FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BH/HNA/2025/0623**
Property	**:**	**288 Murchison Road, London, E10 6LU**
Applicant	**:**	**Razia Chowdhury**
Representative	**:**	**Anthony Owen (Solicitor)**
Respondent	**:**	**London Borough of Waltham Forest**
Representative	**:**	**Victoria Osler (Counsel)**
Type of Application	**:**	**Appeal against a financial penalty – Section 249A & Schedule 13A of the Housing At 2004**
Tribunal Members	**:**	**Judge Robert Latham** **Steve Wheeler MCIEH CEnvH** **Clifford Piarroux JP**
Date and Venue of Hearing	**:**	**28 and 29 January 2026 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**9 March 2026**

DECISION

Decision of the Tribunal

(i) The Tribunal confirms the Respondent's decision, dated 29 October 2024, to impose a Financial Penalty on the Applicant in respect of an offence under section 30(1) of the Housing Act 2004, namely that the Applicant had failed to comply with the requirements of an Improvement Notice which had been served on 18 June 2021.

(ii) The Tribunal reduces the Financial Penalty from £10,000 to £5,000. The Tribunal is satisfied that the Respondent failed to have adequate regard to the mitigating circumstances that exist in this case.

(iii) The Tribunal makes no order for the refund of the fees that have been paid by the Appellant.

The Application

1. This application relates to 288 Murchison Road, London, E10 6LU ("the Property"). The Property is a two-storey, purpose-built, three-bedroom, mid-terraced house. It has three bedrooms, one bathroom, a separate toilet, a kitchen and living room. The Property was built in 1975. At all material times, the property has been occupied by Ms Hanane Sahmane and Mr Khalid Drief ("the tenants") together with their four young children, the youngest of whom is 6 years old.

2. On 25 November 2024, Mrs Razia Chowdhury, the Applicant, issued this appeal against the imposition of a Financial Penalty of £10,000 which had been imposed on 29 October 2024 by the London Borough of Waltham Forest ("the Respondent"). The reason for imposing the Civil Penalty Notice ("CPN") was that the Respondent was satisfied that the Applicant had committed "a relevant housing offence" in that she had failed to comply with the requirements of an Improvement Notice which had been served on 18 June 2021 contrary to Section 30(1) Housing Act 2004 ("the 2004 Act").

3. The Respondent stated that it was further satisfied that its decision to impose a Financial Penalty and the amount of the penalty were in accordance with the relevant statutory provisions and its adopted enforcement policy. The notice gave the weblink on which these documents could be found. The relevant documents are

    (i) "Civil penalties under the Housing and Planning Act 2016: Guidance for Local Housing Authorities" issued by the Ministry of Housing, Communities & Local Government (April 2018) ("the Statutory Guidance"); and

    (ii) "Standard Operating Procedure: Housing and Licensing Team Enforcement Policy" (11 February 2020) which has been approved by the Respondent's Cabinet ("the Respondent's Policy").

4. The Applicant's application form sets out 17 Grounds of Appeal in a single spaced document which extends to some 5,000 words. At the time, she was acting in person. A number of the grounds attack the decision to impose an Improvement Notice. On 18 June 2021, the Respondent had imposed this Improvement Notice, having satisfied itself that Category 1 and 2 hazards existed. The Appellant appealed against this Notice. On 4 April 2022, a Tribunal dismissed the appeal, but made various amendments to the Improvement Notice. Neither party appealed this decision.

5. On 17 July 2025, the Tribunal gave Directions. The Procedural Judge noted that this Tribunal has no jurisdiction to overturn this decision. Pursuant to these Directions:

> (i) The Respondent has filed a Bundle (493 pages) containing the material on which they seek to rely in support of their decision to impose the Financial Penalty. Reference to this Bundle will be prefixed by "R.___".
>
> (ii) The Applicant has filed his Bundle (628 pages) containing the material on which she seeks to rely in support of her appeal. Reference to this Bundle will be prefixed by "A.___".

6. On 12 August 2025, The Respondent filed its Statement of Case in response to the appeal. This was drafted by Ms Victoria Osler (Counsel). She carefully analysed the Grounds of Appeal. On a "generous interpretation" she concluded that only Grounds 4, 7, 8 and 9 included within them any challenge to the CPN. She concluded that the appeal was empty of merit. Most of the grounds concerned the service and content of the Improvement Notice, and the Tribunal's Improvement Notice decision. As far as they advanced a defence of reasonable excuse, no such excuse was made out. There was no challenge to the quantum of the fine. The Respondent invited the Tribunal to uphold the CPN and the Financial Penalty of £10,000. The Tribunal should consider an increase in the Financial Penalty to reflect the Appellant's continued failure to acknowledge her responsibility to ensure that the Property is free of hazards and that she complies with any statutory notice.

The Hearing

7. Mr Anthony Owen, a Solicitor with Kelly Owen Ltd, appeared for the Applicant. He stated that he had only been instructed a few days before the hearing. He was accompanied by Mrs Razia Chowdhury, the Applicant. He had had no involvement in drafting the Grounds of Appeal or Mrs Chowdhury's witness statement.

8. Ms Victoria Osler (Counsel) appeared for the Respondent. She was accompanied by Ms Manasvini Mohan, a trainee solicitor with Sharpe Pritchard, her instructing solicitor. She adduced evidence from Ms Catherine Lovett, a Team Manager within the Respondent's Private Sector Housing and Licensing Team, and Ms Sandra McGrath, an Environmental Health Enforcement Officer.

9. At the beginning of the hearing, the Tribunal sought to ascertain the substance of the grounds of appeal upon which the Applicant sought to advance. We indicated that there were normally two issues to any appeal against a CPN, namely:

(i) Had the Respondent satisfied us to the criminal standard of proof that the Applicant had committed an offence contrary to Section 30(1) of the 2004 Act. We would need to consider any defence of reasonable excuse; and

(ii) Should we uphold the Financial Penalty of £10,000 having due regard to the Respondent's published policy and all relevant circumstances.

