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|  |  | FIRST-TIER TRIBUNAL**PROPERTY CHAMBER (RESIDENTIAL PROPERTY)** |
| **Case references** | **:** | **CAM/33UB/HNA/2024/0600-0610** |
| **Properties** | **:** | **21a Guildhall Street, Thetford IP24 2DT****23a Guildhall Street, Thetford IP24 2DT****3 Glebe Close, Thetford IP24 2LJ****4 Glebe Close, Thetford IP24 2LJ****33 Glebe Close, Thetford IP24 2LJ****9 Whitehart Street, Thetford IP24 1AA****17a Whitehart Street, Thetford IP24 1AA****19a Whitehart Street, Thetford IP24 1AA****12 Raleigh Way, Thetford IP24 2JS****322 St Johns Way, Thetford IP24 3PA****323 St Johns Way, Thetford IP24 3PA** |
| **Appellant** | **:** | **Mohammed Rouf**  |
| **Respondent** | **:** | **Breckland Council** |
| **Type of application** | **:** | **Appeal against financial penalties – regulation 11 and schedule 2 to the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2004** |
| **Tribunal members** | **:** | **Judge M. Hunt****Mr R. Thomas**  |
| **Date of hearing** | **:** | **12 May 2025** |
| **Date of decision** | **:** | **12 June 2025** |

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| **DECISION** |

1. The Council’s decision to issue final notices and to impose financial penalties on the Appellant is confirmed.
2. Each final notice is varied to impose a financial penalty of £2,000 (reduced from £4,000). Accordingly, the Appellant must pay to the Council a total of £22,000.
3. The appeal having been brought after the expiry of the period for payment of each financial penalty, the penalties are due and payable immediately.

**REASONS**

**The appeal**

1. The Appellant is the landlord of the 11 properties the subject of this appeal (the “Appeal Properties”).
2. He appeals the Respondent Council’s decision to impose financial penalties in “final notices” dated 12 April 2024. The final notices were issued pursuant to regulation 11 and schedule 2 of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (the “Regulations”). The Regulations were made under powers conferred by section 122 of the Housing and Planning Act 2016.
3. The financial penalties were imposed for a failure to provide the Council (as local housing authority) with electrical installation condition reports (“EICRs”) for each Appeal Property within 7 days of request, contrary to Regulation 3(3)(c). All the required EICRs have now been provided to the Council.
4. A separate financial penalty was imposed in relation to each of the 11 Appeal Properties. The reason for each penalty was the same, as was the amount of the penalty – £4,000. The Appellant was therefore required to pay a total of £44,000 (11 x £4,000). Although, strictly speaking, the Appellant has brought 11 distinct appeals with each one allocated a separate case number, the appeals all raise the same issues and have been treated as one appeal by the Tribunal. Neither party has suggested there was any material difference in the circumstances relevant to each final notice or financial penalty. There are however slight differences of fact between each appeal, notably as to the date on which EICRs were in fact obtained by the Appellant for each Appeal Property and then provided to the Council. Where appropriate, the Tribunal has highlighted these differences.
5. In determining the appeal, the Tribunal considered a file prepared by the Appellant extending to 37 pages (plus his application form) and a file prepared by the Council extending to 389 pages. The files included witness statements presented by both parties, exhibits, relevant correspondence, a copy of the Regulations and relevant Council policies and both the initial “notices of intention” to impose financial penalties and the final notices. The Tribunal heard from the Appellant and his son and the Council and is grateful to both parties for their preparation and presentation of the appeal.
6. No inspection of the properties took place, it being unnecessary to the determination of the issues.

**The law**

1. The Regulations impose duties on a landlord as follows.
2. Regulation 3(1)(a) requires a landlord to ensure that the electrical safety standards in their properties are met when occupied by tenants. Regulation 3(1)(b) provides that a landlord must:

“*ensure every electrical installation in the residential premises is inspected and tested at regular intervals by a qualified person*”.

