FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/33UD/HNA/2022/0007**
Property	**:**	**83, St Peter's Road, Great Yarmouth, Norfolk NR30 3AY**
Applicant	**:**	**Vida Kerpiene**
Respondents	**:**	**Great Yarmouth Borough Council**
Representative	**:**	**Steven Hall, Housing Enforcement Officer**
Type of Application	**:**	**Appeal against a Financial Penalty – Section 249A & Schedule 13A to the Housing Act 2004**
Tribunal	**:**	**Judge JR Morris** **Mrs M Hardman FRICS, IRRV(Hons)**
Date of Application	**:**	**26th July 2022**
Date of Directions	**:**	**1st September 2022**
Date of Hearing	**:**	**23rd November 2022**
Date of Decision	**:**	**20th December 2022**

DECISION & ORDER

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DECISION

1. The Tribunal orders that the Financial Penalty be varied to £2,750.00.

REASONS

Application

2. The Application received by the Tribunal on 26th July 2022 is an appeal against a Final Financial Penalty Notice for £7,500.00 issued on 9th June 2022 to the Applicant by the Respondent for the offence under section 95(1) of the Housing Act 2004 (the 2004 Act) of being a person

having control of or managing a house which is required to be licensed by reason of the Property being in Selective Licensing Designated Area under Part 3 of the Housing Act 2004 but is not so licensed.

3. Generally, a property does not require to be licensed with a local authority to be let, however, under the Housing Act 2004 licenses do have to be obtained for designated houses in multiple occupation and houses in designated areas. Houses in multiple occupation (HMOs) are designated either by way of definition under the Housing Act 2004 as amended or in accordance with the additional licensing provisions which may be put in place by local authorities. Houses in multiple occupation warrant special provision because they are occupied by several individual households (HMO Licensing). Houses in designated areas justify selective licensing for a specified time because the area is experiencing one or more of the following: low housing demand (or is likely to become such an area); significant and persistent problems caused by anti-social behaviour; poor property conditions; high levels of migration; high level of deprivation; high levels of crime and to enable local authorities to support both landlords and tenants and ensuring that appropriate standards of management and accommodation are met. The local authority must comply with a procedure as set out in "The Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licensing of Other Residential Accommodation (England) General Approval 2015 (Selective Licensing). The present case concerns Selective Licensing where a local authority has designated an area in which properties that are let must be licensed (the Designation).

4. The Respondent local authority provided a copy of the relevant Designation whereby in exercise of its powers under section 80 of the Housing Act 2004 and other enabling powers designated for selective licensing those parts of the Nelson Ward as were delineated and edged blue on the map at Annex A of the Designation. The Designation was made on the 14th September 2018 and came into force on the 7th January 2019. The Designation shall cease to have effect on the 6th January 2024 or earlier if revoked under section 84 of the 2004 Act.

5. The Designation applies to any house which is let or occupied under a tenancy or licence within the area described unless —
   (a) the house is a house in multiple occupation and is required to be licensed under Part 2 of the 2004 Act;
   (b) the tenancy or licence of the house has been granted by a registered social landlord;
   (c) the house is subject to an Interim or Final Management Order under Part 4 of the 2004 Act;
   (d) the house is subject to a temporary exemption under section 86 of the Act;
   (e) the house is occupied under a tenancy or licence which is exempt under the 2004 Act as defined in Annex B to the Designation.

6. The effect of the Designation is to require houses occupied under a tenancy or licence to be licensed under section 85 of the 2004 Act. It was stated that the notification requirements contained in section 83 of the 2004 Act would be complied with and a register of all houses registered under the Designation maintained as required under section 232 of the 2004 Act.

7. The Tribunal noted that there was an error in the Designation in that it stated that it was made by Thanet District Council:

   "Thanet District Council ("the Council") in exercise of is powers under section 80 of the Housing Act 2004 ("the Act") and all other enabling powers hereby designates for selective licensing the area described in paragraph 4."

   It was made clear in all other parts of the Designation that it was made by the Respondent and therefore the tribunal took the view that this slip resulting from the use of a precedent did not invalidate the Designation.

8. 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 the offence under section 95(1) of the 2004 Act that a property that is subject to Selective Licensing is unlicensed. Financial Penalties are also referred to as Civil Penalties. Only the term Financial Penalty has been used here for consistency.

9. 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). As stated, the Tribunal received this Application on 26th July 2022, 12 working days after the expiry of the deadline to appeal on the assumption that the Final Notice dated 9 June 2022 was sent to the applicant on that date. Rule 6 allows the Tribunal to extend the time for complying with the 2013 Rules, even if the application for an extension is not made until after the time limit has expired. The Tribunal wrote to both parties on 24th August 2022 to ask the Applicant for the reason for the delay and to query whether the Notice of Intention was served in time by the Respondent. The Applicant's representative claims that the Final Notice was not received until 20th June 2022 and made a number of other representations about the applicant's lack of English and knowledge of licensing procedure. The Respondent pointed out that the offence was continuing until 24th August 2022 and therefore the Notice of Intention was in time. In all the circumstances of the case, including the amount of the financial penalty, the Procedural Judge considered it

appropriate to extend time and therefore allow the Application to proceed.

10. Directions were issued on 1st September 2022.

11. The Appeal was heard on 23rd November 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.

The Law

12. 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

13. No inspection of the Property was made by the Tribunal. From the Statements of Case, the supporting documents, the Internet and information provided at the hearing from the parties the Tribunal found the Property was a three-storey mid terraced house constructed of solid brick walls, which are rendered under a pitched roof.

14. Externally, the roof to the front of the main building has a concrete tile covering, which to the rear is slate. The render is painted. There are upvc windows frames with double glazed units and upvc doors. The second floor has a dormer window to the rear. There is a two-storey extension to the rear with a shallow built up felt pent roof. The rainwater goods are upvc. There is a low brick wall enclosing a small area to the front. To the rear there is a yard which has access to a lane running at the back of the houses in the street.

15. Internally, the Property has a hallway from which rise stairs to the first floor and off which is a living room, dining room and kitchen on the first floor there are three bedrooms and a bathroom, although the Respondent believed that the loft room provided a fourth bedroom.

Hearing

16. The Hearing was attended by Ms Vida Karpiene, the Applicant, and her representative, Mr Said Jordan. Mr Steven Hall, Housing Enforcement Officer and Mr Ray Haslam Environmental Health Housing Manager attended for the Respondent. Mr David Lowens of the Home Safe Scheme, attended as Mr Timothy Goadsby, who provided a witness statement, was not available.

17. Ms Karpiene, who is of Lithuanian ethnicity confirmed that her first language was Lithuanian and indicated that she only had a basic knowledge of English which she felt put her at a disadvantage in the

context of a legal hearing. Therefore, the Tribunal provided her with an interpreter who was Ms Gintare Daunoraviciute. Ms Daunoraviciute confirmed that she was fluent in Lithuanian, was not related or known to Ms Karpiene prior to the hearing and that she acted only as an interpreter and not a representative. Ms Daunoraviciute gave a simultaneous translation which greatly facilitated both Ms Karpiene's involvement in, and the progress of, the proceedings.

