FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/34UF/HNA/2021/0035**
Property	**:**	**9, High Street, Weldon, Corby, Northamptonshire NN17 3JJ**
Applicant	**:**	**Mr Graham Anthony Gordon Bell**
Respondents	**:**	**North Northamptonshire Council**
Type of Application	**:**	**Appeal against a Financial Penalty – Section 249A & Schedule 13A to the Housing Act 2004**
Tribunal	**:**	**Judge JR Morris** **Mr J Francis QPM**
Date of Application	**:**	**8th July 2021**
Date of Directions	**:**	**26th August 2021**
Date of Hearing	**:**	**15th February 2022**
Date of Decision	**:**	**21st March 2022**

DECISION & ORDER

DECISION

1. The Tribunal orders that the Financial Penalty be varied to £5,450.00.

REASONS

Application

2. The Application is an appeal against a Final Financial Penalty Notice for £8,050.00 issued on 5th August 2021 to the Applicant by the Respondent for the offence of failing to comply with an Improvement Notice served on 26th April 2021 on the Applicant pursuant to sections 11 and 12 of the Housing 2004 Act ("the 2004 Act"). A Notice of Intent to Serve a Financial Penalty Notice was served on 29th June 2021.

3. Under section 249A (1) of the 2004 Act a Local Authority may impose a Financial Penalty if satisfied beyond reasonable doubt that a person's conduct amounts to a relevant housing offence. The Relevant housing offences are set out in section 249A (2) and include failure to comply with improvement notice under section 30 of the 2004 Act. Under section 30 where an Improvement Notice has become operative the person on whom it is served commits an offence if he fails to comply with it.

4. By an application dated 23rd August received by the Tribunal on 1st September 2021, the Applicant appealed to the Residential Property Tribunal. Appeals are dealt with under paragraph 10 of Schedule 13A of the 2004 Act. As no time limit is prescribed for making an appeal the default provisions of Rule 27 of the Tribunal Procedure Rules apply whereby the time limit for appealing is 28 days after the date on which notice of the decision was sent to the applicant - with power to extend time under Rule 6(3)(a). The Appeal is within 28 days of the service of the Final Penalty Notice on the 5th August 2021. Directions were issued on 1st November 2021.

5. The Appeal was heard on 15th February 2022. Under paragraph 10 of Schedule 10 of the Housing Act 2004. The Appeal is by way of the rehearing of the local authority's decision and the tribunal may have regard to matters of which the local authority was unaware. A tribunal may by order, confirm, vary or cancel the Final Notice.

6. Under section 15(6) of the 2004 Act if no appeal against an Improvement Notice is made within the period for appealing against it, the Improvement Notice is final and conclusive as to matters which could have been raised on an appeal.

The Law

7. The legislation relating to the issues raised is the Housing Act 2004 and is set out in Annex 2 of this Decision and Reasons.

Description of Property

8. The Tribunal inspected the Property in the presence of Mr Bell the Applicant, Mr Christopher McCarthy, Counsel for the Respondent and Ms Iljina Housing Technical Officer of the Respondent.

9. The Property is a two-storey semi-detached cottage (the Cottage) constructed primarily of stone under a pitched tiled roof thought to be dating from late 18th century. At some time probably in the late 19th century the first-floor rear wall was raised using brick. The windows are upvc with double glazed units. The rainwater goods are upvc. There is a timber front door.

10. On the ground floor of the Cottage there is an entrance lobby from which rise stairs to the first floor. To one side is a living room and the

other a kitchen. Behind the stairs there is a door to stone steps leading to the cellar which is under the rear two thirds of the living room. On the first floor there are two bedrooms and a bathroom.

11. It appeared from the Energy Performance Certificate (EPC) dated 3rd August 2020 and the Housing Health and Safety Rating System (HHSRS) Assessment dated 19th April 2021, that originally space heating was by electric radiators, one in the living room, and one in each bedroom but that these were no longer operative and that primary space heating was by untested portable appliances. There was no mention of these fixed appliances in the Electrical Installation Condition Report (EICR) dated 22nd August 2020. On the day of the inspection all heating appliances whether fixed or portable had been removed. The Water heating is by an electric heater or Sadia or Red Ring proprietary type. The Property has mains electricity, water and drainage.

12. Externally, the Property is directly on the street and the street level is above the internal floor level of the Property. To the sides and half the rear, the walls of the Cottage form the boundary between the Property and the neighbouring premises. To the rear of half the cottage is a small yard. The external elevations of the Cottage appeared to be in fair condition for its age.

13. Internally, the Cottage was in fair to good condition. Between the HHSRS Assessment dated 19th April 2021 and the time of the Tribunal's inspection on 15th February 2022 the living room and bedroom walls had been drylined with, it was said, insulation backed plasterboard, which had been plaster skimmed and painted. The carpets had been removed in the living room and as stated above there was no space heating appliances. The bathroom and kitchen were fully fitted although dated. The mould growth in the bedrooms and living room which was said to be caused by rising damp in the HHSRS Assessment dated 19th April 2021 was no longer apparent.

14. The cellar was originally a fuel store and was now essentially a void under the suspended timber floor of the living room. The walls had been repointed since the HHSR Assessment dated 19th April 2021. One of the cellar walls was internal, the other, towards the road, was below the pavement. The other two walls to side and rear were adjacent the neighbouring premises and the top of them was just above ground level. The cellar had originally had an aperture which opened to the rear of the Cottage which had at some time in the 20th century been filled in although there were a couple of air bricks to the upper portion which should be extended further. The parties agreed that these had been covered over by soil at the time of the HHSRS Assessment dated 19th April 2021 which had now been cleared. A further aperture was in the process of being made to the other side wall to provide cross ventilation. All the walls had been repointed reducing water ingress to a level which, with adequate ventilation, should not cause damage to the suspended timber floor. A breathable membrane had been affixed to

the underside of the floor over the joists. There was also an active electro-osmosis damp proof course. Taking into account the repointing, the breathable membrane, the uncovering of the air bricks and provided the additional ventilation is carried out the moisture in the cellar should be maintained at a satisfactory level.

The Notice

15. The Tribunal was provided with copies of the Improvement Notice served under Section 11 and 12 of the Housing Act 2004 which is the subject of the Financial Penalty.

16. Under Schedule 1 of the Notice the following Hazards were notified:

17. The Improvement Notice was served on 26th April 2021 (a copy of which was provided) following an inspection of the property on 19th April 2021 at which a HHSRS assessment was carried out (a copy of which was provided). The Survey identified the hazards which are listed in the Notice. Details of the Category 1 and 2 hazards are contained in Schedule 1 of the Notice and remedial action is prescribed in Schedule 2. Both schedules are set out below. The hazard numbers refer to the Housing Health and Safety Rating System Guidance Notes. The Notice was served on all known addresses of the Applicant.

