, which we quote in full:

> "Upon receipt of Improvement Notice in Dec 2018 I immediately sent a copy to my contractor who said he could do all the work. Quoted £6000 +, accepted. His bills to me in early 2019 stated, inter alia, please keep as evidence that all the jobs have been done. The original Improvement Notice (photocopy of relevant page enclosed) is factually incorrect. All timbers were treated at installation and are not "worn and degraded". Window sills do not allow cold ingress. Bedroom windows fit perfectly. NB glass is double glazed. Tenant actually complained that flat was too hot, as he couldn't turn down the storage heater!"

ISSUES

28. The issues are:

(1) Whether the Tribunal is satisfied, beyond reasonable doubt, that the Applicant's conduct amounts to a "relevant housing offence" in respect of the Property;

(2) Whether the financial penalty is set at an appropriate level having regard to all relevant factors.

THE LAW

29. The statute law applicable to this matter is set out in the Appendix attached.

30. The Tribunal is mindful of the recent cases of *Sutton v Norwich CC* [2020] UKUT 0090 (LC) and *London Borough of Waltham Forest v Marshall* [2020] UKUT 0035 (LC), in which the Upper Tribunal emphasised that the First Tier Tribunal should give due deference to the Council's decision, and not depart from a local authority's policy in determining the amount of a financial penalty, except in certain circumstances (e.g. where the policy was applied too rigidly), albeit that the Tribunal's task is not simply a matter of reviewing whether a penalty imposed was reasonable: it must make its own determination as to the appropriate amount of the penalty, having regard to all the available evidence.

31. The Tribunal also bears in mind *Opara v Olasemo* [2020] UKUT 0096 (LC) at paragraph 46, in which the Upper Tribunal warned that, when applying the criminal standard to their fact finding, Tribunals should avoid being overcautious about making inferences from evidence. It observed that, for a matter to be proved to the criminal standard, it must be proved beyond all reasonable doubt; it does not have to be proved beyond all doubt at all.

32. The Tribunal also bears in mind *IR Management Services v Salford City Council* [2020] UKUT 0081 (LC) where on appeal, the Upper Tribunal confirmed that, whilst a Tribunal must be satisfied beyond reasonable doubt that each element of the relevant offence had been established on the facts, an appellant who pleads a statutory defence must then prove on the balance of probabilities that the defence applies.

THE HEARING

33. At the commencement of the hearing, we reminded the Applicant that whilst he could not be prosecuted for any offences for which a financial penalty had been imposed, he could be prosecuted for other matters admitted by him or in respect of which we made findings of fact. He was reminded that he did not have to answer any question or make any statement which might tend to incriminate him, although the Tribunal might draw an adverse inference from his failure to answer. He indicated that he wished to proceed.

34. The Tribunal was concerned by the Respondent's service of an electronic bundle as late as the day before. The Tribunal was also alerted to another issue, namely that the Applicant, who is now 80 years old, could not be sure that the original bundle ordered within the Tribunal directions had been served upon him by the Respondent. The Tribunal therefore adjourned for a short period of time to enable the Respondent to provide evidence of service, and for the Applicant to familiarise himself with the latest electronic bundle. When the hearing was resumed, the Respondent could not provide evidence to the Tribunal of recorded delivery upon the Applicant. Notwithstanding these apparent difficulties, the Applicant was quite clear that he was wished the Tribunal to proceed with the full hearing of his appeal, and that he would endeavour to use the latest electronic bundle served by the Respondent. In the event, the hearing proceeded without any apparent difficulty in terms of the Applicant being unable to navigate his way through the bundle.

35. At the parties' agreement, the Tribunal then started by hearing an opening from the Respondent as to why it alleged an offence had been committed in this case, followed by the Applicant's bullet-points in response.

The Respondent's case

36. The Respondent explained that the civil penalty had been imposed in respect of the Applicant's alleged failure to comply with section 11 of the Housing Act 2004 in respect of the property. Counsel stated that what was required of the Applicant by the Improvement Notice served in December 2018 was that certain remedial works should be completed by 28th March 2019. That was the date of the alleged offence for the purposes of these proceedings.

37. The Tribunal inquired as to whether there was any evidence in relation to the state of the Property on 28th March 2019. The Respondent indicated that it would be asking the Tribunal to infer that the state of the Property on 28th March 2019 was the same as that pertaining on 15th August 2019, because the Property was in the same or a worse state that had been the case on the visit of 9th November 2018.

