FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**MAN/00CA/HNA/2023/0015**
Property	**:**	**450 Hawthorn Road, Bootle, Liverpool L20 9AZ**
The Applicant	**:**	**Cosmas Eze**
The Respondent	**:**	**Sefton Council**
Type of Application:		**Appeal against financial penalty- Section 249A and Schedule 13A to the Housing Act 2004**
Tribunal Members	**:**	**Judge J.M.Going K.Kasambara MRICS**
Date of Hearing	**:**	**1st February 2024**
Date of Decision	**:**	**9th February 2024**

DECISION

The Decision and Order

The financial penalty of £250 referred to in the Final Notice is confirmed and to be paid within the period of 28 days beginning with the day after that on which this Decision is sent to the parties.

Preliminary

1. By an Application to the First-Tier Tribunal Property Chamber (Residential Property) ("the Tribunal") dated 7 February 2023 the Applicant ("Mr Eze") has appealed under paragraph 10 of Schedule 13A of the Housing Act 2004 ("the Act") against the Respondent (" Council")'s issue on 10 January 2023 of a Penalty Charge Notice ("the Final Notice") requiring the payment of a penalty charge of £250, after it had been satisfied that he had failed to licence the property when it was required to be licensed thereby committing an offence under section 95 of the Act.

2. The Tribunal gave Directions on 21 April 2023.

3. The parties provided various documents.

4. A Full Video Hearing was held on 1 February 2024. Mr Eze represented himself. The Council was represented by Ms Harrison, one of its senior legal assistants. Ms Lewis, Mr Lee-Croll, and Ms Pemberton, officers within the Housing Standards Department, and Ms Taylor their Team Manager were also in attendance. Ms Towsend and Mr Keegan, a solicitor and trainee solicitor with the Council, observed.

The Property

5. The Tribunal did not inspect the property but understands that it is a 3 bedroomed end of terrace property with a front and rear garden adjoining Hawthorn Road (being the A5090) at Bootle.

The Facts and Chronology

6. The papers are on record, and the Tribunal has highlighted only those issues which it found particularly relevant to, and to help explain, its decision-making.

7. The following timeline comes from the papers. None the matters mentioned have been disputed, except where specifically referred to.

21 September 2017	The Council designated parts of Bootle, including that within which the Property is located, as a selective licence area for a 5-year period beginning on 1 March 2018. The scheme (which has been renewed) applied to all privately rented properties within the designated area.
From 15	The Council's records refer to Mr Eze being responsible

October 2018 to 16 August 2020	for council tax in respect of the property.
From 17 August 2020 to 20 August 2021	The same records refer to Andras Lakatos and others being responsible for the council tax.
6 March 2021	Mr Eze began making an online application for a licence for the property.
30 March 2021	The Council emailed him to confirm that the application "has not yet been submitted. I must therefore inform you that your selective licence application is not considered "duly made" and so the above premises are presently unlicensed." The email pointed out that failure to have a selective licence is an offence and can be subject to a fine of up to £30,000.
16 April 2021	Mr Eze replied by email explaining "owing to long Covid which I've been suffering from since December 2020 I have been struggling to concentrate… I have been trying to complete the form for a while but still struggle. I am still committed to completing it as soon as possible…."
21 May 2021	The Council in papers sent to the Tribunal refer to the submission of an "initial licence application… with the £150 initial application fee paid". *(Ms Lewis in her oral testimony referred to problems with an initial payment and stated that a successful payment was made on 1 November 2021. This date, 1 November 2021, was also confirmed and referred to in Ms Pemberton's email of 22 April 2022 referred to below).*
From 21 August 2021 to 7 August 2022	The Council's records refer to Abi Oniru being responsible for the council tax.
31 December 2021	Mr Eze had an appointment for an MRI scan at St Margaret's Hospital Epping.
4 February 2022	Ms Kelly was assigned to deal with the application.
11 March 2022	She issued a letter to Mr Eze signalling the Council's intention to issue a licence, allowing a 14-day period for representations, and confirming that the necessary fee licence ("the licence fee") of £545 needed to be paid by 26 March 2022.
29 March 2022	Ms Lewis emailed Mr Eze reminding him that the payment of the licence fee remained outstanding, that the payment was an integral part of the application process and again setting out the various possible consequences of operating a property that is required to be licenced but is not, including a civil penalty.
31 March 2022	Mr Eze emailed Ms Lewis stating that he had been unwell, and that the property had been vacated and may no longer be rented.
1 April 2022	Ms Lewis emailed Mr Eze requesting confirmation of the date his tenants had vacated, having noted the council tax

