



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

Case Reference : **HAV/00HX/HNA/2025/0613**

Property : **13 Pendennis Road,
Swindon, SN5 8QD**

Applicant : **Paul Chukwuemeka**

Respondent : **Swindon Borough Council**

Representative : **Michael Rogers (Counsel)**

Type of Application : **Financial Penalty Appeal:
s.249A, Housing Act 2004**

Tribunal Members : **Judge Dovar
Mr E Shaylor MCIEH**

**Date and venue of
Hearing** : **2nd June 2026
Havant**

Date of Decision : **14th July 2026**

DECISION

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1. This an application dated 16th June 2025, in which under Sched. 13A of the Housing Act 2004 ('the Act'), the Applicant appeals against a financial penalty imposed by the Respondent on 22nd May 2025 in the sum of £6,300 under s.249A for the offence of failing to comply with an Improvement Notice ('IN') under s.30 of the Act.
2. An appeal against such a financial penalty lies with this Tribunal under paragraph 10 of schedule 13A of the Act. The appeal is by way of a re-hearing of the decision but may be determined by the Tribunal having regard to matters of which the Respondent authority was unaware.

Strike out application

3. Prior to the hearing, on 9th April 2026, the Respondent applied under r.9(3) (b) and (d) of the Tribunal Procedure (First tier Tribunal) (Property Chamber) Rules 2013, to strike out the application in relation to the preparation of the bundle for this hearing by the Applicant. The central allegation was that the Applicant had misled the Tribunal and the Respondent in relation to the documents that were provided in the Applicant's Updated Case Hearing Bundle.
4. The amended bundle provided by the Applicant was at best unhelpful, at worst it was confusing and potentially misleading. We did not consider that the Applicant had deliberately tried to mislead either the Tribunal or the Respondent. He has ill-advisedly made amendments to his bundle without flagging them up and had made some adjustments to figures to correct what he considered were errors.

5. We therefore consider that despite the difficulties created by the updated bundle, to strike out the application would be disproportionate and any prejudice caused to the Respondent could be considered in terms of any costs that incurred as a result.

Procedural requirements

6. Section 249A of the Act, empowers a local housing authority, such as the Respondent, to impose a financial penalty on a person if it is satisfied beyond reasonable doubt that a relevant housing offence has been committed. One of the relevant housing offences is a failure to comply with an Improvement Notice under s.30, if there is no reasonable excuse for not complying (s.30(4))
7. Schedule 13A to the 2004 Act sets out the procedure which local housing authorities must follow in relation to financial penalties they intend to impose under section 249A. Before imposing such a penalty on a person, the local housing authority must give a notice of intent setting out:
 - a. the amount of the proposed financial penalty;
 - b. the reasons for proposing to impose it; and
 - c. information about the right to make representations.
8. Unless the conduct to which the financial penalty relates is continuing, that notice must be given before the end of the period of six months beginning on the first day on which the local housing authority has sufficient evidence of that conduct

9. A person who is given a notice of intent has the right to make written representations to the local housing authority about the proposal to impose a financial penalty. Any such representations must be made within the period of 28 days beginning with the day after that on which the notice of intent was given. After the end of that period, the local housing authority must decide whether to impose a financial penalty and, if a penalty is to be imposed, its amount.
10. If the local housing authority decides to impose a financial penalty on a person, it must give that person a final notice setting out, amongst other matters:
 - a. the amount of the financial penalty; and
 - b. the reasons for imposing it
11. When assessing the level of penalty for the offence the local housing authority will have developed their own enforcement policy following Guidance for Local Housing Authorities (April 2018) provided by the Secretary of State under the Act. In this case that is the Swindon Borough Council policy, “Determining the Amount of a Civil Penalty” (13th October 2021).

Background

12. The Property, owned by the Applicant, is a self-contained semi-detached three bedroom house. The Applicant let the Property out on assured shorthold tenancies. Issues with the gas supply and lack of heating led the Respondent to inspect the Property on 30th October 2023.