18. As the proceedings are an appeal against the Respondent's Notices the Respondent's Case giving the reasons for the Notices was presented first followed by the Applicant's Case which addresses the objections to the Notices.

Respondent's case

19. The Respondent provided a Statement of Case supported by witness statements from Mr Steven Hall, Housing Enforcement Officer employed by the Respondent, and Mr Timothy Goadsby, Membership Consultant with the Home Safe Scheme.

20. It was stated that the Respondent, Great Yarmouth Borough Council, introduced a partial Selective Licensing designation, under section 80 of the Housing Act 2004 on 7th January 2019. The Designation area was most of the Nelson Ward in Central Great Yarmouth where anti-social behaviour, poor landlord management and rented properties having numerous defects and in poor condition had been identified. Rented properties not having an exemption, were required to be licensed and adhere to the licensing conditions to improve landlord obligations and housing conditions.

21. The Home Safe Scheme is a third-party agency working alongside the Respondent to assist in the licensing application administration and engage in licensing conditions compliance. Once the licensing application, mandatory documentation and payment functions are completed, the details are then forwarded to the Respondent for the drafting and issuing of the licence. The basic licensing compliance is managed by the Home Safe Scheme but serious compliance breaches or issues of high risk, are referred to the Respondent for enforcement action.

22. The Property is located within the Selective Licensing Designation area. A Council Tax check revealed that the Property has been let as a tenanted house since 18th December 2020 and was not exempt. The Tenant was named as Ms Sandra Juskaityte and a copy of the front page of the Tenancy Agreement was provided which showed she had been a tenant since 5th January 2017. A copy of the Land Registry Entry for the Property wsa provided, Title Number NK302466, which showed that the Applicant had been the proprietor with title absolute since 18th January 2020. It was stated that Mr Ian Peters or his firm of Peters & Rackham Properties had been the registered proprietor prior to that

date. It was also stated that he had held a Licence under the Selective Licensing Designation. A copy of an email dated 19th February 2021 from Mr Peters was provided relating to the revocation of his License following the sale of the Property to the Applicant.

23. Mr Steven Hall, the Respondent's Housing Enforcement Officer spoke with Ms Vida Kerpiene, the Applicant, on the telephone on 22nd February 2021 and offered support and guidance in submitting the application form for licencing. Ms Vida Kerpiene made the application to the Home Safe Scheme on 25th February 2021, but the application was missing the Gas Safety Certificate and the Electrical Inspection Condition Report (EICR) which are mandatory documents for the licensing application.

24. Mr Goadsby, an employee of the Home Safe Scheme, completing the licensing application process did not receive a response from the Applicant to reminders to send the required documents. Therefore, it was submitted that the application was incomplete and deemed not "duly made" and so the defence set out in section 95(3)(a) of the 2004 Act could not be pleaded. The matter was referred to the Respondent who conducted a License Application and enforcement review in accordance with the enforcement and Financial Penalty policies and a Notice of Intention to Issue a Financial Penalty was sent to the Applicant on 15th November 2021. No representations were by the Applicant made following the Notice of Intention to Issue a Financial Penalty. Mr Hall stated that communication at the commencement of the License Application was effective with Ms Kerpiene. He said he believed that she fully understood the responsibility and requirement for the documentation to be included in the License Application for it to be complete and for her to be compliant.

25. The Property remained both let and unlicensed as of 9th June 2022 and a Final Financial Penalty was issued to the Applicant for £7,500.00. In the absence of evidence regarding the Applicant's financial circumstances, a search was carried out with the National Anti-Fraud Network which indicated that the Applicant's credit was such that she would be ablet to raise the amount of the Financial Penalty.

26. It was noted at the hearing that a Licence had been issued for the Property on 20th September 2022.

27. In their witness statements Mr Hall and Mr Goadsby provided the following timeline. Copies of the correspondence and documentation was provided.

On <u>22nd February 2021</u> the Respondent's Selective Licencing Team received an email from the Home Safe Scheme, regarding a new owner's name, phone number and email address which was the Applicant, Vida Kerpiene. Mr Hall said he spoke to the Applicant on the telephone and emailed her following the conversation with information

on the scheme and how to apply through the Home Safe Scheme. The conversation was in English, and the Applicant said she understood the conversation and that she could be emailed in English.

On 25th February 2021 Mr Hall said he received a telephone call from the Applicant requesting further advice on the application process and there were no language issues identified. Following this conversation, a Licence Application form was submitted later that day by the Applicant through the Home Safe Scheme via their website.

On 1st March 2021 the Respondent emailed a list of properties requesting confirmation of whether a Licence Application had been received in respect of the Property and the Home Safe Scheme confirmed that a Licence Application had been received and was awaiting processing.

On 2nd March 2021 Mr Goadsby said processing the application began with confirmation of ownership of the Property and retrieval of a valid Energy Performance Certificate from the national Register. A partial image of a Gas Safety Certificate had been supplied with the License Application, however this could not be accepted as it failed to show the full address of the Property, the date of the test, and evidence that the installation was safe to use. Mr Goadsby notified the Respondent that the Licence Application was being processed but that a valid Gas Safety Certificate and Electrical Installation Condition Report and a copy of the Tenancy Agreement was awaited. In addition, Mr Goadsby said that he informed the Applicant by email that the application was being processed but that a copy of a valid Gas Safety Certificate and Electrical Installation Condition Report and the Tenancy Agreement was required.

On 10th March 2021 Mr Hall said that Mr Goadsdy of the Home Safe Scheme confirmed an application had been made and requested permission from the Respondent's Licensing staff to accept the application. Mr Hall replied giving consent to process the License Application.

On 18th March 2021 an email was received by the Home Safe Scheme from the Applicant containing an image of the 1st page of the Tenancy Agreement, another partial image of a Gas Safety Certificate. The email also said that an electrician had been booked for 9th April 2021 to conduct the electrical test.

On 19th March 2021 an email was sent to the Applicant form the Home Safe Scheme confirming receipt of the Tenancy Agreement but that the Gas Safety Certificate could not be accepted as it was incomplete.

On 30th April 2021 the Respondent emailed the Home Safe Scheme to ask for an update on outstanding applications.

On 6th May 2021 the Home Safe Scheme sent a reply to the Respondent confirming that the Gas Safety Certificate and Electrical Installation Condition Report were still awaited (copy provided).

On 4th November 2021 an email was sent to the Applicant stating that the Electrical Installation Condition Report and a valid Gas Safety Certificate were still awaited and that the Applicant had 7 days to provide the information required or the License Application may be terminated and the matter referred to the licensing authority.

On 8th November 2021, the Respondent approved the service of a Notice of Intention to serve a Financial Penalty Notice.

On 15th November 2021 the Notice of Intention to serve a Financial Penalty Notice was served on the Applicant at her home address.

On 19th November 2021 a copy of the satisfactory Electrical Installation Condition Report carried out on 9th April 2021 was received from the Applicant by the Home Safe Scheme.