18. The Applicant is identified under Schedule 1 Part 1 paragraph 2(2)(a) as the person having control of the dwelling and paragraph 5(2) having a relevant interest as freeholder. A copy of the Notice was also served on the Occupiers under paragraph 5(1)(b).

19. The Property was let to a Tenant under an Assured Shorthold Tenancy from 30th October 2020 at a rent of £650.00 per calendar month. The Tenancy Agreement named the Applicant as the Landlord. The Occupiers were the Tenant and her son.

20. A copy of HM Land Registry Entry Title Number NN237927 of the Property was provided which showed the Applicant as the freehold proprietor since 24th July 2003.

21. ***Category 1(C) Hazard No. 1 - Damp and mould growth***
This category covers threats to health associated with increased prevalence of house dust mites and mould or fungal growths resulting from dampness and/or high humidities. It includes threats to mental health and social well-being which may be caused by living with the presence of damp, damp staining and/or mould growth.

22. The deficiencies giving rise to the hazard are: -
Location: First Floor Double Bedroom
- There is significant mould growth on the wall below window
- The exterior wall penetrating damp and highest reading received from Protimeter.

Location: First Floor single bedroom:

- There is significant mould growth on the wall below window and around the window

Location: Cellar

- Damp present in walls, ceiling and floor. Damp is rising to the lounge and staircase.

23. Remedial action required:
Location: First Floor Double Bedroom

- Treat the bedroom wall with an approved fungicide [as many times as is required] and remove the mould across the entire surface of the ceiling.
- Repaint the wall with an appropriate anti-fungal paint
- Outside wall – carry out such works of repair or renewal as necessary to remedy the dampness and prevent recurrence.
- Should the damp course be found defective, install a horizontal damp proof course constructed in such manner and of such materials as to satisfy the requirements of the building regulations. Alternatively use any approved method of damp proofing carried out in accordance with the manufacturer's instructions so as to make the walls free of dampness.
- Remove skirting boards and ground where necessary and ensure that all damp and contaminated plasterwork is removed. Prepare the surface and replaster the walls using sand cement backing with additive, or renovating plaster or a suitable plaster possessing an Agreement Certificate. Refix skirting boards renewing where necessary to match.

Location: First Floor Single Bedroom:

- Treat the bedroom wall with an approved fungicide [as many times as is required] and remove the mould across the entire surface of the ceiling.
- Repaint the wall with an appropriate anti-fungal paint

Location: Cellar

- Engage a competent, suitably qualified Structural Engineer to survey the external walls and cellar of the Property in order to identify and provide a written report of the cause of the dampness to the masonry. The written report is to include a schedule of works to remedy the cause of the damp and make good all damage arising. Employ a competent Builder to carry out all works as contained in the report, leaving the structure in a safe, sound and stable condition.
- Submit written report to the Council.

24. ***Category 1 (A) Hazard no 02 - Excess Cold***
This category covers threats to health from sub-optimal indoor temperatures

25. The deficiencies giving rise to the hazard are: -
Location: All rooms

- There is no working central heating system in the property and windows are not tightly fitted in the frames which are facilitating draughts.

26. Remedial action required:
Location: All rooms
- Provide and fix a suitable form of wet central heating of sufficient capacity and appropriate design so as to be capable of raising the temperature of the whole dwelling to such a point that (in conjunction with other remedial works specified) excessive condensation is avoided.

27. ***Category 1 (B) Hazard no. 23 — Electrical hazards***
This category covers hazards from shock and burns resulting from exposure. to electricity, including from lightning strikes. (It does not include risks associated with fire caused by deficiencies to the electrical installations, such as ignition of material by a short-circuit).

28. The deficiency giving rise to the hazards: -
Location: Ground Floor Lounge
- Radiator is burning the wall behind it (smoke stains on the wall) – stopped working.
- Rising dampness from cellar into living room is presenting electrical hazard, which will become more sever in the event of the damp reaching the sockets.

29. Remedial action required:
- Carry out an inspection and test of the electrical system in order to check its safety and identify all faults and deficiencies. Record details in a report such as the NICEIC (National Inspection Council for Electrical Installation Contracting) periodic inspection report form. Carry out work identified as necessary by the report so as to leave the electrical system and installation in sound safe and proper working order. All inspections and works are to be carried out by a qualified and competent electrician who is a member of the NICIEC, ECA (Electrical Contractor Association) or is a Chartered Electrical Engineer. Certification of Safety of electrical system is to be provided to this Authority upon completion

30. ***Category 2 Hazard no. 21 - Falling on stairs etc***
This category covers any fall associated with a stairs, steps and ramps where the change in level is greater than 300mm. It includes falls associated with:
a) Internal stairs or ramps within the dwelling;
b) External steps or ramps within the curtilage of the dwelling
c) Internal common stairs or ramps within the building containing the dwelling and giving access to the dwelling, and those to shared facilities or means of escape in case of fire associated with the dwelling, and

d) External steps or ramps within the curtilage of the building containing the dwelling and giving access to the dwelling, and those to shared facilities or means of escape in case of fire associated with the dwelling.

31. The deficiencies giving rise to the hazard: -
Location: Stairs
- Bottom 5 steps are very slippery, due to rising damp form the cellar (wet to touch). On the top 2 stairs the woodwork is damaged under carpet, which presents a higher risk of falls.

32. Remedial action required:
Location: Stairs
- Cut out and renew the defective woodwork on the staircase. Leave all treads and risers and any balustrade in sound and secure condition and make good any disturbed surfaces.

24. The Notice specified the following time scale:

The date on which the remedial action is to be started is (the operative date): 26th May 2021.

The period within which the remedial action is to be completed: 23rd June 2021.

25. The Respondent gave the following reasons for its decision to take enforcement action by way of Improvement Notice under sections 5(2) and 7(2) and of the Housing Act 2004: -
It was satisfied that the following Category 1 and 2 hazards were present and banded according to seriousness with A as the most serious.
Excess Cold - Category 1/A
Damp and mould growth Category 1/C
Falling on stairs Category 2/J
Electrical hazards Category 1/B

26. The house is habitable without great risk to health whilst works are carried out therefore Prohibition or Suspended Prohibition Orders are not appropriate. Emergency Remedial Action is not necessary as the works can be carried out by the landlord within the timescales provided so not to pose any further risk to the Tenant's health.

27. A demand for payment of £204.75 for expenses in serving the Improvement Notice was made on 26th April 2021.

Written Representations

28. As the proceedings are an appeal against the Respondent's Notices above the Respondent's Case giving the reasons for the Notices is set out first followed by the Applicant's Case which addresses the objections is to the Notices.