1. Regulation 3(1)(c) requires the first inspection to have taken place by 1 April 2021 (or before any new tenancy is entered into after that date). Regulation 3(2) specifies that an inspection must take place “*at intervals of no more than 5 years*”.
2. Regulation 3(3) requires the landlord to obtain and retain an inspection report. Regulation 3(3)(c) provides that a landlord must:

“*supply a copy of that report to the local housing authority within 7 days of receiving a request in writing for it from that authority*”.

1. Regulation 3 goes on to provide that, where the report indicates that the electrical safety standards are not being met, remedial work must be carried out within 28 days.
2. Regulation 11 is as follows.

“*(1) Where a local housing authority is satisfied, beyond reasonable doubt, that a private landlord has breached a duty under regulation 3, the authority may impose a financial penalty (or more than one penalty in the event of a continuing failure) in respect of the breach.*

*(2) A financial penalty —*

*(a) may be of such amount as the authority imposing it*  *determines; but*

*(b) must not exceed £30,000*”.

1. The procedure for imposing financial penalties is specified in schedule 2 of the Regulations. The Appellant was provided with a copy of the Regulations by the Council. No issues were raised in this regard and the Tribunal will not repeat the contents of the schedule.
2. Paragraph 5 of schedule 2 to the Regulations provides that any appeal to the First-tier Tribunal is to be a re-hearing of the local housing authority’s decision (which means that the Tribunal makes its own decision on the facts). However, the Tribunal will have full regard to the decision taken by the local housing authority and the reasons for it, accepting that it is primarily responsible for compliance with the Regulations in its area and for the application of its policies. The Tribunal will be slow to interfere in its decisions, doing so primarily when the decision was unreasonable or wrong because of an identifiable flaw in the reasoning, such as a gap in logic, a lack of consistency, or a failure to take account of some material factor, which undermines the cogency of the conclusion.

**The policy**

1. When deciding whether to impose a financial penalty and, if so, its amount, the Government expects local authorities to develop and follow published policies. The Council has done so, publishing its financial penalty policy in November 2021. It included a copy within its file of documents.
2. Broadly, the policy states that the Council will consider imposing a financial penalty in every case where a breach of duty has been identified and it is in the public interest to impose a penalty. The amount of penalty will take account of the severity of the breach of duty, culpability of the landlord, harm to tenants, punishment, deterrence and the removal of financial benefit that may have resulted from the breach.
3. The policy includes a table (or “matrix”), which correlates the level of harm caused by the breach of duty against the landlord’s culpability. An appendix to the policy provides guidance to assist with assessing the level of harm and culpability, between “very high” and “low”. The matrix indicates a “penalty band” for the breach. Each penalty band corresponds to a range of financial penalty. The higher the penalty band, the higher the range. For instance, penalty band 3 correlates to a range of penalty between £1,000 - £4,000. Penalty band 4 correlates to a range of penalty between £6,000 - £12,000. The policy provides an “assumed starting point” for each penalty, typically a little lower than the mid-point in the range, for instance £2,000 for penalty band 3, £8,000 for band 4.
4. Once the starting point for a penalty has been determined, the policy provides for adjustments downwards or upwards, where appropriate. This is notably to address the level of co-operation shown by a landlord in relation to the breach. The policy provides for adjustments to reflect set increments laid down in the matrix, for instance £1,000 increments in penalty band 3, £2,000 in band 4. The starting point can be adjusted down by one increment, remain the same, or be adjusted upwards by 1 or 2 increments.
5. The policy then directs the Council to consider the “totality principle” in cases where more than one penalty has been imposed, such as the present. This is to ensure the total penalty is just and proportionate in all the circumstances.
6. Finally, the policy requires a Council to consider the landlord’s ability to pay a financial penalty when setting its level.