38. The Respondent suggested that there could be no reasonable excuse for failure to comply with the Improvement Notice, given the back and forth between the parties, and the general extensions of time granted by the Respondent to the Applicant.

39. The Respondent gave details of service of the notices of intent and final notice, a matter with which the Applicant did not take issue in any event.

40. The Respondent referred to its options of pursuing a prosecution or imposing a penalty, and in the light of the Secretary of State's guidance and its own enforcement policy document, it had taken the decision that it would impose a financial penalty.

41. The Respondent referred to its prosecution matrix, and its policy, which it said had been applied to the facts of the case. The Respondent considered that the culpability could be categorised as medium according to its policy, and the level of harm high, leading to a financial penalty within a range of £2500 to £7000. The Respondent explained that it had considered this offence to be breach of a mid-range category 1 hazard for the purposes of the 2004 Act, leading to a starting figure of £4750, from which it had decided to deduct £200 in relation to a sole mitigating factor that the Applicant had no previous offences. Hence the penalty of £4550.

The Applicant's case

42. The Applicant's bullet points were as follows:

- There was no excess cold in the flat.
- All wood, exterior and interior, was treated when the Property was built.
- The windows were double-glazed and only needed a coat of paint.
- The Council had failed to spot the Property was adequately heated.
- As soon as the Applicant received the Improvement Notices, he sent in a contractor.

- The contractor did not do work to the windows or the Juliette balcony woodwork as required by the Improvement Notice, because it was not necessary, and so no offence had been committed.
- All the points in the ground of appeal, which were read to him by the Tribunal, were still being pursued.
- The contractor was instructed to do all the works in the notice, even though they were not necessary.

43. The Tribunal then proceeded to hear the parties' evidence.

The Respondent's evidence of breach

44. Mr Brown, a Private Sector Enforcement Officer for the Respondent, confirmed his witness statement dated 29th April 2020, except to correct a typographical error in respect of one date, and save that the Section 8 Statement of Reasons exhibited to his witness statement was wrong, insofar as it had stated the Property had single-glazed windows rather than double-glazed windows. Whilst he accepted this error, he added that he considered the double-glazing to be very thin.

45. Counsel for the Respondent then took Mr Brown through the relevant photographs to evidence non-compliance with the Improvement Notice of December 2018. These were photographs which had been taken on 15th August 2019. Mr Brown gave commentary of what they showed.

46. The Tribunal considers the following photographs to be of most assistance:

Page	**Room**	**Mr Brown's remarks**
B145	Bedroom window (external)	Window worn at the lower end and to right hand side. "nails on left hand window holding it in place. Should be openable, but not. Missing beading.
B159	Room with Juliette balcony doors (internal)	Deterioration around the panes, especially on the left side. A broken vent.
B160	Room with Juliette balcony open (internal)	Deterioration of sill threshold (rotten).
B151	Room with Juliette balcony open (internal)	Deterioration around glass externally. Makeshift vent cover.
B162	Bedroom Right hand side (internal)	Nailed from outside. Only a short section of beading. Deterioration.

B163	Bedroom (External)	Deterioration across whole of frame. Can see missing beading, and nails.
B164	Bedroom (internal)	Left openable window. Deterioration to wood. Frame warped. Window sticks.
B165	Bedroom (internal)	Middle openable window. Advised by tenant not to open because it is so insecure

47. Mr Brown confirmed that, based on his inspection, it was his view that none of the works had been undertaken to address excess cold. He agreed that the railing on the Juliette balcony had been fixed to address the falls hazard.

48. The Applicant then asked questions of Mr Brown. The Applicant suggested the photographs only appeared to show a deterioration. Mr Brown disagreed, adding the photos do show damage. The Applicant then suggested to Mr Brown that the windows only needed a coat of paint. Mr Brown disagreed, pointing to the warping of the windows and the fact that nails were being used to secure them. The Applicant then asked how could the Respondent allege the condition of the windows was contributing to excess cold? Mr Brown answered: because the windows are not secure and that they had been led to the windows by the tenant, advising they were letting in cold. Mr Brown added that they were taken to the Juliette balcony doors, where the tenant complained of water leaks, which was therefore evidence of gaps in the doors, which in turn would also allow in excess cold.

49. The Tribunal inquired as to the effect of the Respondent's error in classifying the Property as a single-glazed Property rather than a double-glazed property. Mr Brown explained that in his opinion it would still be a category 1 hazard, albeit a level B, given that he had undertaken a reassessment under the HHSRS.

50. When asked about heat loss, Mr Brown stated that heat will escape from any part of the building, but the double-glazing was very thin, and would not perform as well as in a modern property.