13. As a result of that inspection, on 21st November 2023, an Improvement Notice was served on the Applicant under ss.11 and 12 of the Act, requiring the Applicant to remedy:
 - a. by 5th January 2024, a category 1 hazard, excess cold, due to the interrupted gas supply issue; and
 - b. by 24th January 2024:
 - i. a category 1 hazard, Falls on the Level due to sunken floorboards in a first floor bedroom, and the dilapidated condition of external timber decking; and
 - ii. a category 2 hazard, Electricity, due to insufficient plug sockets leading to the use of extension cables.
14. On an inspection on 25th March 2024, the council considered that whilst the first item, excess cold had been attended to, the others had not. Consequently they invited him to an interview on 20th May 2024 to discuss the offences. At that interview the Applicant set out the steps he had taken to comply, the difficulties he faced with getting people to do the works and his concern that his tenant was scaring away contractors.
15. On 17th September 2024, the council served a notice of intent to impose a financial penalty under schedule 13A of the Act in relation to the breaches arising out of the failure to comply with the Improvement Notice. They proposed a penalty of £15,750 and gave until 16th October 2024 for representations on that proposal. That prompted a further meeting on 13th March 2025 to discuss representations that the

Applicant had made. As a result of that, the financial penalty was reduced to £6,300 in the Final Notice to Impose a Civil Penalty dated 22nd May 2025.

Grounds of Appeal

16. The Applicant appeals on a number of grounds:
 - a. That he took all reasonable steps to comply;
 - b. That the tenant interfered with compliance;
 - c. That the Respondent failed to properly consider structural issues with carrying out the electrical works;
 - d. That the penalty was disproportionate given his culpability, mitigating circumstances and financial hardship;
 - e. He has complied with some of the items identified, such as the gas supply;
 - f. He fully completed the works.
17. Dealing with each of those in turn.

All Reasonable Steps to Comply

18. The Applicant provided some evidence of his attempts to engage contractors to carry out the works. He said he had tried, but it was difficult to get contractors to carry out the works and when he did, his tenant put them off.

19. The Applicant was unable to give precise details of when and who he had sought to get the works done. He spoke in general terms. As a result we had to rely on what the documentary evidence demonstrated, which was as follows.
20. On 18th and 19th November, there was an exchange with Paul Bowel regarding coming to the property, but no other information is provided. It seems from the messages that Paul was unwell.
21. On 18th December, Nick, of Hale Skills messaged the Applicant in relation to his attendance to remedy a faulty cooker. It appears that he did not carry out the work because he was not paid in advance. On 19th December 2023, the Applicant asked the same Nick Hale, by email, whether he knew any gas engineers.
22. On 12th October 2023, the Applicant's wife arranged for a 'Matt' to go to the Property. But there is no indication why.
23. In an email from the Applicant to Chloe Lloyd of the Respondent dated 18th January 2024, he complained that the tenant caused the damage to the upstairs floors and had been asked to fix it and that the external decking had been re-laid around 2019/2020. There is no suggestion at this time that any contractors had been asked to attend the works. On 29th January 2024, Ms Lloyd reminded the Applicant that it was his responsibility to carry out the works in the IN.
24. A follow up email from the Applicant on 21st February 2024 indicated that again he had not instructed any contractors. He firstly continued in

the vein that the floors were the responsibility of the tenant, given that he had damaged them. He did say he had tried to obtain a carpenter, but they were all fully booked. Finally, he queried the need for extra plug sockets, when the tenant could use an extension cable; a response which overlooked the fact that that was the very hazard that the IN was addressing.

- On 17th March 2024, in response to a notice of inspection on 25th March,
25. the Applicant wrote stating that the tradesmen he had enquired of to do the works were fully booked and he had asked a local letting agent to assist and was hopeful they would.