	records did not show the property as being vacant. Mr Eze was also advised that the licence fee remained due.
4 April 2022	Mr Eze emailed Ms Lewis saying his tenants had not returned the keys but had moved out. He requested that the licence fee be paid by instalments.
7 April 2022	Ms Lewis emailed Mr Eze advising him that a payment plan of 4 monthly instalments of £136.25 beginning on 11 April could be agreed.
15 April 2022	Mr Lee Croll telephoned Mr Eze to take the first payment over the phone. Mr Eze informed him he was unwell and should call back next week.
20 April 2022	Mr Lee Croll telephoned again. Mr Eze said he could not afford more than £100 as a first payment.
22 April 2022	Ms Pemberton wrote to Mr Eze extending the time for the payment of the first instalment to 29 April 2022 explaining that if the terms were not acceptable, the licence fee would again then become payable in full.
29 April 2022	Mr Lee Croll telephoned Mr Eze who repeated that he could not pay more than £100 as the first payment, but would pay it over the coming few days.
5 May 2022	Mr Eze texted Mr Lee Croll and arrangements were made to speak the next day.
6 May 2022	Mr Eze telephoned Mr Lee Croll and £100 was paid. A second payment arrangement was also agreed with Ms Pemberton for 4 more monthly payments of £111.25 beginning on 11 June.
6 June 2022 and again on 1 July 2022	Mr Lee Croll telephoned Mr Eze, but there was no answer and a voicemail was left.
19 July 2022	Mr Eze responded to 2 unanswered calls from Mr Lee Croll earlier in the day, saying that he had been very unwell, his tenants had vacated, he had no source of income from them, the property had been burgled, and requesting a further week to see what was possible in terms of payment.
8 August 2022	The Council's records refer to Wendy Panther becoming responsible for the council tax.
8 September 2022	Mr Eze responded to an unanswered call earlier in the day from Mr Lee Croll informing him that he was not feeling well and with it arranged that Mr Lee Croll phone him again on 13 September at noon.
13 September 2022	Mr Lee Croll telephoned Mr Eze, but there was no answer and a voicemail was left.
7 October 2022	Ms Pemberton sent a "Pre-notification of enforcement" email confirming an opportunity to pay the remaining fee of £445 in full by 14 October 2022. That confirmed that if payment was not received by that date, she would have "no alternative but to commence prosecution proceedings or issue you with a civil penalty".
2 November	Mr Lee Croll telephoned Mr Eze, who confirmed that he

2022	was unable to address various issues due to his declining health and being in an out-of-hospital so frequently. Mr Lee Croll's witness statement refers to his advising Mr Eze to email and document this.
9 November 2022	Ms Lewis and Ms Pemberton met and recorded the decision to proceed with a financial penalty. Having worked through the Council's policy and determined the offence was one of "medium culpability" and "low harm" the penalty was set at £3750.
11 November 2022	The Notice of intent to issue a financial penalty of £3750 was served by the Council on Mr Eze.
14 November 2022	Mr Eze made a further payment of £111.25 during a telephone call with Mr Lee Croll.
5 December 2022	Mr Eze made various representations in response to the Notice of intent.
8 December 2022	Ms Lewis in an email, following an unanswered telephone call and voicemail, offered a final opportunity to pay the balance of £333.75 by 13 December 2022.
13 December 2022	Ms Pemberton telephoned Mr Eze to provide him that opportunity, before a scheduled meeting later in the week to determine the final penalty amount, and after their discussions, he paid £333.75. Her witness statement notes that he mentioned that he is an enforcement officer for housing licencing within another authority.
16 December 2022	Ms Taylor, Ms Pemberton and Ms Lewis met and recorded the decision to reduce the penalty to £250.
10 January 2023	The Final notice was issued confirming the reduction of the penalty to £250. It referenced the timing of the final payment of the licence fee and the consideration of written representations.
7 February 2023	Mr Eze lodged his appeal with the Tribunal.
21 April 2023	The Tribunal issued its initial set of Directions
From 1 August 2023 to 29 August 2003	An extract from Mr Eze's NHS patient appointments record refers to radiation treatment on 21 separate days.

