FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	MAN/00EJ/HNA/2025/0733
Property	:	63 Fines Park, Stanley, Co Durham, DH9 8QY
Appellants	:	Karl Pepperday
Respondent	:	Durham County Council
Representative	:	Felicity Swift (Solicitor)
Type of Application	:	Appeal against a financial penalty Housing Act 2004 – Section 249A & Schedule 13A, paragraph 10
Tribunal Members	:	Tribunal Judge L. White Tribunal Member C. Snowball MRICS
Date and Venue of hearing	:	12 March 2026 Gateshead Magistrates'' Court and Family Court
Date of Determination	:	13 May 2026

DECISION

Decision of the Tribunal

(1) The Tribunal finds that the offence identified in Final Notice under section 95 of the 2004 Act in respect of the property at 63 Fines Park, Stanley, Co Durham, DH9 8QY has been established beyond reasonable doubt, and that no defence is made out. The Respondent was entitled to impose financial penalties upon the Appellant.

(2) The Final Notice dated 23 June 2025 for failure to license a property under section 95 of the Housing Act 2004 is varied to reduce the financial penalty from £11,000.00 to £4,000.00.

Reasons

THE APPEAL

1. The Appellant is the freehold owner of the property at 63 Fines Park, Stanley, Co Durham, DH9 8QY ("the Property"). The Property is a ground floor semi detached property.

2. By letter dated 24 June 2025 and then application form dated 8 October 2025 the Appellant appealed against a financial penalty imposed by the Respondent Council in a Final Notice dated 23 June 2025 in the sum of £11,000.00 ("the Final Notice"). The Final Notice was issued pursuant to section 249A of the Housing Act 2004 for an alleged offence under section 95 of the Housing Act 2004 ("the 2004 Act").

3. Directions were issued by the Tribunal on 3 December 2025. In response to those directions, the Tribunal received a paginated and indexed bundle from the Respondent. The Appellant also filed a bundle of documents.

4. No inspection of the Property took place; it being unnecessary to determine the issues before the Tribunal.

THE HEARING

5. The appeal was heard at a face-to-face hearing at the Gateshead Magistrates' Court and Family Court.

6. The Appellant attended the hearing. The Respondent was represented by Solicitor, Felicity Swift.

7. The Tribunal heard oral evidence from the Applicant and for the Respondent the Tribunal heard oral evidence from Adam Catterson (Housing Enforcement

Officer). The Tribunal also considered the documentary evidence provided by both parties in support of their respective cases.

8. Judgment was reserved.

STATUTORY FRAMEWORK

Power to impose financial penalties

9. New provisions were inserted into the 2004 Act by section 126 and Schedule 9 of the Housing and Planning Act 2016. One of those provisions was section 249A, which came into force on 6 April 2017. It enables a local housing authority to impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a "relevant housing offence" in respect of premises in England.

10. Relevant housing offences are listed in section 249A(2). They include the offence (under section 95) of having control of or managing a house which is required to be licensed but is not licensed.

11. Section 95(4) of the 2004 Act provides that a person does not commit the offence if he has a reasonable excuse for failing to comply with this requirement.

12. It is for the local housing authority to prove, beyond reasonable doubt, that an offence has been committed.

13. It is for the Appellant to prove, on the balance of probabilities, that he has a reasonable excuse for failing to apply for a license.

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

Procedural requirements

15. Schedule 13A to the 2004 Act sets out the procedure which local housing authorities must follow in relation to financial penalties imposed under section 249A. Before imposing such a penalty on a person, the local housing authority must give him or her a notice of intent setting out:

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

16. 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.

17. 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.

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

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

Appeals

19. A final notice given under Schedule 13A to the 2004 Act must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was given. However, this is subject to the right of the person to whom a final notice is given to appeal to this Tribunal (under paragraph 10 of Schedule 13A).

20. Such an appeal may be made against the decision to impose the penalty, or the amount of the penalty. It must be made within 28 days after the date on which the final notice was sent to the appellant. The final notice is then suspended until the appeal is finally determined or withdrawn.

