



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

Case Reference : BIR/00CT/HTD/2025/0001

Property : 89A Dorridge Road, Dorridge, Solihull B93 8BS

Applicant : Mr Jayanti Chouhan (Landlord)

Respondent : Solihull Metropolitan Borough Council

Representative : Regulatory Services (Louse Baggot)

Type of Application : Appeal against a financial penalty
Section 8 and Schedule 3 Tenant Fees Act 2019

Tribunal Members : Judge T N Jackson
Ms J Rossiter MBA MRICS

Date of hearing : 12 August 2026

Date of Decision : 2 September 2026

DECISION

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Decision

We order that the financial penalty in the Final Notice dated 11 February 2025 of £4,125 be confirmed.

Reasons for decision

Introduction

1. By application dated 16 February 2025, the Applicant appeals against a financial penalty of £4,125 in respect of a breach of section 1(1) of the Tenant Fees Act 2019 ('the 2019 Act').
2. Directions were made on 29 April 2025, 22 October 2025 and 12 January 2026. The Respondent and the Applicant each provided bundles.
3. As the bundles did not include a full copy of the Respondent Council's Enforcement policy, a copy was obtained on the morning of the hearing and circulated to the Tribunal and the Applicant.

Background

4. The Property is a two bedroomed flat in a converted house.
5. The Applicant let the Property to tenants by a tenancy agreement dated 29 April 2024 for a period of 12 months from 26 March 2024 at a rent of £900 per month.
6. On 29 May 2024, the tenants received a letter from the Applicant arranging an inspection for 30 May 2024 between 16:30 and 17:00 regarding alleged damage caused by a leak from a washing machine which had damaged laminate flooring and ceiling lights on the ground floor wet room. The tenants unsuccessfully tried to contact the Applicant to say that they would not be able to make the appointment. The tenants returned to the Property on 30 May 2024 at approximately 17:00 and did not hear anything further from the Applicant that day.
7. On 31 May 2024, the tenants received a letter headed 'Property Inspection-Access denied' accompanied by an invoice for £175 which stated:

- 1. Under the terms of the tenancy agreement*
- 2. Missed appointment- contractor call- outs*
- 3. Damage you've caused to the property.*

To be paid within 7 days'.

8. The tenants did not pay the £175.
9. The Respondent Council became aware of the above on 10 July 2024.
10. On 18 December 2024, the Respondent Council issued by first class post a Notice of Intent (although the Tribunal does not have a copy of the signed and dated Notice of

Intent but the bundle includes a draft). The Applicant did not make any written representations in response to the Notice of Intent.

11. On 11 February 2025, the Respondent Council issued a Final Notice of Penalty in the amount of £4,125.

The tenancy agreement

12. Clause 3 sets out the tenants' obligations of which Clause 3.3 is headed 'Further charges to be paid by the tenant'. Clause 3.3.3 says:

'To compensate the Landlord in damages for all reasonable costs and expenses awarded by the court or incurred by the Landlord for the following:

- *recovering or attempting to recover any Rent or other monies in arrears, or possession of the property (be it as a result of a breach of this Agreement or otherwise upon the Tenant failing to vacate the property when required to do so – for example following the expiry of a Notice served under Section 21 of The Housing Act 1988 or any amendment re reenactment of the same) and all related legal and trace fees;*
- *the enforcement of any reasonable obligation of the Tenant under this Agreement or recovery of any reasonable loss suffered by the Landlord as a result of the Tenant's breach of such obligation;*
- *the cost of any repairs of any mechanical and electrical appliances belonging to the Landlord resulting from misuse or negligence or accidental damage by the Tenant, their family or their visitors;*
- *the service of any Notice relating to any major breach of this Agreement whether or not court proceedings are brought;*
- *any re-letting costs or commission incurred by the Landlord if the Tenant vacates the Property early apart from according to a break clause;*

13. Clause 3.3.5 requires the tenants *to pay certain other charges that may arise during the course of this tenancy full details of which are published on the Landlord's Agent's website-alternatively full details can be obtained in writing from that Agent's local office.'*

Respondent Council's Policy for the use of Civil Penalties

14. The Respondent Council has the Regulatory Services Enforcement and Prosecution Policy, ('the Policy'), Part 2B of which relates specifically to the Tenant Fees Act 2019.
15. Paragraph 10 of the Policy sets out a range of enforcement options available to an officer which are an increasing level of response linked to the extent, seriousness and impact of non- compliance with the law. Paragraph 11.6 sets out that where legislation provides a financial penalty notice as an alternative to prosecution, the Respondent Council will consider this a financial penalty as a preferred means of disposal.