51. In Mr Brown's re-examination, he confirmed that the main issue was that of disrepair and its effect on the ability of the Property to keep out excess cold, not whether the windows were single or double-glazed.

The Applicant's evidence in relation to alleged breach

52. The Applicant emphasised that the Property was double-glazed, that the timber had all been treated. He conceded that there was missing beading, but denied that that would in any way let any draughts in. He contended that he had not committed an offence. When asked why he had not appealed the Improvement Notice, he said he

supposed he thought he could persuade the Council that they had got it wrong; in effect, that he could bring them round to his point of view, and that they would relent. However, he said that the Respondent wanted none of that, and that they had pursued him ever since. By then, it was too late to refer the matter to the Tribunal.

53. The Applicant accepted he had received the Improvement Notice, and he had read it, and that he knew that certain works had to be executed by 28th March 2019, and that his failure to do so would be an offence and may make him liable to a civil penalty. He accepted that he had the responsibility to fix the defects, and as a landlord that he was responsible for the safety of his tenants. The Applicant said that he liked to think of himself as a very reasonable landlord. However, the Applicant also said it was impossible to find a contractor to work in Wisbech, given what he called "a state of lawlessness" in the area. He added that he was lucky enough to find a contractor with whom he had worked before, and that he expected him to do the works. He asked, what more could I do?

54. The Applicant was asked about the email exchange on 30th May and 31st May 2019, in which he had stated that he had left it to the contractors to sort things out, and that he had no idea as to the timeframe in which the windows and doors for Furrier's Warren would be installed. The Applicant was adamant that this was an email exchange in relation to flat C, and not the Property, because the Property did not require any new windows and doors to be made.

55. The Applicant accepted that he had not completed the works set out in the Improvement Notice by the end of March 2019. He stated he did not carry them out, and that he didn't think they were necessary.

The Respondent's evidence as regards financial penalty

56. The Respondent emphasised its duty to take action as regards any category 1 hazard, hence the imposition of the Improvement Notice. As regards electing to proceed with a civil penalty, Mr Brown explained that this is the Council's general first course of action, and the easiest way to obtain resolution of the underlying issues. He stated that even though he now knew the Property to be double-glazed, it would still be a level B category 1 hazard, so as not to affect the fine which had been imposed; in particular, on reassessment under the HHSRS the Property had still come out as a high level B on the scale, even after consideration of double-glazing. Mr Brown accepted that there was nothing in the Respondent's policy to give guidance as to where on a sliding scale of a fine the decision-maker should rest, on any given case.

FINDINGS

57. In closing submissions, the Applicant stated that he only wished the Tribunal could have undertaken a site inspection. In our view, none was necessary, given the clear photographic evidence adduced by the Respondent.

58. The Tribunal determines, beyond reasonable doubt, that the Applicant has committed the offence of failing to comply with an operative Improvement Notice on 28th March 2019, contrary to s.30(1) of the Housing Act 2004.

59. Firstly, the Applicant admits having been served with the notice but not having completed the works stated therein within the timeframe stipulated.

60. Secondly, and independent of that admission, the Tribunal accepts without reservation the evidence of Mr Brown of the Respondent, and in particular the photographic evidence, which speaks for itself. The Tribunal does not agree with the Applicant's contention that the windows in the Property only required a coat of paint. It is clear from the photographs that some windows were warped, and some were even held into position with nails externally. The threshold to the Juliette Balcony door was obviously rotten. These photographs evidence that the works specified in the Improvement Notice had not been executed by 15th August 2019, and so the Tribunal readily accepts the inference that the windows and doors were in a similar state as at 28th March 2019.

61. The Tribunal also rejects the Applicant's defence in so far as he may contend that he has a reasonable excuse (on balance of probability) for failing to comply with the Improvement Notice, pursuant to s.30(5) of the 2004 Act, either because (a) the works were unnecessary and/or (b) it was the fault of his contractor.

62. As to (a), the Tribunal, in its experience, considers that the works required under the Improvement Notice were necessary because the defects evidenced in the photographs were causing excess cold. We accept Mr Brown's evidence that the tenant complained of this to him, and indeed of water penetration, which proves that the balcony door was not weathertight. The Tribunal also considers that warped, insecure and damaged windows (as shown on the photographs) would have caused excess cold.

