FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**BIR/OOFK/HNA/2024/0012**
Property	**:**	**119 Old Mansfield Road** **Derby** **DE21 4SA**
Applicant	**:**	**Mr S Oliver**
Representative	**:**	**None**
Respondent	**:**	**Derby City Council**
Representative	**:**	**Ms F Sadiq** **Solicitor for Derby City Council** **Ms A Broster** **Environmental Health Officer** **Mr D Gelsthorpe** **Senior Environmental Health Officer**
Type of Application	**:**	**An appeal against a Financial Penalty – Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020**
Tribunal Members	**:**	**Mr G S Freckelton FRICS (Chairman)** **Mr R Chumley-Roberts MCEIH. JP**
Date of Decision	**:**	**24th March 2025**

DECISION

INTRODUCTION

1. This is the Tribunal's determination on an appeal made by Mr S Oliver ("the Applicant") against the decision of Derby City Council ("the Respondent") to impose a financial penalty under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 ("the Regulations") relating to 119 Old Mansfield Road, Derby, DE21 4SA ("the Property").

2. The Applicant is the owner of the Property.

3. The matter commenced with the service by the Respondent on the Applicant of an Improvement Notice. This was subject to an appeal by the Applicant. Following further inspections of the property the Respondent remained concerned about some aspects of the condition of the Electrical systems in the property.

4. On 17th November 2023 the Respondent served on the Applicant a Notice under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 requiring the following work to be undertaken:

   a) Arrange an inspection and test of every electrical installation in the property by a suitably qualified and competent person.
   b) Obtain a report from the person conducting the inspection and test which gives the results of the inspection and test and the date of the next inspection and test. The report must be in the format as stated in the 18th edition of the Wiring Regulations published by the Institution of Engineering and Technology and the British Standards Institution as BS 7671:2018.
   c) Supply a copy of that report to each existing tenant of the residential premises within 28 days of the inspection and test.
   d) Supply a copy of that report to the Council within seven days of receiving a request in writing for it from the Council.
   e) Retain a copy of the report to give to the inspector who will undertake the next inspection and test.
   f) Complete any further remedial or investigative work as required by the report to ensure the national electrical safety standards are met within 28 days or any shorter period if specified as necessary in the report and supply written confirmation of the completion of the further works to the Council and tenants within 28 days of completion of the work.

5. Following further inspections detailed below, the Respondent concluded that electrical defects remained. The Respondent therefore served a Remedial Notice on the Applicant dated 22nd December 2023.

6. In the opinion of the Respondent, works remained outstanding and on 30th May 2024 the Respondent served a Notice of Intention to Issue a Financial Penalty on the Applicant under Regulation 11. The Notice was issued as the Respondent was satisfied beyond reasonable doubt that the Applicant had committed an offence as he had failed to comply with the Remedial Notice.

7. On 22nd July 2024 the Respondent served a Final Notice of Decision to Impose a Financial Penalty on the Applicant. The Respondent stated in the Final Notice that representations had been received via email on 27th June 2024, 8th July 2024 and 9th July 2024. These had been considered and the Respondent had determined that it was

still appropriate to issue a financial penalty. Pursuant to the Regulations, the Notice imposed a financial penalty of £5,000.00.

8. The breaches were stated as being under Regulation 3 of the Electrical Safety Standards in The Private Rented Sector (England) Regulations 2020 and were as follows:

    1. Failure to ensure that the electrical safety standards are met during any period when the residential premises are occupied under a specified tenancy – Regulation 3(4).
    2. Failure to carry out Required Remedial Actions within 28 days of the initial inspection and testing – Regulation 3(4).
    3. Failure to obtain written confirmation of remedial action undertaken on completion and provide a copy of that confirmation to the Local Housing Authority within 28 days – Regulation 3(5)(a) and Regulation 3(5)(c).

9. The Notice confirmed that the representations received in respect of The Notice of Intention were within the specified period and that in accordance with the Respondent's procedure a review of the representations was held on 12th July 2024. This concluded that the financial penalty should be imposed as the Respondent believed it had sufficient documentary evidence that the offence had been committed and that the level of financial penalty contained within the Notice of Intention was appropriate. The amount of the financial penalty was stated:

    'A financial penalty is imposed for the combined breaches of Points 1, 2 and 3 as listed above. The amount of the imposed financial penalty is £5,000.00.'

