



FIRST - TIER TRIBUNAL

PROPERTY CHAMBER

(RESIDENTIAL PROPERTY)

Case Reference	:	BIR/00CN/HNA/2026/0019
Property	:	14 Jephcott Road B3 3ED
Applicant	:	Sutan Ahmed
Applicant's Representative	:	Mr. Hussain Chowdhury
Respondent	:	Birmingham City Council
Representative	:	Mr Ashfaq Ahmed Solicitor Legal Dept Birmingham City Council
Type of Application	:	Appeal against a financial penalty under S249A and paragraph 10 Schedule 13A of the Housing Act 2004
Tribunal	:	Tribunal Judge P. J. Ellis Tribunal Member Mr W Jones FRICS
Date of Hearing	:	16 July 2026
Date of Decision	:	5 August 2026

DECISION

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***The Tribunal is satisfied to the standard required that the
Applicant has committed the housing offence of owning a***

house which required a licence but was not so licensed pursuant to s95 of the Act.

The Applicant has no reasonable excuse for the failure to licence the house. The Respondent local housing authority is entitled to impose a financial penalty. In exercising its power to impose a penalty the Respondent has applied its enforcement policy including the obligation to ensure the penalty is proportionate.

The Tribunal confirms the Financial Penalty of £5625.00. The Applicant's appeal is dismissed.

Reasons

Introduction and Background

1. This is an appeal by way of a re-hearing of the Respondent's decision to impose the penalty and/or the amount of the penalty, under section 249A and paragraph 10 of Schedule 13A to the Housing Act 2004 ('the Act') but it may be determined having regard to matters of which the Respondent was previously unaware.
2. The Application was issued on 3 February 2026 Substantive Directions were issued on 12 March 2026. The matter came on for hearing by video on 16 July 2026. The Applicant was assisted by his son-in law Mr Hussain Chowhury. The Respondent was represented by Mr Ashfaq Ahmed a solicitor with Birmingham City Council Legal Services.
3. The amount of penalty the subject of these proceedings was £12500.00 which was reduced by the Respondent after receiving representations to the sum of £5625.00.
4. The reason for the penalty was that the Applicant being the owner and person in control of a house which was required to be licensed under Part 3 of the Act was not so licensed which is an offence contrary to s95(1) of the Act.

5. At the hearing the Applicant admitted the house is an area of selective licensing under Part 3 of the Act which came into force on 5 June 2023 and that it was not licensed until November 2025.
6. The Applicant's asserted he was unaware of the need to obtain a licence for the house. Further the penalty was a disproportionate punishment for the offence having his financial circumstances.
7. The Applicant and his wife have owned the subject house since June 1987. It has been let three of four times. It is let at present.

The Financial Penalty

8. By letter dated 9 May 2025 the Respondent purported to notify the Applicant that the house is in an area of compulsory licensing but there is no licence in force relating to the house. The letter was sent to an incorrect address for the Applicant. The Respondent accepts that there was an error in addressing the letter which came to its attention when the letter was returned.
9. On 8 July 2025 the Respondent sent another letter in the same terms as the first to the correct address of the Applicant, but he asserted that he never received it although the Applicant acknowledged the address used on this letter is correct.
10. Having not received a response to its second letter the Respondent issued and served a Notice of Intention to Impose a Financial Penalty of £12500.00 dated 7 October 2025. The Applicant contends this Notice was the first time he was aware he was committing the alleged offence. He prepared an appeal to this Tribunal on 10 October but did not issue it until February 2026 after issue of the Final Notice of a Financial Penalty.
11. Instead, he made representations about his reason for not replying to earlier correspondence, for not having a licence and his financial circumstances. As the Respondent had notified the Applicant's wife of the offence the Applicant

also explained that she had little to do with the house. In light of that information, the Respondent deleted its claim against Mrs Ahmed.

12. In addition, the Applicant made an application for a licence which was granted on 6 November 2025.

The Parties Submissions

13. The Applicant's submissions arising from these facts were that the Respondent could not proceed with the penalty because of the failure to send the first letter to the correct address and that he had not received the letter of July. There was no intention on his part to ignore the Respondent as demonstrated by his prompt response on receipt of the October Notice including making an application for a licence forthwith. Classification of his culpability as high was inappropriate because he had not refused to engage with the Respondent.
14. Second, he was unaware of the introduction of the selective licensing scheme in the area covering the subject house. He had not seen any of the Respondent's publicity. He is not a member of any landlord's association. He does not have a managing agent for the house. He also challenged the Respondent's classification of the risk of harm as serious by adducing a current gas safety certificate and a satisfactory EICR.
15. In any event he is a pensioner with limited means. His income comes from the state pension, some work as a taxi driver and rent from the subject house although there is a mortgage on the property which absorbs much of the rent.
16. Emily Blackhurst the lead officer of the Respondent council submitted a written statement and attended the hearing to give evidence.
17. The Respondent had carried out a publicity campaign in the area affected before introducing the selective licensing scheme including stakeholder emails, public events, press releases, national news coverage, legal notices,

social media outreach, multiple committee reports, multiple citywide leaflet distributions, numerous presentations at ward meetings, multiple digital marketing campaigns, notifications to estate agents, and ongoing community engagement through to 2025.