10. Mr Owen had not prepared a Skeleton Argument. He was unable to summarise the grounds of appeal which he intended to advance. The Tribunal therefore directed him to serve the grounds which he intended to advance by 15.00 and stated that we would determine the appeal on Day 2. The Directions had made provision for an inspection of the Property. Both parties agreed that this was not necessary.

11. At 14.29, Mr Owen served a Skeleton Argument with Amended Grounds of Appeal. These were, to use Ms Osler's description, "a wholesale rewrite". He also relied on five authorities. He relies on nine grounds of appeal:

> "(i) The Notice of Intention to impose a penalty was issued at a time when there had been substantial compliance with the Improvement Notice. No further hazard assessment was carried out following the improvement Notice and before the Penalty Notice (no existing hazards.
>
> (ii) The Notice was based on misinformation (about the roof, the cavity wall insulation, dampness etc).
>
> (iii) The Appellant's representations were not given proper consideration.
>
> (iv) The delay in responding to representations was damaging to the process as was the substantial delay in issuing the penalty to the point that the penalty should be set aside as it is a breach of her Article 6 rights.
>
> (v) The Penalty is based upon a technical non-compliance which is not appropriate as it ought to be results based. In particular, the hazards complained of had been abated by the time provide for in the amended improvement notice.
>
> (vi) If there is found to be non-compliance, the Appellant has a reasonable excuse by way of a complete statutory defence to each and every non-compliance.
>
> (vii) If there is found to be a liability, the quantum is too high taking into account the overall steps taken by the Appellant to comply with the amended Improvement Notice.
>
> (viii) The Council overreached by prescribing the manner in which the hazards must be abated.

(ix) The Tribunal never responded to the Appellants application to reopen or review the earlier decision on the validity of the Improvement Notice which the Authority relies on for its imposition of a penalty."

12. By the time that the Tribunal reconvened at 10.00 on Day 2, Ms Osler had served a detailed Reply to the New Grounds of Appeal, together with five additional authorities. Mr Owen had also served a Response. We commend Ms Osler for the steps which she has taken to ensure that the Respondent has been able to respond to the "wholesale rewrite" of this appeal.

The Evidence

13. The appeal is a rehearing. We are entitled to have regard to matters of which the Respondent was unaware. We must determine whether the Respondent's decision was wrong at the time that it was taken, according it the appropriate degree of deference.

14. The Respondent adduced evidence from Ms McGrath and Ms Lovett. Between January 2020 and April 2021, Ms McGrath inspected the Property on five occasions before deciding to serve the Improvement Notice on 18 June 2021. The Applicant appealed against the Improvement Notice, but it was upheld, subject to variations, by a Tribunal on 4 April 2022. The Applicant was ordered to carry out the specified works within 4 months, namely by 7 August 2022. Ms McGrath inspected the Property on 9 September 2022 and concluded that the Applicant had not complied with the notice.

15. The decision-making responsibility then passed to Ms Lovett. She had regard to the witness statement made by Ms McGrath, dated 21 February 2023, and recommended that the Financial Penalty should be imposed. On 3 March 2023, the respondent served a Notice of Intent to Impose a Financial Penalty of £10,000. The Applicant was invited to make representations, and the Applicant made such representations on 10 March 2023. There were then considerable delays. On 18 January 2024, Ms Carole Haynes, the Private Sector & Licensing Team Manager, responded to these representations. Ms Lovett stated that a different officer reviewed the representations to add an additional degree of objectivity. The Notice of Decision to impose the Financial Penalty was not served until 29 October 2024. This was more than two years after Ms McGrath had concluded that a criminal offence had been committed. Ms Lovett was responsible for serving this notice. She stated that the Respondent had overlooked the fact that Ms Haynes had responded to the Applicant's representations.

16. Mr Owen had few questions for the two officers. The Tribunal asked a number of questions relating to the decision making process. In his closing submissions, Mr Owen placed considerable emphasis on the delays that had occurred.

17. Mrs Chowdhury then gave evidence. Mr Owen was handicapped in that he had not drafted her witness statement. However, Ms Osler asked a number of questions which permitted Mrs Chowdhury to amplify her case. The Tribunal also asked a number of questions.

18. Mrs Chowdhury is married and has two children, aged 12 and 18. She had worked as a teacher. However, she is not currently working. Her husband is unfit to work. Her younger son suffers from a rare blood cancer which requires regular visits to the Great Ormond Street Hospital. On 17 October 2006, Mrs Chowdhury had purchased the Property. She had intended it to be the family home. However, because of the family circumstances, she had decided to let it. The rental income was the family's main source of income.

19. Between 2006 and 2018, Mrs Chowdhury had let the Property to a number of tenants. She had had good relations with them. On 5 July 2018, she had granted an Assured Shorthold Tenancy to Ms Sahmane and Mr Drief. She did not find them to be satisfactory tenants. She stated that they had only complained to the Respondent about their living conditions after she had served a Notice Seeking Possession.

20. The major problem at the property has been one of condensation. Condensation is the interaction between the moisture produced within a dwelling and the equation of heating, insulation and ventilation. Mrs Chowdhury contended that the problem was the untenant-like behaviour of the tenants. The Respondent contend that the property lacked adequate insulation and that the provision for heating was inadequate.

21. Mrs Chowdhury has made a number of complaints about the conduct of Ms McGrath and Ms Lovett. She believed that they were siding with the tenants. We are satisfied that Mrs Chowdhury is a strong willed individual who takes an inappropriate approach to her property rights. She gave long rambling answers and found it difficult to hear what others were saying.

22. We are satisfied that Ms McGrath and Ms Lovett have acted impartially. Ms McGrath gave advice to both landlord and tenant as to what they should do to abate the condensation problem. However, we are satisfied that Mrs Chowdhury was unclear as to what was required for her. The situation was aggravated by the fact that there were concurrent proceedings both before this T ribunal involving the Applicant and the Respondent and in the County Court involving the Applicant and her tenants. Three separate experts have been involved, two of these, Mr Steve Cockram and Mr Aftar Hussain, being single joint experts appointed by the County Court. All have offered differing views as to the cause of the condensation.