Respondent's Case

29. The Respondent provided a Statement of Case and Witness Statement Ms Anastasija Iljina, Private Sector Housing Technical Officer employed by the Respondent in which the following timeline was set out:

9th April 2021 a poor housing conditions complaint as made for the Tenant occupying the Property (copy provided)

13th April 2021 a site visit was carried out at which Category 1 Hazards were identified. The Tenant provided to the Respondent copies of (copies provided to Tribunal):

- Tenancy Agreement,
- Energy Performance Certificate (EPC) rated as E as at 3rd August 2020,
- Tenancy Pack and
- Electrical Installation Condition Report (EICR) rated as satisfactory as at 13th August 2020.

15th April 2021 having carried out a Land Registry search (copy provided) a secton 239 Notice was issued (copy provided).

19th April 2021 a HHSRS inspection was carried out. The Tenant, the Applicant and Mr Barry Agnew, the Respondent's Private Sector Housing Enforcement Officer were present. (A copy of the Assessment was provided)

21st April 2021 an Improvement Notice (as set out above) was issued to the Applicant requesting all remedial works to be carried out by 23rd June 2021.

28th April 2021 email from the Tenant to the Respondent stating that the Applicant had instructed 3 contractors with regard to installing a heating system under the ECO3 Scheme (copy provided).

7th May 2021 the contractors were granted access.

11th May 2021 a Damp Specialist attended the Property.

13th May 2021 email from the Tenant to the Applicant informing him that she no longer qualified for the ECO Scheme (copy provided).

25th May 2021 the Damp Specialist Report, together with email on progress of the works from the Applicant was received by the Respondent (copy provided).

27th May 2021 email from the Tenant to the Respondent stating that works have not started (copy provided).

1st June 2021 email from the Respondent to the Applicant reminding him that tenant is not eligible for a free electrical upgrade under ECO FLEX Scheme and that an alternative solution should be found (copy provided).

14th June 2021 email from the Respondent's Sustainability Officer, Sara Earl, stating that the Applicant applied for Agility ECO Scheme in February 2021 (copy provided).

16th June 2021 email from the Respondent to the Applicant confirming that Respondent would accept an electric heating system instead of a gas system as long as it is safe, hard wired and in full working order (copy provided). Email from the Applicant to the Respondent stating contractor not able to carry out works under free government grant The Respondent replies confirming again that Tenant is not eligible (copy provided).

18th June 2021 email from the Tenant that works not carried out and that she is applying for re-housing (copy provided).

22nd June 2021 email from the Respondent to the Applicant notifying him that an inspection will take place on 24th June 2021 following expiry of the Improvement Notice on 23rd June 2021 (copy provided).

24th June 2021 inspection carried out at the Property attended by Mr Barry Agnew, private Sector Housing Enforcement Officer, Amy Plank, Environmental Protection and Private Sector Housing Manager, Ms Iljina and the Tenant. At the inspection:

- Damp was present, carpets wet to the touch;
- Mould was present;
- There was no form of space heating;
- No Structural Engineer's Report was provided.

It was concluded that the Improvement Notice had not been complied with.

24th June 2021 Tenant to be re-housed.

29th June 2021 Notice of intent to Issue a Financial Penalty served on Applicant was issued to the Applicant (copy provided).

29th July 2021 period for representations expired.

4th August 2021 no representations received.

5th August 2021 Final Notice of Financial Penalty served on the Applicant (copy provided).

Policy

30. A copy of the Respondent's Enforcement Policy ws provided. The relevant sections are set out in abbreviated tabular form below.

Level	Description	Penalty £
	1. Severity of Offence	
1	Low to moderate offences e.g. failure to provide satisfactory EICRs	150.00
2	Serious offences such as e.g., failure to deal with serious hazards of damp and mould	300.00
3	Extreme offences failure to provide adequate fire protection in an HMO	600.00
	2. Culpability & Harm	
	Culpability	***1st/2nd+ Offence***
1	Low offences with little fault or mitigating circumstances e.g.	150/450
2	Medium offences committed through act or omission which a person exercising reasonable care would not commit	300/900
3	intentional breach or flagrantly disregarded the law and knew their actions were unlawful	600/1,800
	Harm to the Tenant	
0	No risk of harm	0
1	Low to moderate risk of harm	150
2	Serious risk of harm	500
3	Very severe risk of harm e.g., band C on HHSRS	1,500
4	Extremely severe risk of harm	2,500
5	Most severe risk of harm	5,000
	3. Punishment /Deterrent	
1	Portfolio 1 - 20	x 2
2	Portfolio 21 - 50	x 2.5
3	Portfolio 51 plus	x 3
	4. Removal of Financial Gain	
	Landlord's gain form non-compliance based on rental income and financial circumstances provided	
1	£0	0
2	£1 - £1000	500
3	£1001 - £2,499	1,250
4	£2,500 - £4,999	2,500
5	£5001 - £10,000	5,000

31. The Respondent applied the policy to the Applicant's situation as set out in the table below.

Level	Description	Penalty £
	1. Severity of Offence	
3	Extreme offences failure to provide adequate	600.00

	fire protection in an HMO	
	2. Culpability & Harm	
	Culpability	***1st Offence***
2	Medium offences committed through act or omission which a person exercising reasonable care would not commit	300
	Harm to the Tenant	
4	Extremely severe risk of harm	2,500
	3. Punishment /Deterrent	
1	Portfolio 1 - 20	x 2
	4. Removal of Financial Gain	
1	£0	0
2	£1 - £1000	500
3	£1001 - £2,499	1,250
4	£2,500 - £4,999	2,500
5	£5001 - £10,000	5,000

Grounds for Appeal

32. On the Application Form the Applicant stated that due to the coronavirus restriction contractors were unavailable to carry out the work in the time given by the Respondent. The Tenant set time and dates of access to the cottage owing to the Tenant working from home and the vulnerability of her son. Both were isolating on different days and weeks owing to covid and hospitalisation.

33. The Applicant said his intention was always to have all the work required rectified by the set time scale, but that the coronavirus restrictions and the tenant's circumstances prevented this from being done. He said that contractors have been put off and in one instance turned away.

34. Some checks regarding dpc and skirting boards by specialists found them to be satisfactory and areas of mould caused by condensation with clothes hanging up to dry and in washing baskets.

35. The Applicant provided some background information describing the Property and its past history.

36. The Applicant then set out the following timeline.

    1st November 2020 the Applicant said the Property was let to the Tenant.

    29th October 2020 the living room was painted and two electric wall heaters were purchased and installed by an electrician.

