FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	:	MAN/00BR/HNA/2024/0072
Property	:	Apartment 8, Islands 312 Liverpool Road, Eccles, M30 0RY
Applicant	:	David Morrisey
Respondent	:	Salford City Council
Representative	:	Ms Lucie Woods (counsel) Mr Paul Scott (solicitor)
Type of application	:	Appeal against a financial penalty – Section 249A & Schedule 13A of the Housing Act 2004
Tribunal member(s)	:	Judge J White J Elliott (Valuer)
Venue	:	Video: Northern residential Property First-tier Tribunal, 1 floor, Piccadilly Exchange, 2Piccadilly Plaza, Manchester, M1 4AH
Date of hearing	:	2 July 2025
Date of decision	:	28 July 2025

DECISION

The Order

(1) The financial penalty of £7500, in respect of the offence under section 95(1) of the Housing Act 2004 is reduced to £6,500.

The Application

1. Mr David Morrisey is the owner and landlord of, Apartment 8, Islands 312 Liverpool Road, Eccles, M30 0RY, the "Property".

2. On 14 August 2024, he made an application against a financial penalty issued by Salford City Council ('the Council') made under section 249A of the Housing Act 2004 (the 2004 Act).

3. On 12 March 2023, a procedural judge issued Directions. In compliance with Directions the Council submitted a bundle of documents as set out below. David Morrisey made some written comments on the response and on 27 June 2025 the Council submitted a skeleton Argument, together with authorities bundle and a second brief witness statement.

The Hearing

4. This Tribunal convened 2 July 2025 to determine the matter by video. The Applicant, David Morrisey appeared in person. The Respondent was represented by Lucie Woods of counsel. The Respondent's witness was in attendance and provided evidence as set out below.

Law and Guidance

5. In summary section 249A of the Housing Act 2004 ("2004 Act") inserted by the Housing and Planning Act 2016, enables a local housing authority to impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a 'relevant housing offence' in respect of premises in England.

6. Relevant housing offences are listed in section 249A(2). It includes section 95 which provides that (1) it is an offence to have control of or manage a house which is required to be licensed under s85, the Selective Licencing provisions, and is not so licenced. (2) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

   (a) A temporary exemption notification had been given in respect of the house under section or
   (b) an application for a licence had been duly made in respect of the house.

7. The selective licencing applies if a house is within a designated selective licencing area and is occupied under a tenancy, in accordance with S79(2)

8. The Council have a number of obligations in respect of Selective Licensing areas. Section 85(4) provides that the local housing authority must take all reasonable steps to secure that applications for licences are made to them in respect of houses in their area which are required to be licensed but are not so licensed.

9. Amongst other things, Section 87 provides that (1) an application for a licence must be made to the local housing authority, (2) the application must be made in accordance with such requirements as the authority may specify, (3).

10. A Person Having Control is defined by s263(1) as a person who receives the rack rent (rent not less than two thirds of the value. A Person Manging is defined by s263(3) and includes a person who is the owner or receives the rent.

11. Schedule 13A to the 2004 Act sets out the procedure which local housing authorities must follow in relation to financial penalties imposed under section 249A. Before imposing such a penalty on a person, the local housing authority must give him or her a notice of intent. Unless the conduct to which the financial penalty relates is continuing, that notice must be given before the end of the period of six months beginning on the first day on which the local housing authority has sufficient evidence of that conduct. That person may make written representations within 28 days. After the end of the period the Local Authority must decide whether to impose a financial penalty, and if a penalty is imposed the amount.

12. The Tribunal may confirm, vary, or cancel the final notice. However, the Tribunal may not vary a final notice so as to make it impose a financial penalty of more than the local housing authority could have imposed, which is a maximum of £30,000.

The Applicants Case

13. The Applicant relies on his grounds in the Application, together with the annotated response and oral evidence as set out below. During oral evidence he made a number of concessions.

The Respondents case

14. The Respondent relies on two bundles containing a response, witness statements by lead practitioner Sarah Hughes, together with all documents served. Oral submissions were made at the hearing by Lucie Wood. The Council's witnesses confirmed their statements and gave oral evidence.