23. We do not find Mrs Chowdhury to be a rogue landlord. She is rather a misguided one who has not acted in her own best interests. On 17 February 2020, Ms McGrath emailed the Applicant suggesting that she employ the services of an agent if she was not in a position to manage the Property. It is a matter of regret that the Applicant did not accept this advice.

24. A further matter which we must take into account is the impact of Covid-19. Ms McGrath's first inspections were conducted on 10 January and 5 March 2020. The first Covid lockdown was imposed on 23 March 2020. This had an impact on all the parties:

(i) Covid was particularly stressful for Mrs Chowdhury, given the impact on her youngest son. It was also difficult for her to arrange for contractors to inspect or carry out works at the Property.

(ii) Covid also had an impact on the care and attention that both the Respondent and this Tribunal afforded this case. The appeal against the Improvement Notice was heard on 4 April 2022 at a time when the Tribunal was not conducting inspections or face-to-face hearings. The wording of the amended Improvement Notice was far from satisfactory. Any landlord who is facing a criminal sanction for non-compliance is entitled to know precisely what is required of them.

The Law

The Service of an Improvement Notice

25. If a local housing authority ("LHA") is satisfied that a category 1 hazard exists in any residential premises, and that no management order is in force, it may serve an improvement notice in respect of that hazard (section 11(1) of the 2024 Act). Similar provision is made in respect of category 2 hazards (section 12(1))

26. The notice must specify, in relation to the hazard (or each of the hazards) to which it relates (a) whether the notice is served under section 11 or 12; (b) the nature of the hazard and the residential premises on which it exists; (c) the deficiency giving rise to the hazard; (d) the premises in relation to which remedial action is to be taken in respect of the hazard and the nature of that remedial action; (e) the date when the remedial action is to be started (see subsection (3)), and (f) the period within which the remedial action is to be completed or the periods within which each part of it is to be completed.

27. An improvement notice will require the person on whom it is served to carry out such remedial action in respect of a hazard "as is specified in the notice": (sections 11(2)/12(2). The remedial action must as a minimum ensure that the hazard in the premises ceases to be a category 1 hazard, although it may go further (section 11(5))). "Remedial action" is defined by section 11(8) as action which in the opinion of the LHA will remove or reduce hazard.

28. An improvement notice may specify alternative schemes of work; where a notice specifying alternative schemes is served on the owner of only one flat, he can decide which scheme to carry out: *Wood v Kingston upon Hull City Council* [2017] EWCA Civ 364, [2017] HLR 30 (per Lewison LJ at [28]). Further, a person served with an improvement notice can appeal on the

ground that there is a cheaper and equally effective alternative to the works required (per Lewison LJ at [35]–[37].

Failure to comply with an Improvement Notice

29. Section 30 of the Housing Act creates the offence of failing to comply with improvement notice:

> (1) Where an improvement notice has become operative, the person on whom the notice was served commits an offence if he fails to comply with it.
>
> .....
>
> (4) In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse for failing to comply with the notice.
>
> (5) The obligation to take any remedial action specified in the notice in relation to a hazard continues despite the fact that the period for completion of the action has expired.

The Imposition of a Financial Penalty

30. Schedule 13A of the 2004 Act deals with the procedure for imposing Financial Penalties:

> "1. Before imposing a financial penalty on a person under section 249A the local housing authority must give the person notice of the authority's proposal to do so (a "notice of intent").
>
> 2. (1) The notice of intent must be given before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates.
>
> (2) But if the person is continuing to engage in the conduct on that day, and the conduct continues beyond the end of that day, the notice of intent may be given—
>
> (a) at any time when the conduct is continuing, or
>
> (b) within the period of 6 months beginning with the last day on which the conduct occurs.
>
> (3) For the purposes of this paragraph a person's conduct includes a failure to act.
>
> 3. The notice of intent must set out—

(a) the amount of the proposed financial penalty,
(b) the reasons for proposing to impose the financial penalty, and
(c) information about the right to make representations under paragraph

4. (1) A person who is given a notice of intent may make written representations to the local housing authority about the proposal to impose a financial penalty.

(2) Any representations must be made within the period of 28 days beginning with the day after that on which the notice was given ("the period for representations").

5. After the end of the period for representations the local housing authority must—

(a) decide whether to impose a financial penalty on the person, and
(b) if it decides to impose a financial penalty, decide the amount of the penalty.

6. If the authority decides to impose a financial penalty on the person, it must give the person a notice (a "final notice") imposing that penalty.

7. The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was given.

8. The final notice must set out—

(a) the amount of the financial penalty,
(b) the reasons for imposing the penalty,
(c) information about how to pay the penalty,
(d) the period for payment of the penalty,
(e) information about rights of appeal, and
(f) the consequences of failure to comply with the notice."

31. Paragraph 10 provides for a right of appeal to this tribunal:

"(1) A person to whom a final notice is given may appeal to the First-tier Tribunal against—

(a) the decision to impose the penalty, or

(b) the amount of the penalty.

(2) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.

(3) An appeal under this paragraph—

(a) is to be a re-hearing of the local housing authority's decision, but

(b) may be determined having regard to matters of which the authority was unaware.

(4) On an appeal under this paragraph the First-tier Tribunal may confirm, vary or cancel the final notice.

(5) The final notice may not be varied under sub-paragraph (4) so as to make it impose a financial penalty of more than the local housing authority could have imposed."

32. In *Hussain (Nasim) v Waltham Forest LBC* [2023] EWCA Civ 733; [2024] KB 154, the Court of Appeal gave importance guidance on the scope of any appeal. The task for this tribunal is to determine whether the decision under appeal had been wrong when it had been taken. In this context, "wrong" meant that the tribunal disagreed with the decision under appeal despite having accorded it the deference or special weight appropriate to a decision involving the exercise of judgment by the body tasked by Parliament with the primary responsibility for making licensing decisions. In reaching its decision, the tribunal could have regard to matters of which the Local Housing Authority ("LHA") had been unaware, including matters arising after the LHA's decision, provided those matters were relevant to the assessment of whether that decision had been right or wrong at the time it was taken (see Andrew LJ at [63]).