    November 2020 some repairs were carried out to the w.c. and to the windows. At about the same time the Applicant said he made inquiries

about installing a gas central heating system via a grant based on the Tenant's eligibility.

14th March 2021 the Applicant said that he made some plaster repairs to the wall in one of the bedrooms and noted that clothes were being dried on the landing.

25th March 2021 the Applicant said he unblocked a gulley.

26th March 2021 the Applicant said that he contacted a stonemason who identified areas that required re-pointing but that masonry bees had been nesting there and so he could not commence work until he was sure that they had flown.

19th April 2021 the Applicant said that he attended a meeting with the Respondent's Officers regarding damp and other problems.

On 25th April 2021 the Applicant said he received the Improvement Notice.

4th May 2021 A carpenter attended to repair the staircase treads. Also, a structural engineer inspected the cellar and verbally stated there was no structural problem with the walls but referred the Applicant to a company called Newtons who have a system which encapsulates cellars and basements. The Applicant said that he contacted Newtons and was referred to three specialist other companies but none of them were interested in doing the work saying it was too small or that they were too busy.

7th May 2021 the Applicant said that he met with Installers UK to discuss the approval of a grant for a central heating system. They were only prepared to install a gas system in which case a gas supply would need to be provided by Cadent the lead time for which was about 10 weeks.

11th May 2021 the Applicant said that he met a mould treatment firm who looked around the Property and made verbal observations that there needed to be better cross ventilation but that this was difficult due to the boundaries of the external walls. They concluded that the issue was condensation. The Applicant said that later the same day he met with Midland Environmental, the damp proofing specialists who installed the damp proofing system. They drilled a hole in the living room wall and said that they found it to be dry and commented that the problem was condensation (a copy of the report was provided).

June 2121 the Applicant said that he looked into getting quotations for electrical heating and arranged for an electrical contractor to provide a quotation but this was cancelled by the Tenant. He said he later arranged for quotations from other electrical contractors but these had to be curtailed due to lack of access.

Hearing

33. The Hearing was attended by Mr Bell the Applicant, Mr Christopher McCarthy, Counsel for the Respondent and Ms Anastasija Iljina, Housing Technical Officer of the Respondent. In addition, Mrs Amy Plank Environmental Protection and Private Sector Housing Manager attended.

37. Respondent's Counsel submitted that it was not open to the Applicant to challenge:
    a) The validity of the Improvement Notice;
    b) the existence of a category 1 or 2 hazard;
    c) that the work set out in the Improvement Notice does not have to be undertaken;
    d) that the time frame is too onerous as section 156(6) of the housing act states that the Improvement Notice is conclusive if not appealed.

38. Respondent's Counsel outlined the defects and the remedial works as set out in the Improvement Notice stating that they were to be carried out by 23rd June 2021 but following an inspection on 24th June 2021 it was said that none of the works had been done. As a result, a Final Financial Penalty Notice in the sum of £8,050.00 had been served on the Applicant on 5th August 2021.

39. Respondent's Counsel said that it was for the Applicant to show on the balance of probabilities that he had reasonable excuse for failing to comply with the Improvement Notice. He said that the Applicant appeared to be submitting that the works were not done for the following reasons:
    a) Delay due to inability to obtain contractors for carrying out repointing work, works in the cellar or for central heating within the time specified in the Improvement Notice.
    b) Contractors advised that the pointing work could not be carried out due the presence of masonry bees and time had to be allowed for them to leave if still present and that work relating to the damp proof course was unnecessary.
    c) Tenant did not allow access to contractors for quotations to be obtained and work such as removing mould to be carried out.

40. Respondent's Counsel submitted that under the terms of the tenancy a tenant was required to give access for works to be carried out and therefore a tenant's refusal to allow admission was not a reasonable excuse.

41. Each of the items of the Improvement Notice was considered in turn to determine a) whether the Applicant had failed to comply with the Notice and b) if the Applicant had failed to comply, whether he had reasonable excuse for not complying.

Mould Growth

42. The Applicant stated that he had attempted to remove the mould growth before 23rd June 2021 and again afterwards. He said that it was all due to condensation and said that it appeared to look worse in photographs that it was in reality. On 6th June 2021 he had started to clean off the mould but the Tenant was concerned about the contents of the cleaner as she was asthmatic and wanted to check with her medical practitioner that the chemicals in it would not adversely affect her. She replied on 7th June 2021 to say that the cleaner could be used.

43. Respondent's Counsel said that notwithstanding the Applicant alleged attempt to clean the walls on 6th or 7th June 2021, on 24th June 2021 at the inspection mould was still present on the walls. In particular he referred the tribunal to a photograph taken at the inspection of wall paper that was peeling off which showed the presence of mould underneath.

Damp

44. The Tribunal considered the damp issue in two parts. Firstly, the living room as being above the damp proof course and secondly the cellar being below.

45. The Applicant said that an electro-osmosis damp proofing system had been installed and he had asked the installer to come and check whether it was operating correctly. The installer drilled into the wall at the skirting and above to see if the damp was rising and concluded that it was not. He said that it was condensation. A copy of the installer's report was provided. Respondent's Counsel questioned the report as it was not from an independent contractor. The Tribunal noted that a Protimeter had been used by the Respondent's Officer to determine damp and commented on its limitations. The Tribunal noted that the walls were damp in that mould had formed and that this was likely to be due to condensation resulting from lack of warmth and ventilation.

46. With regard to the cellar the Tribunal commented that a surveyor or damp proofing contractor was more appropriate than a structural engineer as there did not appear to be a structural defect in the building. Cellars were damp because they were surrounded by earth and the advice given by the structural engineer about contacting Newtons or JEM was only relevant if the cellar was to be made habitable by the use of a tanking system or cavity drainage system. The Tribunal expressed the view from its inspection that the cellar was little more than a void under the suspended floor of the living room and that the remedial action that should have been specified was repointing and increasing the ventilation.

47. Respondent's Counsel said there was no documentary evidence, such as an email, that confirmed the stonemason advised that the repointing work could not be carried out due to the presence of masonry bees.

Excess Cold

48. The Applicant said that he had tried to get an ECO3 grant. He said that he had had experience of doing this three years ago in the house next door which he owned. He said that he was able to contact a company who arranged for the gas supply and installed the heating, the cost of which was all met by the grant. He contacted three companies but none of them were able to carry out the work under the grant. He thought Installers UK would do the work and appeared to be ready to go but two weeks after his inquiry they told hm that he would have to contact Cadent to provide a gas supply from the opposite side of the road and this would take a further 10 weeks. He said that he did not want to put in an electric system when the Tenant wanted gas.