On 23rd November 2021 receipt of the Electrical Installation Condition Report was confirmed and advised that a valid copy of the Gas Safety Certificate was awaited as the images supplied were unacceptable.

On 2nd March 2022 the Home Safe Scheme received an email from the Respondent requesting copies of correspondence between The Home Safe Scheme and the Applicant as enforcement action was being considered. The Home Safe Scheme replied listing the following emails:

02/03/21 sent by the Home Safe scheme re outstanding Gas Safety Certificate, Electrical Installation Condition Report and Tenancy Agreement, reply from the Applicant received 18/03/21 with Tenancy Agreement and Partial Gas Service Certificate.

19/03/21 sent by the Home Safe scheme re outstanding Gas Safety Certificate and Electrical Installation Condition Report - no reply received from the Applicant.

04/11/21 sent by the home Safe Scheme re outstanding Electrical Installation Condition Report and valid Gas Safety Certificate, reply from the Applicant received 19/11/21 with copy of the Electrical Installation Condition Report.

23/11/21 sent by the Home Safe Scheme re outstanding Gas Safety Certificate – no reply received from the Applicant.

On 10th May 2022 email received from Mr Ian Peters, the previous owner of the property, attaching a copy of the revocation form for his licence and stating that the new owner is Vida Kerpiene.

On 9th June 2022 a Final Notice Imposing a Financial Penalty was served. No representations were received from the Applicant. A financial affordability check was carried out on the National Anti-Fraud Network which indicated that the Applicant had access to credit to pay

the financial penalty. The Council Tax records showed that Ms Sandra Juskaityte had continued to pay the tax since 5th January 2017.

On 24th August 2022 Licence Application duly made.

28. A copy of the Notice of Intent to Impose a Financial Penalty dated 15th November 2021 was provided stating that the offence of failure to obtain a licence was committed under Section 95 — offences relating to licensing of houses under Part 3 (selective licensing) and that the Applicant is the person having control of the Property, which is required to be licensed under Part 3 of the Housing Act 2004, but which is not so licensed. The Respondent stated that it proposed to impose a financial penalty of £7,500.00 in relation to this offence and that any representations against the proposal to impose this financial penalty or the amount of the proposed penalty, must be received by 13th December 2021.

29. A copy of the Final Notice Imposing a Financial Penalty dated 9th June 2022 was provided stating that the Respondent has decided to impose a financial penalty on the Applicant because it was satisfied beyond reasonable doubt that her conduct amounted to an offence under Section 95 of the Housing Act 2004 being the person having control of or managing the property, which is required to be licensed under Part 3 of the Housing Act 2004, but which is not so licensed. An investigation of the property carried out on 21 January 2021 established that the property should be licensed and was not, and the offence is ongoing.

30. The Notice stated that the amount of the financial penalty is £7,500.00 and is based on an assessment of the degree of the Applicant's culpability in relation to the offence and the harm caused by it (see below) and has been determined by reference to the matrix and the penalty banding grid set out in the authority's Financial Penalty Policy. An appropriate adjustment has been made to reflect the extent of the Applicant's co-operation with the authority.

31. The Notice went on to state that it is in the public interest to impose the financial penalty for the following reasons:

1. The seriousness or severity of the offence:
   Failing to licence a rented property within a selective licensing designated area is an offence pursuant of section 95 Housing Act 2004. The provision of the licensing is to ensure Health and Safety standards, conditions of the property and tests for appropriate management of the property are met.

2. The compliance history of the offender:
   The responsible person has not engaged with the Local Housing Authority in the obligations to licence the property.

3. The level of culpability of the offender:

A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and are expected to be aware of their legal obligations.

4. Any harm suffered by the tenant, including consideration of the vulnerability of the tenant(s):
   The designated area for selective licensing identifies tenants that may be vulnerable and reside in properties that may have defects and poor property maintenance and management.
   Noncompliance in the licensing of the property may reveal noncompliance in other areas of Health and Safety concerns with regard to the property.

5. The potential deterrent effect that instigating any action would have on the offender and other potential offenders within the local area:
   The goal is to prevent any further offending and help ensure that the landlord fully complies with all their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.

6. Any financial benefit resulting from the offence:
   The offender should not benefit because of committing an offence, i.e., it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

32. In assessing culpability and harm, the authority has had regard to the factors set out in the Appendix to its Financial Penalty Policy.

The authority considers your culpability in relation to the offence to be High (Deliberate Act) for the following reasons:
Intentional breach by landlord or property agent or flagrant disregard for the law, i.e., failure to licence.

The authority considers the harm caused by the offence to be Low for the following reasons:
Defect(s) giving rise to the offence poses a risk of harm to the occupants and/or visitors.

Respondent's Private Sector Housing Financial Penalties Policy

33. The following is an abbreviated account of the Respondent's policy.

Determining the Level of the Financial Penalty

When determining the appropriate penalty level, the Council will have regard to the following factors:

Severity of the offence

The more serious the offence in terms of culpability and harm, the higher the penalty should be.

Culpability and track record of the offender

A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.

Examples of culpability

Very High (Deliberate Act) - Intentional breach by landlord or property agent or flagrant disregard for the law, i.e., failure to comply with a correctly served improvement notice, failure to licence.

High (Reckless Act) - Actual foresight of, or wilful blindness to, risk of offending but risks nevertheless taken by the landlord or property agent; for example, failure to comply with HMO Management Regulations

Medium (Negligent Act) - Failure of the landlord or property agent to take reasonable care to put in place and enforce proper systems for avoiding commission of the offence; for example, part compliance with a schedule of works, but failure to fully complete all schedule items within notice timescale.

Low (Low or no culpability) - Offence committed with little or no fault on the part of the landlord or property agent; for example, obstruction by tenant to allow contractor access, damage caused by tenants.

The harm caused to the tenant

The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a financial penalty. Factors that may indicate a higher risk of harm would include:
a) Multiple victims
b) Especially serious or psychological effect on the victim
c) The victim is especially vulnerable

Examples of harm categories

High Defect(s) giving rise to the offence poses a serious and substantial risk of harm to the occupants and/or visitors; for example, danger of electrocution, carbon monoxide poisoning or serious fire safety risk.

Medium Defect(s) giving rise to the offence poses a serious risk of harm to the occupants and/or visitors; for example, falls between levels, excess cold, asbestos exposure.

Low Defect(s) giving rise to the offence poses a risk of harm to the occupants and/or visitors; for example, localised damp and mould, entry by intruders.

Punishment of the offender

The penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending.

The penalty should be set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.

Deter the offender from repeating the offence.

The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.

Deter others from committing similar offences.

While the fact that someone has received a financial penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a Financial Penalty.

An important part of deterrence is the realisation that
(a) the Council is proactive in levying penalties where the need to do so exists and
(b) that the financial penalty will be set at a high enough level to both punish the offender and deter repeat offending.

Remove any financial benefit the offender may have obtained as a result of committing the offence.