The issues

15. The issues raised by the appeal are from 1 March 2024 to 11 April 2024:
    (a) Has David Morrisey committed an offence under section 95(1) of the 2004 Act of failure to licence a house that was required to be licensed. That is;
        (i) Was the Property in a Selective Licencing Area;

(ii) Was it occupied under a tenancy agreement,
(iii) Was David Morrisey the Person managing or Person Having Control.
(iv) Did he make an application for a licence in accordance with the Councils procedure,

(b) If so, did he have a reasonable excuse for not applying for a licence
(c) The level of any Penalty

16. David Morrisey accepts that he is required to licence the Property and that it falls within the Council's Selective Licensing areas and he has not done so. David Morrisey did not specifically say that he was guilty of the offence and raised issues that may amount to a reasonable excuse.

17. David Morrisey did not make any written representations in response to the Notice of Intention and did not attend the telephone PACE interview.

18. David Morrisey contended that the level of penalty was too high.

Findings

19. David Morrisey purchased the Property on 14 April 2005. He purchased it for the purpose of renting it to tenants. It has been let since that date. It is a two bedroom apartment in a block of eight. David Morrisey had appointed a managing agent, to manage the Property (The Agent).

20. On 24 May 2022, the Council approved the designation of a Selective Licensing Scheme for all privately rented properties within parts of Eccles. The Property was within the designated area. The designation came into effect on 1 September 2022 and lasted for five years. Selective Licensing applies to all privately rented accommodation in the designated area. The area had previously been in a designated area from 2015 to 2020, and David Morrisey had obtained a licence through his then managing agent.

21. On 24 June 2022, the Council sent a letter to David Morrisey's home address in Dublin, advising him that a licence was required. On 2 July 2022 David Morrisey emailed the Council and queried why he needed a licence when he only rented out a one-bed apartment to a single household. He also advised that the Agent managed the Property for him [48]{3}{5}. Around that time his long term managing agent had been taken over by the Letting Group. On 22 May 2023, the Agent started the online application [7B2]. On 28 July 2023, the Agent emailed the Council to confirm that they had to withdraw their application for a licence and withdraw from managing the Property on the following basis:

"'I have chased the landlords several times on pursuing their selective licence application. Unfortunately, they have provided no acknowledgement of the application process. I am unconfident they will fulfil their duty to secure one. As such, we cannot knowingly manage a property without the licence in place or the intent to fulfil their obligation as a landlord. Please may you forward any communication regarding 8 The Islands Licence directly to the landlord.' [4][61]

22. On 2 August 2023, the Council emailed David Morrisey to advise him he was required to complete the application, register himself as a licence holder and register any new manager. They sent a further 5 emails. Some were in response to David Morrisey's queries. The Council advised how to make the application and that he must appoint someone in the UK to be the manager. On 7 November 2023, David Morrisey emailed to say he was intending to sell the Property in the new year.

23. On 30 November 2023, the Council issued a Tenancy Exemption Notice (TEN) for three months. On 29 January 2024, the Council emailed advising the David Morrisey to apply for another TEN or a License. They sent a reminder on 11 March 2023, and set out the consequences of failure to apply. The Landlord replied that he had not sold, and he was unable to apply as he was outside the UK. The following day the Council advised him again he could appoint a manger in the UK. On 19 March 2023 he was invited to attend a PACE interview on 11 April 2023. Despite emails between the parties, and numerous attempts, the Council was not able to contact David Morrisey by telephone for the interview.

24. On 17 June 2024, the Council sent a Notice of Intent. The Landlord did not respond. On 25 July 2025, the Council sent a Final Notice of a Financial penalty of £7500. The Notice stated that the risk of harm was low, culpability was medium and there were no other factors to take into account.

25. David Morrisey has not since applied for a Licence. It has remained let to tenants. At the date of the hearing, he had accepted an offer to buy the Property and had instructed a conveyancer.

Determination: Overall Factors

26. The Tribunal is grateful to David Morrisey as a litigant in person, in the way he conducted himself in the hearing, accepted the majority of the witnesses' evidence, and conceded a number of points. However much of his evidence, was not supported by specifics and at times contradictory, particularly as his arguments were not supported by documentary evidence. He provided little explanation as to why he had not submitted the application and admitted that at some points he had "buried his head in the sand."

