



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

Case reference : **BIR/00CN/HNB/2025/0015**

Property : **206 Heather Road, Small Heath,
Birmingham, B10 9BD**

Applicant : **Nahim Rashid**

Representative : **None**

Respondent : **Birmingham City Council**

Representative : **Mr Calum Styring, Solicitor**

Type of application : **Appeal against a financial penalty under
section 249A of the Housing Act 2004**

Tribunal members : **Judge C Goodall
Mr A Churchill BSc MRICS**

**Date and place of
hearing** : **21 August 2026 by Video Platform**

Date of decision : **7 September 2026**

DECISION

© CROWN COPYRIGHT 2026

Background

1. This is an appeal against a financial penalty (“the Penalty”) imposed on Mr Nahim Rashid (“the Applicant”) on 12 June 2025. The penalty was imposed for an offence under section 95(1) of the Housing Act 2004 (“the Act”) relating to a property at 206 Heather Road, Birmingham B10 9BD. The Penalty imposed was the sum of £10,000.00. The appeal was lodged with the Tribunal on 9 July 2025.
2. Directions for the conduct of the appeal were issued on 13 October 2025. Statements of case were provided by both parties and bundles of documents produced – Applicants bundle running to 110 pages and Respondents bundle to 129 pages.
3. An oral hearing on video was held on 21 August 2026. The Applicant attended. The Respondent was represented by its solicitor, Mr Callum Styring and its evidence was given by Mr James Openshaw.
4. This document sets out the Tribunal’s decision and its reasons for so deciding.

Decision

5. The Tribunal’s decision is to allow the appeal and to cancel the Penalty.

Reasons

A. Law

6. The law which requires a house in a selective licensing area to have a licence is contained in Part 3 of the Act (sections 79 to 100), relevant provisions of which provide:

79 Licensing of houses to which this Part applies

(1) This Part provides for houses to be licensed by local housing authorities where—

(a) they are houses to which this Part applies (see subsection (2)),
and

(b) they are required to be licensed under this Part (see section 85(1)).

(2) This Part applies to a house if—

(a) it is in an area that is for the time being designated under section 80 as subject to selective licensing, and

(b) the whole of it is occupied either—

(i) under a single tenancy or licence that is not an exempt tenancy or licence under subsection (3) or (4), or

(ii) under two or more tenancies or licences in respect of different dwellings contained in it, none of which is an exempt tenancy or licence under subsection (3) or (4). ...

...

85 Requirement for Part 3 houses to be licensed

(1) Every Part 3 house must be licensed under this Part unless—

(a) it is an HMO to which Part 2 applies (see section 55(2)), or

(b) a temporary exemption notice is in force in relation to it under section 86, or

(c) a management order is in force in relation to it under Chapter 1 or 2 of Part 4.

7. Section 95 of the Act provides:

95 Offences in relation to licensing of houses under this Part

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

(a) a notification had been duly given in respect of the house under section 62(1) or 86(1), 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) for failing to comply with the condition,

as the case may be.

- (5) A person who commits an offence under subsection (1) is liable on summary conviction to a fine.

- (6) A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

- (6A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

8. Section 249A of the Act provides:

249A Financial penalties for certain housing offences in England

- (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—

...

(c) section 95 (licensing of houses under Part 3),

...

- (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) Schedule 13A deals with—
 - (a) the procedure for imposing financial penalties,
 - (b) appeals against financial penalties,
 - (c) enforcement of financial penalties, and
 - (d) guidance in respect of financial penalties.

9. The relevant parts of Schedule 13 A provide:

SCHEDULE 13A Financial penalties under section 249A

Notice of intent

- 1 Before imposing a financial penalty on a person under section 249A the local housing authority must give the person notice of the authority's proposal to do so (a “notice of intent”).
- 2 (1) The notice of intent must be given before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates.

(2) But if the person is continuing to engage in the conduct on that day, and the conduct continues beyond the end of that day, the notice of intent may be given—
 - (a) at any time when the conduct is continuing, or
 - (b) within the period of 6 months beginning with the last day on which the conduct occurs.
 - (3) For the purposes of this paragraph a person's conduct includes a failure to act.
- 3 The notice of intent must set out—

- (a) the amount of the proposed financial penalty,
- (b) the reasons for proposing to impose the financial penalty, and
- (c) information about the right to make representations under paragraph 4.