The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e., it should not be

cheaper to offend than to ensure a property is well maintained and properly managed.

Calculating the Amount of the Financial Penalty

The Policy adopts a three-stage approach to calculating the amount of the financial penalty to be imposed. The stages are:

Stage 1
The Council will calculate the amount of penalty based on:
a) the culpability and track record of an offender
b) the level of harm to the tenants
c) aggravating and mitigating factors

Culpability	**Harm**		
	Low	Medium	High
Low	1	3	4
Medium	2	4	5
High	3	5	6

Band	Range £	Assumed Starting Point	
1	£0 to £2,499	£1,250	Low Culpability /Low Harm
2	£2,500 to £4,999	£3,750	Medium Culpability/Low Harm
3	£5,000 to £9,999	£7,500	Low Culpability/Medium Harm or High Culpability/Low Harm
4	£10,000 to £14,999	£12,500	Low Culpability/High Harm or Medium Culpability/Medium Harm
5	£15,999 to £19,999	£17,500	Medium Culpability/High Harm or High Culpability/Medium Harm
6	£20,000 to £30,000	£25,000	High Culpability/High Harm

Aggravating Factors

The penalty may be increased by up to £1,000 from the Assumed Starting Point for each aggravating factor up to a maximum of the top of the band level as determined above.

- Previous convictions
- Motivated by financial gain
- Obstruction of the investigation
    - Deliberate concealment of the activity/evidence
    - Number of items of non-compliance — greater the number the greater the potential aggravating factor
- Record of non-compliance
- Record of letting substandard accommodation
- Record of poor management] inadequate management provision
- Lack of a tenancy agreement/rent paid in cash

Mitigating Factors

The penalty may be decreased by up to £1,000 from the Assumed Starting Point for each mitigating factor to a minimum of the bottom of the band level as determined above.

Listed below is a non—exhaustive list of mitigating factors. Other factors may be considered depending on the circumstances of each case.

- Co-operation with the investigation
- Voluntary steps taken to address issues e.g., submits a licence application
- Willingness to undertake training
- Evidence of health reasons preventing reasonable compliance — mental health, unforeseen health issues, emergency health concerns
- No previous convictions
- Vulnerable individuals) where their vulnerability is linked to the commission of the offence.
- Good character and/or exemplary conduct

When considering the effect of aggravating and mitigating factors, the financial penalty must remain proportionate to the offence.

Stage 2
The Council will calculate the costs associated with investigating, determining, and applying a financial penalty and these will be added to the initial charge.

Stage 3
The Council will adjust the final determination should the offender provide written information/proof to demonstrate that the impact of the level fine would be unfair and disproportionate.

Ability to Pay

The MHCLG guidance states that local housing authorities should use their existing powers to, as far as reasonably possible, assess a landlord's assets and any income (not just rental income) they receive when determining an appropriate financial penalty. Any evidence about ability to pay will be considered before a final decision is made about the amount of the penalty as detailed in Stage 3 above.

Applicant's Grounds for Appeal

34. The Applicant provided a written Statement of Case which Mr Jordan had helped her prepare.

35. The Applicant's Grounds for appeal from the Statement of Case appeared to be that:
    1. She was not aware of the selective licensing; it was not explained to her and no account was taken of her language difficulties she therefore had good reason to be a person in control or managing a property that was not licensed.
    2. She had a number of personal problems which should have been taken into account.
    3. She had applied for a licence which is a defence under section 95. She was only waiting for contractors to carry out work in order to provide the necessary documentation of satisfactory EICR and Gas Safety Certificate.

36. The Applicant said that she was not aware of the Selective Licensing Designation. When she heard about the licensing requirement she applied for a Licence, complied with all the regulations and paid all the fees required on 20th September 2022.

37. She said that she is Lithuanian and that her English is limited and was not able to understand the letters and legal matters. She said she was not aware that she needed a Licence for the Property until she received financial penalty notices and warning letters. She said that it was not explained why she was required to obtain a Licence. She felt that the Respondent was under a duty to ensure that she understood why she was in breach of the regulations especially as this was her first 'buy to let'.

38. The Applicant questioned whether the Respondent could be satisfied beyond a reasonable doubt that she was in breach of her obligations.

39. She also questioned whether the Respondent had acted before the end of 6 months beginning with the first day on which the authority has sufficient evidence of the conduct which led to the Financial Penalty being imposed.

40. She said that as soon as she understood her obligations, she engaged contractors to carry out the necessary work. The Applicant provided an email from the Gas Safe contractor which stated that he was called out to carry out a Landlord's Gas Safety Check at the property but he could not take any readings because the boiler was not working. He ordered the parts for the boiler and when they arrive, he will fix the boiler and carry out the Gas Safety Check.

41. Th Applicant added that she had a number of personal problems. Her long-time partner had split up with her which had caused a her a lot of stress and made her very nervous and this had affected her thinking.

42. The Applicant submitted that she should not be liable to pay a Financial Penalty.

Discussion

43. At the hearing it was confirmed that the Applicant was granted a Licence under the Selective Licensing Designation on 20th September 2022 having made a complete Licence Application on 24th August 2022.

44. Both parties confirmed their written submissions at the hearing.

45. In response to the Tribunal's questions Mr Hall and Mr Lowens said that the email exchange on 10th March 2021 between Mr Hall and Mr Goadsby was not an acceptance by the Respondent that a Licence Application had been "duly made". Mr Lowens and Mr Hall stated that it was part of a liaison procedure. Mr Lowens said that when an application form was received by the Home Safe Scheme, they would contact the Respondent to check whether there were any reasons not to process the Licence Application. For example, it might be inappropriate for a Licence Application to be accepted because the Respondent might be taking enforcement action against an applicant or the property to be licensed might be unsuitable at the time of the application because a prohibition order may be in force. In such circumstances an application would need to be made directly to the Respondent.

46. They said that a Licence Application could be made to either the Respondent or through the Home Safe Scheme except where there were outstanding issues regarding either the applicant or the property, as mentioned above, when the Licence Application would have to be made directly to the Respondent. The advantage of applying through the Home Safe Scheme is that applicants receive assistance with the application process, on-going support with advice on management and can pay the Licence Application Fees by instalments, whereas the Respondent requires the fees to be paid in a single lump sum.

47. Mr Hall and Mr Lowens said that submitting an application form did not amount to an application having been "duly made". The Licence Application form had to be accompanied by the relevant documents of a current Electrical Installation Condition Report, a valid Gas Safety Certificate, a copy of the Tenancy Agreement and the relevant fees before it was duly made. Mr Lowens referred to the email exchange between the Home Safe Scheme and the Applicant to show that the Licence Application was incomplete because the relevant documents had not been provided and no fees had been paid. A Gas Safety Certificate was provided for the Property dated 17th January 2023 (sic).

48. In response to the Tribunal's questions, Mr Jordan said that the Respondent under their obligations of due diligence should have made it clear to the Applicant that a Licence was required as the Applicant was not aware of the Selective Licensing Designation made by the Respondent. Mr Jordan acknowledged that ignorance of the law was no excuse to non-compliance. He also acknowledged that Mr Hall had

contacted the Applicant on 22nd February 2021 to inform her that a Licence would be required and at that stage there was no mention of any enforcement action being taken against her for not having done so sooner.