16. In determining the level of financial penalty, the Policy sets out 8 factors which reflect the factors set out in the Tenant Fees Act 2019: Statutory Guidance for enforcement authorities, namely:
- (a) The history of compliance/non-compliance
 - (b) The severity of the breach
 - (c) Deliberate concealment of the activity and/or evidence
 - (d) Knowingly or recklessly supplying false or misleading evidence
 - (e) The intent of the landlord/agent, individual and/or corporate body
 - (f) The attitude of the landlord/agent
 - (g) The deterrent effect of a prosecution on the landlord/agent and others
 - (h) The extent of financial gain as a result of the breach.
17. Step 1 requires a determination of the offence category considering differing categories of culpability and harm. Appendix 2 sets out a non-exhaustive list of individuals considered to be vulnerable when assessing harm. Having determined the category, Step 2 requires a determination of the starting point within the offence category range set out in various tables. The tables set out a starting point and minimum and maximum amounts for each offence category. The starting point is then adjusted within the offence category range for aggravating and mitigating factors, which are set out at paragraph 40. Appendix 3 sets out a non-exhaustive list of relevant convictions to be considered as aggravating factors. In determining the penalty, the Respondent Council is required to use its powers to make an assessment of the landlord's assets and income and may conclude that the landlord is able to pay any financial penalty unless the Respondent Council has obtained, or the landlord has supplied, any financial information to the contrary.
18. Step 3 sets out general principles to consider in setting a penalty ensuring that the penalty reflects the seriousness of the offence and the taking into account of any financial circumstances or representations received after issue of the Notice of Intent. Step 4 is the procedure for the issue of the Notice of Intent. Step 5 is consideration of written representations and review of financial penalty if appropriate. Step 6 is reductions to the penalty having regard to various matters, including an admission of the offence, although any reduction should not result in a penalty which is less than the amount of gain from the commission of the offence itself. Step 7 sets out any additional actions the Respondent Council may wish to take, including further enforcement action. Step 8 considers the totality principle where the offender is issued with more than one financial penalty. Step 9 is recording the decision.

Inspection/Hearing

19. The Tribunal did not consider an inspection to be necessary. An oral hearing via video platform was held at which the Applicant attended and was unrepresented. Richard Staveley, Team Manager for Regulatory Services and James Shore, Trading Standards Officer attended for the Respondent Council but without a legal representative. As the Tribunal received a copy of the Policy on the morning of the hearing, we had two adjournments to allow the Applicant and the Tribunal to read the Policy. The Tribunal office sent the Policy by email to the Applicant and the hearing was adjourned with the Judge advising the Applicant that he needed to read the Policy as we would be working through it later in the proceedings. On resuming the hearing, the Applicant claimed not to have received the email with the Policy, and yet had not contacted the

Tribunal to advise them of this. The Tribunal sent a further copy by email to the Applicant and the Judge suggested to the Applicant that he may wish to concentrate on section 2B of the Policy which covered financial penalties regarding the 2019 Act. The hearing was adjourned for a further 45 minutes to allow the Applicant to read the document.