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

RELEVANT GUIDANCE

22. A local housing authority must have regard to any guidance given by the Secretary of State about the exercise of its functions in respect of the imposition of financial penalties. Such guidance ("the HCLG Guidance") was issued by the Ministry of Housing, Communities and Local Government in April 2018: *Civil penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities*. It states that local housing authorities are expected to develop and document their own policy on when to prosecute and when to issue a financial penalty and should decide which option to pursue on a case-by-case basis. The HCLG Guidance also states that local housing authorities should develop and document their own policy on determining the appropriate level of penalty in a particular case. However, it goes on to state:

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

23. The HCLG Guidance also sets out the following list of factors which local housing authorities should consider to help ensure that financial penalties are set at an appropriate level:

    a. Severity of the offence.
    b. Culpability and track record of the offender.
    c. The harm caused to the tenant.
    d. Punishment of the offender.
    e. Deterrence of the offender from repeating the offence.
    f. Deterrence of others from committing similar offences.
    g. Removal of any financial benefit the offender may have obtained as a result of committing the offence.

24. In recognition of the expectation that local housing authorities will develop and document their own policies on financial penalties, the Respondent Council has developed their own policies *Corporate Enforcement Policy* dated 01 April 2024 ("the CE Policy") and *Civil Penalties under the Housing and Planning Act 2016* ("the CP Policy"). We make further reference to these policies later in these reasons.

BACKGROUND FACTS

25. The Applicant purchased the Property on or around 11 January 2008. The Applicant rented the Property out to Mr. and Mrs. Howey from 27 September 2019.

26. On 01 April 2022 the Respondent introduced a selective licensing scheme, in accordance with part 3 of the HA 2004, whereby all privately rented properties located within the scheme boundary (which includes the Property), required a licence for a five-year term.

27. The Respondent states a letter was sent to the Appellant at his current address dated 19 March 2024, advising that they believed the Property was occupied and required a licence under the HA 2004 and that further investigations would be carried out.

28. On 4 March 2025 Mr. Catterson, Housing Enforcement Officer of the Respondent Council, made an unannounced visit to the Property to assess whether it was being occupied and rented out. The Property was found to be occupied by Mr. and Mrs. Howey who advised they rented the Property from the Appellant.

29. On 11 March 2025 a letter was sent to the Appellant at his current address inviting him to attend an interview under caution as part of the investigation into the offence under s95(1) of the HA 2004.

30. An interview under caution with the Appellant took place on 2 April 2025.

31. On 17 April 2025 the Appellant applied for a licence for the Property. There was missing paperwork which was subsequently received and a full licence issued to the Appellant for the Property on 21 May 2025.

32. On 29 April 2025 the Respondent states they sent by first class post addressed to the Appellant at his current address, a Notice of Intent to issue a financial penalty ("Notice of Intent") under paragraph 1 of Schedule 13A to the 2004 Act. The Notice of Intent stated that the Respondent had determined a financial penalty of £11,000.00 in respect of a failure to comply with s95 of the 2004 Act should be issued. No representations from the Appellant were received.

33. On 23 June 2025 the Respondent issued the Final Notice, which they delivered by hand to the Appellant at his current address, which is the subject of this appeal.

ALLEGED OFFENCE

34. The Respondent asserts that the Appellant's conduct amounts to a breach of a relevant housing offence in respect of the Property being a failure to licence a property contrary to s95 of the 2004 Act from 01 April 2022.

35. A defence is available: a person does not commit the offence if he has a reasonable excuse for not complying with the regulation in question.

GROUNDS OF APPEAL

36. The grounds on which the Appellant challenges the Final Notice may be summarised as follows:

(i) the license for the Property was granted and in place prior to the Final Notice being issued;
(ii) the Notice of Intent letter was not received by the Appellant;
(iii) the Applicant was unaware of the requirement to licence the Property until receipt of the 11 March 2025 letter and then took swift action to remedy the position; and
(iv) the Appellant cannot afford to pay the sum of £11,000.00.

AGREED/DISPUTED FACTS

Agreed Facts

37. The following facts were agreed between the parties;
(i) the Property is owned by the Appellant;
(ii) the Property was rented out by the Appellant to Mr. and Mrs. Howey from 27 September 2019 to date;
(iii) the Property fell within the selective licensing scheme introduced by the Respondent and required a licence from 01 April 2022;
(iv) no licence was in place for the Property until the Appellant applied for a licence on 17 April 2025 which was issued on 21 May 2025.