27. The Respondents case was largely cogent, credible, and largely substantiated by other evidence. They did not set out fully every stage of their decision making in their own Policy, though were able to answer questions about this.

28. As this is a rehearing, we had the benefit of evidence and submissions from David Morrisey. We could take this into account when deciding the level of penalty. However, we are looking at circumstances at the date of decision. We should also give due deference to the Council's decision, the extent of the deference is dependent on whether we have new evidence, not available to the

Council. We must consider if the decision was wrong at the time it was taken (*LB Waltham Forest v Hussain and others* [2023] EWCA Civ 733).

The Offence

29. The Tribunal is satisfied beyond reasonable doubt that from 1 March 2024 to 11 April 2024, David Morrisey had committed an offence under section 95(1) of the 2004 Act of failure to licence a house that was required to be licensed. It was required to be licenced in accordance with s85 of the 2004 (Selective Licensing). Our reasons are as follows:

    (a) The Property was in a Selective Licencing Area. The area was designated on 24 May 2022, effective from 1 September 2022. This was not in dispute and evidenced in the bundle [55] and [9RB2].

    (b) The Property was required to be licenced as he was renting the Property to tenants during the relevant period. Though, the was a dispute about the number of tenants, David Morrisey accepted that he let the Property under a tenancy agreement and two people occupied the Property.

    (c) He had control of and was managing the Property, as he was the Landlord named in the undated tenancy agreement, received the rent and jointly owned the Property. Though, David Morrisey originally queried the need for a licence, in oral evidence he accepted that he did not have a licence, and one was required under the scheme.

    (d) The Council had complied with Notification requirements by direct notifications on 1 December 2022 and numerous occasions before the offence as set out above.

    (e) The Council are entitled to have their own procedures, though they "must take all reasonable steps to secure that applications are made" in accordance with s85(4). The Council had notified David Morrisey of the requirements to obtain a licence under the Selective Licencing Scheme as early as 1 December 2022 [53] and did not issue a Notice of Intention until 18 months later. Though they were not available when David Morrisey phoned the office, they clearly set out the requirements and process on how to make the application a number of times by email. They offered to assist David Morrisey to make the application and answered all questions by email.

    (f) David Morrisey did not have a statutory defence under section 95(3)(a). The 3 month Temporary Exemption Certificate had expired on 29 February 2024. He did not apply for another one. This issue was accepted by David Morrisey in oral evidence.

(g) David Morrisey did not have a statutory defence under section 95(3)(b). The application was not "duly made" prior to the Notice of Intention on 16 June 2024. Nor was it duly made by the date of the Final Notice dated 25 July 2024. Though the application had been started it was closed on or before 29 January 2024, the date of the TEN [7/RB2]. David Morrisey conceded that:

(i) He had not applied for a licence.
(ii) Though his Agent had initially started the application on 22 May 2023, by 28 July 2023, they were no longer the managing agent and the application was later closed.
(iii) He had not been able to make the application, as he had not appointed someone in the UK to manage the Property, though had considered asking friends, he did not do so or seek to appoint a new managing agent.
(iv) The Property continued to be rented to tenants.

(h) The offence of managing or having control of an unlicensed house is one of strict liability as supported by the Divisional Court in the joined cases of *R (Mohamed) v Waltham Forest LBC, Secretary of State for Housing, Communities and Local Government (HCLG) intervening* and *R (Mohamed) v Wimbledon Magistrates' Court, Waltham Forest LBC et al, Secretary of State for HCLG intervening* [2020] EWHC 1083 (Admin). It found that the offence did not require proof of a defendant's *mens rea* (intension). Further, information stating the bare elements of the offence satisfied statutory requirements and enabled the Magistrates' Court to discharge its obligations when issuing summonses. This is supported by the Upper Tribunal held in *I R Management Services Limited v Salford City Council [2020] UKUT 81 (LC),* at [27], and *Adil Catering v City of Westminster Council [2022] UKUT 238 (LC)*.