20. On resuming the hearing, the Applicant alleged that he had not received the Respondent's bundle. We noted that it had been sent to both the Tribunal and the Applicant by the Respondent Council on 23 May 2025. The Respondent Council had used the Applicant's email address that he had provided in the application to appeal to the Tribunal for contact and he had used himself throughout the proceedings when emailing the Tribunal. The Respondent's bundle was short at 65 pages. It comprised the draft Notice of Intent, Final Notice; Tenancy Agreement; Tenancy Completion Manual; Government Checklist of 'How to Rent'; the letter and invoice dated 31 May 2024 sent by the Applicant and a 14 line witness statement from the tenant.
21. With the exception of the draft Notice of Intent, Final Notice and the tenant's witness statement, the Applicant had included the same documents in his own bundle and therefore was clearly aware of them. He had received the Final Notice and had attached it to his application to appeal sent to the Tribunal. The Tribunal read out the 14 line tenant statement which explained the background to the receipt of the letter and invoice dated 31 May 2024.
22. The Applicant claimed not to have received the Notice of Intent which was served by first class post on 18 December 2025. Under section 7 of the Interpretation Act 1978, service of first- class mail is legally presumed on the second day after posting. The presumption stands as fact unless the Applicant proves otherwise. A simple bare denial of receipt is not enough to overturn the presumption and the Applicant must provide clear, convincing evidence that delivery failed or that the letter was returned undelivered.
23. The Applicant did not offer any such evidence. The Tribunal asked the Applicant if he had difficulties with receiving his post and were told that there were two mailboxes on the Property, one for 89A and one for 89. Sometimes, documents were put in the wrong mailbox but he had not taken any steps to avoid possible confusion, saying that it was a matter for the postman. The Tribunal was not persuaded by any suggestion by the Applicant that he has had difficulties receiving hard copy mail due to the Applicant's requests on 27 May 2025 and 1 February 2026 in these proceedings to have documents serviced in hard copy only, (due to the fact that the Applicant shares a computer with other members of the family). The Tribunal was unconvinced that the Applicant would request documents to served in hard copy if there were significant difficulties in receiving hard copy mail at the Applicant's postal address. The Tribunal does not find that the Applicant has rebutted the presumption of having been presumed to have received the Notice of Intent.
24. As a result of various aspects of the Applicant's evidence throughout the hearing, including his claim not to have received the email with the Policy sent by the Tribunal that morning, the Tribunal do not regard the Applicant as credible. This is expanded further in paragraphs 54 and 55 below.

25. The Tribunal was satisfied that the Applicant had previously seen some of the documents in the Respondent Council's bundle, was deemed to have received the Notice of Intent and we had read to him the very short tenant's witness statement. We therefore find that he was not disadvantaged by not having received the Respondent's bundle, if indeed this was correct, and that the hearing could proceed.
26. During the hearing, the Applicant repeatedly turned off his camera whilst still connected to the video hearing. In addition, on numerous occasions, he disconnected from the video hearing. The Tribunal had to make phone calls to prompt him to reconnect to the hearing. The Applicant claimed that it was due to technical difficulties. That did not explain why, on occasions he remained connected to the hearing but with no camera. Further, the disconnections appeared to occur when the Tribunal was asking the Applicant direct and challenging questions. The Judge warned him that if he continued to conduct himself in this manner, then on the next occasion he disconnected, the hearing would proceed in his absence. The hearing subsequently continued with the Applicant present by video.

Submissions

The Applicant

27. The Applicant's application did not contain any grounds of appeal.
28. His bundle contained evidence regarding alleged breaches of the tenancy agreement by the tenants and related correspondence regarding eviction and the service of a section 21 Notice; details of a County Court judgement dated 8 September 2025 regarding rent arrears and a determination under the Tenancy Deposit Scheme.
29. The Applicant submits that the Respondent Council has behaved unreasonably by issuing the financial penalty and has failed to apply the European Convention of Human Rights under the Human Rights Act 1988 at each stage of the case. He submits that the Respondent has not issued a Notice of Intent. He submits that the Applicant has not taken any fees or kept a holding deposit from the tenants and the Respondent Council has not produced any evidence of fees having been taken from the tenants.
30. He submits that the 2019 Act does not affect a landlord's entitlement to recover damages for breach of the tenancy agreement by way of a deduction from the tenancy deposit or through the courts or an agent's entitlement to recover damages through the courts for breach of the agreement between them and a relevant person.
31. He submits that the Respondent Council has failed to consider whether there is sufficient admissible and reliable evidence that the offence has been committed, whether there is a reliable prospect of conviction and whether they consider that it is in the public interest to take action. He submits that the Respondent Council has failed to provide any reliable evidence to him and has failed to consider each breach on a case by case basis.
32. The Applicant asks the Tribunal to quash the financial penalty.