49. Firstly, with regard to the Licence Application itself, Mr Jordan referred to the Applicant's lack of fluency in the English language. He said that she had received assistance with preparing the application form and in reading and replying to the correspondence regarding it. He said that the provision of the "unsatisfactory" Electrical Installation Condition Report dated 8th April 2021 instead of the "satisfactory" Report dated 9th April 2021 to the Home Safe Scheme was a failure of those assisting the Applicant. He said they also failed the Applicant by not explaining the situation regarding the Gas Certificate. Mr Jordan said there had been a valid Gas Certificate until the boiler had broken down. The gas engineer could not test the boiler and grant another certificate until it was repaired. Parts were ordered and when they arrived the boiler was repaired and tested. Mr Jordan referred to the gas engineer's emails and the Gas Certificate provided.

50. Mr Hall and Mr Haslam responded stating that there was no indication in the course of the telephone calls between Mr Hall and the Applicant on 22nd and 25th February 2021 that the Applicant did not understand that a Licence Application had to be made and that certain documents had to be provided. That she understood this was demonstrated by a Licence Application form having been submitted to the Home Safe Scheme on 25th February 2021 with a partial image of a Gas Certificate.

51. In addition, the email from the Applicant received on 18th March 2021 with the front page of the Tenancy Agreement and partial Gas Service Certificate in response to the Home Safe Scheme's email of 2nd March 2021 and the email from the Applicant received 19th November 2021 with a copy of the Electrical Installation Condition Report in response to the Home Safe Scheme's email of 4th November 2021 showed that the Applicant or her advisers knew what was required irrespective of the Applicant's lack of fluency in English.

52. The Tribunal noted that the Gas Certificate that had been provided was unclear as to the date of issue. The gas engineer had said it was issued on "17/01/23" and the "next gas safety check was due before 23/07/23". Neither Mr Jordan nor the Applicant could explain this. Mr Haslam suggested that, at least so far as the due date for the next gas safety check, this would appear to be correct and that the annual Gas Certificate should have been and should be in future obtained in July of each year. However, he also was equally unclear about the issue date.

53. Secondly, with regard to the Licence Application, Mr Jordan referred to the Applicant's personal problems which together with her lack of fluency in English had led to her not providing the required documents. He said the Applicant was nearly 60 years of age and the splitting up

with her long-term partner around the time that she bought the Property had caused her a lot of stress and made her very nervous. In addition, following her submitting the Licence Application form the Applicant had had problems with her computer and she did not believe she had received all the emails that had been sent to her resulting in her appearing to wilfully fail to respond to requests.

54. The above statements made on behalf of the Applicant were confirmed by the Applicant through the Interpreter. It was clear the Applicant was very upset by the breakdown of her long-term relationship.

55. Mr Hall and Mr Haslam responded by stating that no representations were received following the service of the Notice of Intent to Issue a Financial Penalty and so the Respondent was unaware of the matters raised in the Applicants appeal. Even if they had been aware the circumstances referred to by the Applicant only amount to mitigation and are not a defence under section 95 of the 2004 Act.

56. They went on to state that the Home Safe Scheme and the Respondent had used the telephone number and the email and postal addresses by which the Applicant had said she could be contacted. Mr Hall spoke to the Applicant by telephone using the number given and the Applicant replied to emails sent to the email address given. Documents were sent to the postal address given by the Applicant, in particular the Notice of Intent to Issue a Financial Penalty. The correct procedure was followed and the Applicant was given an opportunity to make representations but did not do so. The Respondent served the Notice of Intent to issue a Financial Penalty on 15th November 2021 but did not issue the Final Notice until 9th June 2022. The Applicant did not provide the Gas Certificate to complete her Licence Application until 24th August 2022.

57. Mr Jordan further submitted that he believed the imposition of the Financial Penalty was out of time under paragraph 2(1) of Schedule 13A in that the Notice of Intent was given more than 6 months after the first day on which the Respondent had sufficient evidence of the conduct to which the financial penalty related.

58. Mr Hall and Mr Haslam responded by stating that under paragraph 2(2) the Notice of Intent may be given at any time when the conduct is continuing, or within the period of 6 months beginning with the last day on which the conduct occurs. They submitted that as no Licence Application had been duly made when the Notice of Intent to Issue a Financial Penalty the conduct of having control or managing a property that is subject to selective licensing but is unlicensed, which is an offence under section 95(1) of the 2004 Act, was continuing. Therefore, the Respondent's issuing of a Notice of Intent was lawful.

59. The Tribunal then addressed the issue of the calculation of the Financial Penalty by the Respondent. In answer to the Tribunal's questions Mr Hall and Mr Haslam said that a copy of the policy or at

least the relevant section, was not sent to the Applicant but it is available on the Respondent's web site. The Tribunal consider that the availability of the policy on the website should be clearly stated in the Notices.

60. Mr Hall and Mr Haslam said that with regard to culpability the penalty had been set at High (Deliberate Act) in that it was believed this was an intentional failure by the Applicant to obtain a licence. The harm was considered to be low which placed the penalty in Band 3. In the absence of representations to mitigate the offence the amount had been put in the mid-range of £7,500.00.

61. The Tribunal expressed the opinion that the level of culpability was medium rather than high in this case. Mr Haslam said that the failure to obtain a licence was specifically mentioned under high culpability. The Tribunal noted that these were examples of culpability and the motivation for which may cover a wide range.

62. In response to the Tribunal's questions Mr Haslem said that the Health and Safety Executive had not been informed of the lack of a Gas Certificate and the Respondent had not considered it necessary to invoke its powers under the Electrical Safety Regulations in the Private Rented Sector (England) Regulations 2020 or its other powers relating to the Housing Health and Safety Rating System, Improvement Notices or Emergency remedial Action under the Housing Act 2004. The imposition of a financial penalty was considered the most appropriate action in the circumstances.

63. The Tribunal expressed concern that the policy only allowed mitigating circumstances to be reduced by £1,000 from the Assumed Starting Point giving insufficient flexibility to meet the proportionality objective.

64. In response Mr Jordan said that if the Tribunal did not find that the Applicant came within one of the defences under section 95 and that the issuing of the Financial Penalty was lawful, he submitted that the amount of the Financial Penalty was unduly high. He said that more account should be taken of the mitigating circumstances relating to the breakup of the Applicant's long-term relationship, her lack of fluency in English compounded by the poor advice she was given with regard to the Electrical Installation Condition Report and Gas Certificate. These circumstances created a great deal of stress for her and made it difficult for her to deal with the situation.