**The issues**

1. No issues have been raised about the Council’s compliance with the procedural requirements of the Regulations relating to the “notices of intent” to issue financial penalties or the “final notices”. The Tribunal is satisfied of compliance, even if timescales were longer than envisaged in the Regulations.
2. The Appellant admits that he did not have the necessary EICR for each Appeal Property. He accepts that the Council asked him for these and that he did not provide them within 7 days as required by the Regulations.
3. The Appellant contends that it was unfair to issue the financial penalties and they should be set aside. If not, the penalties should be reduced as he believes his culpability should be considered “low” and the level of harm posed by the breach should also be considered “low”.
4. He says that he had not been informed by the Council of the Regulations or deadline for having an EICR. He says he had been unable to obtain the EICRs earlier for various reasons, including challenges posed by the covid-19 pandemic and electrician availability. He submits that, as soon as he was asked for them, he instructed his usual electrician to inspect his properties and provide the requisite EICRs. There was evidently a delay in preparing an EICR for each of his rental properties as he owns many of them. He says that his electrician provided the EICRs as quickly as he was able to conduct the inspections, bearing in mind his other professional and personal commitments.
5. The Appellant’s chosen electrician provided a witness statement explaining this situation and also his personal knowledge that at least some landlords are still unaware of their obligations under the Regulations. He also confirmed that none of the “sockets” or “electrical appliances” in any of the 11 Appeal Properties was in a dangerous condition or showing risk of fire.
6. The Appellant also says that he has a good record of compliance with Council requests for action and that it was unfair for the Council to rely on unrelated enforcement action in determining the level of penalty.
7. The main issues for the Tribunal to determine are therefore as follows.
* Whether it was appropriate to impose a financial penalty.
* If so, what the level of penalty should be in the circumstances.

