FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case References	**:**	**BIR/37UE/HNA/2024/0008 & BIR/37UE/HNA/2024/0009**
Properties	**:**	**87 and 87A Curzon Street, Netherfield, Nottingham, NG4 2NU**
Applicant	**:**	**Mr Paul Betts**
Respondent	**:**	**Gedling Borough Council**
Type of Application	**:**	**An appeal under paragraph 10 of Schedule 13A to the Housing Act 2004 against a Financial Penalty**
Tribunal Members	**:**	**Judge M K Gandham** **Mr A McMurdo MCIEH**
Date of Hearing	**:**	**21 March 2025**
Date of Decision	**:**	**30 May 2025**

DECISION

Decision

1. The Tribunal:

   (i) **varies** the Final Notice dated 12 March 2024 given to Mr Paul Betts in relation to the property known as **87 Curzon Street**, Netherfield, Nottingham, NG4 2NU by substituting the amount of the financial penalty imposed from **£2,100 to £800**; and

   (ii) **varies** the Final Notice dated 12 March 2024 given to Mr Paul Betts in relation to the property known as **87a Curzon Street**, Netherfield, Nottingham, NG4 2NU by substituting the amount of the financial penalty imposed from **£2,100 to £800**.

Reasons for Decision

Introduction

2. The Tribunal received an appeal request from Mr Paul Betts ('the Applicant') against two financial penalties, each for a sum of £2,100.00, in relation to the properties known as 87 Curzon Street, Netherfield, Nottingham and 87a Curzon Street, Netherfield, Nottingham (the Properties'). The financial penalties were imposed by Gedling Borough Council ('the Respondent') under section 249A and Schedule 13A of the Housing Act 2004 ('the Act').

3. The Respondent had, on 11 September 2023, given to the Applicant notice of their intention to impose financial penalties on him ('the Notices of Intent') and, on 12 March 2024, had given Final Notices in respect of each ('the Final Notices') for his failure to license both properties under Part 3 of the Act.

4. Directions were issued by the Tribunal on 2 September 2024 as Mr Betts' appeal request was received out of time and the Tribunal needed to determine whether to accept the application.

5. On 21 November 2024, the Tribunal issued a decision on that preliminary issue and determined that the time (under Rule 27 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013) for making the application could be extended (under Rule 6(3)(a)) to 5 July 2024, to allow the appeals to proceed. The Tribunal also issued directions for the progress of the hearing on the same date.

6. An inspection of the Properties was not considered necessary, and an oral hearing was scheduled for 21 March 2025.

7. In readiness for the hearing, the Tribunal received a bundle of documents from the Respondent and a statement of case from the Applicant.

The Law

8. Under section 249A of the Act, 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*'. The imposition of the penalty is an alternative to prosecution for a relevant housing offence.

9. Section 249(A)(2) defines the relevant housing offences as offences 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).

10. Section 249A(3) of the Act confirms that only one financial penalty can be imposed on any person in respect of the same conduct and section 249A(4) confirms that the amount of any financial penalty cannot exceed £30,000.

11. Paragraphs 1 to 8 of Schedule 13A to the Act set out the procedure for imposing financial penalties and provide:

Notice of Intent

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").

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.

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

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

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.

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.

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.

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.

12. The person upon whom a final notice is given may appeal to the Tribunal under paragraph 10 of Schedule 13A to the Act which provides:

Appeals

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.

13. Paragraph 12 of Schedule 13A to the Act states that a local housing authority must have regard to any guidance given by the Secretary of State about the exercise of its functions to impose financial penalties and the Secretary of State has issued "Guidance for Local Housing Authorities: Civil penalties under the Housing and Planning Act 2016 (April 2018)" ('the Guidance'). Paragraph 3.5 of the Guidance sets out a list of factors which local housing authorities should consider when assessing the level of any penalty, these being:

- the severity of the offence;
- the culpability and track record of the offender;
- the harm caused to the tenant;
- the punishment of the offender;
- to deter the offender from repeating the offence;
- to deter others from committing similar offences; and
- to remove any financial benefit the offender may have obtained as a result of committing the offence.