Right to make representations

- 4 (1) A person who is given a notice of intent may make written representations to the local housing authority about the proposal to impose a financial penalty.
- (2) Any representations must be made within the period of 28 days beginning with the day after that on which the notice was given (“the period for representations”).

Final notice

- 5 After the end of the period for representations the local housing authority must—
 - (a) decide whether to impose a financial penalty on the person, and
 - (b) if it decides to impose a financial penalty, decide the amount of the penalty.
- 6 If the authority decides to impose a financial penalty on the person, it must give the person a notice (a “final notice”) imposing that penalty.
- 7 The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was given.
- 8 The final notice must set out—
 - (a) the amount of the financial penalty,
 - (b) the reasons for imposing the penalty,
 - (c) information about how to pay the penalty,
 - (d) the period for payment of the penalty,
 - (e) information about rights of appeal, and
 - (f) the consequences of failure to comply with the notice.

Withdrawal or amendment of notice

- 9 (1) A local housing authority may at any time—

- (a) withdraw a notice of intent or final notice, or
 - (b) reduce the amount specified in a notice of intent or final notice.
- (2) The power in sub-paragraph (1) is to be exercised by giving notice in writing to the person to whom the notice was given.

Appeals

- 10 (1) A person to whom a final notice is given may appeal to the First-tier Tribunal against—
- (a) the decision to impose the penalty, or
 - (b) the amount of the penalty.
- (2) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.
- (3) An appeal under this paragraph—
- (a) is to be a re-hearing of the local housing authority's decision, but
 - (b) may be determined having regard to matters of which the authority was unaware.
- (4) On an appeal under this paragraph the First-tier Tribunal may confirm, vary or cancel the final notice.
- (5) The final notice may not be varied under sub-paragraph (4) so as to make it impose a financial penalty of more than the local housing authority could have imposed.
10. As to the way in which the Tribunal must approach the question raised in the appeal, the authorities suggest (see paragraph 16 of *Brent London Borough Council v Reynolds* [2001] EWCA Civ 1843) that our task is:
- “to make [our] own decision on the application, in place of that made by the local housing authority, and not merely to act as a court of review of the LHA decision. That said, however, the [Tribunal’s] jurisdiction is subject to the very significant condition that [it] should pay great attention to any view expressed by the local housing authority and should be slow to disagree with it.”
11. Further light on how a Tribunal should determine an appeal by way of rehearing is contained in *London Borough of Waltham Forest v Hussain* [2023] EWCA Civ 733, a case on the fit and proper person test for a licensing decision under Part 2 or Part 3 of the Act. In paragraphs 63 and 64, the Court of Appeal said that the task of the Tribunal is “to determine

whether the decision under appeal was wrong at the time it was taken”. “Wrong” means that the appellate tribunal disagrees with the original decision despite having accorded it the deference (or “special weight”) appropriate to a decision involving the exercise of a body tasked by Parliament with the primary responsibility for making licensing decisions”.

12. In so far as the Applicant raises a reasonable excuse defence in this case, that issue was considered by the Upper Tribunal in *Newell v Abbott* [2024] UKUT 181.
13. In that case, the Deputy President of the Upper Tribunal drew attention to a case called *Marigold v Wells* [2023] UKUT 33 (LC) in which he had drawn attention to guidance given by the Upper Tribunal, Tax and Chancery Chamber, on how tribunals should approach a reasonable excuse defence.

“(1) First, establish what facts the taxpayer asserts give rise to a reasonable excuse (this may include the belief, acts or omissions of the taxpayer or any other person, the taxpayer’s own experience or relevant attributes, the situation of the taxpayer at any relevant time and any other relevant external facts).

(2) Second, decide which of those facts are proven.

(3) Third, decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so, it should take into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times. It might assist the FTT, in this context, to ask itself the question “was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?”

