



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **BIR/00CN/HNA/2025/0036**

Subject Property : **193 Berners Street Birmingham B19 2DR**

Applicant : **Yasser Sarwar**

Representative : **Aman Solicitors (Ref:CIV/YS)**

Respondent : **Birmingham City Council**

Representative : **Yim - Tak Yung Cecilia (Ref:BCC-321402145442H-NOT3)**

Type of Application : **An appeal against a Financial Penalty - section 41 & Schedule 13A to Housing Act 2004**

Date of Hearing : **12 March 2026**

Tribunal Members : **Deputy District Judge Stephen Haythorne
Mr Alan McMurdo MCIEH**

Date of Decision : **2 April 2026**

DECISION

Introduction

- 1 This is the Tribunal's determination on an appeal made by Yasser Sarwar ("the Applicant") against the decision of Birmingham City Council ("the Respondent") to impose a financial penalty under section 249A of the Housing Act 2004 ("the 2004 Act") relating to 193 Berners Street Birmingham B19 2DR ("the Property").
- 2 The Applicant is the owner of the Property and the Respondent is the local housing authority which imposed the financial penalty.
- 3 The 2004 Act introduced licensing for certain categories of residential accommodation. Under Part 3 of the 2004 Act, local housing authorities may designate areas in their district as subject to selective licensing in relation to other rented houses not otherwise required to be licensed under Part 2 of the 2004 Act.
- 4 Under section 95 of the 2004 Act a person commits an offence if that person is a licence holder or a person on whom restrictions or obligations are imposed in accordance with section 90(6) of the 2004 Act, and that licence holder or person fails to comply with any condition of the licence.
- 5 Commission of an offence under section 95 may lead to criminal prosecution and conviction or to the imposition by the local housing authority of a financial penalty pursuant to section 249A of the 2004 Act.

Background

- 6 The Property is described as a 3 bedroomed house. On the ground floor is a hallway with 2 reception rooms, along with a self-contained kitchen/diner and through the kitchen/diner is the bathroom. On the first floor, there are 2 bedrooms. There are then stairs up to the second floor attic space which can be used as a third bedroom.
- 7 The Applicant has been the owner of the Property since 2007.
- 8 On 5 June 2023 the Respondent extended its licensing regime to include properties that fall outside the scope of HMO Mandatory and Additional Licensing Schemes by implementing a Selective Licensing Scheme in exercise of its powers under s80 of the 2004 Act. From 5 June 2023, all privately rented properties located within the Selective Licensing designated area are required to be licensed unless exempt in accordance with the 2004 Act.
- 9 On 24 March 2024 the Applicant made an application for a selective licence. That application stated that 1 person lived in the Property and that the Property was rented by the Applicant to that person. The application stated that the Property had 2 storeys, with 3 bedrooms, a kitchen, living room and bathroom.
- 10 On 5 April 2024 the Applicant entered into an assured shorthold tenancy agreement with a tenant who will be referred to in this decision as MW, which began on 15 April 2024 and was for a fixed term of 6 months. The parties to the tenancy agreement also signed an inventory on 5 April 2024 which referred to smoke alarms in the entrance hall and kitchen, but also had a box ticked 'yes' which referred to smoke alarms being presented and tested on each floor.

- 11 On 19 June 2024 the Respondent granted the Applicant a licence under the selective licensing scheme, with licence reference BCC-207270388806 (the Licence). The covering letter from the Respondent to the Applicant stated in bold lettering:

‘It is an offence for a licence holder to fail comply with any condition of licence and liable, on summary conviction, to a fine or may be subject to a penalty notice of up to £30,000’

- 12 The Licence was subject to conditions which are entitled Property Licence Conditions (the Licence Conditions) and include the following:

Condition 5 - Smoke Alarms

▸ The licence holder must ensure that smoke alarms are installed on each storey of the house on which there is a room used wholly or partly as living accommodation. A declaration as to the positioning of such alarms must be provided to Birmingham City Council on demand.

▸ The licence holder must ensure that the smoke alarms are kept in proper working order. A declaration as to the proper working order of the alarms must be supplied to the Council on request.