65. The Tribunal noted at the hearing that an "unsatisfactory" Electrical Installation Condition Report was carried out on 8th April 2021 which was marked "Draft". Clearly on receipt the Applicant instructed the electrician to carry out the necessary work as a "satisfactory" Electrical Installation Condition Report was issued the following day, 9th April 2021. The Tribunal expressed surprise that the "unsatisfactory" report had been sent to the Home Safe Scheme when the "satisfactory" Report

was available. The partial copy of a Gas Certificate that was provided with the Licence Application was probably the last Certificate issued. From the Certificate that was last issued (notwithstanding the confusion over the date of issue) the Tribunal found that the anniversary test date appeared to be July. The Tribunal told the Applicant that she and her advisers should have kept the Respondent informed about the problem with the boiler and the reasons for producing the Gas Certificate late.

Decision

66. The Tribunal considered all the evidence adduced and submissions of the parties.

Validity of the Financial Penalty

67. Firstly, the Tribunal considered whether a Financial Penalty should be imposed, which in this case required the Tribunal to determine whether it was satisfied beyond a reasonable doubt that the Applicant had committed the alleged offence for which the Financial Penalty Notice was issued.

68. The offence under section 95(1) of the Housing Act 2004 would be committed if the Applicant was a person having control of or managing a house, which is required to be licensed under Part 3 of the Housing Act 2004, but which is not so licensed.

69. The Tribunal looked at each part of the offence. The Tribunal found as follows being matters that were agreed or stated as facts and not disputed:

    a) The Applicant is a person having control or managing the property since the 18th January 2020. This was confirmed by the Land Registry entry which identified the Applicant as the Proprietor.

    b) The area within which the Property is situated had been designated as one which was subject to Selective Licensing. The Designation came into force on the 7th January 2019 and would cease to have effect on the 6th January 2024 unless revoked before. The Designation was still effective which meant that the Property, if let, had to be licensed. The Property had been licensed under the Designation by Mr Ian Peters, the previous person having control of or managing a house. That licence had been revoked on 19th February 2021.

    c) The Property had been let to Ms Sandra Juskaityte since 5th January 2017 as evidenced by the was Tenancy Agreement provided. The Landlord at that time was Flexible Letting Agent for whom the Applicant signed.

d) The Applicant had not licensed the Property, as required by the Selective Licensing Designation, from the 18th January 2020 when the Applicant became a person having control or managing the property until the Notice of Intention to Issue a Financial Penalty dated 15th November 2021 was served by the Respondent.

70. Therefore, the Tribunal was satisfied beyond a reasonable doubt that the Applicant had committed the offence under section 95(1) of the Housing Act 2004 of being a person having control of having control of or managing a house which is required to be licensed but is not so licensed.

71. Having found that the offence had been committed the Tribunal considered whether the defence under section 95(3)(b) that, at the material time an application for a licence had been duly made in respect of the house under section 87.

72. Pursuant to section 87(2), the Respondent may specify requirements as to the manner of a Licence Application, such requirements being in accordance with Government Guidance. The Tribunal found that the Respondent specified that the Licence Application must be accompanied by Electrical Installation Condition Report and a valid he Gas Certificate and that such requirements are within the terms of the Government Guidance. The Tribunal found that on the balance of probabilities an application had not been duly made in that although an application form had been submitted but two of the documents, namely the Electrical Installation Condition Report and the Gas Certificate, had not been provided by the Applicant. Therefore, the Tribunal found that the defence in section 95(3)(b) did not apply.

73. The Tribunal accepted that from his telephone conversation with the Applicant on 22nd and 25th February 2021, Mr Hall did not have reason to believe that the Applicant did not understand what was required to licence the Property and this was evidenced by the Applicant completing a Licence Application form and providing some of the documents required.

74. Also, taking into account that landlords taking over a property in an area where Supplementary Licencing Designation had been made may not initially be aware of licencing requirement, the Respondent acted appropriately in informing the Applicant of her obligation and giving time to apply, rather than taking immediate enforcement action.

Amount of the Financial Penalty

75. 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

76. 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.

77. 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).

78. 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."

79. 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.

80. 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.

81. 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.

82. Taking into account the above the Tribunal then considered the Respondent's 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 Tribunal found the principles upon which the policy was based to be in line with government guidance.

83. The Tribunal considered the application of the policy taking into account the facts of this particular case.

84. The two aspects of the offence to be addressed in applying the policy are the level of culpability and the level of harm. The Tribunal was of the view that Parliament required local authorities to differentiate between offending landlords when determining the amount of a Financial Penalty. On this basis a higher Financial Penalty is to be imposed on those landlords who fail to obtain a licence to avoid the scrutiny of the local authority and flagrantly disregard the safety, health and welfare of their tenants. In contrast a lower Financial Penalty might be made against those landlords where there are mitigating circumstances, and whose properties meet appropriate standards, notwithstanding that they have not complied with the administrative requirements intended to safeguard tenants.

85. In assessing culpability and harm, the Respondent considered the Applicant's culpability in relation to the offence to be "High" (Deliberate Act) for the following reasons:
"Intentional breach by landlord or property agent or flagrant disregard for the law, i.e., failure to licence."
The description given actually fits that of "Very High" in the Policy.

86. The Tribunal considered the Policy and its application to the culpability of the Applicant. The Tribunal found that the Applicant acted upon the

advice of Mr Hall and made a Licence Application through the Home Safe Scheme within a few days of being prompted to do so. This was not the action of a landlord deliberately failing to licence or having a flagrant disregard for the law.

87. The Tribunal found that the Applicant's culpability was much more in line with that of "Medium" (Negligent Act) culpability under the policy which described it as:
"Failure of the landlord or property agent to take reasonable care to put in place and enforce proper systems for avoiding commission of the offence; for example, part compliance with a schedule of works, but failure to fully complete all schedule items within notice timescale."

88. In the present case the Applicant completed the Licence Application form but only provided a partial and insufficiently clear copy of the Gas Certificate and failed to provide a copy of the Tenancy Agreement or a copy of the Electrical Installation Condition Report. On 18th March 2021 following a reminder email of 2nd March 2021 from the Home Safe Scheme, the Applicant provided the Tenancy Agreement and another partial Gas Service Certificate and advised that an electrician had been booked for 9th April 2021 to conduct the electrical test.

89. The electrical test was carried out on 8th April 2021 which identified problems with the installation which were rectified on 9th April 2021 and a "satisfactory" Electrical Installation Condition Report was issued. This was not provided to the Home Safe Scheme or Respondent until 19th November 2021. The reason given by the Applicant was that she was stressed by the breakup of her long-term relationship. The Tribunal found this to be a credible explanation. The Report was available when the Applicant said it would be in her email of 19th March 2021. In the circumstances there did not appear to be any other reason for not sending it to the Home Safe Scheme or Respondent.

90. On the balance of probabilities, the Tribunal found that the Gas Certificate expired in July 2021 and that due to problems with the boiler, it was not tested and in working order until after that date, as evidenced by the gas engineer's emails. The reason given by the Applicant for not sending a full copy of the Gas Certificate that was available and not explaining what the situation was about the boiler was the same as for failing to send the "satisfactory" Electrical Installation Condition Report earlier, namely that she was stressed by the breakup of her long-term relationship. Notwithstanding the lack of clarity over the issue date of the Gas Certificate and the Tribunal found this credible.