33. The Applicant's oral evidence was that he confirmed that he had sent the letter dated 31 May 2024 and invoice.
34. The Applicant denied that he had been convicted of an offence at Birmingham Magistrates on 11 January 2024 as claimed by the Respondent Council. After detailed questioning by the Tribunal, the Applicant claimed initially that he was convicted in his absence. He subsequently said that he had attended the hearing but the judge had sent him out of the hearing but he could not explain why and denied that it was due to his behaviour in the court. He alleged that as soon as he received notification of the conviction, he had appealed the conviction. His oral evidence was that the appeal had not yet been dealt with, due to a backlog in the court and that he had last chased it up approximately 4 months ago.

The Respondent

35. The Respondent's bundle was limited. It contained copies of an undated draft Notice of Intent; dated and signed Final Notice; a copy of the letter and invoice dated 31 May 2024 in which the alleged prohibited fee was referred to; a copy of the tenancy agreement, Tenant Completion Manual; the Government's How to Rent publication and a short witness statement from the tenant.
36. However, it did not include a copy of the Respondent Council's Policy nor a complete copy of the offence categories and tables, only part of which was referred to in the Notice of Intent and Final Notice as justification for the assessment of the financial penalty. It did not include a witness statement regarding the application of the Policy and how the financial penalty had been determined, including an assessment of the differing levels of culpability and harm categories. The bundle did not include a written submission.
37. In determining the offence category, the Respondent Council had determined that the matter was one of 'very high culpability' due to the fact the Applicant, trading as Jay Bee's Property Letting and Management was successfully prosecuted by Birmingham City Council Trading Standards as recently as 11 January 2024 for issuing invoices for inspecting a rented property after a tenant had submitted a complaint. He was fined £6000 and ordered to pay £1385 compensation to the tenants, £210 to a witness and £2405 in costs. This was part of a conviction for too aggressive commercial practices under The Consumer Protection from Unfair Trading Regulations 2008.
38. The Respondent Council determined that the harm level was 'high likelihood of harm' category 1 due to the recent conviction and the fact that the 'Tenancy Application Form', which the tenants signed on 3 May 2024, was printed on the letterhead of 'Jay Bee's Property Letting and Management', the same business entity that was prosecuted. This heightens the level of harm attributed to the case as the Applicant, as part of a commercial enterprise and in light of the prosecution, should have had a full awareness of tenancy law.
39. The Respondent Council says that the starting point on the tables for a first breach of prohibited payments under a 'very high culpability' and a 'high likelihood of harm' offence category is £4000. This amount can then be increased or lowered according to respective aggravating and mitigating factors. They used the 8 determinants set out

in the Respondent Council's Policy. As, within this offence category, the fine can be a minimum of £3000 to a maximum of £5000, they considered it most equitable to 'divide the £1000 difference of each side into the 8 factors', resulting in a decrease in the penalty of £125.00 for each mitigating factor and an increase of £125.00 for each aggravating factor. They addressed the factors as follows:

The history of compliance/ non -compliance (plus £125).

40. The prosecution of the Applicant for a similar offence is very recent.

The severity of the breach (minus £125).

41. The fee requested at £175 was a relatively small sum.

Deliberate concealment of the activity and/ or evidence (neither £0).

42. During interview, the Applicant denied that the fee was ever to be chased despite the documentary evidence to the contrary. However, he did not deliberately and actively conceal as such.

Knowingly or recklessly supplying false or misleading evidence (minus £125).

43. Although he denied the offence, the Applicant did not supply false or misleading evidence.

The intent of the landlord/agent, individual and/or corporate body (plus £125).

44. In light of his previous conviction, the Respondent Council believed that the Applicant knew the requested fee was prohibited.

The attitude of the landlord/agent (plus £125).

45. During the investigation for another matter which prompted the discovery of the alleged prohibited payment, the Applicant displayed an aggressive attitude regularly shouting at the Environment Compliance Officers who dealt with him.

The deterrent effect of a prosecution on the landlord/ agent and others (plus £125).

46. The Respondent Council felt that the Applicant's previous action and his continued offending warranted an extra penalty as a deterrent on him and others.

The extent of the financial gain as a result of the breach (minus £125).