Reasonable excuse

30. We are referred to *I R Management Services Limited v Salford City Council [2020] UKUT 81 (LC)* the burden of proving reasonable excuse is on the person seeking to rely on it. Similarly, as established in that case, the standard of proof, in terms of the defence of reasonable excuse, is balance of probabilities.

31. We are referred to *Marigold v. Wells* [2023] *UKUT 33 (LC)* where the UT Tax Chamber provided guidance in relation to the defence of reasonable excuse. At 81 they said.

"When considering a "reasonable excuse" defence, therefore, in our view the FTT can usefully approach matters in the following way:(1) First, establish what facts the taxpayer asserts give rise to a reasonable excuse (this may include the belief, acts or omissions of the taxpayer or any other

person, the taxpayer's own experience or relevant attributes, the situation of the taxpayer at any relevant time and any other relevant external facts).(2) Second, decide which of those facts are proven.(3) Third, decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so, it should take into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times. It might assist the FTT, in this context, to ask itself the question "was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?"'

32. *The Borough Council of Gateshead v City Estate Holdings Ltd* [2023] UKUT 35 (LC) it was held that the burden of proof is a personal one for David Morrisey to discharge. In that case it was found they could have instructed agents or researched the position themselves, and they had not done so.

33. We have found that David Morrisey has not shown a reasonable excuse for the following reasons:

    (a) David Morrisey contends that he gave the Agent consent to apply for a licence and 'assumed it was sorted' [7]. However, in oral evidence he conceded that he was aware that they had not completed the application and acknowledged that he had received all the correspondence from the Council informing him that he was required to complete the application and had not done so.

    (b) David Morrisey contends that his inability to apply for a licence on the basis of not being a UK Citizen constitutes discrimination [8]. David Morrisey had raised this issue on 2 October 2023 [73]. The Council had previously sent links to the guidance and application process and specifically said on 27 October 2023 he was required to appoint someone in the UK, such as a letting agent or friend [72]. Having to appoint someone in the UK is not required by legislation. Though the Tribunal is not the forum to bring a discrimination claim, any discriminatory procedures that unjustifiably prevents a particular protected group from making an application may lead to a finding of reasonable excuse. However, we found that the Council's reasons for doing so were justified, namely that they had a duty to ensure enforcement and that "*A Landlord would struggle to comply with some of the licence conditions when they live outside the UK*" [76] This is the same approach of many local authorities. The requirement to appoint an agent, as David Morrisey acknowledges was not prohibitive. He accepted that the cost was 10% of the rent (£55 per month). He had done so for a number of years and only stopped due to a break down in the relationship. He had not looked for an alternative agent. Though, he said he operated at break even, the level of profit margins does not take precedence over ensuring housing conditions are

maintained. It does not amount to a reasonable excuse.

(c) David Morrisey contends that the Council had not responded to telephone calls. David Morrisey indicated that if he had been able to talk to the Council he could somehow have reached an agreement on this; that he had made various calls, but none had been returned until he spoke to Sarah Hughes sometime after the offence. Sarah Hughes said that there were no notes on the system that he had called and left a message. Though they had provided a mobile, David Morrisey could not say if he had called that. Sarah Hughes had been able to contact him when he had left a message after the financial penalty notice and consequently, they had the correct number on their system. The Tribunal found that David Morrisey was not able to provide details of when he called, why he was calling, how it would affect the application. Though that may have been reason for some delay, it did not prevent him making an application as the Council had clearly provided all information to enable an online application. This method did not hinder his ability to apply for a licence. The Council had offered to provide assistance if required. David Morrisey said in oral evidence that he was able to correspond by email and apply for a licence online.

(d) David Morrisey contends that he had tried 'various avenues to remedy but to no avail' [8] He had previously "been ripped off" by letting agencies [76]. In oral evidence, David Morrisey said that he had a good long standing relationship with an agent, this broke down when it was taken over as, though the 10% fee did not increase, the cost of repairs in some cases doubled. He initially said he did not try and appoint another agent due to the cost, then that he had his own business, was working 60 hours a week and had "buried his head in the sand". He had considered approaching friends but realised it was too onerous. He had not contacted any other letting agency. It was only in late 2023 that he decided to sell. It was made clear in a letter of 9 January 2024 that he could apply for another TENS. He did not do so. The Tribunal found that, as such, he had made little attempt to make the application. He had a personal responsibility to do so.