The Hearing and the parties' submissions

8. The Council's case papers included its statement of case, witness statements from Ms Lewis, Mr Lee Croll, Ms Pemberton, and Ms Taylor, and copies of emails, letters, texts, Notices, its Civil Penalties and Enforcement policies, the Upper Tribunal case of *London Borough of Waltham Forest v Marshall and another [2020] UKUT 0035 (LC)* as well as extracts from the relevant legislation.

9. Mr Eze incorporated within his statement of case screenshots as evidence of the medical appointments referred to in the timeline, various emails, and text messages with former tenants between February and April 2022. He made various submissions which were repeated at the hearing. He

said that he had voluntarily started the online selective licence application after becoming aware of the need for a licence, that he had always answered or returned all calls from the Council, when not in hospital or as soon as he could, that he had felt reassured by Mr Lee Croll that his position was understood, that he had been suffering from long Covid since December 2020, that complex health issues and challenges, including his subsequent cancer diagnosis and the treatment regime impacted his ability to respond in a timely manner to correspondence. He also referred to having between 2019 and 2021 engaged 2 managing agents (Cheapmoov and Abi Enterprises) stating "unfortunately, both efforts failed to yield positive results, rather I lost revenue and was subjected to untold hardship and failings from the managing agents".

10. At the outset of the hearing, Mr Eze confirmed that he is the landlord and owner of the property but that he lives, at distance, in Harlow Essex. He emphasised that when he became aware of the need for a selective licence, he began the online application but encountered difficulties with uploading various documents. He described after the payment of the initial application fee having issues with the tenants, the house itself, and his own health all of which were "serious and very challenging". He stated that he had always tried to return the Council's calls, at the earliest possible time, but that he was in and out of hospital, and very unwell for a long period, and only now "beginning to return to work" "still having long Covid" "making "concentration very difficult sometimes". He said that he was shocked to receive the financial penalty describing it as "inhumane and inconsiderate", that he had not been trying to dodge the application but pleading for "time and leniency".

11. Miss Harrison in her opening comments confirmed that Mr Eze had repeatedly acknowledged the need for a licence, was made fully aware that whilst the fees remained unpaid the property remained unlicensed, and that he therefore committed the offence up to the point the time that the final payment was made. She emphasised that the Council had been "continuously lenient" and that whilst it had "every sympathy with his health issues", he had been offered "over a dozen opportunities" to be able to make the necessary payments which were not made, and that the Council had a responsibility to ensure that the property is licensed. She confirmed that the Council had acted within its discretion under its documented policy by reducing the penalty from £3750 to £250.

12. The Tribunal having explained the nature of the alleged offence and potential defences, outlined the matters that it needed to consider, and then asked various questions to clarify the facts. The parties were also given ample opportunities to ask questions of each other.

13. Mr Eze confirmed the property was purchased in 2018 and that it "has always been rented". He said that he and his family had "a few other properties" "about 4 in Liverpool Council" as investments. He confirmed he was aware that all of Liverpool city was subject to selective licensing but not aware, nor advised when buying the property or subsequently by his managing agents, of the scheme in Sefton. He said there was no reason for

him to not apply for a licence, as all his Liverpool city properties were licensed, emphasising that he was not trying to avoid his obligations, simply unaware of the need for a licence in Sefton. He confirmed that he works for a council which also has selective licensing and emphasised that if he had known that the property required a licence, he would have applied for one, which he did willingly when he became aware of the need.