- 13 On 12 February 2025 the Applicant’s solicitors sent to the Property a section 8 and section 21 Housing Act 1988 notice as a first formal step to end MW’s tenancy. The grounds for possession relied upon in the section 8 notice were grounds 8,10 and 11, which all relate to a failure to pay rent.
- 14 The Applicant regained possession of the Property sometime in early March 2025; the Applicant is not sure of the exact date. The Applicant then arranged for the Property to be repaired, redecorated and recarpeted where required. The Applicant thinks that this refurbishment took around 2 weeks.
- 15 The Applicant then personally inspected the work done and arranged for the Property to be relet. A new tenancy began with a new tenant on 17 March 2025.
- 16 On 26 March 2025 the Respondent carried out an inspection of the Property to ensure compliance with the Licence Conditions.
- 17 Upon inspection the Respondent found mains-wired interlinked smoke alarms in the hallway and first floor landing, both of which were in working order. There was no smoke alarm found in the room located on the second floor (the Room) and no signs that a smoke alarm had ever been fitted. There was also no carbon monoxide detector in the room where the boiler is situated, but no action was to be taken in relation to this as it appeared from the gas servicing certificate that one had been present at the time of the service.
- 18 On 26 March 2025 the Respondent emailed the Applicant regarding the absence of a smoke alarm on the second floor and absence of a carbon monoxide detector where the boiler is situated and that the Respondent considered these issues to a breach of the Licensing Conditions. The Respondent required the issues to be remedied by close of play the following date, that is 27 March 2025.

- 19 The Applicant replied the same day stating that he was overseas due to a family emergency.
- 20 On 31 March 2025 the Applicant informed the Respondent that the breaches had been remedied.
- 21 On 6 April 2025 video evidence of the smoke alarm having been fitted was provided by the Applicant to the Respondent. The Applicant told the Tribunal at the hearing that he fitted the smoke alarm and sent the video the same day. The Applicant clarified that the smoke alarm would therefore have been fitted on 6 April 2025.
- 22 On 1 May 2025 the Respondent served a Notice of Intent to Issue a Financial Penalty (Notice of Intent) on the Respondent pursuant to section 249A and Schedule 13A of the 2004 Act. The Notice of Intent advised the Applicant that a financial penalty of £15,000 was proposed in relation to Condition 5. The Notice of Intent was served by posting through the letter box at the Applicant's last known address of 267 Slade Road, Birmingham, B23 7QY. A copy was also emailed to the Applicant's email address on the same day.
- 23 On 25 May 2025 the Applicant responded to the Notice of Intent by email to the Respondent. The Applicant referred to significant disruption being caused by the previous tenant, MW as MW had sub-let the Property to a third party without the Applicant's permission. The Applicant stated that they had served s.8 and s.21 Housing Act 1988 notices to regain possession. The Applicant stated that the lack of smoke alarm was beyond their knowledge or control and that they did not know of the issue until advised by the Respondent.
- 24 The Applicant stated that the situation was remedied as soon as possible after they became aware and set out mitigating circumstances, including the fact that they are not a full-time landlord and that over £10,000 losses had been incurred to resolve previous tenancy damage.
- 25 On 3 July 2025 the Respondent served on the Applicant a Final Notice to Issue a Financial Penalty (the Final Notice) pursuant to section 249A and Schedule 13A of the 2004 Act. The Final Notice imposed a penalty of £7500 for breach of condition 5 of the Licensing Conditions.
- 26 The Respondent emailed the Tribunal on 31 July 2025 enclosing the grounds of appeal.

The Law

- 27 The regime of financial penalties as an alternative to prosecution for certain housing offences came into force on 6 April 2017
- 28 Section 95 of the 2004 Act prescribes offences in relation to licensing of houses under Part 3 (Selective Licensing)
 - (1)
 - (2) A person commits an offence if—
 - (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 90(6), and
 - (b) he fails to comply with any condition of the licence.
 - (3).....

(4) In proceedings against a person for an offence under subsection (1) or (2) it is a defence that he had a reasonable excuse—

- (a)..... ; or
- (b) for failing to comply with the condition,
as the case may be.