91. It appeared to the Tribunal that the Applicant's personal problems were compounded by her lack of fluency in English as regards not having communicated promptly and clearly with the Home Safe Scheme and the Respondent.

92. The Tribunal found that the Applicant's conduct was negligent, not intentional. She should have handed over the responsibility for making the Application to an agent when she realised that she was not coping well with per personal circumstances.

93. The Tribunal then looked at the Policy and its application to the harm that might be caused to the Tenant. The Respondent considered the harm caused by the offence to be "Low" with which the Tribunal agrees. The Property had been Selectively Licensed previously and so would be known to the Respondent. The Tenant was of long standing and would likely have raised any issues if they had arisen. The Tribunal was of the opinion that if the Respondent considered that there was a risk to the Tenant it would have carried out a Housing Health and Safety Assessment and/or used its powers to instruct a contractor to carry out an Electrical Installation Condition Report and a Gas Test and any remedial works identified.

94. The Tribunal therefore, using the Respondent's table in its Policy, identified the Applicant's conduct as being of Medium Culpability and Low Harm and took its starting point of £3,750.00. The Tribunal then considered whether there was any aggravating or mitigating circumstances.

95. The Tribunal did not find any aggravating circumstances such as previous convictions, financial motive for non-compliance, deliberate concealment, record of non-compliance, substandard accommodation or poor management.

96. The Tribunal found there were mitigating circumstances of which the Respondent was not aware when the Final Notice imposing a Financial Penalty was served. In particular, the Applicant at the time of the Application was suffering distress due to her long-term relationship ending. In addition, she had no previous convictions. She was also prompt to make a Licence Application once she was aware that it was required and took action to obtain the required documents notwithstanding that she failed to keep the Home Safe Scheme and the Respondent informed of progress which made the Respondent believe that she was being un-cooperative and intentionally difficult.

97. Taking the mitigating circumstances into account the tribunal considered that a reduction of £1,000.00 should be made from the Assumed Starting Point.

98. Therefore, the tribunal orders that the Financial Penalty be varied to £2,750.00.

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. Section 79 Licensing of houses to which this Part applies

(1) This Part provides for houses to be licensed by local housing authorities where—
  (a) they are houses to which this Part applies (see subsection (2)), and
  (b) they are required to be licensed under this Part (see section 85(1)).

(2) This Part applies to a house if—
  (a) it is in an area that is for the time being designated under section 80 as subject to selective licensing, and
  (b) the whole of it is occupied either—
    (i) under a single tenancy or licence that is not an exempt tenancy or licence under subsection (3) or (4), or
    (ii) under two or more tenancies or licences in respect of different dwellings contained in it, none of which is an exempt tenancy or licence under subsection (3) or (4).

(3) A tenancy or licence is an exempt tenancy or licence if-
  (a) it is granted by a non-profit registered provider of social housing,
  (b) it is granted by a profit-making registered provider of social housing in respect of social housing (within the meaning of Part 2 of the Housing and Regeneration Act 2008), or
  (c) it is granted by a body which is registered as a social landlord under Part 1 of the Housing Act 1996 (c. 52).

(4) In addition, the appropriate national authority may by order provide for a tenancy or licence to be an exempt tenancy or licence—
  (a) if it falls within any description of tenancy or licence specified in the order; or
  (b) in any other circumstances so specified.

(5) Every local housing authority have the following general duties—
  (a) to make such arrangements as are necessary to secure the effective implementation in their district of the licensing regime provided for by this Part; and

(b) to ensure that all applications for licences and other issues falling to be determined by them under this Part are determined within a reasonable time.

3. Section 80 Designation of selective licensing areas

(1) A local housing authority may designate either—
  (a) the area of their district, or
  (b) an area in their district,
as subject to selective licensing, if the requirements of subsections (2) and (9) are met.

(2) The authority must consider that—
  (a) the first or second set of general conditions mentioned in subsection (3) or (6), or
  (b) any conditions specified in an order under subsection (7) as an additional set of conditions,
are satisfied in relation to the area.

(3) The first set of general conditions are—
  (a) that the area is, or is likely to become, an area of low housing demand; and
  (b) that making a designation will, when combined with other measures taken in the area by the local housing authority, or by other persons together with the local housing authority, contribute to the improvement of the social or economic conditions in the area.

(4) In deciding whether an area is, or is likely to become, an area of low housing demand a local housing authority must take into account (among other matters)—
  (a) the value of residential premises in the area, in comparison to the value of similar premises in other areas which the authority consider to be comparable (whether in terms of types of housing, local amenities, availability of transport or otherwise);
  (b) the turnover of occupiers of residential premises;
  (c) the number of residential premises which are available to buy or rent and the length of time for which they remain unoccupied.

(5) The appropriate national authority may by order amend subsection (4) by adding new matters to those for the time being mentioned in that subsection.

(6) The second set of general conditions are—
  (a) that the area is experiencing a significant and persistent problem caused by anti-social behaviour;
  (b) that some or all of the private sector landlords who have let premises in the area (whether under leases or licences)

are failing to take action to combat the problem that it would be appropriate for them to take; and

(c) that making a designation will, when combined with other measures taken in the area by the local housing authority, or by other persons together with the local housing authority, lead to a reduction in, or the elimination of, the problem.

"Private sector landlord" does not include a non-profit registered provider of social housing or a registered social landlord within the meaning of Part 1 of the Housing Act 1996 (c. 52).

(7) The appropriate national authority may by order provide for any conditions specified in the order to apply as an additional set of conditions for the purposes of subsection (2).

(8) The conditions that may be specified include, in particular, conditions intended to permit a local housing authority to make a designation for the purpose of dealing with one or more specified problems affecting persons occupying Part 3 houses in the area.

"Specified" means specified in an order under subsection (7).

(9) Before making a designation the local housing authority must—

(a) take reasonable steps to consult persons who are likely to be affected by the designation; and

(b) consider any representations made in accordance with the consultation and not withdrawn.

(10) Section 81 applies for the purposes of this section.

4. Section 81 Designations under section 80: further considerations

(1) This section applies to the power of a local housing authority to make designations under section 80.

(2) The authority must ensure that any exercise of the power is consistent with the authority's overall housing strategy.

(3) The authority must also seek to adopt a co-ordinated approach in connection with dealing with homelessness, empty properties and anti-social behaviour, both—

(a)as regards combining licensing under this Part with other courses of action available to them, and

(b)as regards combining such licensing with measures taken by other persons.

(4) The authority must not make a particular designation under section 80 unless—

(a) they have considered whether there are any other courses of action available to them (of whatever nature) that

might provide an effective method of achieving the objective or objectives that the designation would be intended to achieve, and

(b) they consider that making the designation will significantly assist them to achieve the objective or objectives (whether or not they take any other course of action as well).

5. Section 83 Notification requirements relating to designations

(1) This section applies to a designation—
 (a) when it is confirmed under section 82, or
 (b) (if it is not required to be so confirmed) when it is made by the local housing authority.

