FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00DA/HNA/2024/0648**
Property	**:**	**84 Burlington Road, Beeston, Leeds LS11 7DS**
Applicant	**:**	**Ms Eden Tesfom**
Respondent	**:**	**Leeds City Council**
Representative	**:**	**Mr Chris Rafferty (Counsel)**
Type of Application	**:**	**Appeal against a financial penalty: Section 249A & Schedule 13A to the Housing Act 2004**
Tribunal Members	**:**	**Judge J. Hadley** **Ms Jessica O'Hare MRICS**
Date and venue of Hearing	**:**	**19 January 2026** **Virtual hearing**
Date of Decision	**:**	**2 February 2026**

DECISION

DECISION

The financial penalty notice dated 26 November 2024 is varied. Ms Eden Tesfom must therefore pay a financial penalty of £4,750 to Leeds City Council.

REASONS

INTRODUCTION

The appeal

1. On 23 December 2024, Ms Eden Tesfom ("the Applicant") appealed to the Tribunal against a financial penalty imposed on her by Leeds City Council ("the Respondent") under section 249A(1) of the Housing Act 2004 ("the 2004 Act"). The financial penalty related to an alleged housing offence in respect of premises known as 84 Burlington Road, Beeston, Leeds LS11 7DS ("the Property").

2. To be more precise, the Applicant appealed against a final notice dated 26 November 2024 given to her by the Respondent under paragraph 6 of Schedule 13A to the 2004 Act ("the Final Notice"). It imposed a financial penalty of £5,250.00 for alleged conduct, amounting to an offence under section 95 (2) of the 2004 Act.

The hearing

3. The appeal was heard by video on 19 January 2026.

4. Although the Applicant represented herself, the Tribunal permitted her to be assisted by her son, Mr Noah Abel pursuant to Rule 14 (5) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Rules"). This was on the basis that Mr Abel had assisted the Applicant with the application, the Applicant wished for Mr Abel to provide assistance at the hearing and there was no objection from the Respondent, although the Tribunal noted at the outset that it would step in, if necessary, during the course of the hearing to properly manage this assistance. During the hearing, Mr Abel offered assistance during the Applicant's cross-examination because he said that the Applicant could not express herself as well as he could. Despite Mr Abel's assertion, the Tribunal was satisfied that the Applicant was able to communicate her responses to the Tribunal. The Tribunal reminded the Applicant and Mr Abel that the Applicant needed to give her own witness evidence and required her to do so. However, the Tribunal permitted Mr Abel to contribute towards the Applicant's closing submissions.

5. The Respondent was represented by Mr Chris Rafferty (Counsel).

6. The Tribunal considered the documentary evidence provided by the parties in support of their respective cases in compliance with the

Directions made by Legal Officer D Higham on 30 September 2025 ("the Directions").

7. The Applicant had, on 12 January 2026, submitted an additional brief document not provided for in the Directions which was a response to the Respondent's Reply which provided some limited clarification to the Applicant's position. The Respondent did not object to the inclusion of that additional document and so the Tribunal permitted the inclusion of that document.

8. The Tribunal heard oral evidence from the Applicant under cross-examination. The opportunity was given to the Applicant to cross-examine the Respondent's witnesses (including offering the Applicant more time to consider and prepare any questions) but the Applicant opted not to ask any questions of the Respondent's witnesses. Therefore, the Tribunal considered the written evidence given by Katherine Robinson, Housing Standards Officer at the Respondent, and Allan Dixon, Senior Housing Standards Officer, in their respective witness statements and those witnesses did not give oral evidence.

9. The Tribunal did not inspect the Property prior to the hearing but understands it to comprise a three bedroomed terraced house.

STATUTORY FRAMEWORK

Power to impose financial penalties

10. New provisions were inserted into the 2004 Act by section 126 and Schedule 9 of the Housing and Planning Act 2016. One of those provisions was section 249A, which came into force on 6 April 2017. It 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.

11. Relevant housing offences are listed in section 249A(2). They include the offence (under section 95 (2)) of holding a licence under Part 3 of the 2004 Act and failing to comply with any condition of that licence.

12. Only one financial penalty under section 249A may be imposed on a person in respect of the same conduct. The amount of that penalty is determined by the local housing authority (but it may not exceed £30,000), and its imposition is an alternative to instituting criminal proceedings for the offence in question.

Procedural requirements

13. 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 setting out:

- the amount of the proposed financial penalty;
- the reasons for proposing to impose it; and
- information about the right to make representations.

14. 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.

15. A person who is given a notice of intent has the right to make written representations to the local housing authority about the proposal to impose a financial penalty. Any such representations must be made within the period of 28 days, beginning with the day after that on which the notice of intent was given. After the end of that period, the local housing authority must decide whether to impose a financial penalty and, if a penalty is to be imposed, its amount.