29 Section 249A of the 2004 Act, provides

(1) The local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England.

(2) In this section 'relevant housing offence' means an offence under—

- (a).....
- (b).....
- (c) section 95 (licensing of houses under Part 3),
- (d).....
- (e).....

(3) Only one financial penalty under this section may be imposed on a person in respect of the same conduct.

(4) The amount of a financial penalty imposed under this section is to be determined by the local housing authority but must not be more than £30,000.

(5) The local housing authority may not impose a financial penalty in respect of any conduct amounting to a relevant housing offence if—

- (a) the person has been convicted of the offence in respect of that conduct, or
- (b) criminal proceedings for the offence have been instituted against the person in respect of the conduct and the proceedings have not been concluded.

(6)

(7)

(8) For the purposes of this section a person's conduct includes a failure to act.

30 Paragraphs 1 – 8 of Schedule 13A of the 2004 Act provides the procedure to be followed by local housing authorities before imposing a financial penalty which includes:

- i. Service of a notice of intent within 6 months before the end of a 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 and which states the amount of financial penalty, the reasons for such penalty and the right to make representations;
- ii. Service of a final notice if the authority decides to impose a financial penalty, which must include information about the amount of financial penalty, the reasons for such penalty, the payment period, the right to appeal and consequences of failure to comply.
- iii. The final notice must require the financial penalty to be paid with a period of 28 days beginning with the day after the day on which the notice is served.

- 31 By paragraph 10(1) Schedule 13A of the 2004 Act, a person to whom 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
- 32 By paragraph 10(3) of Schedule 13A of the 2004 Act, an appeal under this paragraph is to be a rehearing of the local housing authority's decision, but may be determined having regard to matters which the authority is unaware, and by clause 10(4), the Tribunal may confirm, vary or cancel the final notice.

Determination of the Tribunal

- 33 The Tribunal considered the application in three parts –
- (i) Whether the Tribunal was satisfied beyond reasonable doubt that the Applicant's conduct amount to a 'relevant housing offence' for the purposes of section 249A of the 2004 Act. A 'relevant housing offence' includes offences under section 95 of the 2004 Act.
 - (ii) Whether the Respondent complied with the requirements and procedures regarding the imposition of the financial penalty contained within section 249A and Schedule 13A of the 2004 Act.
 - (iii) Whether the Financial Penalty was set at an appropriate level, having regard to any relevant factors, including:
 - (a) the offender's means;
 - (b) the severity of the offence;
 - (c) the culpability and track record of the offender;
 - (d) the harm (if any) caused to a tenant of the premises;
 - (e) the need to punish the offender, to deter repetition of the offence or to deter others from committing similar offences; and/or
 - (f) the need to remove any financial benefit the offender may have obtained as a result of committing the offence.

Relevant Housing Offence under section 249A of the 2004 Act

The requirements of the offence

- 34 Tribunal is satisfied beyond reasonable doubt that, subject to the establishment of a reasonable excuse defence (see paragraphs 48 – 61 below), the Applicant, as the Licence holder of the Property, had committed an offence listed in section 249A of the 2004 Act, namely an offence under section 95(2) of the 2004 Act, which provides –

A person commits an offence if–

- (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 90(6), and*
- (b) he fails to comply with any condition of the licence*

- 35 The Tribunal is satisfied that the Property was a house subject to selective licensing under Part 3 of the 2004 Act and that Applicant was the Licence holder