The Statutory Guidance

33. Paragraph 12 of Schedule 13A of the 2004 Act requires a LHA to have regard to any guidance given by the Secretary of State about the exercise of its functions under section 249A. A copy of the Statutory Guidance is at R.58-77.

34. LHAs are expected to develop and document their own policy on when to prosecute and when to issue Financial Penalties and should decide which option they wish to pursue on a case-by-case basis in line with that policy. The Tribunal highlights the following passages from the Guidance:

(i) The maximum penalty is £30,000. The amount of the penalty is to be determined by the LHA in each case, having regard to the Guidance ([1.11]);

(iii) LHAs are expected to develop and document their own policies about when to prosecute, when to penalise and how to determine the appropriate level of a penalty ([3.3]);

35. Section 3.5 suggests that LHAs should consider the following factors to help ensure that the civil penalty is set at an appropriate level:

"(a) Severity of the offence. The more serious the offence, the higher the penalty should be.

(b) Culpability and track record of the offender. A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.

(c) The harm caused to the tenant. This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.

(d) Punishment of the offender. A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.

(e) Deter the offender from repeating the offence. The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.

(f) Deter others from committing similar offences. While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying civil penalties where the need to do so exists and (b) that the civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

(g) Remove any financial benefit the offender may have obtained as a result of committing the offence. The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed."

The Respondent's Policy

36. The Respondent's policy is at R.30-57. The policy for Civil Penalties are set out in Appendix 1 (R.39-50).

37. The Policy (at p.10) stresses the need for transparency and consistency. Thus, those managing and having control of rented properties in the

borough (a) should know how the Respondent will generally penalise relevant offences and (b) are assured that, generally, like cases will be penalised similarly, and different cases penalised differently. The Respondent will only depart from its policy in exceptional circumstances. At p.11, the Respondent sets out the statutory guidance which is summarised at [43] above.

38. The Respondent apply a matrix (at p.12) with 6 bands with a range from £0 to the statutory maximum £30,000. Failure to comply with an improvement Notice is considered at p.13. The Policy notes that Category 1 hazards are the most serious hazards, judged to have the highest risk of harm to the occupiers. The Respondent view the offence of failing to comply with the requirements of an Improvement Notice as a significant issue, exposing the tenant[s] of a dwelling to one or more significant hazards.

> (i) The civil penalty for a landlord controlling five or less dwellings, with no other relevant factors or aggravating features [see below] would be regarded as a *serious* matter, representing a band 3 offence, attracting a civil penalty of at least £10,000.
>
> (ii) Where a landlord or agent is controlling/owning a significant property portfolio and/or has demonstrated experience in the letting/management of property the failure to comply with the requirements of an Improvement Notice would be viewed as being a *severe* matter attracting a civil penalty of £20,000 or above.

39. The policy also identifies certain aggravating features that would warrant a higher penalty:

> Aggravating features/factors specific to non-compliance with an Improvement Notice
>
> • The nature and extent of hazards that are present. Multiple hazards and/or severe/extreme hazards that are considered to have a significant impact on the health and/or safety of the tenant[s] in the property would justify an increase in the level of the civil penalty.
>
> Generic aggravating features/factors: The Respondent will have regard to the following general factors in determining the final level of the civil penalty:
>
> • A previous history of non-compliance would justify an increased civil penalty. Examples of previous non-compliance would include previous successful prosecutions [including recent convictions that were 'spent'], works in default of the landlord and breaches of regulations/obligations, irrespective of whether these breaches had been the subject of separate formal action.
>
> • Any available information regarding the financial means of the offender, not restricted to just rental income from the rented home[s].

40. In this case, the Respondent has not identified any aggravating factors. The Tribunal asked Ms Osler whether the policy made any provision for mitigating factors. We were told that it did not. However, Ms Osler suggested that a Financial Penalty of £10,000 was at the bottom of the range.

41. The Respondent automatically applies the following discounted rates to any imposed financial penalties in the following circumstances:

> • In the event that the offender complied with the identified breach before the end of the representation period at the 'Notice of Intent' stage, the Respondent would reduce the level of any imposed civil penalty by 20%
>
> • A further discount of 20% of the original calculated financial penalty can be achieved should the penalty be paid within a specified time period [normally 28 days].

Neither of these apply in the current case.

The Background

42. Between 2006 and 2018, Mrs Chowdhury had let the Property to a number of tenants. She had had good relations with them. On 5 July 2018, she had granted an Assured Shorthold Tenancy to Ms Sahmane and Mr Driefat a rent of £1,700 pm. She did not find them to be satisfactory tenants. She stated that they had only complained to the Respondent about their living conditions after she had served a Noticed Seeking Possession. On 25 April 2017 (R.156), Mrs Chowdhury had licenced the Property under the Respondent's Selective Licencing Scheme. On 12 November 2016 (A.279), she had obtained an EPC certificate which gave a "D" assessment.

43. On 10 January 2020, Ms McGrath inspected the Property. She met the tenants and their four children, then aged 15, 9, 5 and 1. On 3 February (R.176), Ms McGrath wrote to Mrs Chowdhury about a range of defects. The Applicant was asked to employ the services of a professional damp specialist company to carry out a survey paying particular attention to condensation to the front and rear interior walls and out-pipe at the exterior front wall which appear to be causing damp. She was required to provide the Respondent with a copy of the report and to carry out any works which were recommended.

