



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

Case Reference : **BIR/00FW/HNA/2022/0020**

Property : **22 Hemlock Gardens, Nottingham, NG6 7DA**

Applicant : **Robert Michael Hunt**

Applicant's Representative : **James Carter, of Counsel
Cleggs Solicitors**

Respondent : **Nottingham City Council**

Representative : **Ms S Bashir, Nottingham City Council
Legal Services**

Type of Application : **Appeal against a financial penalty under
S249A and paragraph 10 Schedule 13A of the
Housing Act 2004**

Tribunal : **Tribunal Judge P. J. Ellis
Tribunal Member Mr A. McMurdo**

Date of Hearing : **30 August 2022**

Date of Decision : **04 October 2022**

DECISION

- 1. The Tribunal is satisfied beyond reasonable doubt that the Applicant has committed an offence under s95 Housing Act 2004 (the Act) by being a person having control of or managing a house which is required to be licensed under Part Three of the Act but is not so licensed, and***
- 2. The Respondent has complied with s249A and Schedule 13A of the Act in connection with the procedure for imposing financial penalties.***
- 3. Having heard the Respondent's reasons for imposing a Civil Penalty and considering the Applicant's reasons for failing to obtain a licence under Part Three of the Act, the Tribunal is satisfied a financial Penalty should be imposed but it allows the Appeal in part by substituting a Penalty of £1971.25.***

Reasons

1. This is an Appeal against the imposition of a financial penalty of the sum of £6000.00 under s95 of the Act for the having control or management of a house which was required to be licensed but was not so licensed.
2. The matter was heard by video on 30 August 2022 without an inspection of the Property.
3. The Applicant is Robert Michael Hunt of 22 Elms Gardens Ruddington, Nottingham NG11 6DZ. The relevant property is 22 Hemlock Gardens Nottingham NG6 7DA (the Property). Mr Hunt is the co-owner of the Property together with his

wife Deirdre Hunt, his brother Patrick Richard Hunt and his sister-in-law Susan Ann Hunt. They have owned the Property since 2008.

4. The Respondent is Nottingham City Council which is the local housing authority for the area in which the Property is situated.
5. On 1 August 2018 the Respondent extended its licensing regime to include properties that fall outside the scope of HMO Mandatory and Additional Licensing Schemes by implementing a Selective Licensing Scheme in exercise of its powers under s80 of the Act. From 1 August 2018, all privately rented properties located within the Selective Licensing designated area are required to be licensed unless exempt in accordance with the Act.
6. Prior to the Scheme being operational the Respondent took steps to deliver information relating to the Scheme, its meaning and effect and action required by affected landlords. The Respondent published information in local newspapers and a publication delivered to residents of Nottingham City area, sent guidance to all current licence holders, updated its website, placed advertising on local radio stations, Facebook and other social media, and wrote to tenants living in the designated area. It also published a Selective Licensing handbook and distributed it at several public events, organised briefing sessions with landlords and managing agents and held workshops for landlords to attend to receive one to one support in submitting their applications.

Chronology

7. In March 2020 the Applicant's managing agent, Spencer Birch, notified the Respondent that the Applicant had not communicated with them regarding the applications for Selective Licensing in respect of the Property.
8. After making enquiries, the Respondent identified the owners of the Property as the Applicant, his brother and their respective wives. On 12 March 2021 the Respondent served each of the owners with notices under s16 Local Government

(Miscellaneous Provisions) Act 1976 and s235 The Housing Act 2004 requiring documentation in relation to the property. In response the Applicant called the Respondent to confirm receipt of the notice and to enquire about the scheme. On 18 March 2021 Mr Patrick Hunt notified the Respondent that the Applicant would deal with the matter. Thereafter, the Applicant was the correspondent with the Respondent in all matters relating to the licensing of the Property. Correspondence and other communications between the Applicant and the Respondent continued as summarised below. As the Applicant had not made an application for a licence on 9 December 2021 the Respondent served by post a Notice of Intention to Impose a Financial Penalty on him and his co-owners

9. The Applicant made representations in response to the Notice on 14 January 2022. He made an application for a licence on 28 January 2022. On 28 February 2022 the Respondent served Final Notice to impose a Financial Penalty under s249A Housing Act 2004. The Applicant prepared an Appeal against the Financial Penalty, dated 28 March 2022, but it was not received until 5 April 2022. It was completed on 8 April 2022 by payment of the fee although the Final Notice of Penalty was not provided to the Tribunal with the application. On 25 April 2022 the Tribunal gave directions for service of reasons for delay in making the Appeal. On 23 May 2022 the Tribunal, being satisfied the Applicant had a reasonable excuse for filing a late Appeal, gave Directions for the future conduct of the case.