- 36 The Tribunal is satisfied that it was a condition of the Licence that required a smoke alarm to be fitted on each storey of the Property where there is a room used wholly or partly as living accommodation
- 37 The Applicant's case is that at the time of the Respondent's inspection on 26 March 2025, a new tenant was in the Property. The Applicant's case is that the photographs provided by the Respondent on the day of the inspection, which show the Room, evidence that the Room was not in use by the new tenant. The Respondent, at the hearing, accepted that at the time of the inspection the Room did not appear to be in use.
- 38 The Applicant advised the Tribunal that the Room was redecorated after regaining possession after MW's tenancy ended and a new carpet was laid. A bed, which was on the first floor and left by MW or some other person, was then moved up to the Room. The Applicant described this as storage of the bed.
- 39 The Tribunal noted that the Room was freshly decorated and carpeted and that the Applicant had placed a bed in the Room. The Tribunal also noted that the Property is described as a 3 bedroomed house. Without the second floor bedroom, the Property has only 2 bedrooms.
- 40 The Applicant's case is that the correct interpretation of Condition 5 of the Licence Conditions is that a room must be in actual use and that if the room is not actually being used, Condition 5 did not apply and therefore there was no breach of the Licence Conditions and no basis to levy the financial penalty.
- 41 The Tribunal disagrees with the Applicant's case on this issue.
- 42 The tenancy granted to the tenant at the time of the inspection was an assured shorthold tenancy for the whole of the Property. The tenant has exclusive occupation and therefore use of the whole of the Property, including the Room, to the exclusion of the Applicant as the landlord. The tenant was free to use all of the Property as they saw fit and whilst the Room did not appear to be in use at the time of the inspection, the Room could have been used by the tenant at any time without any requirement to advise the Applicant of this. The Applicant had no control over when and how the Room was used as living accommodation as the Room formed part of the tenancy granted to the tenant for their use.
- 43 The Tribunal consider that there is no requirement that the tenant actually physically use the Room as it is a room which the tenant is free to use as living accommodation.
- 44 The Tribunal noted that there is no definition of living accommodation within the Licence Conditions or the 2004 Act. The Tribunal noted that Condition 5 used similar language to Regulation 4 of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the Regulations). Whilst there is no definition of living accommodation within the Regulations, The Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022: Guidance for Landlords and Tenants defines a room used wholly or partly as living accommodation as follows:

The regulations require a smoke alarm to be installed on every storey of the premises on which there is a room used wholly or partly as living accommodation.

A carbon monoxide alarm must be installed in any room which is used wholly or partly as living accommodation and contains a fixed combustion appliance (except gas cookers).

In general, a room is classed as 'living accommodation' if it is used for the primary purposes of living, or is a room in which a person spends a significant amount of time.

The regulations specifically stipulate that a bathroom or lavatory would be classed as living accommodation..

- 45 A purpose of the selective licensing scheme and conditions attached, is to keep occupants of a property safe. The requirement of smoke alarms on each storey where there is living accommodation is to keep safe those persons who may be using an area where it is usual for such a person to spend a significant amount of time. Such area can be distinguished from, for example, a loft area which, whilst forming part of the tenancy, is not ordinarily used as living accommodation as an occupant is unlikely to spend significant amounts of time there.
- 46 A landlord cannot possibly know whether a room was in actual use or not. For example, children may use the room as a playroom from time to time, the room could be used as an ad hoc desk room or visitors may sleep over in the room and it would make little sense for there to be a condition that only applied as when the room was in actual use.
- 47 The Tribunal is satisfied that there was a room on the second floor of the Property and that such room constituted living accommodation for the purposes of Condition 5. Based on the inspection report and photographs provided by the Respondent, the Tribunal is satisfied that there was no smoke alarm on the second floor and that the Applicant was in breach of Condition 5 of the Licence Conditions.

Reasonable excuse defence

- 48 Although the Respondent did not expressly raise a defence of reasonable excuse under section 95(4) of the 2004 Act, the substance of the Respondent's representations require the Tribunal to consider whether the Respondent might have such a defence: see *IR Management Services Limited v Salford City Council* [2020] UKUT 81 (LC) at paragraph 31.
- 49 Section 95(4) provides –
- In proceedings against a person for an offence under subsection (1) or (2) it is a defence that he had a reasonable excuse -*
- (a), or*
- (b) for failing to comply with the condition,*
- as the case may be*
- 50 Although the Tribunal must be satisfied beyond reasonable doubt as to the elements of the offence listed in section 95(2), the standard of proof in relation to the defence in section 95(4) is the balance of probabilities.
- 51 The Applicant's case is that there was compliance with the Licence Conditions in that there was a smoke alarm on every storey, but that MW had sublet the