44. On 10 February 2020 (R.178), Mrs Chowdhury responded that vacant possession would be required before any works could be done. Ms McGrath (R.180) repeated that a report from a damp specialist was required. On 17 February (A.181), Mrs Chowdhury stated that she had booked a builder to deal with the boiler. However, her son was in the Great Ormond Street Hospital undergoing treatment for blood cancer. Ms McGrath (R.182) responded advising to employ the services of a property agent if she was not in a position to ensure that the requested works were carried out. On 19 February, Mrs Chowdhury issued possession proceedings against her

tenants. On 5 March, Ms McGrath carried out her second inspection. She took a number of photographs (at R.188-196). On 20 March (A.288), Mrs Chowdhury installed double glazed windows.

45. On 20 March 2020, the first Covid-19 lockdown was imposed. On 31 March, the selective licence expired. Ms Chowdhury did not make an application to renew it under the Respondent's new scheme until 27 May 2021 (see [7] at R.374). On 20 July 2022 (R.374-391), a Tribunal made a Rent Repayment Order of £2,100 in favour of the tenants in respect of this breach. On 20 March 2020 (A.288), Mrs Chowdhury installed an extract fan in the bathroom.

46. On 15 and 18 December 2020, Ms McGrath carried out her third and fourth inspections. She took a number of photographs (at R.199-214 and R.277-299). Ms Osler highlighted the photograph at R.206 which showed extensive mould in the first floor front bedroom which was occupied by a young child. On 8 February 2021 (R.255), Mrs Chowdhury responded that it was the Respondent's responsibility to rehouse the tenants if known hazards existed. On 10 February (R.256), Ms McGraph requested a full schedule of the works which were to be executed. On 13 February 2021, Mrs Chowdhury recovered the flat roof. The builder charged £1,200 and provided a "12 month felt manufactured guarantee" (R.264).

47. On 31 March 2021 (R.262), Ms McGrath repeated her request for a schedule of the works which were to be executed. Mrs Chowdhury had offered mould cleaning. Ms McGrath advised that insulation was required to the walls and loft, along with additional passive ventilation. On 1 April (R.263), Mrs Chowdhury provided details of the roofer.

48. On 9 April 2021, Ms McGrath carried out her fifth inspection which was to lead to the service of the Improvement Notice. The main deficiencies are listed at R.301. There was black mould affecting the entrance hall, lounge, three bedrooms and bathroom. The damp and mould growth was assessed as a Category 1 hazard. Excess cold, attributed to (i) lack of thermal insulation to the external cavity walls and the flat roof insulation; and (ii) absence of a fixed heating appliance to the bathroom, was assessed as a Category 2 hazard. The HHSRS Assessment is at R.300-304.

49. On 18 June 2021, the Respondent served an Improvement Notice on Mrs Chowdhury (at R.311-318). The following works were to be started no later than 20 July and be completed by 20 October 2021:

> "1. Employ the services of a professional damp specialist company who is a member of the Property Care Association (PCA) to carry out a full survey of the whole dwelling to include an examination of all walls for the presence and condition of damp proof course. This should include any recommended measures to improve ventilation.
>
> - Supplying the Licencing Enforcement Officer with a copy of the report.

- Carry out all works of recommendation to prevent further damp from occurring.
- On completion of any installed damp proof course the specialist contractor is to provide a 20-year guarantee.

2. Employ the services of a competent person who is a member of the National Insulation Association and who is also backed by suitable insurance such as the Cavity Insulation Guarantee Agency to carry out a survey in relation to cavity wall insulation to all external walls.

- Supply the Licencing Enforcement Officer with a copy of the report.
- Carry out all works of recommendation.
- Ensure all works are carried out to comply with Current Building Regulation approved document L.

3. Employ the services of a competent person to supply and fit adequate loft insulation to a depth of 270mm-300mm to reduce heat loss. All works should comply with current building regulation approved document L.

4. Supply and properly install a radiator in the bathroom capable of maintaining the room at a minimum temperature of 22oC when the outside temperature is -1oC."

50. Ms Osler pointed out the following passage in the letter which accompanied the Notice (at A.56): "If you wish to carry out works other than those in the schedule to the notice you must first apply for a variation of the notice stating in writing how you think the notice should be varied". Mrs Chowdhury responded that she was told that if she disagreed with the Notice, she should appeal.

51. On 1 July 2021, Mrs Chowdhury obtained a report from Prokil who are damp and timber specialists. There are two versions of this report. The full report is at A.272-276. Mrs Chowdhury sent a copy ("scanned with CamScanner") to the Respondent. The copy on which the Respondent relied in both the appeal against the Improvement Notice and this appeal is at R.486-488. This is an incomplete copy of the report. It should have been quite apparent to the parties that this copy was incomplete. However, it was only on Day 2 of the current appeal that the Tribunal identified this discrepancy.

52. The Respondent's version omitted pages 4 and 5 of the Prokil report. These pages were critical. Mr Wheeler described them as the "heart of the report", namely the works which Prokil recommended to address the condensation induced dampness, namely:

> "1. A Positive Input Ventilation (PIV) unit should be fitted to the hallway at top of staircase which would be the best solution to reducing the condensation issues throughout the property; by increasing the pressure within property reducing the percentage of humidity and assisting in the dissipation of moisture. It is important

that heating is properly implemented according to the Building Research Establishment and sufficient extractor fans are fitted in the bathroom and kitchen.

2. Passive Air Vents (PAVs) should be installed in all rooms affected with mould. PAVs are a very effective way of expelling excess moisture created in rooms and in extreme cases can expel up to 2.5 litres of water per day. It is important that heating is properly implemented according to the Building Research Establishment recommendations for the PAVs to work effectively. Heating allows the water particles to become airborne and creates high pressure which will always move towards low pressure outside carrying the moisture with it through the PAVs or top opening windows. They do not allow cold air back into the building and function for 24 hours a day and do not require electricity.

3. A new Cyfan, humidity-controlled extractor fan from Nuaire will be supplied and installed in the bathroom and kitchen. These fans are more efficient expelling up to 60 litres per second and benefit from having a quiet run function, low energy consumption and no filter for easy maintenance.

4. All areas in the rooms affected by mould should be treated with a professional use surface biocide method of sterilisation. This will help to prevent re-growth and give long-term protection. As with all chemicals, however, in time the strength will deteriorate and if the conditions which allowed condensation to occur are re-created, mould formation may recur in the future."