The Penalty

10. The penalty, the subject of these proceedings was calculated by the Respondent applying the elements and integers set out in its policy for calculating financial penalties.
11. The first draft of the Civil Financial Penalties Policy prepared by the Safer Housing and Licensing Team was implemented on 16 August 2017. It was restructured on 17 December 2020. It provided the guidance for determining the financial penalty

amount. At paragraph 1.3 it stated the calculation process is broken down and assessed in seven steps:

- a. Culpability
- b. Seriousness of Harm Risked
- c. Penalty band
- d. Offence mitigation
- e. Calculating Financial Benefit
- f. Combining figures to get total penalty amount
- g. Considering landlord representations

12. Four levels of culpability were identified: Very High (Deliberate Act), High (Reckless Act), Medium (Negligent Act), Low (low or no culpability).

13. High culpability involved “Actual foresight of, or wilful blindness to, a risk of offending, but risk nevertheless taken. Must be satisfied that the landlord is reckless as to whether harm is caused, that is, where the Landlord appreciates at least some harm would be caused but proceeds giving no thought to the

consequences even though the extent of the risk would be obvious to most people”. The policy then identified factors that may lead to that conclusion.

14. Medium culpability involved *“Offence committed through an act or omission, which a person exercising reasonable care would not commit.”* Factors that may lead to that conclusion were given.

15. Step 2 Seriousness of Harm risked was categorised with three levels, A,B & C. where:

Level A stated the seriousness of harm risked *“would meet the guidance for Class 1 and Class II harm outcomes un the Housing Health and Safety Rating System*

Level B *“would meet the guidance for Class III & IV harm outcomes in the Housing Health and Safety Rating System; and*

Level C covers *“All cases not falling within Level A or B.*

16. The Penalty Levels and starting points are

Harm Risked	Very High	High	Medium	Low
Level A	5+	5	4	3
Level B	5	4	3	2
Level C	4	3	2	1

17. Calculating Financial benefit is described at paragraphs 3.8 – 15. The guiding principle is described in paragraph 3.8 as *“Civil Penaltiesshould seek to remove the financial benefit which a Landlord many have obtained as a result of committing the offence. This helps to ensure the amount of the Civil Penalty*

imposed will not normally be less than it would have reasonably cost the Landlord to comply in the first place.”

18. The Penalty Bands are

Penalty Level	Penalty Band	Starting Point
1	£600- £1,200	£900
2	£1,200-£3,000	£2,075
3	£3,000- £6,000	£4,500
4	£6,000- £15,000	£10,500
5/5+	£15,000 -£30,000	£22,500

19. Step 1 Culpability was assessed at High. Seriousness of Harm Risked assessed at C. Penalty Band was 3 with midpoint of £4500. Mitigating factors considered were that he had not had any notices served upon him in the preceding two years, that he had returned the s16 notice and that he had suffered ill health in December 2021. After considering the mitigation the penalty was reduced by £1500. Then aggravating factors were considered being that he had ignored warnings from the Council, he had not taken any steps towards compliance and that he had not availed himself of help offered by his managing agent. The aggravating factors were assessed at £450. The penalty was calculated at £3450 before financial benefit as assessed at 60% of £4598.68 (the rent due in the from committing the offence) being £2753.81.

20. The total sum derived by applying the policy was £ 6203.81 which was capped at £6000.00.

21. On receiving the Notice of Intention to Impose a Financial Penalty the Applicant made representations to the Respondent by letter of 14 January 2022. The representations set out his explanation for his failure to appreciate the significance

of the notice he had received but stated his willingness to comply with the licence requirement.

The Property

22. The Tribunal did not inspect the Property, 22 Hemlock Gardens, but there was no issue regarding its suitability for licencing. The Respondent admitted that had the Applicant completed the necessary application, in all probability, it would have given a licence without any additional conditions other than the mandatory conditions required by the Housing Act 2004, schedule 4. The Tribunal proceeded on that basis.