Disputed Facts

38. The following are in dispute between the parties;
(i) whether the Appellant received the letter dated 19 March 2024;
(ii) whether the Respondent has complied with the procedural requirements in Schedule 13A to the 2004 Act as the Appellant states he did not receive the Notice of Intent;
(iii) whether not knowing of the requirement to have a licence amounts to a reasonable excuse defence.

39. The issues for the Tribunal are:
(a) whether is it satisfied beyond reasonable doubt that the Appellant was a person having control of or managing a house which was required to be licensed under Part 3 of the 2004 Act but was not so licensed. From the agreed facts it suggests that this ingredient of the offence is met;

(b) whether the Respondent has complied with the procedural requirements in Schedule 13A of the 2004 Act;
(c) whether the Appellant can rely on the statutory defence of reasonable excuse;
(d) If an offence has been committed, what should be the amount of any financial penalty.

EVIDENCE

Respondent's oral evidence

40. The Tribunal heard oral evidence from Adam Catterson who referred to his witness statement dated 17 December 2025 which exhibited various documents. Mr. Catterson confirmed that the selective licensing scheme, which came into effect on 01 April 2022, had been advertised in local newspapers, on social media and publications placed in various Council buildings. He advised that it was a routine check which prompted the letter being sent to the Appellant in March 2024 and this was not due to any information passed to the Respondent.

41. The matter was passed to him in February 2025 following no reply being received and no licence application having been made, following the letter sent to the Appellant dated 19 March 2024. Mr. Catterson was unsure why there had been a delay of nearly a year between the 19 March 2024 letter and the matter being passed to him to investigate. Mr. Catterson conducted his enquiries and carried out a visit to the Property where the tenants, Mr. and Mrs. Howey confirmed they rented the Property from the Appellant, it was an informal relationship and that if they needed anything regards the Property including repairs they send the Appellant a message via Facebook Messenger. Mr. Catterson stated there was no obvious issues with the Property or any hazards noted by him during the inspection.

42. Mr. Catterson stated that he conducted an interview with the Appellant under caution on 2 April 2025 following sending a letter to him dated 11 March 2025 which requested he attend an interview. Mr. Catterson stated he was satisfied following that interview that the Appellant was a person in control of the Property and that the Property was tenanted and did not have a licence as required. Mr. Catterson did not believe it was appropriate for no action to be taken and formal action was appropriate. He completed a checklist on 9 April 2025 as to whether the formal action should be a financial penalty or prosecution, he concluded that a financial penalty was the most appropriate of those two actions and this was signed off by his supervisor.

43. Mr. Catterson set out how the £11,000 sum was arrived at. He stated that this was in accordance with the CE Policy and CP Policy which provided this offence

was a serious offence and the starting point was £12,500. He did not accept that the wording in the CP Policy - "*The matrix is intended to provide indicative "starting level" under the various offence categories"* and the use of the word "indicative", gave any discretion to the "starting level" for the seriousness of the offence. Mr. Catterson maintained that for this offence: the level of seriousness was serious and as per the CP policy the starting level was £12,500.00.

44. Mr. Catterson told the Tribunal that once the starting level was established from the CP Policy he then went through the banding guidelines to see what aggravating/mitigating factors could be applied which then produced the final figure. Mr. Catterson told the Tribunal that the banding guidelines were designed and prepared by Justice for Tenants and adopted and used by the Respondent as well as 104 other local authorities. Using those banding guidelines the following was deducted/added to give a final figure of £11,000.00:
(i) Deduction of £5,000 as Appellant only owns one property;
(ii) Addition of £5,000 due to offence being committed for 21 months plus;
(iii) Deduction of £1,500 for high level of cooperation with the investigation.

45. Mr. Catterson advised the Tribunal that in hindsight a further deduction of £2,000 should have been made in relation to the section "*Steps taken to remedy the problem*" as the Appellant had completely rectified the breach of law within 28 days of the Notice of Intent.