10. On 17th August 2025 the Applicant applied to the Tribunal. The Application was received by the Tribunal on the same date. The Tribunal issued Directions on 2nd October 2024 following which written submissions were received from both parties.

INSPECTION

11. An inspection of the property was arranged for 11th March 2025. Access was by courtesy of the tenant. Unfortunately, the Tribunal and the parties were unable to gain access to the property so were unable to carry out the inspection.

THE HEARING

12. A hearing was held later that same day at Derby Magistrates Court.

13. Present at the hearing were the Applicant, Miss D Hill, Ms A Broster (Environmental Health officer employed by the Respondent), Mr D Gelsthorpe (Senior Environmental Health Officer employed by the Respondent) and Ms F Sadiq, Solicitor for the Respondent.

14. As the hearing was by way of a re-hearing the Tribunal determined that the Respondent should first submit its case, to which the Applicant could then respond.

15. The submissions made on behalf of the parties in writing and in person at the hearing were briefly as follows.

THE RESPONDENT'S SUBMISSIONS

16. The Respondent's submissions both in writing and at the hearing are summarised below.

17. The Respondent's written submissions were contained in the statement of case provided by Ms Amy Broster. The Tribunal does not intend to detail all the property history given in the statement of case which referred to the initial inspections and service of the Improvement Notice No:021577. The Tribunal accepts that various inspections were carried out and the Improvement Notice properly served.

18. On 1st November 2023 the Respondent received from the Applicant a copy of a new EICR (Electrical Installation Condition Report) dated 13th October 2023 which stated that the electrical installation was in satisfactory condition and declared no category 1 or category 2 defects and identified four category 3 electrical defects.

19. The Respondent submitted that on 14th November 2023 it undertook a reinspection of the property to check compliance with the Improvement Notice. During that inspection the Respondent noted what it believed to be category 2 electrical defects. These defects were not noted on the EICR of 13th October 2023 which indicated to the Respondent the possibility that the EICR may not accurately represent the condition of the electrical installation.

20. The Respondent therefore contacted NAPIT to enquire about the category of the electrical defects found that the property. It was confirmed by NAPIT that the electrician who undertook the inspection was registered with them but not to conduct electrical inspections and testing. The Respondent spoke to the electrician and again spoke to NAPIT who advised that a new electrical inspection and testing should be undertaken.

21. On 17th November 2023 the Respondent served on the Applicant a Notice under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 requiring the following work to be undertaken:

a) Arrange an inspection and test of every electrical installation in the property by a suitably qualified and competent person.
b) Obtain a report from the person conducting the inspection and test which gives the results of the inspection and test and the date of the next inspection and test. The report must be in the format as stated in the 18th edition of the Wiring Regulations published by the Institution of Engineering and Technology and the British Standards Institution at BS 7671:2018.
c) Supply a copy of that report to each existing tenant of the residential premises within 28 days of the inspection and test.
d) Supply a copy of that report to the Council within seven days of receiving a request in writing for it from the Council.
e) Retain a copy of the report to give to the inspector who will undertake the next inspection and test.
f) Complete any further remedial or investigative work as required by the report to ensure the national electrical safety standards are met within 28 days or any shorter period if specified as necessary in the report and supply written confirmation of the completion of the further works to the Council and tenants within 28 days of completion of the work.

22. It was submitted that this Notice was accompanied by a covering letter explaining why the notice had been served.

23. On 20th November 2023 the Respondent received an email from the Applicant containing a screenshot of an email sent from NAPIT to him, stating that the electrician was registered by them to complete EICR's. This email included a complaint regarding Ms Broster's conduct in dealing with the electrical issues.

24. On 1st December 2023 the Respondent received an email from the Applicant stating that the electrician had returned to the property to rectify the electrical defects but there was no evidence of the works to be undertaken. The Respondent emailed the Applicant accordingly and a photograph was received showing the gas boiler and stating that the exposed cables had been removed. However, on the photograph, the Respondent could see that the single insulated cable at the bottom left of the boiler was still present. The Respondent therefore decided to arrange for an independent inspection of the electrical installation to be undertaken.