18. Although the Respondent acknowledged there was inaccuracy with records relating to the Applicant's address, the house was unlicensed until he was made aware of the penalty.

19. The Respondent relied upon the enforcement policy which was produced to the Tribunal. The policy requires that any penalty is proportionate. The main principles for issue a penalty are set out in the Policy are to:

- *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* (Para 3 Appendix 2)

20. *The main principles to be taken into account when determining a penalty are*

- *The seriousness of the offence*
- *The culpability and track record of the offender*
- *The harm caused to the tenant/s*
- *Punishment of the offender*
- *Deterring the offender from repeating the offence*
- *Deterring others from committing similar offences*
- *Removing any financial benefit the offender may have obtained as a result of committing the offence.* (Para 4 Appendix 2)

21. The level of a penalty charge is set out in a table from Low to Severe with penalties determined from £2500.00 to £22,500.00. A serious matter justifies a penalty of £12500.00. (Para 5 Appendix 2).

22. Paragraph 9 of the Appendix provides Stages to be completed when deciding the amount of a financial penalty under the Housing Act 2004 . Paragraph 9,2 is concerned with failure to license a property under the Council's selective licensing scheme – Section 95(1) of the Housing Act 2004. By 9,2,2 *This seriousness of the offence is viewed by the Council as being a serious matter, attracting a financial penalty with a starting level of £12500.*
23. Ms Blackhurst applying the matrix contained in the policy regarded the failure to licence the house as serious with a penalty of £12500.00. She then reviewed any aggravating and mitigating factors as further provided in the policy.
24. Paragraph 10 identifies various aggravating factors but in this case Ms Blackhurst identified only two at the time of issuing the notice of intention to impose a fine namely *“Deliberate intent when committing the offence. Examples of intent would include 1. knowledge that the offending was taking place 2. failing to stop committing the offence after relevant correspondence was sent by the Council”* which justified an uplift of 10% but this was immediately cancelled by the mitigating factor of no previous convictions as provided by paragraph 11.2.
25. After hearing from the Applicant Ms Blackhurst had regard to the policy and applied further mitigation by a deduction of £2500..00 for cooperation, £1875.00 for financial circumstances and a further £2500.00 for proportionality. The total deductions were £6875.00 leaving the penalty at £5625.00 which is the amount of the penalty the subject of this appeal.
26. In answer to a question from the Tribunal, Ms Blackhurst stated she had not learned anything new which would make her further adjust the penalty. She had followed the council's policy and applied a proportionate approach to the calculation of the penalty. Extra time had been given to the Applicant to collate his documentary evidence of his financial circumstances. Although there had been an error with the address the Applicant had operated an unlicensed house for over two years before taking action to apply for a licence.

The Statutory Framework

27. In this case the relevant statutory provisions are s95(1) and (3A) and s249A of the Act. The statutory basis for the offence is at s95(1) *"If a house is required to be licensed under this Part (see section 85(1)) but is not so licensed, an offence is committed by—*

(a) any person within subsection (1A), and

(b) any person who as landlord under a tenancy or licensor under a licence to occupy has an estate or interest in, or a right in relation to, the house that is superior (whether directly or indirectly) to the estate, interest or right of any person within subsection (1A).

(1A) The following are within this subsection—(a) any person having control of or managing the house)

(b) any person who is the landlord or licensor in relation to a person occupying the house under a tenancy or licence.

28. By Subsection 3A *In proceedings against a person for an offence under subsection (1)(a) it is a defence for them to prove that they had a reasonable excuse—*

(a) for having control of or managing the house, or

(b) for being the landlord or licensor in relation to a person occupying the house under a tenancy or licence,

in circumstances in which the house was required to be licensed under this Part but was not so licensed.

29. S249A empowers the local housing authority to *impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England.*

30. The appeal is by way of a rehearing as provided by paragraph 10 Schedule 13A of the Act: *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.