49. The Applicant said that he had numerous emails and accounts of telephone conversations made as he attempted to get a contractor to install gas central heating. In addition, due to the Tenant working at home or her son who was a young person being at home alone or they were self-isolating under the coronavirus regulations it was very difficult to arrange a time for the contractors to visit to either give a quotation or carry out work. In response to the Tribunal's questions the Applicant said that he had not asked the Respondent to extend the time of the Improvement Notice.

50. The Applicant said that the Tenant was not without heat as he had supplied portable heaters.

51. Respondent's Counsel said that it was beyond doubt that the heating had not been installed. The problem with the heating had been known by the Applicant since February 2021 when he had contacted the Respondent's Sustainability Officer, Ms Sara Earl about grants. He knew soon after April that gas was not viable and that another solution needed to be found. The use of portable heaters was not acceptable, not least because they were not 'portable appliance tested' (PAT).

52. The Applicant said that until the Tenant reported the problem with the heating to him, he did not know about it. The Property had been let through an agent and as far as he was aware there was an electric storage/radiator heating system installed and working.

Policy

53. The Tribunal then considered the application of the policy to the financial penalty.

54. In response to the Tribunal's questions, Respondent's Counsel said that Level 3 of Band 1 for Severity of Offence had been selected because that was the level specified in the Policy for the offence of failing to comply with a Notice. Level 4 of Band 2 b) for Harm had been selected because the Tenant had asthma and the Property was occupied by an adult and

young person and therefore it was considered to be an extreme level of harm.

Decision

55. The Tribunal considered all the evidence adduced. As a new hearing the Tribunal could consider matters of which the Respondent was not aware when it made its decision to serve the Civil Penalty.

Validity of the Financial Penalty

56. Firstly, the Tribunal considered whether a Financial Penalty should be imposed. Whereas under section 15(6) of the 2004 Act if no appeal against an Improvement Notice is made within the period for appealing against it, the Improvement Notice is final and conclusive as to matters which could have been raised on an appeal. However, the Tribunal is of the opinion that if a deficiency identified in the Notice is not in fact present or is misdescribed leading to an inappropriate remedial action being required in the Improvement Notice then the Applicant may have on the balance of probabilities reasonable excuse under section 249A of the Housing Act 2004 for failing to comply with the Improvement Notice.

57. Therefore, the Tribunal considered each item of the Improvement Notice in turn to determine whether the Applicant had beyond a reasonable doubt failed to comply with the Notice and if so whether on the balance of probabilities he had reasonable excuse for failing to comply.

Category 1(C) Hazard No. 1 - Damp and Mould Growth

58. The deficiency of mould growth was identified in the First Floor Bedrooms. The remedial action instructed was to treat the bedroom walls with an approved fungicide as many times as is required and remove the mould across the entire surface of the ceiling.

59. From the time line produced, the Applicant had contacted a mould treatment firm to remediate this deficiency on 11th May 2021 but this appeared to relate to the longer-term remediation, i.e., improved ventilation, rather than the removal of the existing mould and spores. He also said that he had made an attempt at cleaning off the mould prior to 23rd June 2021 and again after that date. At the inspection by the Respondent on 26th June 2021, it was found that the walls had not been treated and painted as required by the Notice. The Tribunal was satisfied beyond a reasonable doubt that this failure amounted to noncompliance with the Improvement Notice and the Applicant had not provided evidence of a reasonable excuse for non-compliance.

60. The deficiency of damp was identified in the in First Floor Bedrooms. The manner in which the deficiency was detected was confirmed by the use of a Protimeter. Such meters are invariably calibrated for detecting

damp in timber. In plaster, brick or stone the meter primarily detects conductivity through salts. Its use is therefore really only suitable for determining the difference in moisture from one part of a wall to another and unless it has a specific feature (which the meter in this instance did not appear to have) it only detects moisture on the surface. In the absence of more reliable evidence the presence of mould was an appropriate way of recognising the presence of damp.

61. The reference to whether or not the damp proof course was defective was not appropriate in respect of the bedroom location. Rising damp resulting from the capillary action of water in a wall is rarely detected above a metre from the ground. The remedial action of removal of skirting boards and ground where necessary and ensuring that all damp and contaminated plasterwork is removed is again not an appropriate action with regard to the bedroom and presumably the 'location' should have been "the living room". The reference to "damp proofing" in the location of the bedrooms is also unclear.

62. It is for the Respondent to ensure that the Improvement Notice sets out unequivocally what the remedial action is; not for the Applicant to work it out. Although the Tribunal's remarks may appear pedantic the Respondent is in effect writing, what is the equivalent to, a criminal offence.

63. In so far that there is a horizontal damp proof course which the installer acting under the guarantee said was operating correctly then the Tribunal finds that the Applicant has complied with the remedial action. At the hearing it was submitted by the Respondent that the report by the contractor was not accepted because it was not independent. Firstly, the Tribunal found that the remedial action in the Notice did not specify that it should be tested by a contractor other than the installer. Secondly, the Applicant having shown that, on the balance of probabilities, the damp proof course was operating, it was for the Respondent to show otherwise. Thirdly, to require independent verification of work carried out would put in question the concept and principle of guarantees and self-certification generally.

64. With regard to the alleged penetrating damp in the bedrooms the Applicant engaged a stonemason to make any repairs to the stonework. The stonemason advised that the work, which he said was minor, could not be carried out due to the presence of masonry bees. The estimate from Mr Paul Cox for the work was dated 26th March 2021 and the Applicant hand wrote on the quotation that he had accepted it on 14th April 2021. There was no reason why the work should be postponed other than by Mr Cox saying that the work should not be done until it was likely that the bees had left. Masonry bees are not protected but Mr Cox could have had some other concern with regard to their presence e.g., the presence of pupae which may work their way out of the mortar in Spring. In any event on the balance of probabilities the Applicant was acting on advice and therefore had reasonable excuse for delaying the work so for not complying with the Improvement Notice in the time

specified. The Tribunal was confirmed in this view in that the work was subsequently done.

65. The deficiency of damp was identified in the cellar. Cellars have a tendency to be damp and this is exacerbated by a lack of ventilation. For a basement to be suitable for occupation, tanking and asphalt flooring might be needed. As this basement was not used for occupation, and was effectively merely a void under the suspended timber floor of the living room, a more basic remedial action would be satisfactory. The remedial action stated in the Notice was to engage "a competent, suitably qualified Structural Engineer to survey the external walls and cellar of the Property in order to identify and provide a written report of the cause of the dampness to the masonry".