25. On 19th December 2023 the Respondent attended at the property with an independent electrician and a new EICR was produced which revealed thirteen category 2 electrical defects and seventeen category 3 electrical defects.

26. On 22nd December 2023 the Respondent served a Remedial Notice on the Applicant with a covering letter explaining what was required. The Applicant was advised not to use his original electrician to undertake the remedial actions. The Notice required the following actions to be undertaken:

'Complete any remedial work that is required by the EICR dated 19.12.23 to ensure the national electrical safety standards are met within 28 days or any shorter period if specified as necessary in the report. Supply written confirmation of the completion of the further works to the Council and tenants within 28 days of completion of the work'.

27. On 22nd January 2024 the Respondent received from the Applicant an email informing it that actions had been taken by the original electrician to remediate the category 2 electrical defects. The Respondent requested the minor works certification and was informed that this would be forwarded when the electrician returned from his holiday. To date, the Respondent has not received the requested certification or any other certification to confirm that the installation is in a satisfactory condition.

28. On 22nd March 2024 the Respondent re-attended at the property with two electrical contractors and a second independent inspection of the electrical installation was undertaken and a new EICR dated 24th March 2024 was produced. This showed that most of the category 2 electrical defects had not been remedied and the electrical installation was in an unsatisfactory condition. It was noted that category 2 defect number 25 listed on the EICR of 19.12.23 had been eliminated by the Applicant's electrician by simply removing the cable from the hob rather than wiring the hob into the installation correctly and safely. This left the hob without power and therefore unusable. The tenant vacated in April 2024.

29. On 17th September 2024 the Respondent discovered that new tenants moved into the property on 29th July 2024. The Respondent requested a copy of the EICR from the new letting agent who provided a copy of the EICR produced in October 2023 which, in the

submission of the Respondent, had been demonstrated on two occasions (19th December 2023 and 24th March 2024) to be defective.

30. The Respondent submitted that the relevant offences in accordance with the regulations were:

    a) At the inspections of the property on 5th July 2023, 14th November 2023, 19th December 2023 and 22nd March 2024 visual deficiencies were noted to the electrical installation. Following each inspection, the Applicant was informed of the defects noted but at each subsequent inspection it was noted that the deficiencies remained to the remedied. This indicated to the Respondent that the electrical safety standards had not been met during the period of the property being occupied under a tenancy and therefore in contravention of Regulation 3(1)(a).
    b) The Regulations require that any defects noted on the EICR which require remedial action are to be undertaken within 28 days of the date of the initial inspection and testing. In this case this is within 28 days of 22nd December 2023. The inspection of the property on 22nd March 2024 confirmed that the defects remained to the electrical installation. Therefore, the necessary remedial works were not undertaken within the specified 28 days in contravention of Regulation 3(4)(a).
    c) In accordance with Regulation 3(5) the landlord must obtain written confirmation from a qualified person that no further investigative or remedial work has been carried out and must provide a copy of the written confirmation to the Local Housing Authority within 28 days of the completion of the works. On 22nd January 2024 the Respondent received informal confirmation that remedial actions had been undertaken. Formal written confirmation was requested but no confirmation has been received. This is in contravention of Regulation 3(5)(a) and Regulation 3(5)(c).

31. In order to assess the landlord's assets and potential rental income the Respondent carried out a search of Council Tax Records and the Land Registry. This identified that the Applicant owned two properties in Derby City being the subject property and number 10 Allen Street, Derby, DE24 9DE. This enabled the Respondent to estimate the potential income from the properties using information provided by the tenant of the subject property and by considering typical rental costs in the areas. Based on this the Respondent assumed that each property was let resulting in a potential monthly income of £2,000.00 with a potential annual income of £24,000.00 per annum.

32. On 30th May 2024, the Respondent served a Notice of Intent on the Applicant with a covering letter and a copy of the penalty charge matrix. On 27th June 2024, the Respondent received an email from the Applicant containing representations against the Notice of Intent.

33. On 22nd July 2024, the Respondent served a Civil Penalty Final Notice together with a covering letter and a copy of the post-review penalty charge matrix.