53. Prokil found that there was no evidence of rising damp or penetrative damp affecting the Property at the time of their inspection. However, Prokil did note that to the rear of the property, the lower wall had had multi-finish plaster applied to the exterior. Prokil noted that this product is designed for internal use and would draw in moisture to the wall and cause water ingress. This needed to be fully removed. Prokil also noted cracked render, missing pointing, spalled bricks, missing sealant around windows and doors, disconnected downpipe/gutter all of which could cause water ingress.

54. On 8 July 2021, Mrs Chowdhury appealed against the Improvement Notice. On 22 March 2022, the appeal was heard by Judge Dutton and Peter Roberts DipArch RIBA. Because of Covid-19 restrictions, this was a remote video hearing. There was no inspection. By this date, a radiator had been installed in the bathroom. The Tribunal's decision is dated 4 April 2022. The appeal was dismissed. However, the Improvement Notice was amended having regard to the Prokil Repot and the works which had been executed. The Appellant was ordered to complete the following works within four months of the decision being sent to the parties (7 April 2022):

"1. Relying upon the report from Prokil dated 1st July 2021 Mrs Chowdhury is to implement the recommendations made and to

confirm with the Council that those works have been done and facilitate an inspection to ensure that that is the case.

2. Employ the services of a competent person who is a member of the National Insulation Association and who is also backed by suitable insurance such as the Cavity Insulation Guarantee Agency to carry out a survey in relation to cavity wall insulation to all external walls.

- Supply the Licencing Enforcement Officer with a copy of the report.
- Carry out all works of recommendation.
- Ensure all works are carried out to comply with current building regulation approved document L.

3. Employ the services of a competent person to supply and fit adequate loft insulation to a depth of 270mm-300mm to reduce heat loss. All works should comply with current building regulation approved document L."

55. Mrs Chowdhury did not appeal against this Order. However, the Tribunal identifies the following difficulties that Mrs Chowdhury faced in complying with it:

(i) The Order was premised on the incomplete version of the Prokil Report which the Respondent had included in the Appeal Bundle. This omitted the heart of the report (see [53] above). It was rather based on the more general observations made by Prokil.

(ii) The order was premised on their being cavity walls. Whilst this was true in respect of the walls at the front of the Property, it was not in respect of the rear walls.

(iii) The Property has a flat roof. There is no loft. When the roof was opened up for inspection, it was found to have the requisite insulation.

56. The major requirement on Mrs Chowdhury to comply with the Improvement Notice was to improve the thermal insulation. A Green Homes Grant was available as the tenants were on benefits. On 14 April 2022 (R.358), Mrs Chowdhury wrote to Ms McGrath complaining that the tenants were failing to cooperate with a grant application. She asked for her assistance. On 21 April (R.359), Ms McGrath responded stating that the tenant was unwilling to disclose personal information. Ms McGrath reminded Mrs Chowdhury that the deadline for the works expired on 7 August. On 30 April (A.288), Mrs Chowdhury repaired the extract fan in the bathroom.

57. On 5 May 2022, (R.361), Ms McGrath sent a further email confirming the deadline of 7 August. She noted that the Respondent could not require the tenants to provide the necessary evidence. Mrs Chowdhury responded on the same day. She complained that the tenants were in rent arrears. The

works would only take one week. On 25 May (R.373), Ms McGrath reminded Mrs Chowdhury of her need to meet the deadline of 7 August.

58. On 21 July 2022 (R.393), Mrs Chowdhury complained to the Tribunal of the problem that she was facing. She noted that the Property had a flat roof, so loft insulation was not possible. Further, there was only one cavity wall. She had applied for a grant that day, and was awaiting the outcome. On 22 July (A.289) she arranged for the front wall to be insulated. On 1 August (R.398), the Tribunal responded noting that any time for appealing against the Tribunal's decision had long expired. She was advised to liaise with the Respondent to resolve the outstanding issues. On 2 August (R.400), Mrs Chowdhury wrote to Ms McGrath seeking advice on what she should do.

59. On 7 August 2022, the deadline for completing the works had expired. On 18 August (A.289), Mrs Chowdhury arranged for works to be done to the roof. On 25 August (R.402), Ms McGrath wrote that the Respondent would be inspecting with a view to carrying out works in default. On 1 September (R.125), Moreton Energy Savings issued a certificate in respect of the cavity wall insulation. On 1 September (R.413), Mrs Chowdhury wrote to the Tribunal asking it to review its decision or give permission to appeal. On 2 September (R.406-410), Ms McGrath wrote to Mrs Chowdhury and the tenants stating that she would inspect on 9 September. On 5 September (R.411), Mrs Chowdhury sent Ms McGrath a video of the works that she had executed.

60. On 9 September 2022, Ms McGrath inspected the Property. There were a number of defects. Ms McGrath was satisfied that Mrs Chowdhury had failed to comply with the Improvement Order. She took a number of photographs (at R.424-469). Ms McGrath lists the outstanding defects at [31] of her witness statement (R.327):

(i) Relying upon the report from Prokil, dated 1 July 2021, Mrs Chowdhury had been ordered to implement the recommendations made and to confirm with the Council that those works have been done and facilitate an inspection to ensure that that is the case. Ms McGrath noted that the following recommended works had not been completed: (a) the multi-finish plaster which had been applied to the external wall had not been removed; (b) there was missing pointing and spalled bricks, all of which could be the cause of water ingress; (c) there was decorative spoiling to the kitchen ceiling which was consistent with water ingress; (d) the mechanical extract fan in the bathroom was not working sufficiently; (e) there was no extractor hood in the kitchen; (f) the Applicant had not provided a tumble dryer.

(ii) The Applicant had not provided a copy of a report from a member of the National Insulation Association in respect of the cavity wall insulation.

(iii) The Applicant had failed to fit loft insulation to a depth of 270mm to 300mm to reduce heat loss. Ms McGrath complained that the Applicant had failed to install a suspended ceiling.