16. If the local housing authority decides to impose a financial penalty on a person, it must give that person a final notice setting out:

- the amount of the financial penalty;
- the reasons for imposing it;
- information about how to pay the penalty;
- the period for payment of the penalty;
- information about rights of appeal; and
- the consequences of failure to comply with the notice.

Appeals

17. A final notice given under Schedule 13A to the 2004 Act 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. However, this is subject to the right of the person to whom a final notice is given to appeal to this Tribunal (under paragraph 10 of Schedule 13A).

18. The appeal is by way of a re-hearing of the local housing authority's decision but may be determined by the Tribunal having regard to matters of which the authority was unaware. The Tribunal may confirm, vary or cancel the final notice. However, the Tribunal may not vary a final notice to make it impose a financial penalty of more than the local housing authority could have imposed.

RELEVANT GUIDANCE

19. A local housing authority must have regard to any guidance given by the Secretary of State about the exercise of its functions in respect of the imposition of financial penalties. Such guidance ("the HCLG Guidance") was issued by the Ministry of Housing, Communities and Local Government in April 2018: *Civil penalties under the Housing and*

Planning Act 2016 – Guidance for Local Housing Authorities. It states that local housing authorities are expected to develop and document their own policy on when to prosecute and when to issue a financial penalty and should decide which option to pursue on a case-by-case basis. The HCLG Guidance also states that local housing authorities should develop and document their own policy on determining the appropriate level of penalty in a particular case. However, it goes on to state:

> "Generally, we would expect the maximum amount to be reserved for the very worst offenders. The actual amount levied in any particular case should reflect the severity of the offence as well as taking account of the landlord's previous record of offending."

20. The HCLG Guidance also sets out the following list of factors which local housing authorities should consider to 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.

21. In recognition of the expectation that local housing authorities will develop and document their own policies on financial penalties, the Respondent has issued its own civil penalty policy which is to be read in conjunction with its enforcement policy (together "the Respondent's Policy"). A copy of the Respondent's Policy was included within the bundle, and we make further reference to this policy later in these reasons.

BACKGROUND FACTS

22. The Applicant has been the freehold owner of the Property since 2015. The Applicant lives in London. The tenant Benadicta Bello ("the Tenant") moved into the Property on 2 April 2020. Prior to the Tenant moving in, the Applicant had conducted work to convert the Property from four self-contained flats into a single house again. This was following Prohibition Orders issued to her by the Respondent in January 2020 which Prohibition Orders were subsequently revoked.

23. The Respondent is responsible for the licensing of houses within its district under Part 3 of the 2004 Act. Since 6 January 2020, the Respondent has been operating a selective licensing scheme, pursuant to s.80 of the 2004 Act. The selective licensing scheme requires a licence to be obtained from the Respondent in order to control and/or manage

certain privately rented properties situated in the designated areas which include the area of Beeston, where the Property is located.

24. On 27 October 2020, the Applicant submitted a selective licence application to the Respondent in respect of the Property and a selective licence was granted on 11 May 2021. The licence sets out a number of conditions which included the following:

Gas

To produce to the Council on demand for inspection, a copy of the gas safety certificate obtained in respect of the house within the last 12 months.

Smoke Alarms

To ensure that a smoke alarm is installed on each storey of the house on which there is a room used wholly or partly as living accommodation and to keep each alarm in proper working order.

To supply to the Council, on demand, a declaration as to the condition and positioning of any smoke alarm.

Management of the Property

To ensure that the internal structure of the house and every window and other means of ventilation is maintained in good repair and that any fixtures and fittings and appliances made available are maintained in good repair and working order.

To ensure, as far as is reasonably practicable, that the exterior of the property (including any boundary walls, gates and yards) is maintained in reasonable decorative order and in a good state of repair; that the exterior is free from graffiti and fly posters; and that gardens are maintained in a reasonably clean and tidy condition.

25. The Respondent visited the Property in 2021 and 2022 following complaints by the Tenant as to the condition of the Property. The Respondent's bundle includes evidence of the presence of damp and mould in the Property at that time. The Applicant had difficulty with the Tenant at that time in that the Tenant initially failed to engage with communication and provide access to the Property. With the assistance of the Respondent, the Applicant was eventually able to gain access to the Property to conduct works to the Property. As a result of these prior issues with the Property, the Respondent had the Property on an internal priority list of properties that required a routine proactive compliance inspection.

26. Following a telephone call between Ms Katherine Robinson of the Respondent and the Applicant on 11 April 2024 when Ms Robinson advised the Applicant that the Respondent would be carrying out a

routine inspect of the Property, Ms Robinson inspected the Property to check compliance with the conditions of the selective licence on 25 April 2024. At the inspection, Ms Robinson found that there were a number of issues with the Property which she considered were in breach of the conditions attached to the selective licence as follows:

a. The smoke detector installed on the second-floor bedroom was not in working order;
b. The internal structure of the house was not maintained in good repair in that 27 defects were noted and the external structure of the house was not maintained in good repair in that two defects were noted, such that 29 defects were noted in total.