47. The monetary amount of the invoice was relatively low.
48. As a result of this exercise, an extra penalty of £125 was added to the starting point of £4,000, resulting in a total financial penalty of £4,125.

The Law

49. Schedule 3 of the 2019 Act sets out the procedures relating to financial penalties. Paragraph 6 of Schedule 3 provides that an appeal against a financial penalty is to be a rehearing of the Respondent Council's decision but may have regard to matters of which the Respondent Council was unaware. The Tribunal may quash, confirm or vary the Final Notice.
50. The Government issued 'Tenant Fees Act 2019: Statutory Guidance for enforcement authorities' which was updated September 2020 and was in force at the time of this alleged offence. Similar guidance is provided for landlords and letting agents and

tenants. The Guidance is not authoritative as to the proper interpretation of the 2019 Act but is indicative of the policy of the 2019 Act and we have therefore had regard to it.

51. As this is a rehearing, we do not need to consider the Applicant's arguments that the Respondent Council has failed to consider whether there is sufficient admissible and reliable evidence that the offence has been committed and that there is a reliable prospect of conviction and whether they consider that it is in the public interest to do so. We will carry out that exercise in our deliberations. Nor, for the same reason, do we need to consider the Applicant's assertion that the Respondent Council failed to apply the European Convention of Human Rights under the Human Rights Act 1988 at each stage of the case, which he has not particularised.

Deliberations

52. We considered the issues raised by the Applicant and Respondent Council in their respective appeal bundles and oral evidence.
53. During the hearing, the Applicant continuously referred to the alleged breaches of the tenancy agreement by the tenants; the requirement to serve a section 21 Notice; details of a County Court judgement dated 8 September 2025 in his favour regarding rent arrears and a determination in his favour under the Tenancy Deposit Scheme as a result of the tenants' breaches of the tenancy agreement. However, we make no comment on them as they are not relevant to the matter before us.
54. After hearing the Applicant's oral evidence and considering his bundle, we did not find him to be a credible witness. He claims not to have received the Notice of Intent sent by first class mail to his address; the Respondent's bundle sent to his email address on 23 May 2025, (as evidenced in the Tribunal's correspondence); the Directions dated 29 April 2025 sent to his email address; the Directions dated 22 October 2025 with a strike out warning sent to his email address, despite the fact that he emailed the Tribunal on 23 October 2025 specifically saying that it was in response to that very email; and the Policy sent to his email address on the morning of the hearing (and yet he received one sent to the same email address approximately 40 minutes later). Despite claiming not to have received the Notice of Intent, he says that after receiving the Final Notice, he completed a form with written representations, which was sent to the Respondent Council on 15 February 2025. The Final Notice does not contain a form for written representations but the Notice of Intent does. The Applicant attempted to locate a copy of his completed form whilst in the hearing but could not locate it. A copy of the completed form is not included in the Respondent Council's bundle. The Respondent Council's officers say that they did not receive such a form. The Applicant is asking us to believe that he does not receive emails sent to the email address he provided in his application despite the fact that he uses the same email address effectively to correspond with the Tribunal. He is also asking the Tribunal to believe that he does not receive hard copy mail, despite asking the Tribunal to correspond by that method. The Applicant's assertions stretch credulity.
55. The Applicant's evidence regarding the alleged appeal against conviction also lacked credibility, as is referred to in paragraphs 77 and 78 below. We therefore attached little weight to the Applicant's evidence.

56. We considered the appeal in three parts:

- a. Whether we are satisfied, beyond a reasonable doubt, that the Applicant's conduct amounts to a 'relevant housing offence';
- b. Whether the Respondent Council has complied with all the necessary requirements and procedures relating to the imposition of the financial penalty (section 8 and Schedule 3 of the 2019 Act); and
- c. Whether the financial penalty is set at an appropriate level having regard to any relevant factors.

Has a criminal offence been committed?

57. Section 1(1) of the Tenant Fees Act 2019 provides that:

'A landlord must not require a relevant person to make a prohibited payment to the landlord in connection with a tenancy of housing in England.'

58. Section 3(1) provides that:

'a payment is a prohibited payment unless it is a permitted payment by virtue of Schedule 1'.