23. The Property was let to Mr C Rogers on 4 March 2013. He remains in occupation. On 1 June 2021 a new agreement was made between the Applicant and his family with Mr Rogers and a new tenant Mr P Minns.

The Hearing

24. Under paragraph 10(3) Schedule 13A Housing Act 2004 the Tribunal will conduct a rehearing of the Respondent's decision but it may be determined having regard to matters of which the Respondent was unaware.

25. When the hearing opened, Mr Carter, Counsel for the Applicant conceded the Selective Licensing Scheme had been properly introduced and that the Applicant

had failed to obtain a licence. On his behalf, he contended the penalty was set too high and the authority had misapplied its policy in determining the penalty.

The Parties Submissions

The Applicant

26. Mr Hunt had prepared a statement which was adduced as his evidence in chief. It substantially reproduced the observations made in his letter of representation of 14 January 2022.
27. He conceded the Respondent had introduced a selective licensing scheme for the area in which the Property is situated but he had not seen, heard nor read any of the Respondent's publications about the scheme. Consequently, when he was made aware of the need to licence the Property, he asked for information about the scheme of many agents about the scheme but found there was little knowledge of it. He asserted a typical response was to ask him to let the agents know if he learned anything about the scheme from his enquiries.
28. He asked his agent Spencer Birch what the scheme was for and was told it was for the benefit of the tenants. After these enquiries he did not know the purpose of the scheme or what happened to the fees charged for the licence.
29. In cross examination he was referred to emails of 7 April 2020 between himself and his agent Andrew of Spencer Birch. Andrew referred Mr Hunt to a previous email of 19 March 2020 about the scheme and attaching a licence application form for completion by him. The agent then offered to make the application on the Applicant's behalf. In reply the Applicant was highly critical of the Respondent because he was not given an explanation of why he should comply with the obligation to licence the Property. Although Mr Hunt was robust in his criticisms of the Respondent he observed that he may "have to comply" but he will "not just give in" until he had an explanation of why he had an obligation to licence the Property. His agent replied saying he would take no action until he received further instructions.
30. In 2020 Mr Hunt suffered some ill health which, he maintained, prevented him from further attention to the matter of licensing. In that period of ill-health the

agent wrote again in August 2020 reminding Mr Hunt of the need for a licence. The agent asked for instructions to carry out the necessary work to arrange the work on his behalf.

31. The Applicant asserted that in March 2021 on his recovery from ill-health and a further email from Spencer Birch in January 2021 that he wrote again to the Respondent seeking an explanation of his need to licence a property. He had previously, in 2015, received a demand from the Respondent for a payment in respect of another property owned and let by the Applicant. On this occasion, the Respondent alleged an HMO licence was required but on being challenged as to the need for such a licence the demand was withdrawn. The Applicant referred to the earlier claim in support of his demand for an explanation of the present claim.
32. Mr Hunt having received the s16 Notices of 16 March 2021 wrote to Mr Dott the Respondent's regulatory compliance officer on 20 March 2021 referring to the earlier demand and his request for an explanation of why he must licence the Property. He repeated his demand contending that he and his co-owners are good landlords and the level of rent is low which keeps voids low and benefits the tenants. His letter included a comment that "if there is a legitimate reason for having to pay for a licence" the rent will be increased after the pandemic ends. The letter concludes with a request for a temporary exemption from the licensing scheme pending it becoming permanent.
33. The Respondent replied by letter of 12 April 2021 which the Applicant treated as a reply to his first letter of request for information of March 2020. In it the Respondent described the fees payable for the licence explaining that a fee of £520 is payable on application and a further £370 is payable on licence issue. It also explained that a temporary exemption is not on offer without an application for a licence.
34. In June 2021 the Applicant entered a new tenancy agreement with Mr Rogers and Mr Minns. It was arranged by Spencer Birch as his managing agents. He asserts his agent knew the Property was not licenced and that he should have been told a licence was a necessary condition of the grant of a new tenancy. He criticises Spencer Birch for not reminding him of the need for the licence. He changed agent

in November 2021 to JP Lettings of Ruddington but they were not retained for long. That firm returned the instructions because the Property did not have an electrical safety certificate.