34. The Respondent noted that the Applicant's application to the Tribunal contain several grounds of appeal which the Respondent rebutted as follows:

    a) On the 19/06/24 a copy of the Intention Notice to impose a financial penalty was hand-delivered to the incorrect address. The envelope was handwritten with restricted personal information detailed on the front of the envelope with the contents free for anyone to access. This is being pursued externally as a data

protection breach. The Notice was served against the Applicant, as landlord of the property and the Applicant believed it was unlawful and his attempts at challenging the failings of the individual involved have been largely ignored.

In response, the Respondent submitted that the Applicant's complaint has been dealt with following Council Procedures.

b) The Applicant states that he has numerous forms of evidence highlighting his cooperation concerning the electrical safety of the property and has good reason to believe that the electrics were tampered with by the previous occupants. This was reported to the police.

In response, the Respondent submits that it believes this is a reference to a defective cable to the electric shower in the bathroom. This deficiency was dealt with within a reasonable time and does not form part of the Civil Penalty.

c) That the Respondent has acted in good faith and that the property was covered by an in date EICR at the start of the tenancy. A repeat EICR was carried out when requested and all works necessary were acted on swiftly to ensure the safety of the tenants.

In response, the Respondent submits that this has been covered in the statement of case.

d) *The Applicant submits that the works were detailed and reported when requested in the specified timeframe.*

In response, the Respondent submits that this has been covered in the statement of case.

e) *The Applicant submits that he has good reason to believe the EHO (Environmental Health Officer) involved (Ms Broster) has acted in a discriminatory manner towards himself and his electrician during the course of the tenancy and in particular concerning the works relating to the electrical installations at the property and has disregarded legal documents provided by certified workers that have attended.*

In response, the Respondent submits that this complaint has been dealt with following Council Procedures.

f) That the matter has been ongoing since March 2023 and has taken a considerable toll on the Applicant's health and well-being. The Applicant submits that he feels totally unheard and victimised. The previous tenants left the property in a state of total disrepair causing thousands of pounds worth of damage and the property remained vacant for several months causing a huge financial outlay.

In response, the Respondent submits that the condition at the end of the tenancy has no bearing on whether or not the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 were complied with.

g) *The Applicant submits that it is extremely frustrating to receive a large fine where he believes he has acted in good faith to prioritise the safety of the tenants*

irrespective of the damage they caused, installing a new boiler and repairing the electrical installations that had been damaged deliberately.

In response, the Respondent submits that it found no evidence to suggest that the electrical installation has been deliberately damaged by the tenant. The Applicant had continued to use the ECIR from October 2023 to secure the new tenancy, many months after it was demonstrated that this was defective. The Respondent had received no certification to suggest that the category 1 or category 2 electrical defects identified by the two subsequent independent ECIR's had been removed.

THE APPLICANT'S SUBMISSIONS

35. The Applicant's submissions both in writing and at the hearing are summarised below.

36. The Applicant submitted in his application to the Tribunal that on 19th June 2024 a copy of the 'Intention Notice' to impose a financial penalty ref: T/000119 was hand-delivered to the incorrect address. The envelope was handwritten with restricted personal information detailed on the front of the envelope and its contents free for anybody to access. The matter was being pursued as a data protection breach. The notice was served against the Applicant as landlord of the property and the Applicant submitted that he believed it was unlawful and his attempts at challenging the failings of the individual involved had been largely ignored.

37. The Applicant further submitted that he had numerous forms of evidence highlighting his co-operation concerning the electrical safety of the property and had good reason to believe that the electrics were tampered with by the previous occupants (tenant). This was reported to the police. The property was covered by an in date EICR at the commencement of the tenancy and a further EICR was carried out when requested as a remedial action and all works necessary were acted on swiftly to ensure the safety of the tenants. The works completed were detailed and reported when requested within the specified timeframe and the applicant felt that both he and his electrician were being treated in a discriminatory manner, in particular, with regard to the documents provided by certified workers.

38. It was further submitted that the matter had been ongoing since March 2023 which had taken a considerable toll on the Applicant's health and well-being. The previous tenants left the property in a state of total disrepair causing thousands of pounds worth of damage and the property remained vacant for four months resulting in a considerable financial outlay and loss. As such, to receive a fine when the Applicant believed he had acted in good faith to prioritise the safety of the tenants irrespective of the damage they had caused felt unjust. During the previous tenant's occupation, he had installed a new boiler and repaired electrical installations that the tenants had damaged.