14. Ms Lewis said that Mr Eze did not successfully pay the application fee until November 2021. Only then could she start processing the application. Having gone through the necessary paperwork and checks, she was able to confirm in her letter of 11 March 2022 that the Council was ready to grant the licence, on its standard conditions, but subject to the payment of the licence fee.

15. Mr Eze reaffirmed that the delay in payment of the application fee between March and November 2021 was due to his technical problems, uploading certain documents within the online process and consequently not being able to get to the final payment page. It was also said that for some reason an initial attempted payment may have failed.

16. Questions were asked why there had been no application earlier, and Ms Lewis surmised that some of the earlier lettings may have been through Airbnb. Mr Eze appeared to agree, particularly referring to various problems with tenants recruited by Abi.

17. There was discussion as to who had been responsible for the council tax at different points and by reference to the records produced and exhibited by the Council. Mr Eze referred to having, on repeated occasions, stated to the council tax department that others (rather than he, who lived elsewhere) should be liable for the tax.

18. When discussing the problems encountered with occupiers who had left the property in or around April 2022 Mr Eze said that he had subsequently arranged for "someone to help restore the property" including replacing damaged doors and items in the kitchen.

19. He confirmed, as referred to in the council tax records, that a new tenant was introduced in August 2022.

20. He also cofirmed that he did not dispute the sequencing of the various matters set out in the timeline or under discussion.

21. Ms Taylor explained how the penalty of £3750 referred to in the Notice of intent had been calculated by applying the Council's policy. Particular reference was made to the matrix set out on page 11 of that policy. It was confirmed that after a review of the matter with members of the team Mr Eze's culpability had been assessed as "medium" due to, in the terms of the policy, "acts or omissions which a person exercising care would not commit", and the harm as "low". The matrix set the range of the appropriate penalty as being between £3750 and £5250. Ms Taylor confirmed that consideration was given as to whether there were any mitigating or aggravating factors. Having found

mitigating factors of there being no history of relevant convictions or previous civil penalties, and absent of any aggravating factors, it was decided that the figure should be set at the lowest figure in the range i.e. £3750.

22. It was noted that the lowest figure referred to in the matrix (when both culpability and harm were assessed as being low) was £750. Ms Taylor confirmed that there was no specific reference in the policy to a figure as low as £250, but that it had been adopted and consistently applied as the appropriate figure for comparable cases where the licence fee is fully paid before the issue of a Final Notice. She felt that the Council were being "very reasonable" with such a figure, commenting this was the first instance where it had been appealed.

23. Mr Eze questioned whether the Council had properly responded to his representations following the issue of the Notice of intent and clearly did not feel that it appropriate that a fine should still be levied following the payment of the balance of the licence fee. He said "I did as I was advised, and still I got a fine. I find this really confusing". Ms Taylor responded that Mr Eze's representations had been acknowledged in the Final notice. She confirmed that the penalty was because of the property being unlicensed, not simply a punishment for late payment, and that the much reduced figure of £250 had been arrived at after taking all the relevant factors into account, including Mr Eze's representations.

24. Ms Harrison in her closing submissions said that there was no dispute that Mr Eze was the owner and the landlord of the property and no dispute that the property required a licence. He was made aware that until the outstanding payment was made the property remained unlicenced. She specifically referred to the advice contained in *Waltham Forest* case, the need to have regard to the objectives of the Council's policy and what would happen if they were departed from, stating that the onus was on Mr Eze to persuade the Tribunal, and provide evidence, which he had not done, that a departure from the policy was appropriate. She stated that the objectives of the policy are to secure compliance from landlords, provide protection to tenants, and that the Council had specifically targeted an area where housing standards are often not sufficient. She stated that "too much leniency in this instance would be adverse to the aims of the Council to protect housing standards". She summarised the basis of his appeal as being his financial difficulties and ill-health but that these, in the full circumstances of the case, did not provide a reasonable excuse for the commission of the offence. She asked that the Tribunal confirm the penalty of £250.