35. The Applicant was suffering a further bout of serious ill-health preventing him from attending to his affairs. Also, he had problems with his computer. The technology problems prevented him from completing the necessary application forms which he had received. He had been offered assistance with their completion by an officer of the local authority but the Applicant's difficulty with his computer prevented him dealing with the applications.

36. Instead, as an indication of his intention to comply with the licence obligation he sent a cheque for £520 to the Respondent being the application fee. It was returned as it was not accompanied by an application form.

37. The Applicant described himself as an unsophisticated landlord who was not given adequate advice or explanation of the obligations upon him in connection with the licence especially in light of his previous experience when a licence demand was withdrawn. Also he claimed his age and bouts of ill health impaired his ability to attend to his affairs. Further when he was able to look at the need to obtain a licence he ran into problems with his computer. He maintains he has sought assistance from agents but securing the necessary certificates of safety was difficult to obtain. He blamed the tenants conduct in not permitting access for works to take place which would permit the safety certificates being provided. He also stated the tenants had not paid rent for several months even after the end of the pandemic.

38. On 28 January 2022 the Applicant submitted his application for the licence.

39. In answer to questions from Ms Shabir on behalf of the Respondent, the Applicant asserted that any demand for money should be fully explained. He maintained he had supplied the information which he was asked for in the s16 notices. The only reason he had not applied for a licence was because he had not received any

explanation of its purpose. Had he been told what it was for he would have applied for one immediately.

40. In answer to questions from the Tribunal the Applicant stated he could not overcome his computer problems and he needed to get safety certificates. The offer of assistance from the Respondent did not involve completing a paper application. He did not apply for a temporary exemption notice because JP lettings did not make an application on his behalf. He made the application in January in order to avoid a higher fine and to reduce the damage to his family's and his health arising from stress of this matter was causing. He admitted to owning five other properties which are let to tenants.

The Respondent

41. The Respondent relied on its statement of case and the evidence of Mr Dott its compliance officer.

42. In connection with the failure to licence the Respondent relied upon the number of times the Applicant had been advised of the need to obtain a licence. It referred to the advice from Spencer Birch, the letters which it had sent to the Applicant and the offer of personal assistance as well as the publicity given at the time of launch of the scheme.

43. Mr Dott was cross examined on the calculation of the financial penalty. He described the culpability options as Very High, High, Medium and Low. He could not recall an occasion when culpability was assessed as Low. High culpability includes recklessness. He thought oversight would involve recklessness.

44. He was not suggesting the Property was in poor condition. He agreed that the condition of the Property is such that had an application been made it would probably have had a licence granted without additional conditions. He did not agree that High level of culpability relates to the state of the property.

45. It was not seen as Medium culpability because that involves a negligent act. He agreed that Medium culpability included making some effort to comply but it was

insufficient for full compliance. Also it included a first offence. or submitting an application or completing works after the council have commenced an investigation for non-compliance.

46. The risk of Harm was assessed at C because the risk did not fall within either A or B which involve potential harm to the tenants.
47. He agreed that although the application was submitted in January 2022 it was still in process although he did not agree the review process will take twelve months. He was not aware of any defects or any reason to refuse a licence.
48. Financial benefit was calculated by reference to the rental income received by the Applicant discounted in accordance with the Policy which in this case amounted to 60%
49. In answer to questions from the Tribunal, Mr Dott agreed the only sum saved by Mr Hunt was the application fee as the scheme does not impose other costs on an Applicant in the absence of conditions. The Respondent assesses each case on its individual merits. There would have been no difference in the assessment had the landlord held a large portfolio because, the Respondent contended, there is no relationship between the amount of a penalty and the size of a landlord's business. The only difference might have been the possibility of a prosecution which was viewed as being a more punitive option.
50. The Applicant's medical condition was considered as a mitigating factor with a 5% reduction in accordance with the policy. As the Applicant is not the subject of any other enquiries there was a further 5% deduction for first offence.
51. Having heard the evidence of Mr Hunt at the hearing Mr Dott did not wish to review his calculation of the penalty except by the amendment of the financial benefit. Had

the Respondent known the tenants had failed to pay rent the sum would have been reduced by the equivalent of one month

The Statutory Framework

52. The regime of financial penalties as an alternative to prosecution for certain housing offences came into force on 6 April 2017.