- Property without permission and those persons removed the smoke alarm without the Applicant's knowledge or consent.
- 52 The Applicant's case is that he did not know of any breach of Condition 5 until informed by the Respondent after the inspection on 26 March 2026 and that upon being informed he took steps to remedy the issue as soon as possible.
- 53 The Applicant refers to the inventory which shows that smoke alarms were present when MW's tenancy began.
- 54 In the view of the Tribunal, the Applicant has failed to bring themselves within the scope of the reasonable excuse defence based on a lack of knowledge of the breach and such breach being caused by an unknown and unauthorised third party
- 55 The Respondent has provided evidence in the form of photographs of the Room, which shows no evidence of a smoke alarm ever having been fitted.
- 56 The inventory does refer to smoke alarms being present, but only in the entrance hall and the kitchen. There is no mention of a smoke alarm on the second storey. The Tribunal did note the question at the bottom of the inventory which states *smoke alarms present and tested on each floor*, is ticked 'Yes', however, there is a contradiction with the actual inventory which does not refer to smoke alarms on each floor. The Applicant has failed to establish, on the balance of probabilities, that a smoke alarm was fitted in the second storey.
- 57 In any event, there is clearly a period when there was no smoke alarm fitted to the second storey The smoke alarm was not present at the time of the Respondent's inspection on 26 March 2025. The Applicant was in possession of the Property from the end of MW's tenancy, at the start of March 2025 until the start of the new tenancy on 17 March 2025. The Applicant accepts that he inspected the Property during this period, but failed to notice the missing smoke alarm.
- 58 Further, the Applicant is responsible for ensuring compliance with the Licence Conditions. At all times, when a property is let to another under a tenancy, the tenant enjoys exclusive possession to the exclusion of the landlord and the only mechanism for the landlord to enter to carry out checks is by inspections.
- 59 It should have been obvious to the Applicant that they needed to carry out regular inspections to ensure that the Licence Conditions were being adhered to and this would have been an easy action to take. The Applicant has not provided sufficient evidence which would suggest that it was not safe to inspect. It should have been clear, upon such inspection, that the Licence Conditions were being breached and the Applicant could have taken steps to remedy that.
- 60 The Tribunal is not satisfied, on the balance of probabilities that the Respondent had a reasonable excuse for breach of the Licence Conditions
- 61 However, in the view of the Tribunal, the matters referred to by the Applicant above, may be appropriate to assessing the level of any financial penalty.

Whether the Respondent complied with the relevant procedures

- 62 The Respondent discovered the breach of Licence Conditions on 26 March 2025 and served a notice of intent on 1 May 2025.
- 63 The notice of intent set out why the financial penalty was being imposed, the amount of penalty and advised of the right to make representations.
- 64 The Applicant made representations and a final notice was served on 3 July 2025. Service is evidenced by an email sent to the Applicant on 3 July 2025 and a response from the Applicant which acknowledges receipt of the final notice.
- 65 The final notice sets out the amount of penalty, the reasons for imposing the penalty, how to pay the penalty, the date for payment, which was within 28 days and set out the right to appeal.
- 66 The Tribunal is satisfied that the Respondent complied with the procedures at Schedule 13A of the 2004 Act.

The amount of Financial Penalty

The Respondent's policy

- 67 The amount of financial penalty was calculated by the Respondent by reference to the Respondent's Regulation and Enforcement Policy (the Policy).
- 68 Paragraph 5 of the Policy sets out the Respondent's approach which includes working with businesses to advise on and assist with compliance, but the Respondent makes clear it will take enforcement action where necessary.
- 69 At paragraph 5.5, of the Policy sets out the approach of the Respondent to regulation and enforcement in relation to the sanctions and penalties available. The Policy aims to:
- (a) Change the behaviour of the offender*
 - (b) Change attitudes in society to offences which may not be serious in themselves, but which are widespread*
 - (c) Eliminate any financial gain or benefit from non-compliance*
 - (d) Be responsive and consider what is appropriate for the offender and regulatory issue which can include punishment and the public stigma that should be associated with a criminal conviction*
 - (e) Be proportionate to the nature of the offence and the harm caused*
 - (f) Restore the harm caused by regulatory non-compliance, where appropriate and*
 - (g) Deter future non-compliance*
 - (h) Comply with statutory requirements.*