(e) David Morrisey contends that he had applied for a TEN '*as we were considering selling the property as it is becoming too hard to manage things, but my wife's father passed away after Christmas, so we put things on hold*' [8]. The Tribunal accepts that this bereavement may have caused a slight delay. However, David Morrisey could not explain why he had not put it on the market earlier, if that had been his intension, why they had delayed the sale until a year later, he had only recently put it on the market and accepted an offer of £118,000, and why he did not apply for another TEN which would have been a straight forward process. Though he said that his tenant was going to buy the Property, but this had fallen through when she became pregnant, this does not explain or

provide a reasonable excuse for the long delays, including for the period in question.

The Notices

34. The Tribunal was satisfied that, in respect of the Notices of Intent and the Final Notices, the Respondent had complied with the following procedural requirements as required under Schedule 13A to the Act:
    (a) the offences were within 6 months of the Notice of Intent and were continuing as at the date of the Notices of Intent.
    (b) the Notice of Intent and the Final Notices contained the information as required under paragraphs 3 and 8 of Schedule 13A to the Act; and,
    (c) the Notices of Intent contained information about the right to make representations.

The Penalty

Local Housing Authority Policy on Civil Penalties

35. The Council must follow Government Guidance and adopt a Civil Penalties Policy ("the Policy"). The Guidance also sets out the following list of factors which local housing authorities should consider helping ensure that financial penalties are set at an appropriate level:
    (a) Severity of the offence.
    (b) Culpability and track record of the offender.
    (c) The harm caused to the tenant.
    (d) Punishment of the offender.
    (e) Deterrence of the offender from repeating the offence.
    (f) Deterrence of others from committing similar offences.
    (g) Removal of any financial benefit the offender may have obtained as a result of committing the offence.

36. The Tribunal can set aside a penalty which is inconsistent with the decision maker's own Policy, but it must do so without departing from the Policy, excepting any part of that Policy that does not comply with the Guidance.

37. *In London Borough of Waltham Forest v Marshall* [2020] UKUT 35 (LC) the Tribunal provided some guidance, (approved by the Court of Appeal in *Sutton v Norwich City Council* [2021] EWCA Civ 20):

    "54... *The court can and should depart from the policy that lies behind an administrative decision, but only in certain circumstances. The court is to start from the policy, and it must give proper consideration to arguments that it should depart from it. It is the appellant who has the burden of persuading it to do so. In considering reasons for doing so, it must look at the objectives of the policy and ask itself whether those objectives will be met if the policy is not followed.*

55. Nothing in these cases, or in the present appeals, detracts from the court's or a tribunal's ability to set aside a decision that was inconsistent with the decision-maker's own policy. Nor have the above cases said anything to cast doubt upon the ability of a court or tribunal on appeal to substitute its own decision for the appealed decision but without departing from the policy … It goes without saying that if a court or tribunal on appeal finds, for example, that there were mitigating or aggravating circumstances of which the original decision-maker was unaware, or which of which it took insufficient account, it can substitute its own decision on that basis."

38. As this is a rehearing, we had the benefit of evidence and submissions from David Morrisey. We could take this into account when deciding the level of penalty. However, we are looking at circumstances at the date of decision. We should also give due deference to the Council's decision, the extent of the deference is dependent on whether we have new evidence, not available to the Council. We must consider if the decision was wrong at the time it was taken (*LB Waltham Forest v Hussain and others* [2023] EWCA Civ 733).

39. As The Upper Tribunal reminded us, in *Kazi v Bradford MDC* [2023] UKUT 263 (LC), when reaching our decision, we must not be bound by part of a policy that fetters our discretion.

40. In this case there were a number of shortcomings, in the Policy and the way it was applied by the Council. They did not appear to fully consider, if at all, wider factors, outside the level of harm and culpability, which only covers two of the seven factors that require consideration as set out in the guidance.