Background

14. The following background to the application was established from the submissions of both parties and did not appear to be in dispute.

15. The Respondent is responsible for licensing of houses within its district under Part 3 of the Act. On 1 October 2018, the Respondent gave general approval, under section 82 of the Act, and commenced the selective licensing scheme ('the Scheme') for Netherfield. The Scheme ended on 30 September 2023.

16. On 2 March 2023, Ms Sally Charles (an officer from the Respondent's Anti-Social Behaviour team) answered a telephone call from the Applicant. The Applicant confirmed that he was the owner of the Properties and that his tenant at 87A Curzon Street was experiencing problems relating to harassment from his tenant at 87 Curzon Street. The Applicant was asked whether he had a licence for the Properties as this could have implications in relation to the ability to serve a section 21 notice. As the Applicant stated he did not, Ms Charles made a referral to the Respondent's Selective Licensing team.

17. On 3 March 2023, Mr Cyprian Orukpe (a Housing Improvement Enforcement Officer in the Respondent's Selective Licensing team) contacted the Applicant by telephone to discuss the Scheme. The call lasted over 14 minutes.

18. On 22 June 2023, Mr Michael Bondswell (an Environmental Health Officer employed by the Respondent), visited the Properties with Mr Orukpe to determine their status. As no adults were present at either of the Properties that day, they attended again on 1 August 2023. On that second visit, the officers met

the tenant of 87 Curzon Street and, later that day, Mr Bondwell received a telephone call from the tenant of 87A Curzon Street.

19. Mr Orukpe checked the Respondent's IT software, which confirmed that the Applicant had not applied for a selective licence for the Properties and that the Properties were not subject to any management orders, so were not exempt from licensing provisions.

20. On 25 August 2023, a letter was sent to the Applicant to provide answers to a PACE compliant written interview statement. The Applicant was asked to respond by 8 September 2023.

21. As no response was received, the Notices of Intent were sent to the Applicant on 11 September 2023, proposing a penalty of £2500 for each property for the offence of failure to licence pursuant to section 95 of the Act, a total sum of £5,000.

22. Mr Bondswell contacted the Applicant on 25 September 2023, in which telephone call the Applicant informed Mr Bondswell that he had not been made aware of the Scheme, that he thought that the Scheme was voluntary, that he was not good at reading and writing and that he had not received the letter of 25 August 2023.

23. After a further telephone call on 7 December 2023, the Applicant was given the opportunity to attend an in-person meeting on 12 December 2023 to make his representations verbally.

24. Following this meeting, and taking account of the Applicant's representations, on 12 March 2024 the Final Notices were served on the Applicant. These imposed a financial penalty of £2,100 per property (a total of £4,200), a reduction of £400 per property from the Notices of Intent.

Hearing

25. An oral hearing was held at Nottingham Justice Centre. The Applicant was accompanied by his wife, Mrs Joanne Betts. The Respondent was represented by Mr Craig Allcock (a legal executive employed by the Respondent) and attended with Mr Bondswell, Mr Orukpe and Ms Charles (who had all supplied witness statements).

26. It was accepted by both parties that:

- the Properties fell within the area of the Scheme,
- the Applicant was the person having control of or managing the Properties,
- the Properties had both been let during the term of the Scheme; and
- the Applicant had not obtained a licence during the term of the Scheme for either property.

The Submissions

The Applicant's submissions

27. The Applicant confirmed that he relocated from Nottingham to Walsall in 2002. As he was no longer living in Nottingham, he stated that he had not been made aware of the Scheme having been introduced, as its introduction was not advertised outside of the Nottingham area.

28. The Applicant confirmed that he had been working with the Respondent since 2002, alongside their social services team, to house many of their tenants. He stated that, due to this relationship, he was surprised that the Respondent had not informed him of the Scheme, especially as they must have been aware that he did not have licences in place as he was informed that he would not be able to evict a tenant without the same.

29. The Applicant submitted that, had it not been for him contacting the Anti-Social Behaviour team in March 2023, to complain about one of his tenants, he would never have been issued the penalties.