39. In addition to the grounds contained in his application to the Tribunal the Applicant provided a further bundle containing copies of letters, emails and screenshots between him and the Respondent to support his case. This included an email of 21st August 2024 to his Member of Parliament, Amanda Hack. No further correspondence to or from the MP was enclosed.

40. The Tribunal questioned the parties on several matters and it was submitted:

Applicant

1) The Applicant felt that he was being treated unfairly as he tried to comply with the Respondent's requests to carry out works. However, when works were completed, a re-inspection invariably seemed to generate a request for additional works. As such, the Applicant felt he was never able to 'catch up' and was always in the position where work was required. He had also sent emails to the Respondent requesting clarification on some items but had not received any response or assistance.
2) The Applicant accepted that he had received a copy of the Notice of Intention, but not until 19th June 2024 as it was hand delivered to the incorrect address.
3) The Applicant submitted that he had responded to all calls and emails from the Respondent but felt that whatever he did, nothing was ever good enough.
4) The Applicant confirmed that he did not understand the table setting out the basis of the Financial Penalty and upon being taken through it by the Tribunal did not agree that he had a history of aggression towards local authority employees which called into question his integrity. He emphasised that he had never been aggressive towards anyone.
5) The Applicant further confirmed that he now had a 'Full Agency' Agreement for the ongoing management of the property with Ashley Adams, Estate Agents and that he had spent £4,000.00 in repairs after the previous tenant had left.

Respondent

6) The Respondent confirmed that Ms Broster had carried out the initial inspection at the property in July 2023 and prepared the schedule of works. Ms Broster had then arranged for the Improvement Notice to be served.
7) It was further confirmed that Ms Broster had asked for a further EICR as she had spotted issues with the electrical wiring. It was accepted that she was not a qualified electrician, but both she and Mr Gelsthorpe considered there were obvious defects.
8) It was accepted that the initial letter to the Applicant was dated 12th July 2023 providing a schedule of works but that this was followed by the Improvement Notice on 20th July 2023. As this only gave some 8 days to complete the works, the Tribunal requested a comment as to whether the Respondent considered the period of 8 days was sufficient to allow the Applicant to carry out the works, particularly as the service of an Improvement Notice would result in a charge to the Applicant for its preparation. The Respondent submitted that it had a policy to comply with the Housing Act 2004 and therefore had a duty to serve an Improvement Notice where it considered a category 1 hazard was present, although it was acknowledged that not all local authorities did so.
9) In the opinion of the Respondent, the Applicant had an opportunity to carry out the works specified but did not do so. It was agreed that the Respondent gave no consideration to the cost of the remedial works in relation to the amount of the financial penalty but it was submitted that any financial penalty had to be a deterrent.

41. The Tribunal noted that the Respondent had made assumptions regarding the financial circumstances of the Applicant and asked the Applicant to confirm his financial circumstances.

42. The Applicant submitted that the present rental on the subject property was £1,200.00 per month and on his other property at Allen Street, Derby £795.00 per month. In addition to this his employment generated approximately £28,000.00 per annum. His expenses, apart from his mortgage payments were management costs of approximately £180.00 and £100.00 per month respectively, repairs and insurance. To date, he had spent approximately £10,000.00 in repairs to the subject property.

THE REGULATIONS

43. Section 122 and 123 the Housing and Planning Act 2016 makes provision for duties to be imposed on landlords to ensure the electrical safety of privately rented properties. These have been set out in the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

44. The Regulations apply to 'specified tenancies' which includes, by definition the tenancy in respect of the subject property.

45. The Regulations impose various obligations on landlords relating to electrical safety (Regulation 3). Landlords must ensure that the prescribed electrical safety standards are met during any period where the property is occupied pursuant to a specified tenancy (Regulation 3(1)(a)). Further, landlords must:

a) Ensure the electrical installations in their rented properties are inspected and tested by a qualified and competent person at least every five years;
b) Obtain a report from the person conducting the inspection and test which gives the results and set a date for the next inspection and test. A copy of this must be supplied to the tenants (including any new tenant before they occupy the property) and the inspector who carries out the next test;
c) Where the report shows that remedial or further investigative work is necessary, complete this work within 28 days or any shorter period specified as necessary in the report.