14. *Newell v Abbott* was also a case about a financial penalty where the Applicant had not been aware of the selective licensing scheme for the area of his property. The FTT in the case that the appeal was considering had said that Mr Newell “ought not to have been” unaware of the selective licensing scheme. The FTT had said:

“It was incumbent on landlords to familiarise themselves with the legal requirements to which they were subject, and Mr Newell had failed to do so. His efforts to keep up to date consisted solely of “a few online searches” and he had not taken professional advice or considered joining a relevant national organisation, which might have provided him with relevant information. Even when he learned of the Council’s attempts to contact him his own efforts at communication were minimal. He had not provided his tenants with instructions on what to do with post addressed to him, and he did not attend the property to pick it up. In short, the matters he

relied on, “do not remotely constitute a reasonable excuse for his failure to get the property licensed”.

15. The Upper Tribunal refused Mr Newell’s appeal, and in so doing supported the FTT’s argument above. The Judge accepted that a Tribunal could expect a landlord to be able to show that his actions in relation to being aware of his licensing obligation were objectively reasonable, so he agreed that the FTT had properly stated that it was “incumbent on landlords” to familiarise themselves with the legal requirements.
16. *Newell v Abbott* also confirms (in paragraph 23) that “a local housing authority is not under an obligation to notify individual landlords of a licensing scheme”.

B. Facts

17. 206 Heather Road, Small Heath, Birmingham (“the Property”) is a freehold property in the names of the Applicant and his mother, Sandal Bi. They were registered as proprietors in June 2004. In fact, though, it was the Applicant’s mother and father (Mr Mohammed Rashid) who lived at the Property for some time. The Respondent has records that showed the council taxpayer at the Property in around 2008 was Mr Mohammed Rashid.
18. In around 2022 /23, Mr Mohammed Rashid passed management of the Property to the Applicant, who arranged for a complete refurbishment. He then put the Property on the market for letting with a local agent called Dixons, who found a tenant. The evidence concerning the start date of that tenancy was conflicting. The Applicants evidence was that it was at the start of 2024. The Respondent, relying on the council tax records, suggested it may have been June 2023. Nothing turns on the date, and we find that by early 2024 at the latest, there was a tenant in the Property.
19. The Applicant described the house to us as a three bedroom residential property with two reception rooms, kitchen, and bathroom downstairs and the three bedrooms upstairs. The refurbishment comprised replastering, redecoration, new kitchen and bathroom.
20. On 5 June 2023, the Respondent introduced a selective licensing scheme (“the Scheme”) covering the ward of Small Heath. The Property is in that ward. Mr Openshaw says the introduction of the Scheme followed an extensive consultation and awareness campaign, including stakeholder emails, public events, press releases, national news coverage, legal notices, social media outreach, meetings, digital marketing, notifications to estate agents, and multiple city wide leaflet drops. The Applicant has not challenged this evidence, which we accept.

21. The Applicant, however, says that he was not aware of the Scheme until he received a letter from the Respondent dated 22 April 2025 giving notice of its intention to issue a financial penalty.
22. The Applicant's evidence was that he "heard about bits of the Scheme" before this, and he must have read something in the papers, but he had no positive awareness of the existence of the Scheme and that it had an impact upon him in relation to the Property. He is not a member of any landlord's trade association, nor had the agent who marketed the Property brought the Scheme to his attention.
23. The Tribunal found this evidence to be credible. We had no reason to disbelieve the Applicant's evidence. We find that the Applicant was not aware of the Scheme before 22 April 2025. We also find that he had not taken any active steps to research the Scheme and its impact. It came as a complete surprise to him.
24. In fact, the Respondent had been taking steps to contact the Applicant before 22 April 2025, in the following actions:
 - a. The Respondent had identified that the Property was unlicensed following a house to house door knocking campaign on 13 January 2025. The occupants admitted that they were tenants of the Property but refused to divulge the name of the landlord.
 - b. The Respondent made desktop enquires on 19 February 2025, by inspecting the Council Tax records and the official copies of the Land Registry title. The Council Tax records indicated that the person registered as the Council Taxpayer was Mr Mohammed Rashid. That record said he had been so since 28 November 2008. The official copies, which were dated 19 February 2025, showed the freehold owners as described in paragraph 17 above.
 - c. Despite having three names as potential landlords of the Property, the Respondent decided that the Council Tax records took precedence. As per the Respondent's standard practice at the time, it wrote a letter dated 19 February 2025 (described by Mr Openshaw in his evidence as a first warning letter) to Mr Mohammed Rashid notifying him that they considered the Property required to be licensed. That letter contained the following paragraph:

"If we do not receive a completed application within 7 days from the date of this letter, the Local Authority may take further enforcement action in accordance with the Housing Act 2004."
 - d. After considerable reluctance to do so, Mr Openshaw eventually admitted at the hearing that that letter meant (and we find that it does) that no enforcement action would be taken if the recipient

of the letter complied with the requirement to apply for a licence within 7 days.