25. Mr Eze in his final submissions confirmed that he had never disputed that he did do not own the property or that he should licence it, which he did "willingly, with the intention of, and wanting to comply with the law. "All along I've been cooperating as much as possible with the council to make that happen". "In between I have been through so many issues" which had not been fully documented because of their extent and being personal and painful to revisit. He acknowledged that "an offence has been committed". Nevertheless, he submitted that there were important mitigating circumstances due in particular to his health. He said that the aim of the law

was “to support those who are willing to cooperate” and to target “the unscrupulous”. He felt that he had been assured by Mr Lee Croll that everything was all right before “all of a sudden, we jump into payment from nowhere” “there is no sign of being of being humane” “no sign of support”. He stated that the Council had never inspected the property questioning “where was the harm to the tenant?”. He stated that the Council had the power to withdraw the penalty when the licence fee was paid, which is what should have happened.

The Statutory Framework and Guidance

26. Section 249A(1) of the Act (inserted by the Housing and Planning Act 2016) states that a “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…”

27. The list of relevant housing offences is set out in Section 249A(2),which includes the offence, under Section 95(1) of the Act of controlling or managing of an unlicensed house.

28. Section 95(3)(b) states that it is a defence, if at the material time an application for a licence had been duly made, which under Section 87(2) must be in accordance with such requirements as the authority may specify. Section 87(3) confirms that the authority may, in particular, require the application to be accompanied by a fee fixed by the authority.

29. Section 95(4) states that it is also a defence if the person committing the offence had a reasonable excuse.

30. Section 249A(3) confirms only one financial penalty may be imposed in respect of the same conduct and subsection (4) confirms that whilst the penalty is to be determined by the housing authority it must not exceed £30,000. Subsection (5) makes it clear that the imposition of a financial penalty is an alternative to instituting criminal proceedings.

31. The procedural requirements are set out in Schedule 13A of the Act.

32. Before imposing a penalty the local housing authority must issue a “Notice of intent” which must set out

- the amount of the proposed financial penalty,
- reasons for proposing to impose it, and
- information about the right to make representations. (Paras 1 and 3)

33. Unless the conduct which the penalty relates (which can include a failure to act) is continuing the Notice of intent must be given before the end of the period of 6 months beginning on the first day on which the authority has sufficient evidence of that conduct. (Para 2)

34. A person given Notice of intent has the right to make written representations within the period of 28 days beginning with the day after that on which the Notice was given. (Para 4)

35. If the housing authority then decides to impose a financial penalty it must give a "Final Notice" imposing that penalty requiring it to be paid within 28 days beginning with the day after that on which the Final Notice was given. (Paras 6 and 7)

36. The Final Notice must set out: –

- the amount of the financial penalty,
- the reasons for imposing it,
- information about how to pay it,
- the period for payment,
- information about rights to appeal; and
- the consequences of failure to comply with the Notice. (Para 8)

37. The local housing authority in exercising its functions under Schedule 13A or section 249A of the Act must have regard to any guidance given by the Secretary of State.(Para 12)

38. Such guidance ("the Guidance") was issued by the Ministry of Housing Communities and Local Government in April 2018 and is entitled "Civil penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities".

39. Paragraphs 3.3 and 3.5 of the Guidance confirm that the local housing authority is expected to develop and document their own policies on when to prosecute and when to issue a civil penalty and the appropriate levels of such penalties and should make such decisions on a case-by-case basis in line with those policies.

40. The Guidance states "Generally we would expect the maximum amount to 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. Local housing authorities should consider the following factors to help ensure that the… penalty is set at an appropriate level:

- 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…

41. The Council has documented its own "Housing Standards Civil Penalties Policy" ("the Council's policy") and included a copy in the papers.