30. The Applicant stated that following conversations with Ms Charles, Mr Orukpe and Mr Bondswell, he believed that the Scheme was voluntary. He did accept that in one telephone conversation he had stated that he saw little point in applying for a licence when the Scheme was due to end two weeks later, but could not remember the date of that call.

31. The Applicant confirmed that he had not received the Respondent's letter of 25 August 2023, enclosing the PACE compliant written interview statement, and stated that, had he realised that obtaining a licence was compulsory and that he was committing an offence by not obtaining one, he would have applied for the same.

32. The Applicant confirmed that he had previously been managing the Properties himself and was not a member of any landlord's association but that, since being issued with the penalties, he had employed a managing agent to manage the Properties for him. He also confirmed that he had already made applications in relation to the new selective licensing scheme (which had commenced on 5 January 2025) and was awaiting licences for the Properties from the Respondent.

33. The Applicant stated that he had never disputed the imposition of the penalties but had always disputed the amount of the same due to the poor communication of the Scheme by the Respondent. He also believed that the Respondent should have taken into account that he had paid approximately £10,000 to reinstate the property at 87 Curzon Road because of damage caused by the tenant.

34. The Applicant confirmed that, in addition to the Properties, he owned two further properties and that the majority of the rental income from each property went towards the payment of the mortgage against the same.

The Respondent's submissions

35. The Respondent provided a Bundle of documents which included a Case Summary, a statement of case relating to each property, the Gedling Private

Sector Housing Civil Penalties Policy ('the Civil Penalties Policy'), a summary as to how the financial penalties had been calculated, witness statements from Ms Charles, Mr Orukpe and Mr Bondswell, a transcript of the verbal representations made by the Applicant on 12 December 2023 and a copy of the office copy entries for each property.

36. The Case Summary submitted that the Applicant had committed offences under section 95(1) of the Act by failing to make applications to licence each of the Properties. The Respondent stated that, by virtue of section 249A and Schedule 13A of the Act, the Respondent was entitled to impose a financial penalty if satisfied beyond reasonable doubt that the Applicant's conduct amounted to a relevant housing offence.

37. As the Properties were not exempt under the Act, and the Applicant had not made any applications to licence the Properties without a reasonable excuse to do so, the Respondent found that the Applicant had committed an offence and that it was able to impose a financial penalty for the failure to licence each of the Properties.

38. The Respondent confirmed that general approval had been given under section 82 of the Act for the Scheme and that the Respondent had taken all reasonable steps to secure applications pursuant to section 85(4) of the Act.

39. The Respondent detailed the steps it had undertaken to advertise the commencement of the Scheme in the Case Summary, which included public notices in the Nottingham Evening Post, details on its website, holding workshops and library events, issuing press releases and social media posts and by sending emails to managing agents. The Respondent refuted that there was any legal obligation for it to contact every landlord who owned a property within the area and, in any event, noted that the Applicant had been informed of the Scheme in March 2023 but had refused to obtain a licence.

40. In determining the level of the financial penalty, the Respondent stated that it followed the Guidance and the Respondent's own enforcement policies and matrix for determining the level of fine.

41. At the hearing, Mr Allcock confirmed that it would be disproportionate to expect local authorities to have to contact the owner of every property within the area to ensure that all landlords were made aware of the Scheme and that the steps that the Respondent had taken (as outlined in the Bundle) were reasonable steps pursuant to section 85(4) of the Act. He confirmed that 79 to 80% of all landlords had obtained a licence and that it was the duty of the Applicant, as a prudent landlord, to have kept abreast of any changes in policy and law.

42. Mr Allcock emphasised that the Respondent's Housing Needs team, with whom the Applicant may have been in contact, were completely separate to the Respondent's Selective Licensing team and would not necessarily have known, or been familiar with, selective licensing requirements.

43. In relation to the Respondent's policy for issuing civil penalties, Mr Bondswell confirmed that, in line with their Private Sector Housing Enforcement Policy and Public Protection Enforcement Policy, the Respondent would, when responding to non-compliance, firstly taking informal action and explain or offer advice on the action required to secure compliance. He stated that such informal action could be by way of a telephone call, as in the telephone call made to the Applicant on 3 March 2023, or by way of an informal letter.