70 Paragraph 7.2.1 of the Policy sets out what the Respondent will take into account in assessing what enforcement action is necessary and proportionate and includes:

- (a) The seriousness of the compliance failure.*
- (b) The past and current performance of any business and/or individual concerned.*
- (c) Any obstruction on the part of the offender.*
- (d) The risks being controlled.*
- (e) Statutory guidance.*
- (f) Codes of Practice.*
- (g) Any legal advice.*
- (h) Policies and priorities of Government, Birmingham City Council and Birmingham City Council's Licensing and Public Protection Committee.*
- (i) A person's age in relation to young people (termed 'juveniles') aged under 18.*
- (j) The existence of a Primary Authority agreement.*
- (k) Any duty of a local authority or statutory provisions*

71 The Policy includes a risk matrix at Appendix 1, which the Respondent states in the Policy will be used as a framework to support transparency and consistency of approach and decision making. Action being more likely to be taken where the following have relevance;

- (a) Situations where it is evident that a vulnerable individual or vulnerable group has been exploited*
- (b) Obstruction of authorised officers of the service in the lawful execution of their duties.*
- (c) Offences involving deceptions, fraud or negligence.*
- (d) Wilful disregard for the law.*
- (e) Risk to public health /safety*
- (f) Public nuisance*
- (g) Categories of offences which create significant financial burden to the taxpayer or impact at a community-wide level or that undermine public/business confidence in the City.*

72 At paragraph 7.4.1 the Policy states that the time allowed to put things right will be reasonable taking into account the seriousness of the contravention and the implications for non-compliance.

73 Paragraph 7.16 of the Policy refers to civil penalties. The Respondent makes clear that a financial penalty will only be imposed where the Respondent would otherwise be in a position to begin a prosecution, that is, there would have to be a realistic prospect of conviction based on the evidence and where it would be in the interests of justice to prosecute.

74 At Appendix 2 of the Policy is the Respondent's Civil Penalty Charging Policy (the Charging Policy) for the Private Rented Sector.

75 At paragraph 3 of the Charging Policy the main principles for issuing a penalty charge are stated to be:

- *lower the risk to the tenants' health and safety and well-being*
- *promote compliance of landlords in the private rented sector*
- *eliminate any financial gain or benefit from non-compliance*
- *educate landlords on the associated risks of non-compliance*
- *be proportionate to the nature of the breach of legislation and the risk posed*
- *aim to prevent future non-compliance*

76 Paragraph 5.2 of the Charging Policy sets out the starting level of financial penalty ranging from moderate to very severe as follows:

Seriousness of the offence	Starting level
Mild	£2500
Moderate	£7500
Serious	£12500
Very serious	£17500
Severe	£22500

77 At paragraph 9.3 of the Charging Policy it is noted that there is an unlimited maximum Court fine that could be imposed by the court upon a successful prosecution for failure to comply with a licence condition.

78 At 9.3.4 of the Charging Policy is a table with a starting level of financial penalty for breach of various conditions. The starting level for a breach of the provision of smoke alarms and/or other fire detection measures under the selective licensing scheme, is £12,500.

79 At paragraph 18 of the Charging Policy, a 25% reduction in the penalty is offered if at the first opportunity the landlord admits guilt for the offence and immediately remedies any outstanding issues. Payment of financial penalty (after reduction of the 25%) would have to be made within 28 days of service of the final notice and any outstanding works are carried out within the same period.

80 When considering civil penalties as an alternative to prosecution the Respondent follows the following stages for determining the amount of civil penalty:

- **Stage 1** determines the seriousness of the offence to identify a starting level of the penalty.
- **Stage 2** determines aggravating factors such as culpability and the track record of the offender.
- **Stage 3** determines whether there are any mitigating factors to reduce the penalty.
- **Stage 4** ensures there is no financial benefit gained by committing the offence.

- **Stage 5** provides how much may be added to the penalty amount for licensing offences as a result of the landlord's income.

- **Stage 6** reviews the penalty amount to ensure it is proportionate – the total amount at this stage cannot go above £30,000.