46. Local authorities have various powers including to require remedial action (Regulation 4). They also have power, where urgent remedial action is required, to arrange for the required works to be carried out immediately, subject to giving not less than 48hours notice to the tenants (Regulation 10).

47. Regulation 4(1) provides that local authorities must serve a remedial notice if there are "reasonable grounds to believe" that a landlord is in breach. The remedial notice must be served within 21 days beginning with the day on which the authority decides it has reasonable grounds.

48. Regulation 4(2) states that the remedial notice should:

a. Specify the premises to which the notice relates.
b. Specify what the local housing authority believes the landlord has failed to do
c. Specify what needs to be done.
d. Require the landlord to take action from the day the notice is served.
e. Explain the landlord's entitlement to make written representations within 21 days.
f. Specify the person and address, or email address, that representation can be sent to.

g. Explain the provisions about financial penalties and rights of appeal.

49. The local authority must consider any representations made by the landlord and where representations are received, the remedial notice is suspended until the local housing authority has complied with its obligations under Regulations (4) and (6), i.e. consider the representations and;

a) Inform the private landlord in writing the outcome of its consideration of the representations within seven days beginning with the day on which the period under sub-paragraph (2)(e) expires; and
b) Where the outcome of the consideration is to confirm the remedial notice, confirm that notice and inform the private landlord in writing that the remedial notice is confirmed and the suspension ceases to have effect.

50. Local authorities have power to impose a financial penalty of up to £30,000.00 on landlords who are in breach of their obligation (Regulation 11).

51. The guidance provides that local housing authorities should develop and document their own policy on how they determine appropriate financial penalty levels. According to the guidance:

'…. we would expect the maximum amount be reserved for the very worst offenders. 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'.

52. The guidance also states that authorities may wish to consider the policy they previously developed for civil penalties under the Housing and Planning Act 2016.

53. A landlord may appeal to the First-tier Tribunal against (1) the decision to impose the penalty; or (2) the amount of the penalty (Regulation 12 and Schedule 2).

54. The appeal against the financial penalty:

a) Must be brought within the period of 28 days beginning with the day after that on which the final notice was served (Schedule 2, paragraph 5(2)).
b) If an appeal is made the final notice is suspended until the appeal is finally determined or withdrawn (Schedule 2, paragraph 5(3)).
c) The appeal operates by way of a re-hearing of the original decision albeit may be determined having regard to matters of which the authority was unaware when it made that decision (Schedule 2, paragraph 5(4))
d) the Tribunal has power to uphold, vary or quash the final notice (Schedule 2, paragraph 5(5)) although it cannot vary it so as to impose a penalty of greater than £30,000.00 (Schedule 2, paragraph 5(6)).
e) Following the decision of the Upper Tribunal in *Waltham Forest LBC v (1) Marshall (2) Ustek [2020] UKUT 0035(LC),* the First-tier Tribunal must start from and give considerable weight to the local authority's policy and decision.

THE TRIBUNAL'S DETERMINATION

55. The Tribunal then considered the appeal in three parts:

1) Whether the Tribunal was satisfied, beyond reasonable doubt, that the Applicant's conduct amounted to a relevant offence in respect of the premises under the Regulations.
2) Whether the Local Housing Authority complied with all of the necessary requirements and procedures relating to the imposition of the financial penalty under the Regulations; and/or
3) Whether the financial penalty was set at an appropriate level, having regard to any relevant factors, including:

i. the offender's means;
ii. the severity of the offence;
iii. the culpability and track record of the offender;
iv. the harm (if any) caused to a tenant of the premises;
v. the need to punish the offender, to deter repetition of the offence or to deter others from committing similar offences; and/or
vi. the need to remove any financial benefit the offender may have obtained as a result of committing the offence.

56. Did the Applicant's conduct amount to a relevant offence?

57. It was not contested by the Applicant that he owned the Property or that the Remedial Notice was served on him and he had not fully complied with it.

58. The Tribunal is therefore satisfied beyond reasonable doubt that the alleged offence was committed and that the Applicant was the person in control of the premises.

59. Whether the Local Housing Authority complied with all of the necessary requirements and procedures relating to the imposition of the financial penalty?

60. There was no challenge by the Applicant in this element of the appeal and the Tribunal determines that the procedural requirements for the imposition of the financial penalty were satisfied.