44. In relation to the telephone call made on 3 March 2023, in his witness statement, Mr Orukpe stated that the Applicant had informed him that he would not be obtaining a licence as there were only a few months left on the Scheme. Mr Orukpe stated that he had informed the Applicant that applying for a licence was "*the right thing to do*" and offered his details so that the Applicant could contact him for any further advice, which offer he stated was turned down.

45. At the hearing, Mr Orukpe explained that he had not included the contents of the entire conversation in his written statement, the call having lasted over 14 minutes, as he had tried to be brief. Although he had not made any contemporaneous note of the telephone call, he recalled informing the Applicant of the consequences of not obtaining a licence, and that this would be an offence. He stated that he encouraged the Applicant to obtain a licence as soon as possible and offered his details in case he had any further questions. In reply to this, Mr Orukpe said that the Applicant had stated that he was not going to apply for a licence as the Scheme was going to end in a few months. Mr Orukpe confirmed that he had not informed the Applicant that by not applying he might be liable for prosecution or face a civil penalty of up to £30,000.

46. Mr Orukpe confirmed that the costs of a licence under the Scheme if an application had been made online was £700 per Property, with a paper application costing £760.

47. In relation to the delay between the telephone call and the first visit to the Properties in June, Mr Bondswell confirmed that this was due to issues with workload, but that as soon as they had received confirmation of the fact that the Properties were still being let and that licences had not been obtained, despite the informal advice given in March 2023, he considered it was appropriate to take formal action.

48. In relation to the level of the penalties, Mr Bondswell confirmed that both penalties were calculated based on the Civil Penalty Policy taking into account the same factors for each property.

49. When issuing the Notices of Intent, they considered that the Applicant's '*Culpability*' had been '*High*', as he had been made aware of the Scheme in March 2023 and made an active choice not to obtain a licence for either property. They considered the risk of harm to be '*Low*' as they had not been informed of any risk to any individual. Based on the Culpability table in Step Two of the Civil Penalty Policy, this led to the starting point of the civil penalty being £1,000 for each property.

50. Mr Bondswell stated that the starting point was then adjusted for any 'aggravating' or 'mitigating' factors.

51. They considered that, in this matter, there were several aggravating factors, namely: a motivation by financial gain (as the Applicant had stated he did not wish to apply for a licence as the Scheme was due to end); evidence of wider community impact (as other landlords might be motivated to not apply); obstruction of justice (a failure to comply since the beginning of the Scheme); record of poor management or not meeting legal requirements (as he failed to apply for a licence); and refusal of free advice and training (as he failed to accept Mr Orukpe's offer of advice). Although in the calculation of the initial penalty for 87 Curzon Street it referred to a 'record of providing substandard accommodation' rather than 'refusal of free advice or training', Mr Bondswell confirmed that these two matters had been transposed in error. Mr Bondswell stated that they had not been aware of any mitigating factors.

52. Taking into account the aggravating and mitigating factors, the amount of the penalty was increased to the '*Higher mid-point*' value, so that the penalty for each property rose from the starting point of £1,000 to £1,900.

53. In addition, Mr Bondswell stated that, under the Civil Penalty Policy, an amount of £600 was added on to the penalty for each property, for the cost of investigating the offences. As such, the total penalty was £2,500 per property.

54. Following the oral representations made by the Applicant on 12 December 2023, and noting the Applicant's financial circumstances – his having referred to one of his tenant's as having caused substantial damage to one of the Properties – Mr Bondswell stated that a reduction of £400 was made to each penalty, reducing each penalty to £2,100.

55. On questioning by the Tribunal, Mr Allcock accepted that the Act did not allow for any recoupment of investigation costs and, in relation to the Culpability table, Mr Bondswell accepted that, had they believed that the Applicant had genuinely misunderstood the Scheme to be voluntary, they would have reduced the '*Culpability*' from '*High*' to '*Medium*'. Mr Bondswell also accepted that there had been no previous record of any poor management of the Properties and that the failure to meet the '*legal requirements*' only related to the current failure to obtain licences for the Properties.