Discussion and Decision

31. The first decision of the Tribunal is whether or not it is satisfied beyond reasonable doubt that the Applicant's conduct amounted to a "relevant housing offence". In his written submissions the Applicant proposed that he had a reasonable excuse for failing to have a licence because he was unaware of the introduction of the selective licensing scheme in June 2023.
32. The Applicant has owned the subject house for many years, but he has not made any effort to familiarise himself with the obligations and duties of a landlord. He admitted to not reading local newspapers or paying attention to local news programmes. In *Sutton v Norwich City Council 2020 [UKUT] 0090(LC)* Martin Rodger QC said in relation to the defence of reasonable excuse "*It is possible to conceive of circumstances in which a lack of knowledge of the facts which caused a house to be an HMO might provide a reasonable excuse for non-compliance..*" with the obligation to licence a property but in *Thurrock Council v Daoudi [2020] UKUT 209 (LC)* Martin Rodger QC held that a genuine lack of awareness of the need to obtain a licence was irrelevant in deciding whether the landlord had a reasonable excuse for not obtaining a licence.
33. The Tribunal is satisfied that the Applicant had not taken any steps to inform himself of the obligations of a landlord. His want of awareness of the introduction of the selective licensing scheme is not a reasonable excuse.
34. A second line of defence was that the penalty was invalid because of the incorrect address used in correspondence of May 2025.
35. The Respondent accepts its first letter was wrongly addressed but, the second letter informing the Applicant of the need to licence the house was correctly

addressed. The Applicant denies he received it but agrees the address was correct. The Tribunal was unable to determine the conflict regarding the second letter but by July 2025 the house had been unlicensed for over 24 months. Thereafter the Respondent followed all prescribed steps leading to the imposition of the financial penalty in accordance with Schedule 13A to the Act. There were no further procedural irregularities after the first letter was returned. The Tribunal does not find the Respondent's penalty was invalid by reason of alleged procedural irregularity.

36. In the alternative the Applicant pleads that the penalty is disproportionate having regard to his financial circumstances and that he was unaware of the need to obtain a licence. When he learned of the need to obtain a licence he acted promptly.
37. In determining the penalty Ms Blackhurst followed the matrix guiding determination a penalty under the Respondent's enforcement policy. The policy identifies a failure to licence as a serious matter justifying a penalty without more of £12500.00. However, acting in accordance with the duty to be proportionate Ms Blackhurst reduced the penalty by £6875.00 or 55% having regard to the Applicant's financial circumstances, no previous convictions and proportionality.
38. At the hearing Ms Blackhurst remained of the view the fine was proportionate with regard to the matters raised by the Applicant. There were no new facts not known at the time of the determination of the penalty.
39. The approach of the Tribunal to determining the appeal and deciding what level of penalty is appropriate HHJ Cooke stated in *Homes & Housing v LB Of Croydon*
- "15. The approach that the FTT and the Tribunal should take to the local housing authority's policy is well-established. In Sutton v Norwich City Council [2020] UKUT 90 (LC) the Deputy President said at paragraph 244:*

“It is an important feature of the system of civil penalties that they are imposed in the first instance by local housing authorities, and not by courts or tribunals. The local housing authority will be aware of housing conditions in its locality and will know if particular practices or behaviours are prevalent and ought to be deterred. The authority is well placed to formulate its policy and in London Borough of Waltham Forest v Marshall [2020] UKUT 35 (LC) the Tribunal (Judge Cooke) gave guidance on the respect that should be afforded to a local authority’s policy by the FTT when hearing an Appeal from a civil penalty imposed by the authority. As Wilkie J put it, concerning the approach which should be taken by magistrates, in Darlington Borough Council v Kaye [2004] EWHC 2836 (Admin): 7 “The Justices ... ought to have regard to the fact that the local authority has a policy and should not lightly reverse the local authority’s decision or, to put it another way, the Justices may accept the policy and apply it as if it was standing in the shoes of the council considering the application. 245. If a local authority has adopted a policy, a tribunal should consider for itself what penalty is merited by the offence under the terms of the policy. If the authority has applied its own policy, the Tribunal should give weight to the assessment it has made of the seriousness of the offence and the culpability of the appellant in reaching its own decision.”

40. The Tribunal is satisfied to the standard required that the Applicant has committed the housing offence of owning a house which required a licence but was not so licensed pursuant to s95 of the Act. Further that the Applicant has no reasonable excuse for the failure to licence the house. Accordingly, the local housing authority is entitled to impose a financial penalty. In exercising its power to impose a penalty the Respondent has applied its enforcement policy including the obligation to ensure the penalty is proportionate.

41. The Tribunal has reviewed the policy and heard the reasons for the Respondent's determination of the penalty which the Tribunal confirms. The Applicant's appeal is dismissed.

Appeal

42. If either of the parties is dissatisfied with this decision they may apply to this Tribunal for permission to Appeal on a matter of law to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to them rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Judge P.J.Ellis