- e. The letter was sent to the Applicant's address, but it was addressed to Mr Mohammed Rashid, not the Applicant. Mr Mohammed Rashid did not receive the letter, as it was not the Applicant's practice to open post addressed to his father unless it was clearly important to open it, for instance because it came from the NHS. Otherwise, his practice was to forward the letter to his father. Unfortunately, his father was not in the country at that point in time.
 - f. On 3 March 2025, a follow-up letter was sent to Mr Mohammed Rashid at the Applicants address, but there was no response.
 - g. Further enquiries were then made of the tenants in the Property by email on 2 April 2025. They replied on the same day giving the Applicant's name as landlord, and a mobile phone number. However, calls to that number that the Respondent says it then made were not answered, because, the Applicant said, the number was wrong. The Applicant provided his mobile number to Mr Openshaw in an email dated 14 June 2025. It is correct to say that the number given by the tenant is not the same number as the one provided by the Applicant to Mr Openshaw.
25. Documentary evidence before the Tribunal indicated that Mr Mohammed Rashid was in Pakistan from 23 September 2024 until 3 March 2025, and that the Applicant was also in Pakistan from 16 February – 1 March 2025.
26. On the basis of the material listed in paragraph 24 above, on 22 April 2025 the Respondent assessed the state of its endeavour to contact the person responsible for licensing the Property and what action it should take, and it decided to issue a Notice of Intention to Impose a Financial Penalty on the Applicant. That Notice was sent to the Applicant on the same date. That date is a crucial date in the case, it being the date the Respondent decided to take enforcement action.
27. The Notice of Intention listed the steps the Respondent had taken to contact the Applicant and included statements that:
- “You were contacted via letter correspondence on 19 February and the 13 March sent to your residential address of [correct address given] by royal mail ...
- Birmingham City Council considers the service of a Financial Penalty as the most appropriate course of action for your failure under the Scheme ...”

28. We find that the first of these statements was not true, or at least no evidence was presented to us that it was. The letters referred to were sent to the Applicant's father, not the Applicant (see paragraph 24 above).
29. On receipt of the Notice of Intention to Impose a Financial Penalty, the Applicant made an application for a licence. In all probability, the application was made on 20 May 2025. It had certainly been made by then.
30. The Applicant says he took "immediate action" on receiving a letter in April 2025 (paras 11 and 12 of his Statement of Case) but in his witness statement, he gave the date of his application as 20 May 2025 and said that he became aware of the licensing requirement in May 2025, rather than April (para 7 of the witness statement).
31. The Respondent has provided an email dated 21 May 2025 from Mr Openshaw [p33 Respondents bundle] acknowledging receipt of the application. It appears that by sending that email, the Applicant intended the existence of the application to be taken into account as a representation to the Notice of Intention, and Mr Openshaw suggests this would be so, as his email says, "we will consider the application received and the below email [not provided] upon review of the case".
32. What is confusing is that also on 21 May 2026 the Respondent wrote a letter to the Applicant saying that it proposed to grant a selective licence. On the basis that it is improbable that the Respondent carried out all its checking processes following receipt of an application for a selective licence the day after receipt of the application, we think it is possible that errors may have crept in to the narratives provided by one or both parties.
33. This disparity is not particularly relevant to our discussion, save that we find that the application for a licence was made prior to 12 June 2025 (see below). That finding is based on the Respondent's letter which **is** dated 21 May 2025 (page 24 of the Applicant's bundle); there is little room for doubt that it was sent on that date.
34. On 12 June 2025, the Respondent issued its Final Notice of a financial penalty. The text includes the same statement that was contained in the Notice of Intention as referred to in paragraph 27 above incorrectly saying that the Applicant had received two letters regarding failure to licence the Property. Additionally, the Final Notice contains the following statement:

"To date, and despite reasonable efforts to engage your compliance with the Scheme, the offence is ongoing and an application for a selective licence has not been submitted by you or on your behalf."
35. On the basis of the evidence summarised in paragraphs 32 and 33 above, this statement also appears to be untrue.