66. The Applicant had instructed a structural engineer who inspected the cellar and verbally stated there was no structural problem with the walls but referred the Applicant to companies that tank or provided cavity drainage systems which are designed to make cellars and basements fit for habitation. In the knowledge and experience of the Tribunal the reason cellars are damp are because they are surrounded by earth. The Tribunal found from the description of the deficiency and its own inspection of the Property that the engagement of a building surveyor would have been much more appropriate. What was required was for the Respondent's Officers to identify a means by which: a) any ingress of water from the ground around the cellar could be reduced, e.g., by repointing, b) the cellar could be ventilated to control the dew level in the air e.g., air bricks and c) the suspended timber floor could be protected e.g., by a breathable membrane.

67. At the hearing the Respondent submitted that it was not just the damp in the cellar, but the Respondent's Officer believed there was something fundamentally unsound about the building that warranted a full structural survey in particular reference was made to the damp in the living room carpet and on the last few steps of the stairs.

68. The Tribunal found that firstly, neither the deficiency nor the remedial action in the Notice raised any issue with regard to the structure of the building or that the building was becoming unstable because of damp. Secondly, the Tribunal did not find from its inspection or from the evidence adduced that there was anything to indicate that the building was structurally unsound. Thirdly, with regard to the damp living room carpet, this was a) due to a lack of ventilation in the cellar and humidity i.e., condensation in the living room or b) capillary action due to a lack of a damp proof membrane to the solid floor section of the living room, which the Respondent's Officer should have been able to determine and for which an appropriate remedy should have been prescribed in the Notice.

69. The Tribunal found that the Applicant had not complied with the Improvement Notice in so far as a Structural Engineer's report was not provided to the Respondent. However, on the balance of probabilities

the Tribunal found that the Applicant had reasonable excuse for failing to comply because the remedial action specified in the Improvement Notice did not correspond to the deficiency.

70. From the evidence adduced excess cold (referred to below) and a lack of ventilation caused excessive condensation, possibly exacerbated by the occupier's lifestyle.

Category 1 (A) Hazard no 02 - Excess Cold

71. The deficiency of excess cold was identified in all rooms. The remedial action instructed was to provide and fix a suitable form of wet central heating of sufficient capacity and appropriate design so as to be capable of raising the temperature of the whole dwelling to such a point that (in conjunction with other remedial works specified) excessive condensation is avoided.

72. At the time of the inspection on 19th April 2021 there was no working central heating system in the Property as stated in the HHSRS assessment, which was still the situation at the Tribunal's inspection. However, the requirement "to provide and fix a suitable form of wet central heating" in a property which had no gas supply, which is one of the most common domestic wet systems, and which had the inoperative remnants of an electric system, was not appropriate. The appropriate action would have been to merely require the provision of a suitable form of central heating system.

73. Notwithstanding this requirement in the Notice, the Respondent had apparently informed the Applicant that an electrical system would be compliant with the Notice. The provision of a central heating system was, in this case, a fundamental remedial action for which a formal amendment to the Notice was required. A telephone conversation was insufficient.

74. The Applicant submitted that he had tried to contact contractors to obtain quotations but due to coronavirus and later the difficulty in obtaining materials he had not been able to get the work done. The Tribunal appreciated that these were difficult times but if the period for carrying out the work was too short then it was for the Applicant to contact the Respondent to obtain an extension or appeal that provision of the Improvement Notice.

75. The Applicant said that the Tenant had been unduly proscriptive about the times when contractors could visit. This was apparently due to the Tenant working at home and on one occasion due to her son who was a young person being at home alone. In addition, there was an occasion when they were self-isolating under the coronavirus regulations. Notwithstanding this, there is provision in the tenancy agreement under which a landlord may obtain right of entry to carry out works. This should have been implemented as ultimately the responsibility for

ensuring the Improvement Notice is complied with rests with the Applicant.

76. The Applicant said that from the Damp Proof contractors' report and his own experience, the Tenant had contributed to the damp caused by condensation by drying clothes around the Cottage. Whereas this may be correct nevertheless the heating that was provided was not of "sufficient capacity and appropriate design so as to be capable of raising the temperature of the whole dwelling to such a point that (in conjunction with adequate ventilation) excessive condensation is avoided".

77. It was apparent that the Applicant initially believed that the Tenant would be eligible to enable him to obtain funding for a system. The Tribunal appreciated that this had occurred in relation to the cottage next door. However, by 7th May 2021, it was clear that the scheme was only available for a gas installation. The Tribunal found that the Applicant's pursuit of a grant to install a heating system, whether gas or electric, was unrealistic and ignored the needs of the Tenant over his desire to obtain a heating system for which he did not have to pay or pay in full. The Tenant's preference for gas central heating was irrelevant. It was a matter of urgency that a heating system was installed to ensure the welfare of the Tenant with regard to warmth and to avoid excessive damp caused by condensation and to eradicate mould.

78. The Tribunal found that the Applicant had not complied with the Improvement Notice by failing to install a suitable heating system within the time specified in the Notice of 23rd June 2021, which the Tribunal found to be reasonable and the Applicant had not shown that, on the balance of probabilities, he had a reasonable excuse for failing to comply.

Category 1 Hazard no. 23 — Electrical hazards

79. The deficiency of overheated radiators in the Ground Floor Lounge was identified together with damp. The remedial action was to have the electrical installation inspected and tested. The appropriate time for this to be done was following the installation of the electrical heating system.

80. The Tribunal found that the Applicant had not complied with the Improvement Notice by failing to install the heating system referred to above and having the electrical installation inspected and tested within the time specified in the Notice. The Applicant had not provided any evidence upon which the Tribunal could find that on the balance of probabilities he had a reasonable excuse for failing to comply.

Category 2 Hazard no. 21 - Falling on stairs etc

81. The deficiency identified was of the bottom 5 steps being very slippery due to rising damp from the cellar (wet to touch) and on the top 2 stairs the woodwork is damaged under carpet, which presents a higher risk of falls. The remedial action required was to cut out and renew the defective woodwork on the staircase.

82. The Tribunal found that the Applicant had repaired the top two stairs. The condition of the bottom five stairs was due to the carpet being damp which appeared to be caused by condensation. If as the evidence suggested this defect was due to condensation, then improving ventilation and providing heating would be the remedy.

83. So far as the remedial action specified of cutting out and renewing the defective woodwork on the staircase the Applicant had carried this out and therefore the Applicant had complied with the Improvement Notice. The Tribunal was therefore not satisfied beyond a reasonable doubt that the Applicant had failed to comply with the Improvement Notice.