56. With regard to mitigating factors, Mr Allcock stated that the Applicant's difficulties with literacy may have been considered a mitigating factor if the Respondent had been made aware of this at the time.

57. In relation to how the various aggravating and mitigating factors impacted upon the range of penalties payable in the Culpability table, Mr Bondswell stated that it was not simply a matter of carrying out a simple count of each factor to make a determination, but that the officer would look at the factors as a whole and decide whether the starting point should be adjusted.

58. In addition, he confirmed that any final penalty imposed would have needed to have exceeded the cost of obtaining a licence for each property, to have been an effective deterrent and to punish the offender.

The Tribunal's Deliberations and Determinations

59. The Tribunal, under paragraph 10 of Schedule 13A to the Act, may confirm, vary or cancel a final notice, determining the matter as a re-hearing of the local housing authority's decision.

60. In reaching its determination the Tribunal considered the relevant law and all of the evidence submitted, both written and oral, and briefly summarised above.

Reasonable Excuse

61. Under section 249A of the Act, a local housing authority may only impose a financial penalty on a person if it is satisfied "*beyond reasonable doubt*" that a person's conduct amounts to a relevant housing offence. Although the Respondent did not refer to the defence of "*reasonable excuse*" directly, the Tribunal considered whether the various submissions made by him amounted to a reasonable excuse for committing an offence, under section 95(4) of the Act.

62. In deciding this question, the Tribunal considered the guidance set out by the Upper Tribunal in *Marigold v Ors* [2023] UKUT 33 LC. In paragraph 48 of that decision, the Upper Tribunal referred to three steps which the First-tier Tribunal could use when deciding whether such a defence was established – firstly, which facts gave rise to the defence, secondly, which of those facts were proven and, thirdly, whether, if viewed objectively, those proven facts did amount to a reasonable excuse for the default and, if relevant, when such excuse ceased.

63. The Tribunal noted that the Respondent submitted that he had, initially, failed to obtain a licence as he had been unaware of the Scheme. The Tribunal accepted that the Respondent had not lived in the Nottingham area for some time, that he managed the Properties himself and that the Scheme had only been advertised in the Nottingham area and to managing agents. Accordingly, the Tribunal accepted that the Applicant had been unaware of the Scheme until March 2023.

64. As to whether this amounted, objectively, to a reasonable excuse, the Tribunal noted that, under section 85(4) of the Act, the Respondent was only required to take "*reasonable steps*" to consult persons likely to be affected by the Scheme.

65. The Tribunal accepted that it would not have been reasonable or practical for the Respondent to administer a strategy to inform all landlords outside of the locality of the Scheme. It would have required the Respondent to discover which properties within the boundaries of the Scheme were rented, who the landlords of those properties were, and then obliged the Respondent to contact each of those landlords individually.

66. The Tribunal also accepted that the Respondent's Housing Needs team were distinct from its Selective Licensing team and would not have necessarily known,

or been familiar with, the licensing requirements, nor would they have had a duty to inform the Applicant of the same.

67. As a landlord, professional or otherwise, the Tribunal found that it was for the Applicant to make himself aware of all his legal obligations in respect of any property he chose to let and the requirements of any local authority in the areas in which those properties were located. On the evidence before the Tribunal, the Applicant had taken no steps to keep himself abreast of any changes in the law or the Respondent's housing policy.

68. Accordingly, the Tribunal found that the Applicant's initial lack of knowledge of the Scheme did not amount to a reasonable excuse.

69. The Tribunal noted that both Ms Charles and Mr Orukpe had made the Respondent aware of the existence of the Scheme in March 2023. Although the Tribunal found that the Applicant, mistakenly, from those conversations, thought that the Scheme was voluntary (he had stated as much in both his telephone conversation with Mr Bondswell on 25 September 2023 and in his oral representations on 12 December 2023) the Tribunal accepted, based on his oral testimony (which was not disputed by the Applicant at the hearing), that Mr Orukpe had informed the Applicant that he was required to licence the Properties.