- There is a message from the Applicant to Darren of Dacol Services, a
26. tradesman, dated 20th March, in which the Applicant informs him that the Council would be attending on 25th March and he should attend then.
27. He followed up on 2nd April asking Darren to find out when he could start the work, and again on 4th April.
28. There is a message from the Applicant to 'Sarah' on 3rd April 2024, asking for the contact details of electricians and masons for an urgent fix at the Property.
29. Darren at Dacol Services emailed on 8th April to confirm works to the sockets and the decking.
30. The Respondent said that the evidence of his attempts was thin and sporadic. Further, that he only made contact with an electrician after

March 2024. Likewise there was no real evidence of attempts to engage a carpenter or other contractor to remedy the floor and the decking.

31. Notwithstanding that it may have been difficult for the Applicant to engage contractors, we do not consider that he did make sufficient effort to carry out the necessary works. His oral evidence was vague and unprecise and the documentary evidence showed that he had failed to appreciate what was expected of him until very late in the day and even then he did not appear to take the matter seriously. Certainly he only had Darren of Dacol lined up on the day of the inspection on 25th March, which was well passed the day on which he should have had the work carried out.
32. We therefore do not consider that the Applicant had a reasonable excuse for not complying with the IN and dealing with the flooring, the decking and the sockets by 24th January 2024.

Tenant Interference

33. The Applicant said his tenant was putting off contractors.
34. There was an email from Darren of Dacol, dated 18th April 2024 in which he appeared delighted to hear that the tenants had left. He said he had been arranging others to be with him when he carried out the works as *'I don't want to work alone due to the abusive nature of these tenants or being threatened with police charges against me.'*
35. There was other, prior correspondence, between the Applicant and his tenant, when the Applicant complained about the tenant's behaviour and

that he was making it difficult to have people carry out works. It was not entirely clear, but this appeared to concern the arrangements for the plumber to deal with the gas issues.

36. The Respondent said in light of the evidence as to when contact was made with various contractors, any interference was all after the event ; i.e. after 24th January 2024, when the IN required the works to be carried out.
37. Given our findings on when the attempts were made to engage contractors, notwithstanding that the tenant may well have been off putting, we do not consider this affords the Applicant a defence of reasonable excuse. Indeed, notwithstanding the tenant's conduct, the Applicant did manage to remedy the gas with the tenant in situ and Nick Hale also attended to fix the oven. Further Darren from Dacol was prepared to go in and do the works, albeit with help.

Structural Issues

38. The Applicant said it wasn't possible to add plug sockets without substantial works given the solid nature of the construction of the walls. The Respondent pointed to the fact that he has now managed to do the works. Further, that had this been a cause for delay, it had not been raised by the Applicant with them.
39. Certainly given the chronology set out above it does not appear that the Applicant took this seriously until well after the IN date had expired. He did then manage to carry out the works. There was no request for

additional time, despite the Applicant stating he had been given an extension from January 2025, this was not formally agreed by the Respondent. In our view, this does not provide a reasonable excuse.

Disproportionate

40. The Applicant said he had told the Respondent that he had been out of work for a long time and found it difficult to pay. The Applicant claimed that an officer of the Respondent authority had assumed he was well off, because he was a landlord and owned property in addition to the one he resided in. That officer was not present to be questioned about this, and in any case there was no evidence that the Respondent had made disproportionate assumptions about the Applicant's wealth. He had not ignored the IN but had difficulty in finding contractors. Prior to this he had spent over £5,000 on repairs and £8,000 improving the property before the tenant moved in. He also relied on the difficulty he had experienced in engaging contractors and getting unhindered access.
41. The Respondent said they had taken some of this into account when they reduced the penalty from £15,750 to £6,300. They were concerned over the impact the breaches would have on a tenant. There was danger from the holes in the floor and the timber decking, as well as the electrical hazard from the use of extension cables.
42. The Respondent explained their calculation under their enforcement policy as follows. An assessment of culpability and the level of harm would provide the minimum fine.