27. The Respondent wrote to the Applicant on the day of the inspection, 25 April 2024, to request a copy of the gas safety certificate within 7 days. However, the Applicant did not send a copy of the gas safety certificate to the Respondent despite a further chaser letter being sent on 9 May 2024 and a follow-up phone call with the Applicant. The Respondent subsequently referred that matter to the Health & Safety Executive ("HSE"), and the Applicant eventually provided a copy of the gas safety certificate dated 1 September 2023 to the HSE.

28. The Respondent also wrote to the Applicant on 9 May 2024 asking her to rectify the smoke detector.

29. Following a case review meeting, the Respondent wrote to the Applicant on 18 June 2024 under the Police and Criminal Evidence Act 1984 (PACE). No response was received.

30. Following a review panel meeting, the Respondent served the Applicant with a notice of intention to impose a financial penalty dated 2 September 2024 ("the Notice of Intent"). The Notice of Intent proposed a financial penalty of £15,750.00.

31. Following consideration of representations made by the Applicant, at a further Respondent case panel review meeting, it was determined that the level of penalty should be reduced.

32. The Respondent served the Applicant with a final penalty notice dated 26 November 2024 ("the Final Notice") in the sum of £5,250.00 ("the Penalty").

33. The Penalty was calculated on the following factors:
    a. Level of culpability – Medium
    b. Level of harm – Low
    c. Aggravating factors – 10% increase on the basis of the Applicants' record of letting sub standard accommodation and lack of insight into their failings.
    d. Mitigating factor – 5% reduction in penalty on account of the element of tenant responsibility.

34. On 23 December 2024, the Applicant submitted her appeal to the Tribunal in respect of the Final Notice.

35. Subsequently, the Applicant has taken steps to evict the Tenant via repossession action in the County Court.

The Applicant's Submissions

36. The Applicant accepts that there were conditions attached to the selective licence. During oral evidence, the Applicant indicated that she may not have read all the conditions and / or fully understood the conditions but she said that she was an experienced landlord and would have done what was required anyway. She said that this was the first of her properties to have been subject to a selective licence.

37. The Applicant accepts that she did not provide the gas safety certificate to the Council within the required timeframe, although a valid certificate did exist.

38. The Applicant also accepts that the smoke alarm in the attic was not working at the date of the inspection by the Respondent. She had not been aware of that issue prior to then because the Tenant had not reported it to her and she had not been able to obtain access to the Property.

39. The Applicant does not dispute the existence of the defects (including the 27 internal defects) noted by the Respondent at its inspection. The Applicant says she was not aware of those issues because she was unable to gain access to the Property to conduct a full inspection.

40. The Applicant's principal submission is that she has a reasonable excuse in that she could not comply with the conditions in the licence because of the difficulty she experienced, throughout the tenancy, in communicating with and gaining access to the Property from the Tenant. The Applicant says that lack of cooperation from the Tenant made compliance with the licence conditions impossible. There is evidence in both parties' bundles of correspondence which supports the assertion that the Applicant had such difficulty during the tenancy, and Mr Abel took the Tribunal to correspondence in the Respondent's bundle during closing submissions which he said supports this. The Applicant also submits that she has not been able to produce all email evidence because some emails are unavailable due to her closing that email account.

41. The Applicant says that the Tenant's communication with her would be "hot and cold", fluctuating during the course of the tenancy; there were periods when she could obtain access and carried out repairs, and then times when she could not obtain a reply from the Tenant nor access to the Property. She needed to involve third parties like the Council to

secure access, and the Tenant never gave access without some resistance first. By early 2024, the Applicant says the Tenant had become completely silent and would not respond to her.

42. During cross examination the Applicant stated that the reason why she did not escalate the matter by taking Court action for an injunction or possession at an earlier date was because of the tenant's fluctuating communication which meant that she did manage to obtain access to the Property at times. She also had concerns that such action would be complicated by the fact she did not have a signed tenancy agreement and thought that she would need a specialist solicitor.

43. In response to a question from the Tribunal, the Applicant submitted that the last time that she inspected the Property, prior to the Respondent's inspection, was on in September 2023 when she obtained the gas safety certificate. She said that she would usually inspect one of her properties every three or four months, subject to being given access.

44. In her witness statement, the Applicant stated that the Property was fully refurbished prior to the Tenant moving in, was in excellent condition and there had never been any history of damp, mould, or serious issues at the property. Also in her witness statement, the Applicant asserted, in relation to the complaints raised by the Tenant in 2021 and 2022, that the damp was caused by condensation caused by the Tenant's failure to heat the Property, not structural disrepair. However, the Applicant did not cross-examination the Respondent on its evidence in terms of the condition, or the cause of the damp and mould, at that time.