61. The Tribunal makes the following observations:

(i) The Improvement Notice had omitted the main recommendations of the Prokil Report. The Improvement Notice merely referred to a number of general recommendations. Prokil had found no evidence of rising or penetrating damp at the date of the inspection. These general recommendations were drafted in general terms, for example the spalled bricks. A number of the recommendations were not for the landlord to complete, but were rather addressed to the tenants.

(ii) On 1 September, Mrs Chowdhury had obtained a certificate from Moreton Energy Savings in respect of the cavity wall insulation. It is not entirely clear when she provided the evidence at R.115-125 to the Respondent. Ms McGrath suggested that this was not until 15 August 2023 (R.114).

(iii) Given that there was no loft, it was not practical for the Applicant to install loft insulation. On 26 July 2023 (A.325), when Mrs Chowdhury finally obtained a report from London Roofing & Building Solutions Ltd, it was found that there was already 300mm insulation. This could only be confirmed by opening up the roof. Having opened up the roof, Mrs Chowdhury paid the contractor £3,250 to replace the insulation (A.315).

62. On 3 March 2023 (at R.81-88), the Respondent served the Notice of Intent to Impose a Financial Penalty of £10,000. The Notice was issued by Ms Lovett. The alleged offence was failure to comply with the Improvement Notice. The Notice did not provided particulars of the alleged breach.

63. On 31 March 2023 (R.97-106), Mrs Chowdhury made representations against the proposed penalty. The letter is dated 10 March. Mrs Chowdhury set out the steps that she had taken to comply with the notice.

64. On 18 January 2024 (R.131-134), The Respondent replied to these representations. Mrs Chowdhury stated that she received this on 31 January. The response was made by Ms Carole Haynes, the Private Sector Housing & Licensing Team Manager. It is the Respondent's policy to arrange for a different Team Manager to respond to any representations to add an element of independence. Ms Haynes decided to uphold the decision to impose the Penalty. It is to be noted that this letter was sent after a delay of ten months.

65. On 29 October 2024 (R,135-142), Ms Lovett issued the Respondent's Notice of Decision to Impose a Financial Penalty of 2024. There had been a further delay of nine months. Ms Lovett stated that she had not been aware that Ms Haynes had sent out her response. There had therefore been a delay of some 20 months between the service of the Notice of Intention and the Final Penalty Notice.

66. During this period, the tenants had brought proceedings in the County Court. The Court had appointed Steve Cockram as a Single Joint Expert. He carried out inspections on 21 November 2022, 20 November 2023, 15 February 2024 and 18 April 2024. On 20 July 2023, the Court awarded

damages of £8,500. In his final report (at A.260-271), Mr Cockram found that Mrs Chowdhury had carried out a significant amount of remedial work. The work that he had recommended had been completed. Also, heat recovery electric extract fans have been provided in the bathroom and each of the three bedrooms. It is apparent that the works that he had proposed in his report differed from those that had been included in the Improvement Notice.

67. The Applicant has also provided a report from Afthar Hussain MCIEH, dated 21 May 2025 (at A.147-259). He had also been appointed as a Single Joint Expert by the County Court. Mrs Chowdhury had issued a claim for possession and the tenants had filed a Counterclaim. He did not identify any hazards within the Housing Health and Safety Rating System. However, there were a number of steps that the tenants could take to reduce the problem of condensation.

68. Ms Osler confirmed that the Respondent is now satisfied that Mrs Chowdhury has complied with the Improvement Notice.

The Tribunal's Decision

69. The Tribunal is satisfied beyond reasonable doubt that the Applicant failed to comply with the terms of the improvement notice, but considers that there are a number of mitigating factors which the Respondent has failed to take into account.

70. The Applicant has raised nine grounds of appeal:

Ground 1: The Notice of Intention to impose a penalty was issued at a time when there had been substantial compliance with the Improvement Notice. No further hazard assessment was carried out following the improvement Notice and before the Penalty Notice (no existing hazards)

71. The Tribunal does not accept that there had been substantial compliance. No further hazard assessment was required. The Improvement Notice related to the following:

(i) The Prokil Report: Whilst we have noted the ambiguities relating to this aspect of the Order, Mrs Chowdhury did not notify the Respondent of the works that she had done. Had she been uncertain as to what was required, she should have raised this with the Respondent.

(ii) Cavity Wall Insulation: Mrs Chowdhury did not supply the Respondent with a report from a member of the National Insulation Association. Whilst she had obtained a certificate from Moreton Energy Services on 1 September 2022, she did not provide this to the Respondent until 15 August 2023 (see [61(ii)] above).

(iii) Loft Insulation: Ms McGraph's complaint was that Mrs Chowdhury had failed to install a suspended ceiling. We accept that the Order had not required her to do so.

Ground 2: The Notice was based on misinformation (about the roof, the cavity wall insulation, dampness etc).

72. The Tribunal accepts that the drafting of the Improvement Notice was unfortunate (see [61] above). There was no loft. There was no cavity wall at the rear of the Property. The Improvement Notice was not based on the heart of the Prokil Report, namely the key recommendations to abate the condensation induced dampness. However, these are matters of mitigation. They do not provide a defence.

Ground 3: The Appellant's representations were not given proper consideration.

73. On 31 March 2023, Mrs Chowdhury made representations against the proposed penalty. On 18 January 2024, Ms Carole Haynes responded. This was a full, albeit a very belated, response.

Ground 4: The delay in responding to representations was damaging to the process as was the substantial delay in issuing the penalty to the point that the penalty should be set aside as it is a breach of her Article 6 rights.

74. The Tribunal has noted the substantial delays in this case. The Respondent took 10 months to respond to Mrs Chowdhury's representations. There was a further delay of nine months before the Respondent imposed the Financial Penalty on 29 October 2024.