(2) As soon as the designation is confirmed or made, the authority must publish in the prescribed manner a notice stating—
 (a) that the designation has been made,
 (b) whether or not the designation was required to be confirmed and either that it has been confirmed or that a general approval under section 82 applied to it (giving details of the approval in question),
 (c) the date on which the designation is to come into force, and
 (d) any other information which may be prescribed.

(3) After publication of a notice under subsection (2), and for as long as the designation is in force, the local housing authority must make available to the public in accordance with any prescribed requirements—
 (a) copies of the designation, and
 (b) such information relating to the designation as is prescribed.

(4) In this section "prescribed" means prescribed by regulations made by the appropriate national authority.

6. Section 85 Requirement for Part 3 houses to be licensed

(1) Every Part 3 house must be licensed under this Part unless—
 (a) it is an HMO to which Part 2 applies (see section 55(2)), or
 (b) a temporary exemption notice is in force in relation to it under section 86, or
 (c) a management order is in force in relation to it under Chapter 1 or 2 of Part 4.

(2) A licence under this Part is a licence authorising occupation of the house concerned under one or more tenancies or licences within section 79(2)(b).

(3) Sections 87 to 90 deal with applications for licences, the granting or refusal of licences and the imposition of licence conditions.

(4) The local housing authority must take all reasonable steps to secure that applications for licences are made to them in respect of houses in their area which are required to be licensed under this Part but are not so licensed.

(5) In this Part, unless the context otherwise requires—
  (a) references to a Part 3 house are to a house to which this Part applies (see section 79(2)),
  (b) references to a licence are to a licence under this Part,
  (c) references to a licence holder are to be read accordingly, and
  (d) references to a house being (or not being) licensed under this Part are to its being (or not being) a house in respect of which a licence is in force under this Part.

7. Section 87 Applications for licences

(1) An application for a licence must be made to the local housing authority.

(2) The application must be made in accordance with such requirements as the authority may specify.

(3) The authority may, in particular, require the application to be accompanied by a fee fixed by the authority.

(4) The power of the authority to specify requirements under this section is subject to any regulations made under subsection (5).

(5) The appropriate national authority may by regulations make provision about the making of applications under this section.

(6) Such regulations may, in particular—
  (a) specify the manner and form in which applications are to be made;
  (b) require the applicant to give copies of the application, or information about it, to particular persons;
  (c) specify the information which is to be supplied in connection with applications;
  (d) specify the maximum fees which may be charged (whether by specifying amounts or methods for calculating amounts);
  (e) specify cases in which no fees are to be charged or fees are to be refunded.

(7) When fixing fees under this section, the local housing authority may (subject to any regulations made under subsection (5)) take into account—
  (a) all costs incurred by the authority in carrying out their functions under this Part, and
  (b) all costs incurred by them in carrying out their functions under Chapter 1 of Part 4 in relation to Part 3 houses (so far as they are not recoverable under or by virtue of any provision of that Chapter).

8. Section 95 Offences in relation to licensing of houses under this Part

(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) A person commits an offence if—
  (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 90(6), and
  (b) he fails to comply with any condition of the licence.

(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), 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) for failing to comply with the condition,

as the case may be.

(5) A person who commits an offence under subsection (1) is liable on summary conviction to a fine.

(6) A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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

(6B) 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.

(7) For the purposes of subsection (3) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either—
(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or
(b) if they have decided not to do so, one of the conditions set out in subsection (8) is met.

(8) The conditions are—
(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or
(b) that an appeal has been brought against the authority’s decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(9) In subsection (8) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority’s decision (with or without variation).

8. 249A Financial penalties for certain housing offences in England

(1) The local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England.
(2) In this section “relevant housing offence” means an offence under—
(a) section 30 (failure to comply with improvement notice),
(b) section 72 (licensing of HMOs),
(c) section 95 (licensing of houses under Part 3),
(d) section 139(7) (failure to comply with overcrowding notice), or
(e) section 234 (management regulations in respect of HMOs).

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

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

(5) The local housing authority may not impose a financial penalty in respect of any conduct amounting to a relevant housing offence if—
(a) the person has been convicted of the offence in respect of that conduct, or
(b) criminal proceedings for the offence have been instituted against the person in respect of the conduct and the proceedings have not been concluded.

(6) Schedule 13A deals with—
(a) the procedure for imposing financial penalties,
(b) appeals against financial penalties,
(c) enforcement of financial penalties, and
(d) guidance in respect of financial penalties.

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

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

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

9. Schedule 13A of the Housing Act 2004 sets out the provisions relating to appeals against Financial Penalties under section 249A as follows:

Notice of intent

Paragraph 1

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

Paragraph 2

(1) The notice of intent must be given before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates.
(2) But if the person is continuing to engage in the conduct on that day, and the conduct continues beyond the end of that day, the notice of intent may be given—
(a)at any time when the conduct is continuing, or
(b)within the period of 6 months beginning with the last day on which the conduct occurs.

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

Paragraph 3

The notice of intent must set out—
(a) the amount of the proposed financial penalty,
(b) the reasons for proposing to impose the financial penalty, and
(c) information about the right to make representations under paragraph 4.

Right to make representations

Paragraph 4

(1) A person who is given a notice of intent may make written representations to the local housing authority about the proposal to impose a financial penalty.
(2) Any representations must be made within the period of 28 days beginning with the day after that on which the notice was given ("the period for representations").

Final notice

Paragraph 5

After the end of the period for representations the local housing authority must—
(a) decide whether to impose a financial penalty on the person, and
(b) if it decides to impose a financial penalty, decide the amount of the penalty.

Paragraph 6

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

Paragraph 7

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

Paragraph 8

The final notice must set out—
(a) the amount of the financial penalty,
(b) the reasons for imposing the penalty,
(c) information about how to pay the penalty,
(d) the period for payment of the penalty,

(e) information about rights of appeal, and
(f) the consequences of failure to comply with the notice.

Withdrawal or amendment of notice

Paragraph 9

(1)A local housing authority may at any time—
(a)withdraw a notice of intent or final notice, or
(b)reduce the amount specified in a notice of intent or final notice.
(2)The power in sub-paragraph (1) is to be exercised by giving notice in writing to the person to whom the notice was given.

Appeals

Paragraph 10

(1) A person to whom a final notice is given may appeal to the First-tier Tribunal against—
   (a) the decision to impose the penalty, or
   (b) the amount of the penalty.

(2) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.

(3) An appeal under this paragraph—
   (a) is to be a re-hearing of the local housing authority's decision, but
   (b) may be determined having regard to matters of which the authority was unaware.

(4) On an appeal under this paragraph the First-tier Tribunal may confirm, vary or cancel the final notice.

(5) The final notice may not be varied under sub-paragraph (4) so as to make it impose a financial penalty of more than the local housing authority could have imposed.

10. Section 263 Meaning of “person having control” and “person managing” etc.

(1) In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises—

(a) receives (whether directly or through an agent or trustee) rents or other payments from—

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.

(4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).

(5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.