46. Mr. Catterson told the Tribunal that the Notice of Intent was sent by first class post. He did not himself print off the letter and place this in the post, he explained that the Respondent uses an internal postal system called Flight and that he posts the letter on the system and then the letter is printed and posted by someone else. He confirmed the letter dated 11 March 2025 which invited the Appellant to attend an interview under caution was sent the exact same way and the Appellant received that letter. Mr. Catterson went on to explain that in-between the Notice of Intent being sent by first class post via the Flight system and the Final Notice, there was a change in advice internally as to service of notices and if an address to which a notice needed to be served was local, then it would be hand delivered. The Final Notice was therefore hand delivered rather than sent by first class post through the internal Flight system.

47. Mr. Catterson advised that there is no distinction provided for in the mitigation/aggravating factors in the banding guidelines between someone who knowingly commits an offence and someone who is unaware that they are committing an offence. Mr. Catterson stated that this offence is a strict liability offence, ignorance is not a defence: he would expect landlords to be aware of the licensing requirements. He further confirmed that he would not consider

good character of the offender or lack of previous convictions as mitigating factors.

Appellant's oral evidence

48. The Tribunal heard evidence from the Appellant who was cross examined by Ms Swift. The Appellant told the Tribunal that he had moved out of the Property in 2019 to move in and look after his mother as she had had a nervous breakdown and he didn't want her to be on her own. He rented the Property to a friend of someone he knew, he did not market the Property for letting, did not carry out any research as to requirements for letting a property and did not employ a managing agent to look after the Property for him.

49. The Appellant stated that he did not know about the selective licensing scheme that came into force on 1 April 2022 otherwise he would have applied for a licence at that time. He stated that the selective licensing scheme was not broadcasted enough and other people he has spoken to are not aware of this scheme. The Appellant said he only received two letters from the Respondent, both of which he has taken action as soon as he received those. The first letter he received was the letter 11 March 2025 requesting he attend an interview, which he did and then straight away got on with getting the necessary paperwork in place to obtain a licence. He said the only other letter he received was a letter telling him he had to pay £11,000 and that he could appeal this to the First Tier Tribunal which he did straight away. The Appellant stated he received no other letters from the Respondent, however, when asked by Ms Swift if he received the April PACE interview invitation, he replied "yes, I didn't get the first one, but every other one", indicating that he did in fact receive the Notice of Intent. The Tribunal considered that there was some inconsistency in the Appellant's evidence regarding the receipt of the Notice of Intent. He denied burying his head in the sand as put to him by Ms Swift to the letter in March 2024 and stated that if he had received that letter he would have applied at that point for the licence.

50. The Appellant confirmed he receives a rental income from the Property, but this doesn't quite cover the mortgage at this time. The Appellant stated he was unemployed but has a recovery truck so he does a few jobs here and there. He is not in receipt of any benefits and stated that he does not need a lot of money to live on. He advised he had "a little bit of savings".

Relevant housing offence

51. The Respondent's decision to impose a financial penalty can only be upheld if the Tribunal is itself satisfied, beyond reasonable doubt, that the Appellant's conduct amounts to an offence under section 95 of the 2004 Act.

52. Section 95 HA 2004 reads as follows:

(1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.

(2) ....

(3) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

(a)............ or

(b)an application for a licence had been duly made in respect of the house under section 87, and that notification or application was still effective (see subsection (7)).

(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)for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b)..............,

as the case may be.

53. As detailed above, the Property falls within the scheme boundary for selective licensing scheme, in accordance with Part 3 of the HA 2004 and it is admitted that from 01 April 2022 the Appellant was a person having control of the Property and the Property did not have a licence as required.

54. It does not necessarily follow that this amounts to the offence under section 95 of the 2004 Act: a breach does not amount to a criminal offence if the Appellant had a reasonable excuse for its failure to comply. Whilst the Tribunal must be satisfied, beyond reasonable doubt, that each element of the relevant offence has been established on the facts, an appellant who pleads a statutory defence must then prove, on the balance of probabilities, that the defence applies.

55. In ***IR Management Services v Salford [2020] UKUT 0081 (LC)*** the UT observed:

> "*The issue of reasonable excuse is one which may arise on the facts of a particular case without an appellant articulating it as a defence (especially where an appellant is unrepresented). Tribunals should consider whether any explanation given by a person ... amounts to a*

reasonable excuse whether or not the appellant refers to the statutory defence."