53. Section 95 of the Act prescribes offences in relation to licensing of houses under Part 3 (Selective Licensing)

(1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.

(2).....

(3) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

(a) a notification had been duly given in respect of the house under section 62(1) or 86(1), (taking steps to ensure house no longer needs a licence) or

(b) an application for a licence had been duly made in respect of the house under section 87,

and that notification or application was still effective (see subsection (7)).

(4) In proceedings against a person for an offence under subsection (1) or (2) it is a defence that he had a reasonable excuse—

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b)..... ,

as the case may be.

54. Section 249A of the 2004 Act, inserted by section 126, and paragraphs 1 and 7 of Schedule 9 to, the Housing and Planning Act 2016 ('the 2016 Act') provides

(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) The Secretary of State may by regulations make provision about how local housing authorities are to deal with financial penalties recovered.*
- (7) The Secretary of State may by regulations amend the amount specified in subsection (4) to reflect changes in the value of money.*
- (8) For the purposes of this section a person's conduct includes a failure to act.*

55. By paragraph 10 of schedule 13A 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.*

56. By clause 10(3) *an Appeal under this paragraph is to be a rehearing of the local housing authority's decision, but may be determined having regard to matters of which the authority is unaware,*
and by clause 10(4) *on an Appeal under this paragraph the First-tier Tribunal may confirm vary or cancel the final notice.*

57. S.234 Housing Act 2004 provides:

(1)The appropriate national authority may by regulations make provision for the purpose of ensuring that, in respect of every house in multiple occupation of a description specified in the regulations—

(a)there are in place satisfactory management arrangements; and

(b)satisfactory standards of management are observed.

(2)The regulations may, in particular—

(a)impose duties on the person managing a house in respect of the repair, maintenance, cleanliness and good order of the house and facilities and equipment in it;

(b)impose duties on persons occupying a house for the purpose of ensuring that the person managing the house can effectively carry out any duty imposed on him by the regulations.

(3)A person commits an offence if he fails to comply with a regulation under this section.

(4) In proceedings against a person for an offence under subsection (3) it is a defence that he had a reasonable excuse for not complying with the regulation.

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

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

(7)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.

Decision

58. In this case, the Applicant has accepted that the offence of managing or controlling a property which is required to be licenced under Part 3 of the Act but was not licenced contrary to s95(1). Also, there is no challenge to the validity of the Civil Penalties Policy implemented by the Respondent in 2017 and restructured in 2020. His challenge is to the application of the policy to the facts of this case.

59. The Tribunal explained to the parties at the outset of the hearing that the Applicant's Appeal against the penalty imposed would be conducted as a rehearing in accordance with paragraph 10 Schedule 13A of the Act.

60. In so far as deciding what level of penalty is appropriate HHJ Cooke stated in *Homes & Housing v LB Of Croydon*

"15. The approach that the FTT and the Tribunal should take to the local housing authority's policy is well-established. In Sutton v Norwich City Council [2020] UKUT 90 (LC) the Deputy President said at paragraph 244:

"It is an important feature of the system of civil penalties that they are imposed in the first instance by local housing authorities, and not by courts or tribunals. The local housing authority will be aware of housing conditions in its locality and will know if particular practices or behaviours are prevalent and ought to be deterred. The authority is well placed to formulate its policy and in London Borough of Waltham Forest v Marshall [2020] UKUT 35 (LC) the Tribunal (Judge Cooke) gave guidance on the respect that should be afforded to a local authority's policy by the FTT when hearing an Appeal from a civil penalty imposed by the authority. As Wilkie J put it, concerning the approach which should be taken by magistrates, in Darlington Borough Council v Kaye [2004] EWHC 2836 (Admin): 7 "The Justices ... ought to have regard to the fact that the local authority has a policy and should not lightly reverse the local authority's decision or, to put it another way, the Justices may accept the policy and apply it as if it was standing in the shoes of the council considering the application.

245. If a local authority has adopted a policy, a tribunal should consider for itself what penalty is merited by the offence under the terms of the policy. If the authority has applied its own policy, the Tribunal should give weight to the assessment it has made of the seriousness of the offence and the culpability of the appellant in reaching its own decision.”