61. Whether the financial penalty was set at an appropriate level?

62. The methodology by which the penalty amount was calculated was by the Respondent Council's Civil Penalties Policy which includes a matrix. The Tribunal was informed that this was approved by the Council's Cabinet. In assessing the financial penalty in this case, the Respondent had assessed the Breach Category as being 'Negligent' with a 'Low Level of Harm'. Based on the matrix, this gives a starting point for the penalty of £5,000.00.

63. The Respondent's policy then provides at Step 5 of its process, for adjustments to this figure with advice as to how the penalty can be adjusted. The policy states that table 6 (the method to determine aggravating and mitigating factors) "contains a non-exhaustive list of factual elements providing the context of the breach and factors relating to the perpetrator". In the Tribunal's opinion, this allows some necessary flexibility in the procedure so that a realistic level of financial penalty can be demanded based on all the circumstances of the individual case. Step 5 also suggests that adjustments are made for each aggravating or mitigating factor of between 10%-50%, usually up to a maximum of £2,500.00 upwards or downwards.

64. In this case the following aggravating factors have been considered:

a) An Improvement Notice previously served in respect of 119 Old Mansfield Road, Derby.
b) An Improvement Notice served in 2013 in respect of 10 Allen Street, Derby.
c) The tenants reported that contact with the Applicant in respect of 119 Old Mansfield Road and 10 Allen Street had been ignored.
d) The Applicant was aggressive with Council employees on several occasions.

65. In respect of each of the above the Respondent had increased the financial penalty by £500.00 making a total of £2,000.00.

66. The following mitigating factors had also been considered:

a) There were no previous convictions.
b) There was no history of penalty charge notices.
c) No works in default or emergency measures had been taken.
d) No other enforcement actions have been taken.

67. In respect of each of the above the Respondent has decreased the financial penalty by £500.00 making a total of £2,000.00.

68. This has resulted in a financial penalty determined by the Respondent as follows:

Original Penalty	£5,000.00
Plus: aggravating factors	£2,000.00
	£7,000.00
Less: mitigating factors	£2,000.00
Financial Penalty	£5,000.00

69. In effect, the Respondent's calculation balances out the aggravating and mitigating factors to leave the financial penalty at the original assessment of £5,000.00.

70. The Tribunal entirely accepts that part of the purpose in imposing Financial Penalties is punitive; they should punish the offender to deter repetition and remove any financial benefit from failure to comply with statutory requirements whilst also protecting the tenant of the premises. It is an alternative to prosecution. It would however, seem wholly inappropriate if the level of financial penalties levied were substantially greater than the level of fine(s) that might reasonably be expected had the local housing authority opted for the alternative of prosecution. The Tribunal recognises that in putting in place the legislation permitting local housing authorities to levy civil penalties the Government was no doubt seeking to make those responsible for committing breaches of statutory housing requirements contribute towards the cost of enforcement. However, the Tribunal would also express the view that local housing authority civil penalty notices should be carefully drafted and sufficiently flexible to allow penalties levied to properly reflect all the circumstances of a particular case. They have a proper place in the overall legislative framework aimed at dealing with unsatisfactory housing conditions and in drafting and reviewing them local housing authorities most certainly should avoid any temptation to regard them as a steady income stream.

71. The Tribunal therefore considered the calculation of the financial penalty in this case and agrees with the Respondent that based on its approved matrix the category of breach is 'Negligent' and the level of harm is 'Low'. The Tribunal therefore agrees with the Respondent that the starting point for the financial penalty is £5,000.00.

72. The Tribunal then proceeded to consider the 'Aggravating Factors' determined by the Respondents and determined that the previous Improvement Notice served in respect of 119 Old Mansfield Road, Derby should not be included as at the time of the Financial Penalty being given, this Improvement Notice had been appealed and the determination on that appeal was unknown. In addition, a previous Abatement Notice served on the Applicant under the terms of the Environmental Protection Act 1990 was stated to have been complied with. The Tribunal have not been advised of the precise terms of the notice or the circumstances of the Applicant compliance. However, the fact that the Applicant complied with the notice could be viewed as being more of a mitigating factor than an aggravating one.