70. As such, although the Tribunal believed the Applicant when he stated that his subsequent failure to licence was based on his genuine misunderstanding of the Scheme to be voluntary, the Tribunal found that this error also failed to amount to a reasonable excuse.

Imposition of and Level of Penalty

71. As offences had been committed under section 95(1) of the Act, and no reasonable excuse defence had been made out, the Tribunal accepted that the Respondent was entitled to consider whether to prosecute the Applicant under section 95(5) of the Act or, as an alternative to prosecution, impose a financial penalty under section 249A of the Act.

72. The Tribunal accepted that, as the Respondent considered that the Applicant had been aware of the Scheme since March 2023, following the informal advice given on the telephone call, and, several months later, had still not applied for licences, it was reasonable for the Respondent to consider that formal action should be taken.

73. The Tribunal also accepted that, although not set out in the Respondent's summary of how its arrived at its decision to impose the Final Notices, due to the impact that failure to act might have on the wider community (particularly as the Respondent was looking to renew a selective licensing scheme for the area) it was in the public interest to take action and that a civil penalty was an appropriate alternative to prosecution.

74. Having considered that a civil penalty was appropriate and that the Respondent had drawn up its own policy on civil penalties, the Tribunal, following the

Guidance given by the Upper Tribunal in *London Borough of Waltham Forest v Marshall* [2020] UKUT 35 (LC) and in *Sutton v Norwich City Council* [2020] UKUT 90 (LC), went on to consider the level of penalty that should be imposed based on the Civil Penalty Policy. The Tribunal did not include any costs for investigative charges, as there was no legislative basis for including the same. The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017 already permit money recovered from financial penalties to be used for the carrying out of its enforcement functions in relation to the private rented sector.

75. The Tribunal, following Step One of the Civil Penalty Policy, began by assessing the '*Culpability*' and '*Harm*'. The Tribunal accepted that there was a low likelihood of harm caused by the Applicant's actions, as there was no evidence of any adverse effect on any individual by the Applicant failing to licence. Accordingly, the Tribunal agreed with the Respondent that the risk of harm was '*Category 3*'.

76. In relation to '*Culpability*', as previously stated the Tribunal did accept that the Applicant had initially been unaware of the Scheme and, following the telephone calls in March 2023, believed that the Scheme was voluntary - the Applicant had stated this in the telephone conversation he had with Mr Bondswell on 25 September 2023 and in his verbal representations on 12 December 2023, he twice stated that had he known that he *had* to have a licence he would have purchased one.

77. As the commission of the offences appeared to be through a genuine misunderstanding, rather than with "*actual foresight*" or "*wilful blindness*", the Tribunal found that the '*Culpability*' of the Applicant was '*Medium*' rather than '*High*'.

78. Based on the Tribunal's findings for '*Culpability'* and '*Harm',* the starting point for the penalty based on the Culpability table in Step Two of the Civil Penalty Policy was £350 as opposed to £1,000.

79. The Tribunal then went on to consider the aggravating and mitigating factors taken into account by the Respondent.

80. As the Tribunal found that the Applicant had, initially, not known about the Scheme and then misunderstood the same, the Tribunal found that there was little evidence that there was any motivation for financial gain. Although the Applicant may have stated that he did not wish to apply for a licence as there was only a few weeks/months left, the Tribunal found that this could be as he understood the Scheme to be voluntary. For similar reasons, the Tribunal found that there was no evidence of any obstruction of justice, especially since the Applicant stated that he did not receive the Respondent's letter of 25 August 2023.

81. In relation to whether the Applicant had a '*Record*' of poor management or not meeting legal requirements, the Tribunal considered that this factor should only come into play if there was a previous record or history of poor management and

should not be taken into account in this matter as no such record existed. If this were taken to include the case under consideration, it would apply in each and every breach.

82. The Tribunal did accept that there may have been wider community impact if it was known that landlords who had not applied for licences were not pursued, and noted that the Applicant refused to take up Mr Orukpe's offer of further advice (something which was not denied by the Applicant at the hearing).