56. When considering whether the Appellant had a reasonable excuse for failing to have a licence for the Property the Tribunal finds that he does not. In making this determination, the Tribunal considered the Appellant's bundle of documents submitted and his oral evidence. It is not a reasonable excuse to not know of the licensing requirements. The Appellant rented out the Property and received a rental income from this. He should have made enquiries as to what that entails and ensure all statutory obligations were met.

57. For these reasons, we are not persuaded that the Appellant had a reasonable excuse for failing to have a licence in accordance with s95 of the 2004 Act. It follows that we are satisfied, beyond reasonable doubt, that the Appellant's conduct amounts to the offence of failing to ensure that the Property was licensed.

Procedural requirements

58. Schedule 13A to the 2004 Act states:

(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").

59. The Respondent advises the Notice of Intent was sent by first class post. The Appellant denies receiving it. As detailed above in paragraph 49 above, the Tribunal noted some inconsistency in the Appellant's evidence on whether he did in fact receive the Notice of Intent.

60. Section 7 of the Interpretation Act 1978 provides that where an Act authorises or requires any document to be served by post, service is deemed to be effected by properly addressing, pre-paying, and posting the letter, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

61. Section 233 of the Local Government Act 1972 expressly authorises postal service for any local authority seeking to give or serve any statutory notice. It states:

(1) Subject to subsection (8) below, subsections (2) to (5) below shall have effect in relation to any notice, order or other document required or authorised by or under any enactment to be given to or served on any person by or on behalf of a local authority or by an officer of a local authority.

(2) Any such document may be given to or served on the person in question either by delivering it to him, or by leaving it at his proper address, or by sending it by post to him at that address.

62. In ***Newcastle CC v Abdallah* [2024] UKUT 140 (LC)** the UT at paragraph 30 stated:

"The effect of a local authority serving a document by ordinary post (as permitted by section 233, 1972 Act) is therefore that it is deemed to have been validly served, whether or not it was actually received……."

63. By virtue of the Local Government Act 1972 the Tribunal finds that the Notice of Intent was validly served.

Amount of the financial penalty

64. We are satisfied that it is appropriate for the Respondent to impose a financial penalty on the Appellant in respect of his failure to comply with s95 of the 2004 Act. We must therefore determine the amount of that penalty.

Guiding principles

65. The Tribunal's task is not simply a matter of reviewing whether the penalty imposed by the Final Notice was reasonable: the Tribunal must make its own determination as to the appropriate amount of the financial penalty having regard to all the available evidence. In doing so, the Tribunal should have regard to the seven factors specified in the HCLG Guidance as being relevant to the level at which a financial penalty should be set (see paragraph 29 above).

66. The Tribunal should also have particular regard to the CE Policy and CP Policy applied by the Respondent. As the Upper Tribunal (Lands Chamber) observed in *Sutton & Another v Norwich City Council* [2020] UKUT 0090 (LC):

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

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

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

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

69. It follows that, in order to determine this appeal, it is necessary for us to consider the provisions of the CE Policy and CP Policy along with the banding guidelines, together with the decision which the Council made in reliance upon those policies in this case.

The CE Policy and the CP Policy

70. The CE Policy and CP Policy are based on the relevant factors specified in the HCLG Guidance. In determining the level of civil penalty to be imposed this is calculated using the matrix set out in the CP Policy which provides indicative starting level under the various offence categories, with the final level of civil penalty adjusted in each case, taking account aggravating and mitigating factors the Respondent deems significant.

71. The Respondent assessed the starting level for an offence under of the s95 of the 2004 Act as serious which gives the starting figure as £12500. The Tribunal agrees with that starting figure.

72. When giving evidence Mr Catterson confirmed that by using the banding guidelines in the CP Policy the following was deducted/added to give a final figure of £11,000.00:
    a) Deduction of £5,000 as Appellant only owns one property;
    b) Addition of £5,000 due to offence being committed for 21 months plus;
    c) Deduction of £1,500 for high level of cooperation with the investigation.

73. Mr. Catterson further confirmed that in hindsight a further deduction of £2,000 should have been made in relation to the section "*Steps taken to*

remedy the problem” as the Appellant had completely rectified the breach of law within 28 days of the Notice of Intent.