Summary

84. For the above reasons the Tribunal was satisfied beyond a reasonable doubt that the Applicant, without reasonable excuse, had failed to comply with the Improvement Notice served on 26th April 2021 by the specified date of 23rd June 2021 as follows:

a) Category 1(C) Hazard No. 1 - Damp and Mould Growth
The walls of the two first floor bedrooms were not treated with an approved fungicide [as many times as is required] and the mould across the entire surface of the ceiling was not removed; nor were the walls repainted with an appropriate anti-fungal paint.

b) Category 1(A) Hazard no 02 - Excess Cold
A suitable form of central heating of sufficient capacity and appropriate design so as to be capable of raising the temperature of the whole dwelling to such a point that (in conjunction with other remedial works specified) excessive condensation is avoided, was not provided.

c) Category 1(B) Hazard no. 23 — Electrical hazards
The electrical installation had not been inspected and tested.

Amount of the Financial Penalty

85. Secondly, the Tribunal considered the amount of the Financial Penalty. In doing so it 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

86. 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 financial 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 financial 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.

87. 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).

88. 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."

89. 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.

90. 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 deserve respect.

91. 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.

92. 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. The Notice of Intent had been served within six months of the date the Respondent had acquired sufficient evidence of the conduct to which the penalty related.

93. The Tribunal found the principles upon which the policy was based to be in line with government guidance and had been applied in this case. However, neither the Notice of Intent nor the Final Notice to Issue a Financial Penalty was accompanied by a narrative explaining on what basis the penalty was imposed. The only document that was annexed was a matrix calculator in the form of a spread sheet. The figures with which the spread sheet was populated could not be comprehended without a copy of the policy or at least the relevant extracts, which were not provided. Also, no mention was made in either the Notice of where or how the policy might be accessed. There was a statement on the last page which said that "If you do not understand the contents of this notice or would like to know more about it, please contact the Local Authority".

94. The Tribunal was of the opinion that this was barely adequate and the Respondent should make improvements in this regard.

95. The Tribunal considered the Application of the Policy to the offences.

Band 1

96. Band 1 related to the Severity of the Offence. This appeared to refer to the type of offence and in this instance failure to comply with an Improvement Notice fell within level 3 which was the highest of the three levels and incurred a penalty £600.00.

97. The Tribunal considered that the level selected did not sufficiently reflect the differentiation between offences. Failure to comply with a Prohibition Order would be at level 3 because noncompliance with the

order would mean that a landlord was letting a property that should not be occupied. Improvement Notices are placed on properties which may have a variety of different defects some of which may be dangerous and others minor but none of them preclude a property being occupied. The severity of non-compliance is dependent upon the defects and remedial action required.

98. The Tribunal found that the offence of noncompliance in this instance related primarily to failure to install a fixed heating system which was serious but not extreme and the Respondent was of the opinion that the Property could remain occupied while the remedial action was first pending and later carried out. For this reason the tribunal determined the offence was at Level 2 which incurred a penalty of £300.00.

Band 2

99. Band 2 related to Culpability and Harm. This was dealt with in two parts: a) Culpability and b) Harm.

Band 2 a) Culpability

100. Culpability was divided into three levels. Level 1 was for low offences with little fault or with mitigating circumstances. Level 2 related to medium offences which have been committed by acts or omissions and Level 3 offence for very high offences where the offender intentionally breached or flagrantly disregarded the law.

101. The Tribunal considered the Severity of the Offence had already been set at Band 1 therefore reference to whether the offence is low, medium or high is not relevant. The Level of Culpability refers to the level of fault i.e., Level 1 unintentional or little fault, Level 2 intentional or should have known if exercising reasonable care and Level 3 flagrant disregard.

102. In the present circumstances Culpability was placed at Level 2 which the Tribunal considered appropriate as the Applicant intended to carry out the works but failed to expedite matters. Each level had two categories, 1 for a first offence and 2 for a subsequent offence. As this was a first offence the penalty for a category 1 Level 2 is £300.00.

Band 2 b) Harm

103. With regard to Harm, the narrative stated that the level of the penalty was dependent upon the degree of harm or potential harm. It was added that in parenthesis that this may be "as perceived by the tenant". It was not clear what was meant by this. A tenant might subjectively perceive the harm to be very great, although, taking an objective view, it was not. Alternatively, it might mean, for that particular tenant, looking objectively, the harm was at a specific level, because of the tenant's physical and/or mental state of which the landlord was aware. It was this latter view which appeared the most appropriate.

104. Harm was divided into six levels. At Level 0 there was no risk to the Tenant, Level 1 was low or moderate risk, Level 2 was serious risk, Level 3 severe level of harm to the tenant including hazards at band C in the HHSRS or C2 faults in an EICR not rectified within 28 days. Level 4 are extreme risk including hazards scoring Band B at HHSRS and C2 faults in an EICR not rectified within 28 days. Level 5 very extreme risk including hazards at band A in the HHSRS or multiple C1 faults in an EICR not rectified within 28 days.

105. In the present circumstances the Tribunal considered that the level selected did not sufficiently reflect the differentiation between degrees of severity. The level should correspond to the harm. At Level 5, the maximum level, the harm or potential harm should be such that it is too dangerous for the tenant to live in the property and would be the subject of a Prohibition Order and the tenant may already have suffered injury. At Level 4 the harm or potential harm should be such that, for example, emergency remedial action has had to be taken to ensure the property is safe.

106. Taking the above into account the Tribunal found that the Harm was at Level 3 to ensure it has something left in its armoury to differentiate between harmful transgressions. The Respondent did not find that the property was so unsafe that the Tenant in this case was not able to reside there while the work was being undertaken. It also was not considered so urgent that emergency action was required. With regard to this last point the Tribunal does not consider that a local authority's financial situation is a valid consideration. If emergency action is required to remediate the harm, then the local authority can carry out the work and re-charge the cost to the landlord. The Tribunal is not suggesting that the Tenant and her son did not suffer serious discomfort but evidence, such as a medical report, was not adduced to show a higher level of harm the 3 should be considered.

107. The Tribunal found that Harm was severe not very severe or extreme and was at Level 3 which incurred a penalty of £1,500.00.

Band 3

108. Band 3 related to the degree of Punishment and Deterrence. This is determined by a multiplier which is applied to the sums accrued under Band 1 to 3 depending on the size of the landlord's portfolio. In the present case the Applicant has between 1 and 20 properties in his portfolio which gives multiplier of 2.

109. The total penalty accrued under bands 1 – 2 is
Band 1 at Level 2 = £300.00
Band 2 a) at Level 2 (category 1) = £300.00
Band 2 b) at Level 3 = £1,500.00
Sub Total = £2,100.00
Band 3 x 2 = £4,200.00

Under Band 3 this figure is doubled giving a total of £4,200.
This figure times 2 = £4,200.00

Band 4

110. Band 4 removes the Financial Gain obtained by the Landlord as a result of committing the offence. The rent is £650.00 per calendar month. From evidence provided by the Applicant the Respondent calculated the financial gain as being between £1,001.00 and £2,499.00 which was at Level 3 which is a penalty of £1,250.00.