**The facts**

1. Most of the facts relevant to this appeal are uncontroversial. On the few times the Tribunal has had to make findings, it has done so on the balance of probabilities in light of all of the evidence. For the avoidance of doubt, the Tribunal has found “beyond reasonable doubt” that the Regulation 3(3)(c) duty had been breached, although the facts were admitted so no real findings were necessary.
2. The Appellant owns numerous rental properties in the Thetford area. He has done so for many years. He does not employ agents to assist him with managing the properties, although his children help out to differing degrees. Some of the Appeal Properties have been let to the same tenants for many years. Others have had less stable occupation over the years. All were required to have an EICR at the latest by 1 April 2021.
3. The Regulations came into force in June 2020. The Council did not personally notify the Appellant about this. It hosts “landlord forums” where information about the Regulations is provided, has a website where relevant information for landlords is available and employs a dedicated housing team that is available to answer questions and provide guidance to landlords.
4. The Council expects landlords to know about their obligations and to comply with them. It does not routinely request all landlords in its area to provide EICRs. It asks for them when it deems it appropriate to do so, such as where it has concerns about electrical safety in any of the landlord’s properties.
5. In 2020, the Appellant’s son, Tarek, had arranged to obtain some EICRs for several of his father’s properties. Tarek had been assisting with the management of his father’s rental properties whilst he was abroad. On his return, the Appellant took over full management once again and commissioned no further EICRs at that time, preferring to wait for any Council requests for action.
6. In August 2022 the Council received a complaint from a tenant of premises at 10 Glebe Close in Thetford (not one of the Appeal Properties). The Appellant (or his son) was their landlord. The electrical installation was found to be deficient. The reasons for this are irrelevant for present purposes. It is sufficient to note that an Improvement Notice was issued in October 2022 citing “category 2 hazards” relating to electrical safety. Subsequently, an Emergency Prohibition Order was issued on 23 December 2022 as the electrical safety issue was now considered a “category 1 hazard” posing an imminent risk of serious harm. This was not the only engagement the Council had had with the Appellant about his rental properties.
7. The Council decided to call the Appellant to an informal meeting on 7 March 2023. At the meeting, the Council explained to the Appellant some of a landlord’s obligations, including in relation to electrical safety. It requested EICRs for all of his rental properties. The Appellant gave the Council a list of 9 properties he managed. The Council discovered that the Appellant in fact managed many more rental properties and asked for the EICRs for all of them in an email dated 29 March 2023. The request was specifically said to have been made under the Regulations and further information about them was provided, including a hyperlink to the text of the Regulations. The email stated that the Council could impose financial penalties of up to £30,000 if the requests were not complied with.
8. In parallel, the Council had concerns about the Appellant’s compliance with several Improvement Notices. This is not relevant for present purposes, save that it helps to explain why a further informal meeting with the Appellant was arranged for 4 October 2023.
9. The EICRs were discussed at that meeting and the Appellant said that he had supplied copies as requested. This was not true. Some had been provided, but not relating to all of his rental properties. The Appellant had attended the meeting with his son and the Council felt that the Appellant’s son had reacted entirely inappropriately at the meeting, not only by lying about the EICRs but also by accusing the Council’s officers of “incompetence” in their failure to locate the EICRs. This was of course wholly misleading as neither the Appellant nor his son had sent the EICRs to the Council. The Appellant’s son explained at the hearing that he had called the Council’s officer(s) incompetent and that this arose out of frustration. The Tribunal took his account as amounting to a belated apology.
10. After the meeting, the Council tasked one of its officers with compiling a list of the properties for which an EICR had been received and those for which one had not been received. On 10 October 2023 an updated list of properties was provided to the Appellant. The officer sent a further formal request for the missing EICRs on 17 November 2023, providing a list of properties for which an EICR was still awaited. Some were provided over the following weeks, within a few days in the case of properties managed by the Appellant’s son, Belal. No enforcement action was taken in relation to those late EICRs. By 12 December 2023, 12 EICRs were still to be provided.
11. On or around that date, the Council determined to issue a “notice of intention to issue a financial penalty” in relation to each of those properties for the failure to provide copies of the EICRs. The notices were issued on 19 December 2023, stating the Appellant had breached his Regulation 3(3)(c) duty. The date of beach was identified as 7 December 2023.
12. An email from the Appellant’s chosen electrician dated 16 December 2023, forwarded to the Council the same day, states that he had booked in further property inspections, but would be unable to undertake them until 20 January 2024.
13. No representations were received from the Appellant in relation to the notices of intention. On or around 12 February 2024 the Council determined to impose financial penalties. It is unclear why there was a delay in issuing final notices. In any event, the Appellant telephoned the Council on 5 March 2024 in relation to various issues, including the missing EICRs. The Appellant stated that these had now been provided to the Council. Again, this was untrue. The Council checked this and wrote back on 6 March 2024 highlighting the 12 missing EICRs. Some were then provided the same day, notably the EICR relating to 12 Raleigh Way (which was apparently issued on 18 July 2023) and 23a Guildhall (which was apparently issued on 24 October 2023). On 12 March 2024, EICRs were provided for the 2 St Johns Way properties, which were issued on the same day. Others followed after inspections in April and May 2024.
14. Eventually, on 12 April 2024 the final notices were issued imposing the financial penalties. The Tribunal understands that 1 was subsequently withdrawn or amended as the Appellant was not the landlord of that property; all that matters is that only 11 of the financial penalties are the subject of this appeal. In response, the Appellant’s son suggested that one of the EICRs (relating to 21a Guildhall) had been provided to the Council on 19 October 2023. The Tribunal saw no further evidence of that. As the Appellant and his son had a history of misleading the Council about the provision of EICRs and the Council was keeping a close eye on the EICRs received, the Tribunal found the EICR was not sent on 19 October 2023 as suggested.
15. In deciding to impose the financial penalties, the Council determined that the Appellant had demonstrated “medium” culpability in line with its policy because the breach of duty resulted from the Appellant having no routine to ensure safety or regulatory compliance of his properties and a haphazard approach to complying with enforcement action. It decided the breach of duty had entailed “medium” harm because, although an EICR itself does not prevent electrical safety incidents, it provides a means of mitigating that risk through inspection and remediation.
16. The Council applied its policy, identifying from the matrix that penalty band 3 was appropriate. It took the “assumed starting point” of £2,000 and adjusted it upwards by 2 “increments” of £1,000 on account of the Appellant’s significant lack of co-operation and obstructive behaviour. The Council’s approach was summarised as follows. “*We did not simply request* [the EICRs] *once and then impose a draconian penalty, we repeatedly requested them to a point where it became ridiculous*”.The Council then considered the “totality principle” and the information available to it about the Appellant’s income and determined that a financial penalty of £4,000 per property was appropriate, believing that the Appellant’s ongoing and continued failure to produce EICRs, despite the Council’s informal and formal interventions, justified the level of the cumulative penalty as otherwise it would not be a sufficient deterrent or fair to compliant landlords.