63. As to (b), the Tribunal determines on the facts of this case that it is not open to the Applicant to blame his contractor. The Applicant did not exercise sufficient supervision and control over the contractor, we find. The Applicant ignored the Respondent's request for timescales for completion of works, which were sufficient if not generous. Nor did the Applicant seek or agree an extension of time in which to complete the works before the deadline was up. The Applicant left matters entirely in the hands of his workmen. This was not an excuse, still less a reasonable one.

64. As to the financial penalty imposed, we have had regard to the MHCLG Guidance for Local Authorities issued under paragraph 12 of Schedule 13A to the 2004 Act. The maximum amount (£30,000) should be reserved for the worse offenders. The amount should reflect the severity of the offence as well as taking into account the landlord's previous record of offending, if any. Relevant factors include:

- 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
- Severity of the offence
- Culpability and track record of the offender
- The harm caused to the tenant

65. The MHCLG Guidance encourages each Local Authority to develop their own policy for determining the appropriate level of penalty. We give due deference to the Respondent's policy. The Tribunal sees no reason to depart from it. Moreover, we consider the Respondent's application of its policy to the facts in this case to be entirely appropriate. The Tribunal agrees with the assessment of culpability (medium) on the grounds this was "an act or omission which a reasonable person would not commit", and with its assessment of harm (serious) on the grounds that there was a high risk of an adverse effect on the tenant occupier. The Tribunal considers the Applicant has not treated the Improvement Notice with the seriousness it deserved.

66. The Tribunal further agrees with the positioning of this offence at or near the mid-point of the Respondent's scale, i.e. with a starting point of £4750.

67. We see no reason to disagree with the sole mitigating factor of the Applicant having no previous offences to weigh against him. While the Applicant is of advanced years, there is no indication that his age or health has had any bearing on his actions.

68. The Tribunal therefore determines the financial penalty at £4550.

Conclusions

69. The appeal against the imposition of the financial penalty is dismissed.

70. The Tribunal confirms the civil penalty imposed by the Respondent of £4550.

Signed: S J Evans Date: 22 October 2020

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 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 to 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.

APPENDIX: HOUSING ACT 2004

11 Improvement notices relating to category 1 hazards: duty of authority to serve notice

(1) If—

(a)the local housing authority are satisfied that a category 1 hazard exists on any residential premises, and

(b)no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4,

serving an improvement notice under this section in respect of the hazard is a course of action available to the authority in relation to the hazard for the purposes of section 5 (category 1 hazards: general duty to take enforcement action).

(2)An improvement notice under this section is a notice requiring the person on whom it is served to take such remedial action in respect of the hazard concerned as is specified in the notice in accordance with subsections (3) to (5) and section 13.

(3) The notice may require remedial action to be taken in relation to the following premises—

(a)if the residential premises on which the hazard exists are a dwelling or HMO which is not a flat, it may require such action to be taken in relation to the dwelling or HMO;

(b)if those premises are one or more flats, it may require such action to be taken in relation to the building containing the flat or flats (or any part of the building) or any external common parts;

(c)if those premises are the common parts of a building containing one or more flats, it may require such action to be taken in relation to the building (or any part of the building) or any external common parts.

Paragraphs (b) and (c) are subject to subsection (4).

(4)The notice may not, by virtue of subsection (3)(b) or (c), require any remedial action to be taken in relation to any part of the building or its external common parts that is not included in any residential premises on which the hazard exists, unless the authority are satisfied—

(a)that the deficiency from which the hazard arises is situated there, and

(b)that it is necessary for the action to be so taken in order to protect the health or safety of any actual or potential occupiers of one or more of the flats.

(5) The remedial action required to be taken by the notice —

(a)must, as a minimum, be such as to ensure that the hazard ceases to be a category 1 hazard; but

(b)may extend beyond such action.

(6) An improvement notice under this section may relate to more than one category 1 hazard on the same premises or in the same building containing one or more flats.

(7) The operation of an improvement notice under this section may be suspended in accordance with section 14.

(8)In this Part "remedial action", in relation to a hazard, means action (whether in the form of carrying out works or otherwise) which, in the opinion of the local housing authority, will remove or reduce the hazard.

30 Offence of failing to comply with improvement notice

(1) 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.

(2) For the purposes of this Chapter compliance with an improvement notice means, in relation to each hazard, beginning and completing any remedial action specified in the notice—

(a) (if no appeal is brought against the notice) not later than the date specified under section 13(2)(e) and within the period specified under section 13(2)(f);

(b) (if an appeal is brought against the notice and is not withdrawn) not later than such date and within such period as may be fixed by the tribunal determining the appeal; and

(c)(if an appeal brought against the notice is withdrawn) not later than the 21st day after the date on which the notice becomes operative and within the period (beginning on that 21st day) specified in the notice under section 13(2)(f).