83. In relation to any mitigating factors, although the Respondent had not taken any into account when deciding the level of the penalty, the Tribunal noted, based on the Civil Penalty Policy, the fact that the Applicant had no previous convictions was a relevant factor.

84. In relation to the Applicant's reported difficulties with reading or writing, although Mr Allcock, at the hearing, stated that these may have been taken into consideration if they had been known at the time, the Tribunal noted that, based on the Civil Penalty Policy, only a disability linked to the commission of the offence could be considered. On the evidence before the Tribunal, based on the points raised by the Applicant for his failure to licence, there was no such link.

85. Accordingly, the Tribunal found that there were two aggravating factors and one mitigating factor.

86. The Tribunal found the information in the Civil Penalty Policy on how to adjust the level of fine in the Culpability table based on the aggravating and mitigating factors to be unhelpful and incredibly subjective. In addition, it was unclear as to how, when the importance of such factors was left to individual officers to determine, the Respondent's policy could "*ensure transparency, consistency and fairness*", as required by paragraph 2.1 of the policy.

87. As the Tribunal was obliged to follow the Respondent's own policy, and as the Tribunal had found that there was one more aggravating factor than mitigating factor, the Tribunal considered that the starting point on the Culpability table should be adjusted by one step to take it to the '*Lower mid-point Range*' of £525.

88. The Tribunal then went on to Step Three of the policy and considered whether the proposed level of penalty should be increased or decreased.

89. The Tribunal noted that the Respondent had at this stage, after hearing the Applicant's verbal representations, reduced each of the penalties from £2,500 to £2,100, taking into account the money incurred by the Applicant for the damage caused to one of the Properties.

90. The Tribunal had already reduced the amount of each penalty to £525 and noted that the Applicant had four properties from which he was receiving a rental income, albeit paying mortgages on the same, and, based on his representations, was employed, albeit on minimum wage. The Tribunal also noted that the Applicant had always queried the amount of the penalty rather than stating that he was unable to pay any penalty at all.

91. Accordingly, based on the evidence before it, the Tribunal chose not to make any further reduction to the level of each penalty.

92. As to whether the fine should be increased, the Tribunal accepted that it should not be cheaper to offend than to have obtained the licences and also noted that the level of the fine should meet the objectives of, not only the removal of any financial gain derived from the commission of the offences, but also be set at a level to punish and deter reoffending.

93. The Applicant had made his application to the new scheme online and confirmed that, had he known about the Scheme, he would also have made an online application for the same. As the cost of an online application to licence each property was £700, the Tribunal found that the cost of the penalties should not be less than this figure, as the penalties needed to remove any financial benefit that the Applicant may have obtained.

94. With regard to punishment of the offender and any deterrent effect, the Tribunal noted that, although the Applicant had failed to apply for the licences, such failure was not intentional and that the misunderstanding of the Scheme appeared to have arisen from informal advice that was given to the Applicant over the telephone in March 2023. The Tribunal considered that, had the Respondent been given information about the Scheme via a letter in March 2023, rather than via a telephone conversation, the Applicant would, more likely than not, have applied for the licences.

95. The Tribunal also noted that the Applicant had already applied for licences under the new scheme and had no record of previous poor management or dealings with the Respondent in relation to any properties he owned.

96. As such, based on all of the evidence, the Tribunal found that it would only be just and proportionate for each penalty to be increased slightly above the amount it would have cost the Applicant to obtain the licences (as a punishment for the failure to licence), so increased the level of each penalty by £100 to £800 per property.

97. The Tribunal found that there was no evidence that any reduction should be made in line with Step Four (Reductions for impact of the financial penalty on the offender's ability to comply with the law or make restitution to victims or on his employment of staff, service users, customers and local economy) or Step Five (reduction for early admission of guilt).

98. In relation to the final step, Step Six – the totality principle, the Tribunal noted that there was no reason to suggest that the imposition of a penalty of £800 in relation to each property was not just and proportionate.

99. Accordingly, the Tribunal found that the Final Notices should be varied to impose a financial penalty of £800 for each property.

Appeal Provisions

100. 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).

M K GANDHAM
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Judge Gandham