**Conclusions**

**The breach of duty**

1. It was not in dispute that the Appellant had not provided EICRs for the Appeal Properties within 7 days of request in March 2023. Indeed, he could not have done so as they did not exist. They were again not provided within 7 days of a further formal request in November 2023. Again, most still did not exist by that point.
2. The Tribunal therefore found, beyond reasonable doubt, that the Appellant had breached the Regulation 3(3)(c) duty to supply the Council with copies of the requested EICRs.
3. There is no reference in the Regulations to the duty being subject to any potential “reasonable excuse” for non-compliance. Nonetheless, it is no doubt a relevant consideration.
4. In relation to whether the Appellant breached the duty, he may or may not have been aware of the requirement to have an EICR prior to March 2023, but it is incumbent on a landlord to familiarise themselves with their responsibilities. The Council could have done more to notify the Appellant of his responsibilities, but a landlord (especially one responsible for a large number of rental properties) is expected to show proactivity in relation to regulatory compliance. It is not acceptable or reasonable for a landlord to be purely reactive to a council’s requests or enforcement action. Not having the EICRs, and therefore not being able to provide copies, due to ignorance of the Regulations, is not a “reasonable excuse”. This is sufficient to establish that the breach occurred.
5. Additionally, the Tribunal noted that the Appellant had chosen not to commission any further EICRs after his son had obtained 5 in 2020. He could have made further enquiries at this point. He also has a long-term relationship with his chosen electrician, who would clearly have been able to provide any information about the Regulations if asked (assuming he had not done so).
6. Furthermore, and in any event, the Appellant’s evidence is entirely contradictory about when he became aware of the requirement. In his appeal form, he stated that he “*was unable to get reports between 2021 and 2023 due to covid, tenants not giving access to property in 2022*”. If that was the case, he must have known about the requirement in 2021, else he would not have thought to seek EICRs. If he did simply want EICRs irrespective of the Regulations, this is not supported by any evidence. The Tribunal does not accept that it was impossible to find an electrician to provide the necessary EICRs to a reasonable timescale at any point between 2021 and March 2023 or to obtain access to the Appeal Properties at any point in this period for that purpose. Even if he wished only to commission his preferred electrician, there was ample opportunity to do so. So, if in fact the Appellant had known about the requirement, the Tribunal found that it was the Appellant’s inaction that resulted in him being in breach of the Regulations, not any difficulties in arranging the necessary inspections. That is clearly not a “reasonable excuse” for a breach.
7. The breach clearly having been established and the Tribunal being satisfied that there was no reasonable excuse for it, there are 2 main issues for the Tribunal to consider: whether it was appropriate to impose financial penalties, and, if so, whether the penalties imposed were appropriate.