(3)A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse for failing to comply with the notice.

(5) The obligation to take any remedial action specified in the notice in relation to a hazard continues despite the fact that the period for completion of the action has expired.

(6) In this section any reference to any remedial action specified in a notice includes a reference to any part of any remedial action which is required to be completed within a particular period specified in the notice.

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

(8)If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct

S.249A Financial penalties for certain housing offences in England

(1) The local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England.

(2) In this section *"relevant housing offence" means* an offence under—

(a) section 30 (failure to comply with improvement notice),

(b) section 72 (licensing of HMOs),

(c) section 95 (licensing of houses under Part 3),

(d) section 139(7) (failure to comply with overcrowding notice), or

(e) section 234 (management regulations in respect of HMOs).

(3) Only one financial penalty under this section may be imposed on a person in respect of the same conduct.

(4) The amount of a financial penalty imposed under this section is to be determined by the local housing authority, but must not be more than £30,000.

(5) The local housing authority may not impose a financial penalty in respect of any conduct amounting to a relevant housing offence if—

(a) the person has been convicted of the offence in respect of that conduct, or

(b) criminal proceedings for the offence have been instituted against the person in respect of the conduct and the proceedings have not been concluded.

(6) Schedule 13A deals with—

(a) the procedure for imposing financial penalties,

(b) appeals against financial penalties,

(c) enforcement of financial penalties, and

(d) guidance in respect of financial penalties.

(7) The Secretary of State may by regulations make provision about how local housing authorities are to deal with financial penalties recovered.

(8) The Secretary of State may by regulations amend the amount specified in subsection (4) to reflect changes in the value of money.

(9) For the purposes of this section a person's conduct includes a failure to act.

Schedule 13A

1 Before imposing a financial penalty on a person under section 249A the local housing authority must give the person notice of the authority's proposal to do so (a "notice of intent").

2 (1) The notice of intent must be given before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates.

(2) But if the person is continuing to engage in the conduct on that day, and the conduct continues beyond the end of that day, the notice of intent may be given—

(a) at any time when the conduct is continuing, or

(b) within the period of 6 months beginning with the last day on which the conduct occurs.

(3) For the purposes of this paragraph a person's conduct includes a failure to act.

3 The notice of intent must set out—

(a) the amount of the proposed financial penalty,

(b) the reasons for proposing to impose the financial penalty, and

(c) information about the right to make representations under paragraph 4.

4 (1) A person who is given a notice of intent may make written representations to the local housing authority about the proposal to impose a financial penalty.

(2) Any representations must be made within the period of 28 days beginning with the day after that on which the notice was given ("the period for representations").

5 After the end of the period for representations the local housing authority must—

(a) decide whether to impose a financial penalty on the person, and

(b) if it decides to impose a financial penalty, decide the amount of the penalty.

6 If the authority decides to impose a financial penalty on the person, it must give the person a notice (a "final notice") imposing that penalty.

7 The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was given.

8 The final notice must set out—

(a) the amount of the financial penalty,

(b) the reasons for imposing the penalty,

(c) information about how to pay the penalty,

(d) the period for payment of the penalty,

(e) information about rights of appeal, and

(f) the consequences of failure to comply with the notice.

9 (1) A local housing authority may at any time—

(a) withdraw a notice of intent or final notice, or

(b) reduce the amount specified in a notice of intent or final notice.

(2) The power in sub-paragraph (1) is to be exercised by giving notice in writing to the person to whom the notice was given.

10 (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.

11 (1) This paragraph applies if a person fails to pay the whole or any part of a financial penalty which, in accordance with this Schedule, the person is liable to pay.

(2) The local housing authority which imposed the financial penalty may recover the penalty or part on the order of the county court as if it were payable under an order of that court.

(3) In proceedings before the county court for the recovery of a financial penalty or part of a financial penalty, a certificate which is—

(a) signed by the chief finance officer of the local housing authority which imposed the penalty, and

(b) states that the amount due has not been received by a date specified in the certificate,

is conclusive evidence of that fact.

(4) A certificate to that effect and purporting to be so signed is to be treated as being so signed unless the contrary is proved.

(5) In this paragraph *"chief finance officer"* has the same meaning as in section 5 of the Local Government and Housing Act 1989.

12 A local housing authority must have regard to any guidance given by the Secretary of State about the exercise of its functions under this Schedule or section 249A.