43. The first stage was to determine the culpability of the offender. They considered this was medium as the Applicant had fallen short of his legal duties by not completing the works and not having sufficient systems in place. Whilst he had carried out some of the works, thereby demonstrating an understanding of the importance of the IN, he failed to do all the works in time and ignored warnings of breaches, believing they were the responsibility of the tenant.
44. We consider this is an accurate reflection of the Applicant's culpability. We were particularly concerned that he failed to take on board the fact that these were his responsibilities and continued to deflect until after the date for carrying out the works had passed. Whilst we had some sympathy for the fact that the holes in the floor were created by the tenant, that did not address the problems that had arisen due to the rear decking, nor the lack of electrical sockets. The failure to have anyone attend until the inspection in March 2025 demonstrated a lack of responsibility. The Applicant said that this was the only time possible given the difficulties with the tenant, but we note that the gas works had been completed and that the only evidence of contact with other contractors was around the time of the inspection in March. Whilst he had undertaken some of the work in the IN in time, and had carried out works in the past, this did not excuse his failure to address continuing problems.
45. In order to move to a 'low' category we would need to be satisfied that the *'offender did not fall far short of their legal duties; for example, because: significant efforts were made to address the risk, breach or*

offence. Failings were minor and occurred as an isolated incident.' As is evidence from the above, this does not suit the facts in this case.

46. The second stage was harm. This was put a Level A, the highest as there was a category 1 hazard, when assessed using the HHSRS, presenting a significant risk to occupants and visitors. Not only were the holes in the floor a trip hazard but the unstable decking was the only rear access out of the property. In order to understand this categorisation it is necessary to consider the HHSRS assessment on the three identified hazards.

47. The category 1 hazard for falls on the level is in our view the correct category. The HHSRS Operating Guidance states that the average score for falls on the level, without any aggravating deficiencies, is already a quite high Category 2 (E) and this reflects that falling is one of the most common causes of accidents and injury at home. The officer of the Respondent assessed the likelihood of a person being injured as a result of a fall either on the outside decking or in one of the first floor rooms, to be higher than average for this type of property (due to defective decking or flooring) and raised the likelihood from the average 1 in 126 to 1 in 32.

We agree with this assessment. Taken alone, this scoring adjustment would raise the calculation to a high Category 2 (D).

48. However, the officer also increased the spread of harms in the more serious categories, stating that the potential injury would be more serious or severe than average because *'Although there were no secondary hazards present, the spread of harm outcomes are slightly higher than the national average due to the fact that a fall on the*

decking would be outside and in winter, could be more serious for a member of the vulnerable age group'. Although HHSRS Operating Guidance states that the spread of harm scores for each hazard would only increase where there is a secondary hazard making the potential injury or illness more severe, the Tribunal agrees that a fall outside could result in a worse health outcome than average, especially in cold weather. This adjustment made the HHSRS assessment Category 1 (C) based on the risk of falling on the decking. The electrical hazard was a low Category 2 (H).

In any event, this did not form part of the Applicant's challenge to the penalty.

49. As a result, the minimum fine was £6,000 according to their policy.
50. Then the financial benefit was considered to be:
 - a. £3,400 being the weekly income of £218.39 per week multiplied by 2.5, being the multiplier appropriate for penalty level 4;
 - b. And £3,400 being the estimate cost saving from not carrying out the work.
51. Then the base penalty was calculated as the higher of the minimum penalty and the financial benefit; so £6,000.
52. The next stage determines the 'track record amount' and takes into account past history of offending. The only relevant matter was the fact that a relevant notice had been served on the Applicant in the past 2 years. That provided as score of 1. This related to a continuing issue under s.236, whereby the Applicant had failed to produce bank

statements to evidence his financial benefit. As a result a further multiplier of 0.05 was applied to £6,000, being £300 and hence the penalty of £6,300. This is part of the Respondent's policy and there is no challenge to this.

Partial Compliance by the date of the inspection

53. The fact that there had been partial compliance in relation to the gas problems was addressed in that that was not considered when arriving at the financial penalty. Indeed it was taken into account at the culpability stage.

Full Compliance now

54. The fact that the items were remedied after the inspection does not detract from the fact that at the time of the inspection there were breaches of the IN. To the extent that it is relevant it had been taken into account at the culpability stage.

Conclusion

55. For the above reasons the Respondent's decision on imposing a financial penalty and the level of that penalty stands and the appeal is dismissed.

Appeals

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk .

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

If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.