59. Section 12(1) provides that:

'A person commits an offence if-
(a) the person breaches section 1 or 2'.

60. The 2019 Act does not set out any provisions relating to defences.

61. The Applicant admitted in oral evidence that he had sent the letter and invoice dated 31 May 2024, claiming that he was entitled to do so under the terms of the tenancy agreement. We have seen the relevant letter and invoice.

62. We have reviewed the provisions of Schedule 1 of the 2019 Act which sets out permitted payments, and the fees claimed in the letter do not fall within that Schedule.

63. The Applicant submits that the 2019 Act does not affect a landlord's entitlement to recover damages for breach of the tenancy agreement by way of a deduction from the tenancy deposit or through the courts or an agent's entitlement to recover damages through the courts for breach of the agreement between them and a relevant person. We agree. However, the invoice of 31 May 2024 does not fall within that description. Further, in so far as the tenancy agreement purports to allow the landlord to require a tenant to make a 'prohibited payment' i.e. a payment that does not fall within Schedule 1 of the 2019 Act, then the provisions of section 4 (1) of the 2019 Act makes it clear that such terms are not binding.

64. We understand the Applicant's concern regarding damage to the Property allegedly caused by the tenants. However, the correct approach to recover the cost of such damage is through court proceedings, rather than by sending an invoice in the terms of that of 31 May 2024.
65. The Applicant submits that the fee was never paid and there is no evidence that the fee was paid. We accept that the fee was never paid. However, the 2019 Act does not require a prohibited fee to have been paid. The offence refers to 'requiring' a person to make a payment, not the receipt of such a payment.
66. The Applicant asserts that Respondent Council has failed to provide any reliable evidence. In our opinion, the only evidence that is required to satisfy the offence is contained in the letter and invoice dated 31 May 2024 which requires payment by the tenants of a fee which does not fall within the permitted payments set out in Schedule 1 of the 2019 Act and which the Applicant has admitted that he sent.
67. As the fee did not fall within the permitted payments in Schedule 1, then we are satisfied beyond a reasonable doubt, that on 31 May 2024, the Applicant committed an offence under section 1(1) of the 2019 Act by requesting a prohibited fee.

Has the Respondent Council complied with the procedural requirements?

68. With the exception of the service of the Notice of Intent, which is dealt with at paragraphs 22 and 23 above, the Applicant has not raised any issues of non-compliance with the procedural requirements.
69. The Respondent Council became aware of the breach on 10 July 2024 and served the Notice of Intent on 18 December 2024, so before the end of 6 months beginning on the day it had sufficient evidence of the breach.
70. We have reviewed the documents and are satisfied that the Respondent Council has complied with the relevant paragraphs of Schedule 3 of the 2019 Act regarding the service of a financial penalty.

Imposition of and Amount of Financial Penalty

71. In determining whether the penalty was set at an appropriate level, we had regard to *London Borough of Waltham Forest v Allan Marshall* and *London Borough of Waltham Forest and Huseyin Ustek* both of which are noted under [2020] UKUT 0035 (LC).
72. The Upper Tribunal held that the FTT must accept the local authority's policy. "*The FTT is not the place to challenge the policy about financial penalties*". When determining an appeal, the FTT must "*start from the policy*", and although it may depart from it, it may only do so in certain circumstances. In addition, the Applicant bears the burden of persuading it to do so, and in considering whether it should do so, the FTT must:

- a. *“Look at the objectives of the policy and ask itself whether those objectives will be met if the policy is not followed” and*
 - b. *“Consider the need for consistency between offenders, which is one of the most basic reasons for having a policy and an essential component of fairness in the financial penalty system.”*
73. As an appeal under Schedule 3 to the 2019 Act is by way of a rehearing, we must make our own decision. In doing so, however, we must afford the local authority’s decision particular weight, described variously by the Upper Tribunal as *“special weight”*, *“considerable weight”* and *“great respect”*. Parliament has conferred the primary decision-making function on democratically elected and accountable local authorities.
74. The Applicant has not asserted that the Respondent Council has deviated from its’ Policy and categorisation of offence. However, we considered the matter ourselves.