45. The Applicant says that she is not a bad landlady; she had not ignored issues, and she had tried to obtain access to the Property.

46. In addition, the Applicant argues that the Penalty is unfair and is not necessary nor proportionate.

47. Finally, the Applicant argues that the Penalty will cause her financial hardship. Whilst she has assets, she is cash poor and has significant mortgage obligations. The Penalty will also impact on her teenage daughter due to the stress it will cause.

The Respondent's Submissions

48. The Respondent points out that, on her own evidence, the Applicant accepts there were breaches of the conditions of the selective licence. The fact that the Applicant did not read or fully appreciate the need to comply with the terms of the licence is no excuse for her failure to do so.

49. The Respondent argues that the Applicant has no realistic hope of showing that she had a reasonable excuse for breaching the conditions of the licence. The entirety of her case depends upon the fact she says she could not gain access to the Property to comply with the conditions due to the Tenant's behaviour. That defence would not apply to the breach of the first condition, relating to the gas safety certificate, in any event.

50. In relation to the other breaches in relation to the smoke alarm and management of the Property, the Respondent says that the Applicant's alleged defence is flimsy and her evidence contradictory. In oral evidence, the Applicant said that the Tenant was "*hot and cold*" in terms of her communication and providing access to the Property; on some occasions the Applicant said she could gain access to the Property, then on other occasions the Applicant said she could not. It is difficult to determine which is true.

51. In any event, the Respondent argues that the fault lies with the Applicant:

    a. Either she was able to gain access, in which case she should have conducted sufficient inspections, implemented a regime of inspections and ensured that repairs were carried out such that the defective smoke alarm and 27 other defects had not been noted at the Respondent's inspection of the Property. Insofar as the Applicant said that she last inspected the Property in September 2023, she has not provided any evidence of that assertion or the assertion that she was properly managing the Property.
    b. Alternatively, if the Applicant could not gain access to the Property, it was still her responsibility to ensure that the conditions were adhered to. She should have applied to Court for an injunction or possession of the Property. There is evidence that the Application was aware of this option in June 2022. Nothing prevented her from taking this action; her assertion that she thought she would need a solicitor to do this is nonsense; in June 2022, she said that she was taking legal advice.

52. There is evidence of previous complaints by the Tenant in relation to the condition of the Property. The Applicant cannot simply say that she was managing the Property adequately in 2022 or that she implemented an adequate inspection regime afterwards because issues were found with the Property in 2024. In either scenario, the responsibility for those defects rests with the Applicant.

53. In terms of the level of Penalty, the penalty has been assessed in accordance with the Respondent's Policy.

54. In terms of culpability, low culpability would be appropriate where there was little fault on the part of the landlord. The Respondent determined that was not appropriate because the Applicant was plainly aware of issues since 2022 and there was no evidence that she had attempted to

manage the Property including putting in place an inspection regime or apply to Court. In contrast, Medium culpability is appropriate where a person exercising reasonable care would not have committed the breach. It can apply even where a system is in place. The Respondent submits that Medium culpability is the appropriate level here.

55. In terms of harm, Low is applicable where there is low risk of harm or little risk of adverse result. The Respondent submits that this case plainly satisfies the criteria for low harm at least.

56. In terms of aggravating factors, the Respondent submits that it was appropriate to apply two 5% increases in respect of two factors; the fact there had been complaints in relation to the Property since 2022 and the lack of insight which the Applicant showed particularly in failing to provide the gas safety certificate when requested.

57. In terms of mitigating factors, the Respondent submits that it was appropriate to apply one 5% reduction on account of the fact that the Respondent accepts that there is evidence of the difficult relationship with the Tenant in terms of gaining access to the Property albeit it falls short of amounting to a defence.

The Tribunal's Deliberations and Determinations

58. The Tribunal, under paragraph 10 of Schedule 13A to the 2004 Act, may confirm, vary, or cancel a final notice, determining the matter as a re-hearing of the local authority's decision.

59. In reaching its determination the Tribunal considered the relevant law and all evidence submitted, both written and oral, and briefly summarised above. The fact that this decision may not mention a particular piece of evidence does not mean that it was not considered.

Has the Applicant committed a relevant housing offence?

60. The Applicant accepts that she failed to comply with three conditions attached to her selective licence. In particular:
    a. She accepts that she did not provide the gas safety certificate to the Council within the required timeframe;
    b. She accepts that the smoke alarm in the attic was not working at the date of the inspection; and
    c. She does not dispute the existence of the defects noted by the Respondent at its inspection.

61. Considering the above, the Tribunal is satisfied beyond reasonable doubt that the Applicant has committed an offence under section 95 (2) of the Housing Act 2004.

Does the Applicant have a reasonable excuse defence?