Conclusion

111. Having found beyond a reasonable doubt that the Applicant had failed to comply with certain remedial actions specified in the Improvement Notice dated 23rd April 2021, applying the Respondent's Policy in the manner set out above, the Tribunal calculated the Financial Penalty for non-compliance as set out in the table below.

Band	**Level**	**Amount £**
1 Severity of Offence	2	300.00
2 a) Culpability	2 (Category 1)	300.00
2 b) Harm	3	1,500.00
Sub Total		*2,100.00*
3 Punishment/Deterrence	1 (x2)	4,200.00
4 Removal of Financial Gain	3	1,250.00
Total		**5,450.00**

112. The Tribunal orders that the Financial Penalty be varied to £5,450.00.

Judge JR Morris

ANNEX 1 - 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.

ANNEX 2 – THE LAW

1. The relevant legislation is set out below:

Housing Act 2004

2. Part 1 Chapters 1 and 2 of the Housing Act 2004 established a system for assessing housing conditions and enforcing housing standards. The assessment is carried out under the Housing Health and Safety Rating System. This involves the classifying of hazards according to a Hazard Score – a numerical representation of the overall risk of the hazard. The Score is based on the evaluation of the likelihood of an occurrence and of the probable spread of harms that could result.

2. Those hazards which score 1000 or above (Bands A-C) are classed as Category 1 hazards. If a local housing authority makes a Category 1 hazard assessment, it is mandatory under section 5(1) for it to take appropriate enforcement action. Hazards with a score below 1000 (Bands D-J) are Category 2 hazards, in respect of which the authority has discretion to take enforcement action.

3. Section 3
   (1) A Local Housing authority must keep the housing conditions in their area under review with a view to identifying any action that may need to be taken by them under subsection (2).

   Subsection 2 amongst other actions provides for the Authority to take action under Part 1 of the Act.

4. Section 4
   (1) (a) as a result of any matter of which they have become aware in carrying out their duty under section 3 or
   (b) for any other reason

   that it would be appropriate for any residential premises to be inspected with a view to determining whether any category 1 or 2 hazard exists on those premises the authority must arrange for such an inspection to be carried out.

5. Section 5:
   (1) If a local housing authority consider that a category 1 hazard exists on any residential premises, they must take the appropriate enforcement action in relation to the hazard.
   (2) In subsection (1) "the appropriate enforcement action" means whichever of the following courses of action is indicated by subsection (3) or (4) –
   (a) serving an improvement notice under section 11;

   [Other Remaining provisions relate to other actions not relevant to this application]

6. Section 7

(1) The provisions mentioned in subsection (2) confer power on a local housing authority to take particular kinds of enforcement action in cases where they would consider that a category 2 hazard exists on residential premises

(2) The provisions are-
(a) section 12 (power to serve an improvement notice)

[Other provisions relate to actions not relevant to this application]

7. Sections 11 and 12 provide that an improvement notice 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.

8. Section 13 Contents of improvement notices.
(1) An improvement notice under section 11 or 12 must comply with the following provisions of this section.
(2) The notice must specify, in relation to the hazard (or each of the hazards) to which it relates—
(a) whether the notice is served under section 11 or 12,
(b) the nature of the hazard and the residential premises on which it exists.
(c) the deficiency giving rise to the hazard, .
(d) the premises in relation to which remedial action is to be taken in respect of the hazard and the nature of that remedial action,
(e) the date when the remedial action is to be started (see subsection (3)), and
(f) the period within which the remedial action is to be completed or the periods within which each part of it is to be completed.
(3) The notice may not require any remedial action to be started earlier than the 28th day after that on which the notice is served.
(4) The notice must contain information about—
(a) the right of appeal against the decision under Part 3 of Schedule 1, and
(b) the period within which an appeal may be made
(5) In this Part of this Act "specified premises", in relation to an improvement notice, means premises specified in the notice, in accordance with subsection (2)(d), as premises in relation to which remedial action is to be taken in respect of the hazard.

9. Section 15 Operation of improvement notices
(1) This section deals with the time when an improvement notice becomes operative.
(2) The general rule is that an improvement notice becomes operative at the end of the period of 21 days beginning with the day on which it is served under Part 1 of Schedule 1 (which is the period for appealing against the notice under Part 3 of that Schedule).

(3) The general rule is subject to subsection (4) (suspended notices) and subsection (5) (appeals).

(4) If the notice is suspended under section 14, the notice becomes operative at the time when the suspension ends.
This is subject to subsection (5).

(5) If an appeal against the notice is made under Part 3 of Schedule 1, the notice does not become operative until such time (if any) as is the operative time for the purposes of this subsection under paragraph 19 of that Schedule (time when notice is confirmed on appeal, period for further appeal expires or suspension ends).

(6) If no appeal against an improvement notice is made under that Part of that Schedule within the period for appealing against it, the notice is final and conclusive as to matters which could have been raised on an appeal.

10. Section 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.

11. Section 49 Power to charge for certain enforcement action

(1) A local housing authority may make such reasonable charge as they consider appropriate as a means of recovering certain administrative and other expenses incurred by them in—

(a) serving an improvement notice under section 11 or 12;
(b) making a prohibition order under section 20 or 21;
(c) serving a hazard awareness notice under section 28 or 29;
(d) taking emergency remedial action under section 40;
(e) making an emergency prohibition order under section 43; or
(f) making a demolition order under section 265 of the Housing Act 1985 (c. 68).

(2) The expenses are, in the case of the service of an improvement notice or a hazard awareness notice, the expenses incurred in—

(a) determining whether to serve the notice,
(b) identifying any action to be specified in the notice, and
(c) serving the notice.

12. Section 239

(1) Subsection (3) applies where the local housing authority consider that a survey or examination of any premises is necessary and any of the following conditions is met-

(a) the authority consider that the survey or examination is necessary to carry out an inspection under section 4(1) or otherwise to determine whether any functions under any parts 1 to 4 or this part should be exercised in relation to the premises

(3) Where this subsection applies-

(a) a person authorised by the local housing authority (in a case within subsection (1))
(b) may enter the premises in question at any reasonable time for the purpose of carrying out a survey or examination of the premises

(5) Before entering any premises in exercise of the power conferred by subsection (3) the authorised person or proper officer must have given at least 24 hours' notice of the intention to do so-

(a) to the owner of the premises (if known) and
(b) to the occupier (if any)

13. Schedule 13A of the Housing Act 2004 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.