Was enforcement action appropriate?

75. We first considered whether enforcement action was appropriate and considered the enforcement options and the criteria for courses of enforcement action referred to at paragraphs 10 and 11 of the Policy respectively. We are satisfied, based on the evidence of the letter and invoice, that an offence under the 2019 Act had been committed. As this was very similar to an offence for which the Applicant had been convicted only 4 months previously and yet he was repeating the same conduct, it was likely that he would continue repeating the conduct unless some form of enforcement action was taken. In our view, it was not appropriate to take no enforcement action.
76. As there were grounds for believing the offence was likely to be continued or repeated, this fell within the public interest criteria for prosecution. There was sufficient evidence to prove the offence beyond a reasonable doubt, the evidence was reliable and acceptable, there were no defences available and there was therefore a realistic prospect of success on prosecution. However, at paragraph 11.6 of the Policy, it states that where a fixed penalty notice is available as an alternative to prosecution, the Respondent Council will consider this as a preferred means of disposal. We find that it was appropriate to take enforcement action and that a fixed penalty rather than any lesser enforcement action was appropriate.
77. The Applicant submitted that the conviction was not relevant and should not have been taken into account, either in determining whether enforcement action should be taken, or later in the decision to determine the amount of final penalty. It is clear from the Policy at paragraphs 13.2 and 40.1, that relevant previous convictions are definitely to be considered at each of those stages
78. At the hearing, for the first time, the Applicant alleged that he had appealed the conviction and therefore it should not be taken into account. He had not referred to an appeal in his bundle, despite the Final Notice expressly referring to the conviction having been taken into account as justification for the amount of financial penalty.

Clearly, it was appropriate to have included evidence in his bundle of the alleged appeal. He has not produced any evidence to the Tribunal to support that he has appealed the conviction. Despite his oral evidence that he had an acknowledgement from the magistrates that the appeal had been submitted, he has not produced it. He has not produced any evidence to the Tribunal of his assertion that supported his claim that he had chased the matter 4 months ago. Furthermore, whilst we appreciate that courts have backlogs, it lacks credulity that, despite an alleged acknowledgement of the submission of the appeal, there had been no progress, at all, on an appeal in the 2 years and 7 months since the conviction. We find that the Applicant is not a credible witness and determine that there was no such appeal and therefore the conviction was a relevant factor.

Determination of amount

79. Under Step 1 of the Policy, we determine the culpability as 'very high', as in light of the recent previous conviction for a very similar offence, in our view the Applicant has intentionally breached or flagrantly disregarded the law and should have known that their actions were unlawful. We determine that harm was 'medium likelihood of harm', rather than 'high likelihood of harm' as suggested by the Respondent Council. The Respondent Council based their decision on the conduct having a widespread impact due to the nature and/or scale of the landlord's business. Other than the fact that the Applicant had this Property and another where he was convicted in Birmingham, the Respondent Council had provided limited evidence of the extent of the Applicant's business. Neither had they provided any evidence that the tenants were vulnerable as defined in Appendix 2 of the Policy. We determined that there was a low risk of serious adverse effect (Category 2) in this particular set of circumstances. Very high culpability and medium likelihood of harm resulted in a range of £2750 to £4750 with a starting point of £3750 on the table in the Policy for a first breach in respect of prohibited payments.
80. The Respondent Council officers' evidence was that they had not considered the aggravating and mitigating factors as set out in paragraph 40 of the Policy. Rather, they had applied what they describe as the 8 factors which are from the statutory guidance on Tenant Fees Act 2019.
81. We considered the previous conviction 4 months earlier for a very similar offence to be a major aggravating factor. We did not consider that any of the other aggravating factors set out at paragraphs 40.1 and 40.2 applied. We considered the mitigating factors set out at paragraph 40.3 but did not consider that any applied. The Applicant had raised that the Council had not considered the harm caused to the Property. However, we do not consider this to be a mitigating factor. Whilst it may be correct that the tenants caused damage, there are legal avenues available to the Applicant to obtain a solution.
82. We noted that in applying the 8 factors, the Respondent Council had applied or deducted £125 or scored zero in relation to each factor. We are not clear why they would reduce by £125 if the factor did not apply rather than score it zero. There

appears to be an inconsistent approach, particularly as they had also scored zero. We therefore only increased or decreased by £125 if the factor applied.