62. Pursuant to s.95(4) of the 2004 Act, the landlord has a defence to the offence if they had a reasonable excuse for failing to comply with the condition. The burden of proof is on the Applicant to show that she had a reasonable excuse for failing to comply with the conditions.

63. In deciding this question, the Tribunal considered the guidance set out by the Upper Tribunal in *Marigold v Wells [2023] UKUT 33 LC*. In paragraph 48 of the judgment, 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 give rise to the offence; secondly, which of those facts were proven; and, thirdly, whether if viewed objectively those facts did amount to a reasonable excuse.

64. The Applicant does not assert that she has a reasonable excuse defence to the breach of the first condition (in relation to the failure to provide the gas safety certificate). However, she asserts that she has a reasonable defence in relation to the other two breached conditions. That is, she says that she could not comply with the conditions in the licence in terms of the maintenance of the smoke alarm and the management of the property as a whole because of the difficulty she experienced, throughout the tenancy, in communicating with and, in particular, gaining access to the Property from the Tenant.

65. In terms of the Tenant's poor communication and failure to provide access to the Property to the Applicant, the Applicant has provided evidence to demonstrate the existence of that behaviour on the part of the Tenant during earlier periods of the tenancy and the Respondent accepts that there is evidence of that to some degree. Therefore, there is no doubt that the Applicant had difficulties during the tenancy in obtaining a response to communications with the Tenant and cooperation from the Tenant to access the Property. No doubt that caused frustration to the Applicant. However, what is not clear is whether it was those difficulties with the Tenant which caused the Applicant not to be able to access the Property to inspect it and maintain it in line with the conditions in the licence.

66. In closing submissions, Mr Abel took the Tribunal to specific email evidence from 2022 to demonstrate the efforts made by the Applicant to manage the Property and the difficulties caused by the Tenant. However, save for in the case of aggravating factors (dealt with below) this evidence from 2022 is largely irrelevant; what is relevant is what was happening in 2023 / 2024.

67. Whilst the Applicant has said that the Tenant was not communicating with her at all by the start of 2024, the Applicant has not specified what, if any, efforts she made to contact the Tenant at that time. Furthermore, she has not provided any evidence to demonstrate that she was actively trying to contact the Tenant to gain access to the Property in late 2023 / early 2024. The Applicant has asserted that some email evidence is not available because she cancelled her email account, however, she has not

specified what email evidence is missing (in terms of time period / recipients) nor what that missing evidence would have shown. She could have provided other evidence to demonstrate her efforts to contact the Tenant, for example, notes and records, calendar entries, third party witness evidence from her agent. The Applicant says that, on previous occasions, she used a third party, like the Council, to contact the Tenant and obtain access to the Property. However, the Council has no records of such requests being received from the Applicant at that time.

68. The Applicant said, in oral evidence, that she last inspected the Property in September 2023 (when the gas safety inspection took place). However, the Applicant has not provided any evidence to demonstrate that she was present at the Property in September 2023, that she undertook a detailed inspection of the Property and the Property was in good repair at that stage. Again, whilst the Applicant has asserted that some email evidence is not available because she cancelled her email account, she has not specified what email evidence is missing (in terms of time period / recipients) nor what that missing evidence would have shown. Furthermore, she could have provided other evidence to demonstrate the fact of an inspection in September 2023, for example notes and records, calendar entries, third party witness evidence from her agent or builder.

69. The Applicant also said, in oral evidence, that she would ordinarily inspect a Property every three or four months. However, again, she has not provided any evidence to demonstrate that. She could have provided evidence such as notes and records, calendar entries, and third-party witness evidence from her agent to support this assertion.

70. When asked why she had not taken steps to access the Property via court proceedings in cross examination, the Applicant said that it had not been necessary because the Tenant had eventually provided access at various times. She also said that she thought that she would need specialist legal advice and that the lack of a signed tenancy agreement may cause complications, although there is correspondence from the Applicant stating that she was seeking legal advice in June 2022 and threatening the Tenant with legal action. The Tribunal considers that this is evidence that the Applicant was aware of her legal options but, in any event, it would be reasonable to expect the Applicant, as a responsible landlord, to be aware of those options and to have taken further steps to secure access to the Property if necessary to comply with her legal obligations. Whilst such action may have been avoided in the past because the Tenant provided access, that does not explain why such further action was not taken by the Applicant to secure access to the Property more recently. On the Applicant's evidence, the Tenant had gone completely silent by early 2024 and the Applicant should have been alerted to the need to do something to secure access. The fact that the Applicant had not started to take such action by early 2024 (or at least by April 2024) is inconsistent with her assertion that she was actively trying to obtain possession at that time, particularly as she had considered, and

threatened, that option when faced with lack of cooperation by the Tenant in 2022.