42. A person receiving a Final Notice has the right of appeal to the Tribunal against the decision to impose a penalty or the amount of the penalty (under paragraph 10 of Schedule 13A of the Act).

43. The Final Notice is suspended until the appeal is finally determined or withdrawn. (Para 10(2))

44. The appeal is by way of rehearing, but the Tribunal may have regard to matters which the local authority was unaware of. (Para 10 (3))

45. The Tribunal may confirm, vary or cancel the Final Notice but cannot impose a financial penalty of more than the authority could have imposed. (Paras 10 (4) and (5))

46. The Upper Tribunal has, in various cases, confirmed that: –

- the Tribunal's task is not simply to review whether a penalty imposed by a Council was reasonable, it must make its own determination having regard to all the available evidence,
- in so doing, it should have regard to the 7 factors specified in the Guidance,
- it should also have particular regard to the Council's own policy. *Sutton and another v Norwich City Council [2020] UKUT 90 (LC).*
- the Tribunal's starting point in any particular case should normally be to apply that policy as if it were standing in the Council's shoes,
- whilst a Tribunal must afford great respect (and thus special weight) to the decision reached by the Council in reliance on its own policy, it must be mindful of the fact that it is conducting a rehearing, not a review; the Tribunal must use its own judgement and it can vary the Council's decision where it disagrees with it, despite having given it that special weight. If, for example, the Tribunal finds that there are mitigating or aggravating circumstances which the Council was unaware of, or of which it took insufficient account, the Tribunal can substitute its own decision on that basis. *Waltham Forest v Marshall.*

The Tribunal's Reasons and Conclusions

47. All of the written evidence was carefully considered before, during the hearing where it was referred to, and after it. The oral evidence at the hearing was also carefully considered.

48. There are three substantive issues for the Tribunal to address: –

- whether the Tribunal is satisfied beyond reasonable doubt that Mr Eze has committed a "relevant housing offence" in respect of the property,
- whether the Council has complied with all the necessary procedural requirements relating to the imposition of the financial penalty, and
- whether a financial penalty is appropriate and, if so, has been set at the appropriate level.

Dealing with each of these issues in turn:-

49. Mr Eze readily confirmed that the property was an investment, that he had never lived in it, and that it had been let for various periods throughout his ownership from October 2018 to date. It was also agreed, as well as being abundantly clear from the papers, that a selective Licence for the property was not granted until after 13 December 2022.

50. There was no dispute therefore that the property was unlicensed at times when it was required to be licensed, including during parts of the six-month period preceding the issue of the Notice of intent.

51. Having been satisfied, beyond any reasonable doubt, that the offence set out in Section 95(1) of the 2004 Act of having control or managing of an unlicensed house was committed, the Tribunal had next to determine whether Mr Eze had a defence, either under Section 95(3)(b) of an application for a licence having been duly made and/or the separate defence under Section 95(4) of a reasonable excuse.

52. The case of *IR Management Services Ltd v Salford City Council [2020] UKUT 0081(LC)* confirms that the burden of proving any such defence falls on Mr Eze, to be established on the balance of probability.

53. Dealing first with the question of whether, and if so when, before the actual granting of licence, the application for the licence could be said to have been duly made. Section 87(3) makes it clear, as did the Council, that without the application being accompanied by the appropriate fee it is not "duly made".

54. Ms Lewis stated (and it was not disputed by Mr Eze) that the application fee of £150 (which is properly regarded as a part of the total fee) was not successfully paid until 1 November 2021. Between that date and whilst the Council was processing the application up until the date on which the licence fee became due ie 26 March 2022, Mr Eze had the defence of the application having been duly made.

55. However, that defence fell away between 26 March 2022 and 13 December 2022 when he failed to keep to the agreed payment plans. It has been readily admitted that the property was let without any licence, both before November 2021, and during the periods between 26 March 2022 and 13 December 2022 when he failed to pay the set instalments and at which times there was no such defence.