The history of compliance/ non -compliance (plus £125).

83. The prosecution of the Applicant for a similar offence is very recent.

The severity of the breach (£0).

84. The fee requested at £175 was a relatively small sum.

Deliberate concealment of the activity and/ or evidence £0).

85. The Respondent Council's bundle does not provide any evidence by witness statement on this point.

Knowingly or recklessly supplying false or misleading evidence (£0).

86. The Respondent Council's bundle does not provide any evidence by witness statement on this point.

The intent of the landlord/agent, individual and/or corporate body (plus £125).

87. In light of his previous conviction, we find that the Applicant should have known that the requested fee was prohibited.

The attitude of the landlord/agent (£0).

88. The Respondent Council's bundle does not provide any evidence by witness statement on this point.

The deterrent effect of a prosecution on the landlord/ agent and others (plus £125).

89. The Applicant's previous action and his continued offending despite a conviction warranted an extra penalty as a deterrent on him and others.

The extent of the financial gain as a result of the breach (£0).

90. The fee was not paid.

91. We therefore add £375 (3 x £125) to the starting point of £3750, resulting in a financial penalty of £4,125.

92. We considered the Applicant's financial circumstances. He had not provided any documentary evidence in his bundle. His oral evidence was that his only income was the state pension at £950 per month. He was very evasive regarding direct questions as to income from his lettings' agency and despite repeated questions, would only say that it was based on commission only and he 'probably' had 2 properties but he 'couldn't remember' the income. He advised that he had shut the business approximately 4 months ago. He had run the business 'on and off' on a part- time basis for the last 3 years. He did not have any qualifications or training for the role which he described as 'not rocket science'.

93. In terms of assets, he said he had savings of £250 but produced no evidence. He lives in a detached 3 bedroomed house with a medium sized garden and double garage. He claimed that he did not know its value nor the council tax band but that there was an outstanding mortgage of approximately £200,000. The Respondent Council described the area as very affluent with the neighbouring property, which was a cottage, selling for £1 million 8 years ago. Due to the lack of documentary evidence

provided by the Applicant and our concerns regarding his credibility, we did not make any adjustment for financial circumstances.

94. Step 4 refers to service of the Notice of Intent. Under Step 5, whilst the Applicant did not send written representations to the Notice of Intent, we have considered the Applicant's comments made in his appeal bundle. His main concern is that the tenants had caused damage to the Property and had been in arrears. This was substantiated by decisions in the Applicant's favour at the County Court and under the Tenancy Deposit Scheme. The Applicant's view was that the tenants had caused harm, and this had not been considered by the Respondent Council, and therefore there should not be a financial penalty. However, as stated previously, alleged damage by tenants and rent arrears are not relevant to the matter before us. He also raised concern regarding the use of the previous conviction. This has already been considered in paragraphs 77 and 78 above.
95. We do not consider it appropriate to make any further reductions under Step 6 as the Applicant has not provided any evidence that the financial penalty would impact on his ability to comply with the law or on the employment of staff, service users, customers or the local economy. Further, whilst accepting that he sent the letter and invoice, there is limited evidence that the Applicant even now appreciates that he is in breach of the 2019 Act.
96. Step 7 does not apply as it relates to further enforcement action by the Respondent Council. Step 8 does not apply as there is only one financial penalty and therefore, the totality principle does not apply. Step 9 is a matter for the Respondent Council regarding recording the decision.

Conclusion

97. We consider that a financial penalty of £4,125 is set at a high enough level to help ensure that it has a real impact on the Applicant and demonstrates the consequences of not complying with his responsibilities as a landlord. Further, it is set at a level to deter the Applicant from repeating the offence and deter others from committing similar offences.

Determination

98. We determine to confirm the financial penalty of £4,125 as set out in the Final Notice dated 11 February 2025.

Costs

99. Neither party made an application for costs, and we make no such order.

Appeal

100. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application

must be received within 28 days after these written reasons have been sent to the parties and must state the grounds upon which they intend to rely in the appeal.

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Judge T N Jackson