The Respondent's decision

81 The Respondent completed a risk matrix as set out at Appendix 1 of the Policy and scored a total of 21, which placed the breach at high risk where formal action should be considered.

82 At stage 1 the Respondent started at the starting level of £12,500 as this was a breach of the Licence Conditions relating to smoke alarms.

83 At stages 2 and 3, aggravating and mitigating factors, the Respondent considered there was deliberate intent as the Applicant was an established landlord who had been informed of previous breaches and added 10%.

84 The Respondent also added 20% as the Applicant had a large portfolio. In mitigation, the Respondent recognised that there were no previous convictions and reduced the amount by 10%. This gave an initial financial penalty of £15,000 as referred to in the Notice of Intent.

85 Following the Applicant's representations to the Respondent, the Respondent reduced the financial penalty as stated in the notice of intent by 50% to £7500 on the basis that there was only a partial breach of the Licence Conditions because the Applicant did have working smoke alarms on the ground and first floor and looking at the overall proportionality of the case.

86 This would be reduced by a further 25% if the Applicant paid within the 28 day appeal period.

87 The Tribunal noted that the Respondent had not set out how and why it considered it could have prosecuted the Applicant, which is a pre-requisite to imposing a financial penalty (see paragraph 73 above)

The Tribunal's decision

88 In terms of the risk matrix, the Tribunal scored the risk matrix as follows:

Activity	Tribunal's conclusion	Score
<i>People are safe and their well-being and safety assured</i>	<i>The Property had hard wired smoke alarms on floors 1 and 2 and risk was limited to fire starting in the Room or above. Absence of detection will not affect occupiers being alerted to smoke and flame or the means of escape. No evidence available to suggest that the risk of a fire starting would be any higher than average.</i>	<i>1</i>
<i>Economic implications to</i>	<i>Nominal cost of the smoke alarm. Clearly an oversight</i>	<i>1</i>

<i>legitimate business</i>	<i>and very little economic advantage</i>	
<i>Economic loss to consumer</i>	<i>A smoke alarm is only intended to alert an occupier to a fire to enable the occupier to escape as soon as possible, rather than to tackle the fire. Fire damage would occur therefore in any event once a fire starts</i>	<i>0</i>
<i>Reputational risk to the Respondent of taking no action</i>	<i>Medium risk</i>	<i>2</i>
<i>Likelihood infringement could have been ascertained</i>	<i>Should have been found upon inspection and was easy to ascertain</i>	<i>3</i>
<i>Has business taken reasonable precautions and due diligence to prevent activity occurring</i>	<i>Should have been found upon inspection and was easy to ascertain</i>	<i>2</i>
<i>What is the history of business in relation to regulatory compliance</i>	<i>The Respondent did not provide satisfactory evidence of breaches at other properties. At the Property there was just 1 breach which was rectified within a reasonable time frame</i>	<i>2</i>
<i>Aggravating features</i>	<i>No evidence breach was deliberate. No evidence of any effect on tenant. Low cost to remedy</i>	<i>1</i>
	Total	<i>12</i>

89 The Tribunal is satisfied that the offence under section 95(2) of the 2004 Act was committed and given the evidence of a lack of smoke alarm and lack of reasonable excuse, there was a realistic prospect of a conviction. Further, compliance with the Licence Conditions is important, especially conditions relating to smoke and fire detection, which is a risk to occupiers health and safety and the Tribunal was satisfied that it would have been in the interests of justice to prosecute.

90 The Tribunal, in line with the Policy, then conducted its own calculations in respect of the breach to ascertain the level of financial penalty.