71. In contrast, the undisputed evidence from the Respondent is that, at the time of the inspection in April 2024, there was a substantial number of defects at the Property. Whilst it is possible that the smoke detector ceased working only very shortly before the inspection date, the Tribunal notes that there is email evidence that the detector was "beeping" and was, therefore, apparently defective as far back as 2022. Furthermore, there were, in any event, 27 other internal defects found at the Property, including black mould spots, mould and damp staining, missing grouting to bathroom tiles, a cracked and insecure bathroom sink, defective windows and doors, and a defective plug socket and light fitting, and defective electric oven. The photographs provided by the Respondent showing the defects found at the inspection show the Property in a poor condition. The Tribunal considers that it is likely that the Property was in that poor state for some time prior to the inspection since 27 issues are unlikely to have accumulated simultaneously over a brief period.

72. In light of the above and, in particular, given the Applicant's lack of evidence to the contrary, the Tribunal finds it is more likely than not that the Applicant did not inspect the Property in September 2023 or at least she did not inspect the Property thoroughly. If she had done so, it seems almost certain that she would have identified defects at the Property given the Respondent's clear evidence that the Property was in a poor condition at the date of the inspection and the likelihood that the issues with the Property had been ongoing and developing for some time.

73. Furthermore, in light of the above and, in particular, given the Applicant's lack of evidence to the contrary, the Tribunal also finds it more likely than not that the Applicant did not implement a regular inspection routine, such as every three to four months or even every six months. If she had done so, it is more likely than not that the Property would not have been in the condition it was found in April 2024.

74. In any event, given the lack of evidence from the Applicant in terms of any efforts made by her to contact the Tenant in late 2023 / early 2024, including the absence of any contact with the Council around that time notwithstanding that the Applicant previously sought the assistance of the Council to gain access and the Applicant's failure to instigate court action, the Tribunal finds, on the balance of probabilities, that the Applicant was not trying to contact the Tenant and / or gain access to the Property at that time.

75. In light of the above, the Tribunal finds as a fact that it was not the Tenant's lack of cooperation which the Applicant which caused the Applicant to fail to comply with the conditions in the licence but rather the Applicant's failure to inspect and, thereafter, repair the Property thoroughly and often enough. Given the Applicant's evidence during cross examination, it seems to the Tribunal likely that the Applicant had

not understood the need to proactively inspect the Property in order to ensure compliance with the conditions of the licence, or that she had become frustrated by the difficulties posed by the Tenant such that she had become less proactive or both.

76. In any event, even if the Applicant had satisfied the Tribunal that the Tenant's conduct had prevented her from accessing the Property so that she could comply with the licence conditions, the Tribunal does not consider that that would have amounted to a reasonable excuse. That is because, in such an event, it would be reasonable to expect the Applicant, as a responsible landlord, to have taken further steps to secure access to the Property including issuing legal letters to the Tenant and issuing court proceedings for an injunction or possession. The Tribunal can appreciate that there may have been occasions in the past when the Applicant avoided the need for such action because the Tenant eventually provided access. However, as stated above, that does not explain why such further action was not taken by the Applicant to secure access to the Property more recently. The Applicant should have been alerted to the need to do something to secure access in 2024. It is clear from the communication in June 2022 that the Applicant was aware of her legal options, and, in any event, as a landlord, she would be expected to be aware of her legal remedies in order to ensure she could comply with her legal obligations.

77. Accordingly, the Tribunal determines that the Applicant does not have a reasonable excuse defence.

78. The Tribunal further notes that the Applicant does not assert having a reasonable defence to the breach of the first condition (in relation to the failure to provide the gas safety certificate) in any event.

Imposition and Level of Penalty

79. Given that the Applicant has not established a reasonable excuse defence, it follows that the Respondent was entitled to consider whether to prosecute the Applicant under s.95(6) of the Act or impose a financial penalty under s.249A of the 2004 Act. The Tribunal is satisfied that it was appropriate for the Respondent to impose a financial penalty on the Applicant in respect of her failure to comply with the conditions of the licence. The Tribunal must therefore determine the amount of that penalty.

80. The Tribunal must make its own determination as to the appropriate amount of the financial penalty having regard to all the available evidence. In doing so, the Tribunal should have regard to the seven factors specified in the HCLG Guidance as being relevant to the level at which a financial penalty should be set.

81. The Tribunal should also have regard to the Respondent's Policy. As the Upper Tribunal (Lands Chamber) observed in *Sutton & Another v Norwich City Council [2020] UKUT 0090 (LC)*:

> "It is an important feature of the system of civil penalties that they are imposed in the first instance by local housing authorities, and not by courts or tribunals. The local housing authority will be aware of housing conditions in its locality and will know if particular practices or behaviours are prevalent and ought to be deterred."

82. The Upper Tribunal went on to say that the local authority is well placed to formulate its policy and endorsed the view that a tribunal's starting point in any case should normally be to apply that policy as though it were standing in the local authority's shoes. It offered the following guidance in this regard:

> "If a local authority has adopted a policy, a tribunal should consider for itself what penalty is merited by the offence under the terms of the policy. If the authority has applied its own policy, the Tribunal should give weight to the assessment it has made of the seriousness of the offence and the culpability of the Applicant in reaching its own decision."