73. With regard to the Improvement Notice in respect of 10 Allen Street, Derby, served in 2013, the Tribunal determined that this was historic being over 10 years old. No evidence was given to the Tribunal as to whether this had been appealed or if any further action was taken. The only note was that *'the section 235 Notice was not complied with'*. The Tribunal therefore determined that this should not be included as an aggravating factor.

74. With regard to the allegation that the tenants had reported that contact with the Applicant had been ignored, no witness statements or other proof had been provided to support this submission and the Tribunal therefore determined that this should not be included as an aggravating factor.

75. The final aggravating factor was that the Applicant had been aggressive towards two Council employees on several different occasions. Again, there was nothing provided to support this allegation and it was strenuously denied by the Applicant. In this matter, the Tribunal was impressed by the Applicant and preferred his evidence to that of the Respondent. In addition, under this aggravating factor the Respondent has also included that the section 235 Notice in respect of 10 Allen Street, Derby, was not complied with. In the opinion of the Tribunal this was 'double counting' as it also been used under the "History of Non-Compliance" aggravating factor heading.

76. The Tribunal then proceeded to consider the mitigating factors and agrees with the Respondent that the factors detailed above in paragraph 66 should be taken into account. It also agrees that the sum of £2,000.00 as detailed in paragraph 67 is appropriate.

77. However, in addition to the above mitigating factors the Tribunal determined that the Applicant had partly complied with the Electrical Safety Notice served on 17th November 2023 and detailed in paragraph 21 above. It is evident to the Tribunal that the Applicant has complied with sections a, b, e and part of section f. In its assessment of mitigating factors, the Respondent gave no credit to the Applicant for this but merely said on their matrix that he had not complied with the Notice. At worst, this was a partial non-compliance and as a layman, the Applicant had every right to rely on the EICR he had received, even if it was in some way faulty. The Tribunal therefore determines that an additional amount of £500.00 be allowed in mitigation.

78. The Applicant had submitted on several occasions that he felt he was not properly listened to by the Respondent. In particular the Respondent clearly ignored the Applicant's view that much of the repair work required was due to the ongoing actions of the tenant who apparently wished to be re-housed and caused at least some damage to the property over a period of time. There has clearly been issues between the Applicant and the Environmental Health Officer which resulted in a breakdown of communication and co-operation. This was not helped when a request from the Applicant to the Respondent that a new case officer be assigned, was refused.

79. The Applicant confirmed at the hearing that he did not understand the table which set out the basis of the financial penalty calculation. In this the Tribunal agrees with the Applicant and the Tribunal also had some difficulty following and understanding it. The Respondent should have regard to the fact that such matters are not generally dealt with by lay members of the public on regular occasions and they should be both easy to understand and transparent.

80. Step 5 of the Respondent's policy for adjustments to the level of a financial penalty confirms (quite correctly in the Tribunal's opinion) that the table is 'non-exhaustive' and therefore gives the local authority (and the Tribunal) scope to adapt the amount of the penalty to individual cases. In this respect the Respondent could and should have taken a view on the level of financial penalty against the value of the outstanding matters on the Notice (which in the Tribunal's estimation is in the range of £100.00-£300.00). As such, in this case, the Tribunal further reduces the penalty by £500.00 to allow for this, together with the Applicant's obvious difficulties in discussing matters with the Respondent and, to a much lesser extent the difficulty in understanding the basis on which it was determined.

81. This results in a financial penalty as follows:

Original Financial Penalty		£5,000.00
Plus: Aggravating factors		Nil
Penalty		£5,000.00
Less: Mitigating factors:		
As determined by the Respondent	£2,000.00	
Partial compliance with Notice	£500.00	
Value of works outstanding/communication	£500.00	
Total		£3,000.00
Financial Penalty		£2,000.00

82. The Tribunal then considered the Applicants personal circumstances and is satisfied that the penalty it imposes is neither excessive or too lenient. It is satisfied that the Applicant has the ability to pay the amount awarded and that it will provide a suitable deterrent being considerably more than the cost of rectifying the various defects.

DECISION

83. The Tribunal varies the Financial Penalty under Regulation 11 of the Regulations to £2,000.00 (Two Thousand Pounds).

APPEAL

84. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Graham Freckelton FRICS (Chairman)
First-tier Tribunal (Property Chamber) (Residential Property)