**The imposition of a financial penalty**

1. The Tribunal noted that it must give some deference to the Council’s decision, as the local housing authority responsible for ensuring compliance with the Regulations in the local area. The Tribunal took account of the Council’s policy to consider issuing financial penalties whenever a breach of duty is identified if it is in the public interest. The policy refers to criminal offences, which does not strictly apply to breaches of the Regulations. However, ensuring compliance with regulations relating directly to tenant safety clearly is of a similar nature, even if possibly of slightly reduced severity.
2. In this case, EICRs had been required since 2021. The Appellant had not commissioned any in respect of any of the 11 Appeal Properties (and many more rental properties besides) by that time. The Council notified the Appellant of the requirement in March 2023, both orally and in writing. The Appellant’s family had prior knowledge of EICRs, as the Appellants son had arranged for several to be produced in 2020. The Appellant had chosen not to commission any more. The evidence suggests that this was a wilful decision that the Appellant took despite knowing of the requirement. Even if he was not aware, when provided with the opportunity in March 2023 to bring himself into compliance with the Regulations, he did not. He was warned about the possible imposition of a financial penalty.
3. At a further meeting in early October 2023, rather than explain any difficulties he may have been facing in getting all the inspections completed, the Appellant lied to the Council about having obtained and supplied the EICRs.
4. By 17 November 2023, less than a third of the requested EICRs had been provided to the Council. By 7 days later, indeed by 12 December 2023, none of those relating to the 11 Appeal Properties had been provided. Some remained outstanding until at least May 2024, over a year after initially being requested.
5. It was evident that the Appellant had clearly and persistently breached the Regulation 3(3)(c) duty. There was no reasonable excuse for that. The Council has clearly not been overly zealous in its approach to enforcement, quite to the contrary. It has been extremely flexible in allowing many months to pass, and in investing much of its officers’ time, in pursuing what should be a very straightforward request, which the Regulations require to be satisfied within 7 days. Despite having clear grounds to consider issuing further penalties, the Council took a very pragmatic decision to take no action in relation to the majority of the Appellant’s properties, where the same breach had occurred, but where the Appellant had finally brought himself into (sometimes very) belated compliance. Exercising an element of flexibility is no doubt appropriate before it becomes in the public interest to issue financial penalties. The Council has taken that fully into account.
6. The Tribunal is entirely satisfied that the Council acted appropriately in determining to issue financial penalties. The Tribunal reached the same conclusion.