The nature and severity of the offence and risk of harm:

41. In considering the penalty the Tribunal has to have regard to the seriousness of the offence in accordance with *Hussain v Sheffield* at 46: -

"...An assessment of the seriousness of the offence should therefore focus on the circumstances of the offence itself and should take into account matters as they were at the date of the offence. 47. That is not to say that matters which occur after the offence has been committed are necessarily irrelevant to its seriousness. The longer an offence continues the more serious it may become, and the decision maker, whether the authority or the FTT, may take into account what has happened between the time the offence was first committed and the date of the decision. But an offence of long duration does not become less serious by being remedied; it does not get any more serious, but nor does it become less serious."

42. The Policy states that in order to ensure that the civil penalty is set at an appropriate level the factors set out in the Guidance will be considered. It then goes on to consider Harm caused and Culpability.

Harm Caused:

43. The policy sets out that harm caused relates to the person, community and wider types of harm. It sets out 3 levels of harm, high, medium and low. Each has examples of harm set out as a risk of harm.

44. The Council has assessed the level of harm as low, as there is low risk of adverse effect on an individual(s) and low adverse effect on individual(s). Though we note, that without a licence they could not carry out any checks.

45. We have also found that the level of harm is low. This is because, at the date of offence there is no evidence of actual harm. A failure to obtain a licence does not itself pose a risk, though the conditions and any failures in management may, and it could also be said that the rigours of licensing conditions would help prevent any risks. We have weighed this against the low likelihood of harm, taking account of the fact that there had not been any history of harm or record of breach of housing standards, it is a small self-contained flat in a block of 8, and that the tenants appear to be long standing.

Culpability:

46. The Policy sets out four levels of culpability These are deliberate (Very High), reckless (High), Negligent (Medium) Low or no culpability (Low). The Council says it was a Negligent, though this was a "generous" interpretation and should be High. Reckless act as defined as "*Serious or systemic failings, actual foresight of or wilful blindness to risk of offending but risks nevertheless taken by the landlord or property agent, e.g., failure to comply with HMO Management Regulations."*

47. We determine that the level of culpability for this offence is medium for the following reasons:

    (a) David Morrisey admitted that he was aware of the requirement to licence
    (b) David Morrisey admitted to "burying his head in the sand" and the Tribunal found that this reflected his attitude, a failure to take steps as opposed to recklessness /wilful blindness.
    (c) It is accepted that David Morrisey had made some phone calls, as he referred to this in emails, though may not have left a message or followed up the calls. He had sent intermittent emails making enquires.
    (d) David Morrisey had previously applied for a TENS, and this had expired just before the offence. He had intended to sell, though did not in fact do so until June 2025.
    (e) Though David Morrisey had let the Property for some time, he had no other Properties and had previously relied on the Agent. He could not be said to be a professional landlord.

Correlation between Harm and Culpability:

48. The Policy uses a matrix, to determine the seriousness of the offence. The low level of harm and medium level of culpability has a penalty band range of £5250.00 - £12000.00 with a starting point of £7500.00.

49. As was said in *Leicester CC V Morjaria* [2023] UKUT 129 (LC) where a similar matrix of harm and culpability provided a band the deputy president said at 54. ..." *The conflation of harm and seriousness may be dictated by a desire to fit the relevant considerations into a grid with two axes. The attraction of a grid to aid decision makers is understandable, but in this Policy, it may have resulted in insufficient consideration being given to the seriousness of the offence. As a result, offences with strikingly different consequences to which one would expect different degrees of seriousness and penalties should attach, have been deemed worthy of the same penalty. That was the approach which the FTT found difficult to accept, and I share its concern."*

50. To pay due deference to the Policy whilst remedying this shortfall, we have therefore assessed the seriousness of the offence where it fits into the existing policy as set out below.

The level of Penalty to be imposed:

51. The Policy states that in determining the penalty, there should be further considerations;
    (a) Subject to a maximum of £30,000, the Council shall have regard to the banding levels.

    (b) It should be fair and proportionate given the circumstances of the case but in all cases should act as a deterrent and remove any gain as a result of the offence.

    (c) The starting point will be the mid-point of the band and is based upon the assumption that no aggravating/mitigating factors apply to the offence.