C. The party's cases

Applicant

36. We mean no disrespect to the Applicant in providing a very short summary of his case. In our view, it boils down to three key points:
- a. He was unaware of the selective licensing designation until 22 April 2025, and therefore has a reasonable excuse for not applying for a licence earlier than he did; and
 - b. The Respondent's failure to carry out its enquiries competently meant he was denied the opportunity, which the Respondent allows to others, to cure this omission without a resultant financial penalty. His final submission was very short, but very telling; he simply said he thought he should have been given the same chance as any others to put right his omission to apply for a licence without further sanction;
 - c. The Penalty imposed is manifestly excessive.

Respondent

37. The Respondent's case is that an offence under section 95 of the Act has clearly been made out on the evidence; the defence of reasonable excuse cannot succeed on the basis of the authorities.
38. So far as any procedural defects are concerned, it is denied that if any are found that they can affect the Penalty imposed, which was in accordance with the Council's published policy.

D. The Respondent's policy

39. A copy of the Respondent's Regulation and Enforcement Policy was provided to the Tribunal.
40. In the Introduction, the Policy sets out the broad purpose. It includes:
- "1.3 Section 6 of the Regulators' Code sets out an expectation that local authorities will ensure that their approach to their regulatory activities is transparent. This means we will publish our policy on how we intend to deliver regulation and what those affected can expect.
41. Section 2 sets out the actions available to the Respondent for enforcement action, which include no action, informal action and advice, civil penalties, and prosecution. When considering enforcement, and where appropriate and reasonably practicable, the policy provides that the Respondent will

discuss the circumstances with those suspected of a breach to decide the best approach.

42. Section 5 promotes the principle that prevention is better than cure and that the Respondent will actively work with businesses to advise on and assist with compliance. Para 5.8 states that the Respondent will endeavour to ensure that those regulated can seek advice from the Respondent without automatically triggering enforcement action.
43. Section 7 deals with enforcement action itself. The list of available enforcement options is set out again. Paragraph 7.2 says that consideration will be given to
 - The seriousness of the compliance failure
 - The past and current performance of any business and/or individual concerned
 - Any obstruction on the part of the offender
 - The risks being controlled
 - Statutory guidance
 - Codes of Practice
 - Any legal advice
 - Policies and priorities of Government, Birmingham City Council and Birmingham City Council's Licensing and Public Protection Committee
 - A person's age in relation to young people (termed juveniles') aged under 18
 - The existence of a Primary Authority agreement
44. Appendix 2 of the Policy covers financial penalties imposed in the private rented sector. As assessment is made of the seriousness of the offence and a fixed "tariff" for that offence is provided. That amount is then adjusted for aggravating and mitigating factors, financial impact and a final review that ensures the penalty is proportionate.
45. An offence under section 95(1) of the Act is designated as a serious offence, and accordingly the "tariff" is £12,500.00. In this case, that was reduced by 10% because the Applicant had no previous convictions, and by the same 10% amount because of steps voluntarily taken to remedy the default – total 20%, reducing the Penalty to £10,000.00.

E. Discussion

46. There are two issues for the Tribunal in this case:
 - a. Has an offence under section 95 of the Act been committed – in other words, was the Applicant, without reasonable excuse, a

person in control of a house which was required to be licensed but was not so licensed; and