56. The Tribunal then went on to consider whether Mr Eze had a reasonable excuse for committing the offence. The Tribunal reminded itself that not properly applying for a licence is not the offence. The offence is being in control of the property which did not have a licence when it should. As confirmed in the Court of Appeal case of *Palmview Estates Ltd v Thurrock Council [2021] EWCA Civ 1871,* not applying for a licence, and controlling a property without a necessary licence, are not the same thing.

57. The Tribunal readily accepts that Mr Eze had, at different times, various compelling issues to deal with particularly relating to the effects of covid, long

covid, and gruelling courses of treatment for cancer. Nevertheless, and having carefully considered all the circumstances, the Tribunal does not accept that such issues absolved him from ensuring that that his statutory responsibilities were properly attended to for months, if not years, beginning when he first let the property after its purchase in October 2018.

58. The Tribunal found that Mr Eze is an experienced landlord with a portfolio of properties. He was, by his own admission, very well aware of the nature and possibility of selective licensing, both from his experience in other neighbouring districts and a consequence of his employment. His confirmations that he was, for some time at least, ignorant of the requirement for the property to be licensed is an explanation, but it is not a reasonable excuse.

59. Mr Eze has complained that he was let down by two sets of managing agents, but again that was not found by the Tribunal to constitute a reasonable excuse. As the Upper tribunal observed in *Thurrock Council v Daoudi (2020) UKUT 209 (LC)* "No matter how genuine a person's ignorance of the need to obtain a licence, unless their failure was reasonable in all the circumstances, their ignorance cannot provide a complete defence". It also confirmed in *Aytan & Ors v Moore & Ors (2022) UKUT 27 (LC)* "a landlord's reliance upon an agent will rarely give rise to a defence of reasonable excuse. At the very least the landlord would need to show that there was a contractual obligation on the part of the agent to keep the landlord informed of licensing requirements; there would need to be evidence that the landlord had good reason to rely on the competence and experience of the agent; and in addition there would generally be a need to show that there was a reason why the landlord could not inform themself of the licensing requirements without relying upon an agent, for example because the landlord lived abroad".

60. It was Mr Eze's responsibility to ensure that statutory requirements are met in a timely manner and that if, for whatever reason, the task was beyond him that he then engaged qualified and competent help.

61. The importance of failure to obtain a licence should not be underestimated. Unlicensed properties undermine the statutory objective to promote proper housing standards and a Housing Authority's regulatory role and poses a risk for harm. Mr Eze as a landlord has a duty to ensure that relevant legislation is complied with.

62. The Tribunal found that Mr Eze did not have a reasonable excuse for allowing the Property to remain unlicensed at the material times.

63. The Tribunal is satisfied therefore, beyond reasonable doubt, that offence under Section 95(1) of the 2004 Act was committed. It is also satisfied that Mr Eze has not on the balance of probability established either the defence of a reasonable excuse, or of a duly made application having been made at all the material times.

64. The Tribunal next carefully reviewed the actions taken by the Council and the timing and information set out in its different Notices and concluded

that it had satisfied the necessary procedural requirements to be able to impose a financial penalty in respect of the property.

65. The Tribunal then considered the appropriateness and amount of the penalty.

66. The Tribunal is satisfied that it is appropriate to impose a financial penalty in respect of the offence, which as confirmed in the Guidance is an alternative to prosecution.

67. The Tribunal began the task of assessing the amount by a review of the actions of the parties and an evaluation of the evidence. In so doing it has had particular regard to the 7 factors specified in the Guidance referred to above.

68. Whilst not bound by it, the Tribunal also carefully reviewed the Council's policy and found that it provides a sound basis for quantifying financial penalties in a reasonable, objective and consistent basis. As confirmed by the Upper Tribunal in the *Sutton* case, the local authority is well placed to formulate its policy on penalties taking into account the Guidance, and that "It is an important feature of the system of civil penalties that they are imposed in the first instance by local housing authorities and not by courts or tribunals. The local housing authority will be aware of housing conditions in its locality and will know if particular practices or behaviours are prevalent and ought to be deterred".