74. The Tribunal agrees with the deductions and additions detailed above which would take the financial penalty imposed to £9,000. However, the Tribunal finds that additional mitigating factors were not taken into account which should have been when considering the facts of the offence and proportionality. The Tribunal takes account of the CE Policy which confirms that penalties imposed should be “*proportionate to the nature of the offence and the harm caused”* and that “*the council understands that each case is unique and must be considered on its own merits…”.*

75. Further the CP Policy confirms that “*the actual amount levied in any particular case should reflect the severity of the offence, as well as taking account of the landlord’s previous record of offending*.” It goes on to set out factors that should be taken into account to ensure the civil penalty is set an appropriate level in each case which includes:

a) Severity of the offence.
b) Culpability and track record of the offender.
c) The harm caused to the tenant.
d) Punishment of the offender.
e) Deterrence of the offender from repeating the offence.
f) Deterrence of others from committing similar offences.
g) Removal of any financial benefit the offender may have obtained as a result of committing the offence.

76. The banding guidelines permits a deduction to be made of between £1,000 and £5,000 for “other” in the mitigating features/factors section of the matrix. Evidence heard by the Tribunal which the Tribunal finds are mitigating factors and should be considered when determining the level of civil penalty include:

- The Appellant is not a repeat offender.
- This was the first offence committed by the Appellant.
- The Appellant let the Property to the tenants (who were a friend of a friend) due to personal circumstances to move in and look after his mother.
- The rent did not always cover the mortgage payments.
- No obvious issues with the Property nor was there any hazards noted by Mr Catterson during his inspection of the Property.
- The Appellant has a good relationship with his tenants.
- No suggestion the tenants were vulnerable.
- No deliberate intent to commit the offence.
- No obvious harm caused to the tenants as a result of the offence.

77. The Tribunal determines that taking account of the Respondent's policies and that any penalty should be *"proportionate to the nature of the offence and the harm caused"* alongside the mitigating factors as set out above, a further deduction of £5,000 should be made.

78. In summary the Tribunal calculates the financial penalty as follows:

<u>Starting Figure</u>	<u>£12500</u>
Addition due to offence being committed for 21 months plus	£5000
<u>Subtotal</u>	<u>£17500</u>
Deduction as Appellant only owns one property	£5000
Deduction for high level of cooperation with the investigation	£1500
Deduction as the Appellant had completely rectified the breach of law within 28 days of the Notice of Intent	£2000
Deduction for further mitigating factors and taking account of proportionality	£5000
<u>Total</u>	**<u>£4000</u>**

79. The Tribunal considers £4,000.00 to be the appropriate amount of the financial penalty to impose on the Appellant. It has an appropriate punitive and deterrent effect as well as taking account of the mitigating factors in this case.

80. It is relevant to have regard to any reliable information about an offender's means to set a penalty at a level which will be appropriately punitive; which will have the right deterrent effect; and which will remove any financial benefit obtained from committing the offence. Indeed, the HCLG Guidance states that local housing authorities should, where possible, use their existing powers to assess an offender's assets and income.

81. The Appellant in his oral evidence advised that he receives a rental income from the Property, but it doesn't quite cover the mortgage. He stated that although he was unemployed, he was not in receipt of any benefits and has a recovery truck enabling him to carry out some paid work. He also stated he had some savings but did not say how much. No written evidence was provided about the Appellants' income, assets or liabilities. The Tribunal finds in those

circumstances that £4,000.00 is the appropriate amount of the financial penalty to impose on the Appellant.

OUTCOME

82. For the reasons explained above, we uphold the decision of the Respondent to impose a financial penalty on the Appellant in relation to the Property.

83. The Tribunal finds that the Respondent failed to make a deduction of £2,000 in relation to the section "*Steps taken to remedy the problem*" as the Appellant had completely rectified the breach of law within 28 days of the Notice of Intent. Further the Tribunal finds that when considering the case as a whole, further mitigating factors should be taken into account and a deduction made of £5,000.

84. The Final Notice dated 23 June 2025 is varied to replace the penalty of £11,000.00 with a penalty of £4,000.00, such sum to be paid by the Appellant within 28 days of the receipt of this decision by the parties.

85. The imposition of such a financial penalty is appropriate in the circumstances of this case: not only does it reflect the seriousness of the offending conduct, but it should also have a suitable punitive and deterrent effect.