75. Whilst these delays are unfortunate, the Tribunal does not consider these to afford a defence under Article 6. As Ms Osler notes, neither statute, government guidance, nor the Respondent's policy sets down a timeframe. However, we accept the delays provide some mitigation. Any landlord is entitled to expect any action to be taken promptly. Long delays cause unnecessary uncertainty and anxiety.

Ground 5: The Penalty is based upon a technical non-compliance which is not appropriate as it ought to be results based. In particular, the hazards complained of had been abated by the time provide for in the amended improvement notice.

76. The Tribunal does not accept that the non-compliance was technical. There was no requirement for the Respondent to carry out a further hazard assessment. There is therefore no clear evidence that the hazards had been abated by September 2022. The Tribunal notes that there were further proceedings in the County Court relating to the condensation induced dampness. Mr Cockram concluded that the works necessary to abate the dampness had only been completed by April 2024 (see [66] above).

Ground 6: If there is found to be non-compliance, the Appellant has a reasonable excuse by way of a complete statutory defence to each and every non-compliance.

77. In *Marigold v Wells* [2023] UKUT 33 (LC); [2023] HLR 27, Martin Rodger KC, the Deputy President, at [48] suggested that a tribunal should approach any "reasonable excuse" by asking the following questions: (i) what facts does the landlord assert give rise to a reasonable excuse? (ii) are those facts proved? and (iii) do these proven facts amount objectively to a reasonable excuse? Ms Osler reminds the Tribunal that any defence of "reasonable excuse" must relate to all the works required by the notice (see *Banfield v Swale BC [2025] UKUT 235 (LC)*).

78. Mrs Chowdhury has the evidential burden of establishing a defence of reasonable excuse. She has failed to do so. Mr Owen has failed to formulate the facts upon which he relies to establish such a defence. Whilst he has raised a number of mitigating factors, none of these constitute a defence of reasonable excuse.

Ground 7: If there is found to be a liability, the quantum is too high taking into account the overall steps taken by the Appellant to comply with the amended Improvement Notice.

79. The Tribunal accepts that there are a number of mitigating factors in this case. We consider these below.

Ground 8: The Council overreached by prescribing the manner in which the hazards must be abated.

80. The Tribunal is satisfied that this ground is hopeless. First, it was the Tribunal which defined the terms of the Improvement Notice. Secondly, the entire function of an Improvement Notice to prescribe how any hazard should be abated. Any landlord is entitled to know precisely what is required of them. Any breach puts her at risk of a criminal sanction.

Ground 9: The Tribunal never responded to the Appellants application to reopen or review the earlier decision on the validity of the Improvement Notice which the Authority relies on for its imposition of a penalty.

81. Mrs Chowdhury had 28 days in which to appeal against the Improvement Notice (rule 52 of Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013). She failed to exercise this right. Rule 55 gives the Tribunal the power to undertake a review of a decision, but only if (a) a party has applied for permission to appeal and (b) the tribunal is satisfied that a ground of appeal is likely to be successful. The Tribunal did respond to the Appellant. On 1 August 2022, the Tribunal informed her that that any time for appealing had long expired (see [58] above).

Conclusions

82. The Tribunal is satisfied beyond reasonable doubt that the Applicant is guilty of the offence of failing to comply with the Improvement Notice. We remind ourselves that in determining the appropriate penalty, we must have due regard both to the Respondent's policy and its decision-making process. However, we note that the starting point for a penalty for a landlord

controlling five or less dwellings, with no other relevant factors or aggravating features is a civil penalty of at least £10,000. Thus, although the policy makes provision for aggravating factors, it makes no provision for mitigating factors.

83. The Tribunal highlights the following factors:

(i) Mrs Chowdhury lets out a single Property. She is not currently working. Her husband is unfit to work. Her son suffers from a rare form of cancer. She is therefore in an entirely different position from a landlord who controls five properties. We are satisfied that she has been misguided and has not acted in her best interests. It is a matter of regret that she did not accept the Respondent's advice to appoint an agent to manage the Property. We accept that it was reasonable for her to seek grant aid for the insulation works. We reject Mrs Chowdhury's suggestions that the Respondent had not acted impartially.

(ii) The problem in this case has been one of condensation induced dampness. Condensation is the interaction between moisture produced within the Property and the equation of heating, insulation and ventilation. The Property was built in 1975 according to the standards of the time. Since then, the insulation standards have changed. For a number of years, Ms Chowdhury let out the Property without there being a problem of condensation induced dampness. There has been an issue of the extent to which the tenant's lifestyle has contributed to the problem.

(iii) Against this background, it was essential that the Improvement Notice was drafted in terms that left the Applicant in no doubt as to what action was required of her. Unfortunately, the Improvement Notice was not drafted in such terms (see [61] above). We are satisfied that Mrs Chowdhury was uncertain of what was required of her.

(iv) There were separate proceedings in the County Court in which different Single Joint experts came up with alternative proposals. Mrs Chowdhury has also been required to pay damages to her tenant and has incurred significant legal costs.

(iv) There have been unfortunate delays in this case. The Respondent first inspected the Property on 20 January 2020, shortly before the first Covid-19 lockdown. Covid-19 created particular problems for the landlord, tenant and local authority. There were also excessive delays between 3 March 2023, when the Notice of Intention was served and 29 October 2024 when the Notice imposing the Financial Penalty was imposed. These delays caused unnecessary uncertainty and anxiety for Mrs Chowdhury, particularly given the sickness in the family.

84. Taking all these factors into account, we are satisfied that the Financial Penalty of £10,000 was excessive and reduce this to £5,000. The Respondent's policy did not permit the relevant officers to take mitigating circumstances into account. As a result, the Respondent had no regard to the mitigating factors which we have identified.

Tribunal Fees

85. The Applicant has been successful in her appeal in that we have reduced the Financial Penalty. We have considered whether we should order the Respondent to refund the tribunal fees of £337 which she has paid. We have decided that it would be inappropriate to do so. On the first day of the hearing, Mr Owen rewrote the Grounds of Appeal. This would have been a one day hearing had the initial Grounds of Appeal been drafted more concisely.

Judge Robert Latham
9 March 2026

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.