69. As such the Tribunal was content to use the Council's policy as the starting point and as a tool to assist its own independent decision making.

70. The policy sets out a stepped approach to determine the level of any civil penalty. It is based on the factors specified in the Guidance. The first step involves determining the category of the offence following a determination of both an offender's culpability and the potential harm caused by the offence. The policy refers to 4 potential categories of culpability being Low, Medium, High and Very High and 3 potential categories of harm being Low, Medium, and High and includes descriptions of each. These are then brought together in the matrix on page 11 of the policy which provides a starting point and a range for each penalty band. As part of the second step there is a consideration of how far any aggravating or mitigating factors should result in an upward or downward adjustment from the starting point. It is noted that "in some cases it may be appropriate to move outside the identified category range". Step three involves a review of the penalty amount having particular regard to the general principles of reflecting the seriousness of the offence, taking into account financial circumstances of the offender (so far as they are known) and with it clearly stated that the penalty should meet in a fair and proportionate way, the objectives of punishment, deterrence and the removal any gain derived for the commission of the offence. (The policy then sets out 4 further potential steps which are not relevant to the facts of this particular case).

71. The Tribunal agrees with the Council's assessment of Mr Eze's culpability at the time the Notice of intent was issued. There is ample evidence

of his receipt of repeated oral and written warnings that the necessary steps had not been taken. It also notes that he was able to prioritise the restoration of the property before August 2022 over and above completing the payment of the licence fee.

72. The Tribunal also agrees with the Council's assessment of the harm classification as low. Whilst there is no direct evidence of tenants having suffered harm or potential harm, Mr Eze did worryingly refer to concerns with the competence of his appointed managing agents.

73. Despite Mr Eze's submissions that the Council did not properly respond to his submissions following the notice of intent, it is perfectly clear from the Final Notice itself and the very substantial reduction from the figure of £3750 to £250 that his submissions were noted. The Tribunal also rejects completely the assertion that the Council's actions were inhumane and lacking consideration. The evidence points to the opposite conclusion.

74. The Tribunal found that the Council had correctly and reasonably applied the policy both when issuing the Notice of intent, and subsequently when issuing the Final Notice.

75. The Tribunal is however conducting a rehearing, not simply a review, and must make its own independent assessment.

76. In doing so, it particularly reminded itself that:-

- the property was within the selective licensing area throughout Mr Eze's ownership.
- despite being a landlord with a portfolio of properties, with experience of selective licensing, he failed to properly engage with the application process.
- his initial attempt at an application for a licence was not made until some 28 months after his purchase.
- there was then a further 7 to 8 months delay in providing the requisite documentation and application fee.
- subsequently, between March and December 2022 there was a further 8½ months delay in completing the payment of the licence fee.
- Mr Eze, in mitigation, was able to point to his multiple, serious and complex health issues extending over a considerable period of time.
- he was however able to organise the "restoration" of the property in the summer of 2022, and exhibited having sent over 30 separate WhatsApp messages to his tenants between 8 February and 3 April 2022.
- the Council, and various Council officers also clearly gave him considerable amounts of support and advice, despite his submissions to the contrary.
- to overly focus on the application process is to possibly miss the more important point being that the substantive offence is managing or having control of a house which should be licensed but is not.
- the Tribunal (as with the Council) must consider all 7 factors referred to in the Guidance which include the need to deter not just the offender but also others from repetition.

- as the Guidance confirms “a civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at 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”.
- in the Final notice, the Council decided on a figure which was £500 less than the lowest figure specifically referred to in its written policy.

77. The Tribunal’s general conclusion is that the sum of £250 (which equates, approximately, to 2 weeks’ housing allowance for a 3 bedroomed house in Bootle) is exceedingly lenient, and that the Council could well have legitimately imposed a greater sum. Nevertheless, after due consideration and in deference to the Council’s established practice in similar instances, the Tribunal prefers not to upset its decision.

78. The Tribunal has therefore decided to confirm the financial penalty of £250.