- 91 In relation to stage one, the Tribunal noted at this stage it is just considering what the breach is, with other factors, such as aggravating and mitigating factors and proportionality to be considered at the later stages.
- 92 The Tribunal agrees that a lack of smoke and fire detection can pose a serious risk to occupiers health and safety and the Tribunal saw no reason to depart from the Charging Policy in respect of the starting level for such breaches. The Tribunal determines that the starting level should be £12,500
- 93 With regard to stages 2 and 3, the Tribunal did not consider there to be sufficient evidence of deliberate intent in failing to provide a smoke alarm to the second floor. This appears to have been an oversight on the part of the Applicant. The Tribunal did not add anything in this category.
- 94 The Tribunal was satisfied that the Applicant is a large portfolio holder, by the definition within the Policy and agreed with the 20% increase in that respect.
- 95 The Tribunal agreed that there should be a 10% reduction in respect of there being no previous convictions.
- 96 The Tribunal considered that there should have been a further 10% reduction for cooperation and steps taken to put things right. There was no evidence that supplying smoke alarms with 24 hours is set out in the Policy or Licence Conditions. The Applicant was not in the Country when they were informed of the issue, but did take steps to put things right within a reasonable period of time. The Tribunal noted that Regulations permitted 28 days for compliance where a smoke alarm was not fitted. The Tribunal reduced the amount by 10% to reflect the cooperation and steps taken to remedy the issue within a reasonable period of time.
- 97 Whilst the Tribunal noted that the Applicant appears to have been overseas dealing with a family emergency when they were informed by the Respondent of the breach, the Applicant had been in the UK a short time before and had inspected the Property. The Tribunal was not satisfied that any family emergency had an impact on the Applicant's failure to provide the smoke alarm and did not award any reduction in this respect.
- 98 With regard to stages 4 and 5, the Tribunal noted that the cost of supplying and fitting a smoke alarm was very low, in the £10 - £20 bracket. There was no substantive financial gain to the Applicant and no impact on the Applicant's rental income. The Tribunal did not therefore add or reduce the amount at this stage.
- 99 The Tribunal calculated the amount of financial penalty, after stages 1 – 5 as being , Stage 1 - £12,500, Stage 2 -£12,500 + 20% =£15,000, Stage 3 £15,000 -10% x2 = £12,500
- 100 With regard to stage 6 and stepping back and looking at the overall proportionality of the financial penalty. The Tribunal noted the specific nature of the breach of the Licence Conditions in this case in that there were working hard-wired smoke alarms on the ground and first floor. The second floor consisted only of the Room and there was a staircase, with no door, leading from the first floor to the second floor. If fire began in any part of the Property, other than the second floor and roof area, this would very likely be detected by the smoke alarms on the ground and first floor. Most of the Property therefore had satisfactory smoke detection. The Tribunal noted that there was a scale of seriousness in terms of potential breaches of Condition 5.

In a worst-case scenario, a breach of Condition 5 would be a property without any smoke detection and with significant fire hazards which increased the risk of fire. The circumstances encountered in this case are significantly lower risk.

101 The Tribunal noted that the breach was remedied within a reasonable period of being brought to the Applicant's attention. There was no deliberate conduct and the cost of compliance was nominal. A lower level of fine will achieve the objectives of the Policy and the Charging Policy and will still result in amount payable of many times the cost of compliance. It acts as both a deterrent for future breaches and punishment for the breach.

102 The Tribunal therefore decided that at stage 6 the financial penalty of £12,500 should be reduced by a further 80% to reflect proportionality and therefore the amount of financial penalty is £2500 ($12,500 \times 80\% = 10,000 - 12,500 - 10,000 = £2500.00$).

103 The Tribunal noted that under the Charging Policy, to benefit from the 25% reduction for payment with 28 days there must be an admission of guilt. The Tribunal noted that the Applicant's primary case was that they had not breached Condition 5 for reasons set above (see paragraphs 37 -40 above). The Applicant at the hearing did not accept guilt and is not therefore entitled to a further 25% reduction.

Summary

104 The Tribunal varies the financial penalty imposed by the Respondent in respect of the offence under section 95(2) of the 2004 Act, to **£2500.00** (two thousand five hundred pounds).

Appeal

105 If a party wishes to appeal this Decision, that appeal is to the Upper Tribunal (Lands Chamber). However, a party wishing to appeal must first make written application for permission to the First-tier Tribunal at the Regional office which has been dealing with the case.

106 The application for permission to appeal must be received by the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

107 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(s) for not complying with the 28-day time limit. The Tribunal will then consider the reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

108 The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking.

2 April 2026

Stephen Haythorne
Deputy District Judge