61. The Tribunal is satisfied that the Applicant has committed a housing offence which entitles the Respondent as local housing authority to impose a financial penalty under the Act. However, having heard the evidence and submissions by both parties the Tribunal is satisfied the penalty imposed was disproportionate to the offence in the circumstances and it has considered what penalty is merited.
62. The Respondent had assessed the Applicant’s culpability as High, one step lower than the highest level of culpability, but recognised the risk of harm to the tenants was C which was because it was assessed as not sufficiently serious to fall in the other two levels.
63. In cross examination the Respondent accepted there was no risk of harm to the tenants nor was there any suggestion of poor management. Mr Carter referred to the purpose of imposing a Civil Penalty is that it should not be cheaper to offend as stated in the Overview of the Policy. In this case, although the application for a licence is still under review, Mr Dott was not aware of any issues which will prevent the grant of a licence.
64. Mr Carter also submitted that the Tribunal can have regard to the fact that the Applicant applied for a licence before the final notice of penalty and paid the fee of £890.
65. The Tribunal accepts Mr Carter’s submission that the policy lacked an explanation for justifying the direction to choose the highest level when behaviour falls into more than one category.

66. As far as the level of culpability is concerned the Tribunal recognised that the Applicant's behaviour was unhelpful to his cause. There was a stubborn determination to wait for an explanation to his satisfaction of the reason why he had to apply for a licence. Although he had previous experience of securing the withdrawal of a demand for licensing, in this case he ignored not only demands from the Respondent but also advice from his agent. Moreover, as a landlord he had not properly acquainted himself with all the regulations and responsibilities of that position. He had failed to obtain necessary safety certificates and not heeded the publicity campaign run by the Respondent. The Tribunal was not satisfied with his explanation for his failure to obtain the certificates or his ignorance of the publicity given to the new licensing scheme.

67. However, the Tribunal was not satisfied this behaviour could be characterised as reckless. Once the scheme was drawn to his attention the Applicant may have taken the incorrect approach in response, but he did not behave in a way which amounted to "*wilful blindness to a risk of offending*". Also, the Applicant regarded himself as a good landlord who provided good accommodation. He cannot be described as being one who takes a risk and is "*reckless as to whether harm is caused, that is, where the Landlord appreciates at least some harm would be caused but proceeds giving no thought to the consequences even though the extent of the risk would be obvious to most people*". The Tribunal was given no evidence that the tenants were at risk of harm from the want of a licence.

68. It is the Tribunal's decision that the correct level of culpability is medium. It confirms the risk of harm is level C. Applying the Respondent's policy the penalty level is 2 which means a penalty between £1,200 - £3,000 with a starting point of £2,075.00.

69. Aggravating and mitigating factors are assessed and where applicable the starting point is varied by 5%. An aggravating factor is that the Applicant allowed the safety certificates to lapse, that he ignored warnings and refused help offered by both his agent and the Respondent. As these are all

characteristics of a negligent approach to property management the Tribunal increases the penalty by 5%.

70. The Tribunal identified two mitigating factors. The Applicant suffered spells of ill-health which interfered with his attention to property management although nevertheless he made some attempts to comply with his obligations. Secondly this was his first offence, and the Respondent confirmed the Applicant was not under investigation for other housing offences. The Tribunal allowed 10% deduction from the gross starting point after allowing for an aggravating factor.

71. The sum deduced before consideration of financial benefit is £1971.25.
($2075 + (5\% \ 103.75) = 2178.75 - 207.5 = £1971.25$).

72. The Respondent applied the whole rent for the period of penalty in the sum of £2753.81 after the discount provided for in the policy. Ms Shabir conceded that had the Respondent known the tenants had not paid rent it would have reduced the financial benefit by one month.

73. The Tribunal is not satisfied that the Applicant has derived a financial benefit that should be forfeited for non-compliance. The Applicant would have obtained a licence had he applied for one. The property is not in poor condition. The tenants' rent record is poor. The deterrent effect of the policy is to deprive the landlord of a financial benefit he should not have or would not have, had there been a licence. There would have been no difference in the financial situation of the Applicant if a licence was in place other than the cost of the licence.

74. In summary, the decision of the Tribunal is that the penalty imposed by the Respondent on the Applicant is varied to the sum of £1971.25

Appeal

75. If either of the parties is dissatisfied with this decision, they may apply to this Tribunal for permission to Appeal on a matter of law to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written

reasons have been sent to them rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Tribunal Judge Peter Ellis