- b. Did the Respondent correctly decide to issue the Financial Penalty Notice – in other words, do any procedural defects in the Respondent’s actions in investigating and issuing enforcement action mean that the Notice should not have been issued.
47. Dealing with the first of these issues, our decision is that the Respondent has established that an offence under section 95 of the Act has been proved beyond reasonable doubt. The Applicant has not challenged that the Property is a house to which Part 3 of the Act applies; that the house is located in an area which was designated subject to the Scheme; that it was tenanted in January 2025; and that there was no licence in place.
48. So far as a reasonable excuse is concerned, the authorities set out above show that mere lack of awareness of a scheme cannot be a reasonable excuse without more. The fact is that it is incumbent upon landlords operating in a regulated environment to ensure that they make reasonable endeavours to comply with the Act. The standard that is required of private landlords this day and age is that they take steps to know about their legal obligations and comply with them. There was no evidence that the Applicant had taken any steps to research his legal obligations or the existence of the Scheme.
49. As was pointed out in *Newell v Abbott*, the law does not require the Respondent to notify all landlords individually about their obligation to obtain a selective licence.
50. We therefore find that the Respondent was entitled to find that the Applicant’s excuse for not applying for a licence as was required by or on the date the Scheme came into effect was not a reasonable excuse. That being the case, the Respondent was entitled to consider whether to take enforcement action in the light of its legitimate finding that an offence under section 95 of the Act had been committed by the Applicant.
51. This leads to the second issue. Has the process of taking enforcement action been carried out properly and robustly? Our task at this point is to consider whether the Respondent made the right decisions, in our view at two points in time, to progress to the issue of a financial penalty.
52. The first enforcement action decision was taken on 22 April 2025, which was to progress to an immediate issue of a Notice of Intended Financial Penalty. That decision was taken in the light of a belief that the Applicant had failed to respond to two warning letters to the Applicant. As we found in paragraph 28 above, that information was wrong. No warning letters had been sent to the Applicant at all at that point.

53. The decision was also taken in the belief that the Applicant had failed to respond to a phone call. However, the source of the telephone number was the tenant, with no independent verification that the number was correct. The decision maker, in our view, had no basis for assuming that the Applicant had received that call.
54. In addition, our view is that the decision maker, in the light of the fact that the Respondent undoubtedly needed to establish the correct identity of the landlord, should have reviewed the attempts to find the landlord made in February and March 2025 and realised that having identified three potential people who might be the landlord, it had decided only to pursue one of them, who turned out not to be the landlord. We do not understand why letters were not issued to all three.
55. Further, we do not understand why, having made a house call to the Property, the Respondent did not write to the Applicant (no letters had been sent to him at all prior to 22 April 2025) or make a house call to the Applicant at some point to discuss his compliance with the Act – section 2 of the Enforcement Policy suggests that this is highly desirable.
56. Additionally, the Respondent should have appreciated that its policy to issue warning letters to potential licence defaulters allowed the possibility of submission of an application for a licence in compliance with the warning letters which would avoid a financial penalty. If a potential defaulter received no warning letters, that person was denied the opportunity that the policy gave to every other defaulter. That is prima facie unfair. We find, on the basis of Mr Openshaw's evidence to us, that it was the Respondent's standard practice to send warning letters in the same or similar terms to the letter sent to Mr Mohammed Rashid on 19 February 2025.
57. As the Applicant had in fact not received any warning letters, the decision maker should have realised that proceeding straight to a Notice of Intended Financial Penalty would have denied the Applicant the benefit of that policy that others benefitted from and which could have allowed him to avoid the Penalty.
58. Our conclusion, in the light of the above points, is that the decision to proceed straight to enforcement by financial penalty on 22 April 2025 was poorly considered, premature, and based on incorrect information. In our view it was the wrong decision and cannot be supported. It cannot have been the case that the decision to issue a Notice of Intended Financial Penalty was the right decision when it was based on facts which were incorrect.
59. All the Respondent's actions from then on are tarred with the brush of the incorrect decision to issue a Notice of Intended Financial Penalty. The Tribunal noted in paragraph 35 above that the Final Notice made an additional factually inaccurate statement, but our view is that that

statement was a clerical error as the Penalty itself in fact took account of the application for a licence prior to 12 June 2025, as it was treated as a mitigating factor.

60. The issuing of the Final Notice was the second point at which the Respondent had an obligation to make a decision concerning enforcement – see para 5(a) of Schedule 13A of the Act. But it follows that as it was wrong to issue a Notice of Intended Financial Penalty, it was wrong to pursue that process to issue of a Final Notice. The decision to issue the Final Notice was therefore also wrong.
61. We would add that the Respondent's policy on its approach to enforcement should a first warning letter be heeded was opaque. Mr Openshaw veered from saying that compliance with the warning would never avoid the issuing of a financial penalty, to admitting that the wording in the letter positively meant that a financial penalty **would** be avoided. Bearing in mind paragraph 1.3 of the Enforcement Policy, it might be prudent for the Respondent to clarify the Policy.
62. The Penalty cannot stand and is cancelled.

Appeal

63. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
First-tier Tribunal (Property Chamber)