    (d) An offender will be assumed to be able to pay a penalty up the maximum amount unless they can demonstrate otherwise.

52. The midpoint for the band is £7,500. However, the Respondent does not specifically address the requirements of the Government Guidance to assess separately the seriousness of the Offence, including the sentencing guidelines. The Tribunal has additionally considered seriousness of the offence when weighing mitigating and aggravating factors and determined that the midpoint is the right starting point, taking into account the above factors.

Aggravating or mitigating factors:

53. The Policy only allows for adjustments for aggravating and mitigating factors and each either increases or decreases the level by £1000 but not to a level that takes it outside the band. No further guidance is given. We note that a similar policy setting a fixed amount has been held in *Kazi v Bradford MDC* to fetter the Council's and Tribunals discretion.

54. The Council have not added or detracted any factors as David Morrisey did not attend a PACE interview or make submissions following the initial Notice of Intent. We do, however, have to take into account the sentencing guidelines.

55. We need to consider these, and other factors not accepted as amounting to a reasonable excuse. We consider that mitigating factors are:
    (a) There have been no previous offences and no reported complaints made by any of the tenants. The Council had not taken this into account as required by the sentencing guidelines.
    (b) They have made little financial gain, they attempted to pay the licence fee, although this was returned. The gain would be limited to the cost of the letting agent fee of £55 per month and additional obligations that need to be met.
    (c) The other factors raised above have been considered in relation to the level of culpability and do not affect the seriousness of the offence any further. Sarah Hughes explained that this was their rational for setting culpability as medium, as opposed to high. They had taken into account that David Morrisey had made some contact with the council, albeit intermittent.

56. On the other hand, the aggravating factors are:
    (a) The length of time that the Property was not licenced and that David Morrisey took no action to appoint an agent in the UK.

57. As there are two mitigating factors and one aggravating factor this gives a £1000 deduction. We do not consider that any factor necessitates a greater or less amount than £1000 for each factor. This reduces the penalty to £6,500.

Reduction in Penalty:

58. The Local Housing Authority may reduce the penalty imposed where corrective action is taken in respect of the offence committed in a timely and appropriate manner in circumstances where the Local Housing Authority have assessed the category of culpability as being low or medium. This does not apply to David Morrisey.

Financial Circumstances:

59. Government Guidance and the Policy require us to consider David Morrisey 's ability to pay. As David Morrisey had not attended the PACE interview and not responded to the Notice of Intension, the Council had little information, beyond the rent of £550 per month.

60. David Morrisey contended that he was not making any profit as his costs were equal to rent that had since increased to £650. He said there were only two occupiers, who were a couple, despite the Council's evidence that 4 people had informed Council Tax that four people were in occupation. He agreed that he bought the property for around £94,000. He said he was selling it for £118,000 with a mortgage of around £20,000. When asked he said that he could afford to pay the penalty, albeit in instalments. He did not provide any company or personal accounts, or tax returns. Nor did he provide any documentary evidence to support his claim that, taking into account his mortgage payments, he was not making any profit. On the basis of David Morrisey 's oral evidence we conclude that he has the ability to pay and could do so from the profits of sale.

Removing any gain as a result of the offence and proportionality:

61. The Guidance states that we must consider whether the penalty is fair and proportionate given the circumstances of the case but in all cases should act as a deterrent. Taking into account the above factors a penalty of £6,500 is high enough to remove any gain from not having a licence, including the cost of ensuring compliance. It is proportionate to the offence and sufficient to be a deterrent to others, though David Morrisey states that he will not continue to be a landlord. We have taken into account that David Morrisey did not seem clear of additional obligations and since taking over management from the Agent had not taken steps to ensure compliance as a landlord, beyond undertaking repairs.

Conclusion

62. The offence has been committed beyond reasonable doubt.

63. The procedural requirements have been followed.

64. Taking into account the Guidance and following the Respondents own Policy where it complies with the Guidance, the Tribunal determines the level of the penalty as £6,500.

65. The Applicant must pay the penalty within 28 days of service of this determination.

Judge J White
28 July 2025

RIGHTS OF APPEAL

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

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

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

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