83. Upper Tribunal guidance on the weight which tribunals should attach to a local housing authority's policy (and to decisions taken by the authority thereunder) was also given in another decision of the Lands Chamber: *London Borough of Waltham Forest v Marshall & Another* [2020] UKUT 0035 (LC): whilst a tribunal must afford great respect (and thus special weight) to the decision reached by the local housing authority in reliance upon its own policy, it must be mindful of the fact that it is conducting a rehearing, not a review: the tribunal must use its own judgment and it can vary such a decision where it disagrees with it, despite having given it that special weight.

84. The Tribunal has given very careful consideration to the decision reached by the Respondent and the reasons for the same, and the Tribunal agrees with the Respondent's assessment of the level of culpability and harm although for slightly different reasons. The Respondent assessed culpability to be medium and harm to be low.

85. In respect of culpability, according to the Respondent's Policy, low culpability would be appropriate where there was "*little fault*" on the part of the landlord. Examples given in the Respondent's Policy include where there was no or minimal warning of circumstances / risk, minor or technical breaches, isolated occurrence, and / or a significant effort has been made to comply but was inadequate in achieving compliance.

86. The Respondent determined that it would be inappropriate to set the level as low because the Applicant was aware of the issues with the Property since 2022 and because the Applicant did not have an inspection regime in place; the Tribunal does not consider that the first of those has been proven based on the evidence. In particular, the Respondent's evidence demonstrates that the majority (if not all) of the

repair work was completed in 2022. However, the Tribunal is satisfied that low culpability is not appropriate for the other reasons set out below.

87. In the Tribunal's opinion, whilst the breach of the conditions relating to the gas safety certificate and smoke alarm might have been considered as minor or technical breaches by themselves, the existence of so many other defects at the Property means that the breaches do not come within that category. Similarly, it cannot be said there was an isolated occurrence when a total of three conditions were breached. It cannot be said that the Applicant has made a significant effort to comply; she failed to provide the gas safety certificate and to make efforts to fix the smoke alarm when requested by the Respondent, and she has not provided any evidence of steps taken to try to secure access to the Property to inspect and carry out repairs before the inspection in April 2024. The fact that she sought a possession order from the Courts after the event is irrelevant; this was too late.

88. In contrast, under the Respondent's Policy, medium culpability is appropriate where a landlord commits an offence *"through an act or omission a person exercising reasonable care would not commit"*. Examples provided include where it is a first offence with no high-level culpability criteria being met, where the failure is not a significant risk to individuals and where the landlord had systems in place to manage risk or comply with their duties, but these were not sufficient or adhered to or implemented. The examples are not exclusive, and other factors may be taken into account when considering the level of culpability. The Tribunal considers that a landlord exercising reasonable care would have instigated a regular inspection regime and escalated matters to court proceedings if access to the Property was not forthcoming. Therefore, the Tribunal is satisfied that this is the appropriate level in this case, particularly as it is also a first offence, there was no significant risk of harm posed to individuals and given the difficulties which the Applicant experienced with the Tenant.

89. For the avoidance of doubt, the Tribunal has considered high culpability under the Respondent's Policy but does not consider that there is evidence that the Applicant was intentionally or recklessly in breach or wilfully disregarded the law such that that would be warranted.

90. In respect of harm, this has been assessed as low which is the lowest possible category. Under the Respondent's Policy, examples given of low-level harm are where there is low risk of harm or potential harm or little risk of an adverse effect on individuals. In fact, it was found that there was damp and mould at the Property in April 2024 and the Tribunal considers that those defects were likely to have existed for some time before that. Therefore, it seems possible to the Tribunal that the defects could pose more than a low risk of potential harm or little risk of an adverse effect on individuals. However, the Respondents, having inspected the Property, were satisfied that the risk was low here and have not made submissions to the contrary. Therefore, the Tribunal is satisfied that the circumstances meet the requirements of low harm in

the very least and that that is the appropriate classification in the circumstances.

91. Based upon the Tribunal's findings of culpability and harm, the starting point for the penalty based upon the Respondent's Policy is £5,000.

92. The Tribunal then went on to consider the aggravating and mitigating factors considered by the Respondent.

93. The Respondent identified two aggravating factors and applied a 5% increase for each in line with the Respondent's Policy. The aggravating factors were (1) that there was a record of letting sub standard accommodation and (2) that the Applicant lacked insight into their failings.