**The amount of the penalty**

1. The final issue for the Tribunal is to address how the Council’s policy was applied and whether the penalty imposed was appropriate. Again, due deference should be afforded to the Council in this regard.
2. The Tribunal noted that the Council had issued financial penalties specifically for a breach of Regulation 3(3)(c). This is a duty to provide copies of a property’s EICR within 7 days. In reality, the Council was as much concerned by the Appellant’s failure to have commissioned the reports (a breach of Regulation 3(1)(b)). Much of the Council’s reasoning applies to either breach, certainly as far as the assessment of culpability is concerned. However, less so in relation to the assessment of harm posed by the breach.
3. A breach of Regulation 3(3)(c) may well reveal a breach of Regulation 3(1)(c) (as ultimately happened in this case), but they are not the same breach. On imposing a financial penalty, an element of procedural rigour is paramount. A landlord must know the case it has to address, determine whether to challenge it, and, if so, what resources to allocate to that challenge. It is not the Tribunal’s role, nor would it be fair or appropriate for it to, “substitute one breach for another” on appeal. Certainly not in cases where the breaches are clearly distinct and there is no typographical or similar error in any notice.
4. This is not an academic point. For instance, at least in respect of 12 Raleigh Way (for which an EICR was apparently issued on 18 July 2023) and 23a Guildhall (24 October 2023), both appear to have had in place an EICR by 7 December 2023. This is the date on which the Council determined to assess whether a breach of the Regulations had occurred. There had clearly been a breach of duty in relation to both properties for a sustained period, both under Regulation 3(1)(b) and 3(3)(c), but the only breach subsisting on 7 December 2023 (at least in relation to these 2 properties) was of the Regulation 3(3)(c) duty. As that is the breach that was actually acted upon, the matter is of limited real relevance to the appeal. However, it demonstrates that not all of the Council’s reasoning was focussed on the correct issue. The Tribunal therefore determined it should scrutinise that reasoning and conclusion fully and depart from it if appropriate.
5. The Tribunal found that the Appellant’s failure to inspect the Appeal Properties was a more serious breach of duty than his failure to provide copies of the EICRs to the Council. This is due to the more direct risk to which his tenants might have been put. However, the Tribunal recognises that compliance with Regulation 3(3)(c) is the Council’s main method through which to assess compliance with other duties in the Regulations. That purpose should not be minimised. The Regulations provide that a similar financial penalty can be imposed, presumably precisely for that reason. It is therefore not greatly less serious a breach.
6. As to culpability, the Tribunal considers the Council was right to consider the Appellant to have “medium” culpability. Whether or not the breach is of Regulation 3(1)(b) or 3(3)(c), largely the same considerations apply. He clearly had no routine to ensure regulatory compliance. When found lacking, rather than engage properly with the Council to address the issues and explain what he was going to do, he lied and allowed his son to accuse its officer(s) of incompetence. Despite his arguments to the contrary, the Appellant has a chequered recent history of regulatory compliance. The Council has been led to take enforcement action, including imposing a separate financial penalty for unrelated matters. It has not been appealed. It was not for this Tribunal to investigate those matters at length and they are of limited relevance. None of the breaches of duty that have resulted in this appeal were isolated as the Appellant was in breach in relation to most of his rental properties over a significant period of time. He was made aware of his responsibilities towards the Council and given ample time to remedy the breaches. He did so with no urgency. Arguably, the Council could have considered the Appellant’s culpability to be “high” in accordance with its policy, but the Tribunal accepted its assessment of “medium” culpability.
7. As to the level of harm posed by the breach, in light of the specific breach alleged – of Regulation 3(3)(c) – the Tribunal found it had to depart, to an extent, from the Council’s analysis. There was no direct, significant risk of harm to tenants through a failure to provide a EICR to the Council. The example of 12 Raleigh Way is useful to demonstrate the point. The EICR existed, so the risk to tenants had been mitigated (assuming any identified remedial work had been undertaken, a matter about which the Tribunal had no evidence). However, as explained above, the Tribunal accepted that there was an indirect risk to tenants, as the main route through which to ensure compliance with the Regulations is through the provision of EICRs to the relevant local housing authority. The Tribunal found that the level of harm was not “low”, as submitted by the Appellant. The ramifications of the breach were not at all reflected in the definition of “low” harm in the policy appendix. They sat more easily within the “medium harm” description, although there was little by way of direct correlation, save potentially as to undermining confidence in the local letting market. The Tribunal determined that “medium” was the appropriate harm classification, but towards the lower end of “medium”.
8. According to the policy matrix, the Tribunal found that penalty band 3 remained the appropriate reference point for the financial penalty. However, the penalties within that range are from £1,000 - £4,000. Just because the policy provides for an “assumed starting point” does not mean the penalty must be that figure. The Tribunal had concluded that the level of harm caused by the breach was towards the low end of medium. It concluded that the penalty should equally be at the low end of the range provided for in penalty band 3, i.e. £1,000.
9. It was entirely right to determine that 2 “increments” should be added to the penalty in light of the Appellant’s conduct and the amount of work to which the Council was put in chasing up a straightforward request for sight of EICRs and then being led to take enforcement action.
10. In relation to the “totality principle”, the Tribunal agreed that a separate penalty should be imposed in relation to each breach. It is not appropriate that a landlord with a large number of properties should be able to “dilute” any penalty mainly due to the number of properties they manage. However, it is similarly inappropriate to penalise that landlord for their behaviour, as unhelpful and obstructive as it may have been, by applying a full “increment” (or uplift) to each penalty on account of the same behaviour. The Council was put to additional work by the Appellant’s obstructive behaviour, but the breaches were dealt with largely together, whether in oral or written communications. Even the financial penalty notices themselves were almost identical to each other and were issued at the same time. The Tribunal determined the Council had failed to consider these issues. The most appropriate way to apply the totality principle in this case was to apply a 50% deduction to the “increments” to address this element of duplication.
11. Accordingly, the appropriate penalty for each breach is £2,000. £1,000 based on each breach warranting a penalty at the bottom end of penalty band 3, increased in each case by £1,000 due to the Appellant’s conduct (“increments” of £2,000 being justified, but reduced by 50% to £1,000 due to the application of the “totality principle”).
12. The Tribunal was satisfied of the Appellant’s ability to pay, noting that his income was significant, significantly higher than that assessed by the Council, and that the penalty had been halved.
13. In consequence of the above, the financial penalties are reduced from £4,000 to £2,000 for each property, amounting to a total of £22,000.

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| **Name:** | **Judge M. Hunt** | **Date:** | **12 June 2025** |

**Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).