94. In respect of the first aggravating factor, the Tribunal does not agree with the Respondent's assessment. Whilst Prohibition Orders were previously served on the Applicant, they were later revoked when the Applicant complied with them. Whilst the Respondent had the Property on an internal priority list of properties that required a routine proactive compliance inspection, the Respondent's own evidence indicates that the Applicant carried out the majority (if not all) of the repair work in 2022. Whilst there is some indication in the Respondent's evidence that there were some failings on the part of Applicant in 2022, there are also emails from officers of the Respondent in 2022 demonstrating that, in their opinion, the principal issue was the lack of cooperation of the Tenant and also that the Tenant's conduct was causing or contributing to the damp, as well as that the Property was in good condition in 2020. Whilst the Applicant did not cross-examine the Respondent's witnesses on those points, the content of the Respondent's evidence speaks for itself and contradicts their finding that there was a record of letting substandard accommodation. Therefore, the Tribunal is not satisfied that the Respondent has demonstrated, on the balance of probabilities, that there is a history of the Applicant letting substandard accommodation. Accordingly, the Tribunal does not deem it appropriate to apply a 5% increase for that factor.

95. The Tribunal agrees with the second aggravating factor on the basis that the Applicant has shown a lack of insight into the Respondent's findings by failing to provide the gas safety certificate despite chasing, failing to respond to the Respondent in relation to the issues identified at the Property sooner and with appropriate urgency and continuing to show lack of insight at the hearing itself in terms of her legal responsibilities as landlord to proactively inspect and maintain the Property. Whilst noting that the Applicant appears not to have appreciated the obligations on her under the selective licence, it was open to her to seek legal advice to improve her understanding at any time. Therefore, the Tribunal considers that it is appropriate to impose a 5% increase for this aggravating factor.

96. The Tribunal does not consider that any other aggravating factors apply.

97. The Respondent then applied a 5% reduction for one mitigating factor in line with the Respondent's Policy. The single mitigating factor identified was the element of tenant responsibility in view of the difficulty posed by the tenant's lack of cooperation in providing access to the Property.

98. The Tribunal agrees that it is appropriate to apply a mitigation for this factor, even though it is not a factor expressly listed in the Respondent's Policy, to account for the practical difficulties which the Applicant has faced in managing the Property during the tenancy due to the Tenant's conduct.

99. Having considered the Respondent's Policy, the Tribunal considers that the Respondent should have applied an additional mitigating factor to take account of the fact that the Applicant has no previous convictions. This means that the Tribunal considers that the Respondent should have applied two 5% reductions to take account of mitigating factors.

100. The impact of the above is that the Tribunal considers that the penalty should be reduced from £5000 to £4,750.

101. In accordance with the Respondent's Policy, the Tribunal must review the penalty and, if necessary, adjust the amount arrived at to ensure it fulfils the general principles in the policy. The Respondent's Policy goes on to state that "*the civil penalty should be a fair and proportionate but in all instances should act as a deterrent and remove any gain as a result of the offence*".

102. The Respondent made no adjustment in that regard, and the Tribunal agrees with that approach. In particular, the Tribunal does not consider that the Applicant has made an economic benefit from the offence.

103. The Tribunal finds that a penalty of £4,750 is significant enough to act as a punishment to the Applicant as well as a deterrent not just to the Applicant, but also to other landlords and potential landlords. The Tribunal consider that the imposition of a penalty of £4,750 meets the objectives of the Respondent's Policy in a fair and proportionate way in the circumstances of this case.

104. The Applicant made submissions in terms of the financial hardship she says the penalty will cause to her and her family and submitted some limited evidence in terms of her financial standing. Insofar as the Applicant was asserting that she is unable to pay the penalty (which is not necessarily what was being asserted) the Tribunal considers that the fact that the Applicant owns other properties is evidence that she has assets which could be sold or refinanced to pay the debt if necessary (notwithstanding the mortgages on those properties). It is not sufficient for the Applicant simply to say that she has no cash flow. The Applicant has not provided sufficient evidence to demonstrate that she cannot

afford to pay the penalty. Therefore, insofar as the Respondent's Policy requires the Respondent to consider the impact of the penalty and the Applicant's ability to pay, the Applicant has not demonstrated to the Tribunal that a reduction should be made in that regard.

OUTCOME

105. For the reasons explained above, we vary the decision of the Respondent to impose a financial penalty on the Applicant. We do not consider that the Respondent's Policy was properly applied in respect of the penalty. However, following the Applicant's appeal to this Tribunal and a re-hearing of the Respondent's decision, the Tribunal has determined that under the Respondent's Policy the amount of the penalty should be £4,750. The imposition of such a financial penalty is appropriate in the circumstances of this case: not only does it reflect the offending conduct, but it should also have a suitable punitive and deterrent effect.

106. Accordingly, we vary the Final Notice. The Applicant must therefore pay a financial penalty of £4,750 to the Respondent.

Signed: J. Hadley
Judge of the First-tier Tribunal
Date: 2 February 2026

Rights of appeal

1. 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.

2. 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.

3. 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.

4. 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.

5. 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.

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