FIRST - TIER TRIBUNAL
PROPERTIES CHAMBER
(RESIDENTIAL PROPERTIES)

Case Reference	**:**	**BIR/00CN/HNA/2026/0011** **BIR/00CN/HNA/2026/0012**
Subject Properties	**:**	**632 & 630a Washwood Heath Road, Birmingham, West Midlands, B8 2HG**
Applicant	**:**	**Samira Shiraz Latif**
Respondent	**:**	**Birmingham City Council**
Representatives	**:**	**Mr Otty and Ian Weston (Ref BCC-43943739514OH FN) & (Ref BCC-657447373 72H FN)**
Type of Application	**:**	**An appeal against a Financial Penalty - section 41 & Schedule 13A to Housing Act 2004**
Date of Hearing	**:**	**29 September 2026**
Tribunal Members	**:**	**Deputy District Judge Stephen Haythorne** **Tribunal Member Mr T. Wyn Jones FRICS**
Date of Decision	**:**	**02 November 2026**

DECISION

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Introduction

1 This is the Tribunal's determination on an appeal made by Samira Shiraz Latif ("the Applicant") against the decision by Birmingham City Council ("the Respondent") to impose a financial penalty under section 249A of the Housing Act 2004 ("the 2004 Act") relating to 630a and 632 Washwood Heath Road, Birmingham, B8 2HG ("the Properties").

2 The Applicant is the owner of the Properties and the Respondent is the local housing authority which imposed the financial penalty.

3 The 2004 Act introduced licensing for certain categories of residential accommodation. Under Part 3 of the 2004 Act, local housing authorities may designate areas in their district as subject to selective licensing in relation to other rented houses not otherwise required to be licensed under Part 2 of the 2004 Act.

4 Under section 95 of the 2004 Act a person who has control of or manages a house that is required to be licensed under Part 3, but is not so licensed, commits an offence.

5 Commission of an offence under section 95 may lead to criminal prosecution and conviction or to the imposition by the local housing authority of a financial penalty pursuant to section 249A of the 2004 Act.

Background

6 The Properties form 2 out of 3 separate flats above commercial premises and are accessed individually by doors at the rear. 634 is also one of the properties above the commercial premises and is owned by the Applicant. The Respondent's officer, Mr Weston, advised the Tribunal that the flats were not individually numbered on the outside.

7 The Applicant has been the owner of the Properties since 2015. The Applicant advises that her father deals with day-day management of the Properties and the Applicant states that she has never visited the Properties

8 On 5 June 2023 the Respondent extended its licensing regime to include properties that fall outside the scope of HMO Mandatory and Additional Licensing Schemes by implementing a Selective Licensing Scheme in exercise of its powers under s80 of the 2004 Act. From 5 June 2023, all privately rented properties located within the Selective Licensing designated area are required to be licensed unless exempt in accordance with the 2004 Act.

9 On 16 July 2024 the Respondent says that it sent 2 letters to the Applicant at the Applicant's home address. The letters advised that 630a and 634 Washwood Heath Road may require a licence and advised how to do this and the consequences of not licensing. The Applicant states that they do not recall receiving any letter in relation to 630a Washwood Heath Road.

10 On 23 July 2024 the Applicant began the online application to licence 634 Washwood Heath Road and a licence was granted for that property on 12 November 2024

11 No such application was made for the Properties and on 12 September 2024, the Respondent says that it sent a further letter with regard to 630a Washwood Heath Road. The Applicant does not recall receiving this letter.

12 On 19 June 2025 officers from the Respondent's Private Rented Sector Licensing Team attended at the Properties and met and spoke with the Applicant's father who told the officers that he was the managing agent.

13 The tenant at 630a Washwood Heath Road provided a copy of their tenancy agreement which showed that that the assured shorthold tenancy agreement began on 1 October 2024 and that the Applicant's father was the landlord. The Tribunal noted that the copy of the tenancy agreement provided by the Respondent referred to 630 Washwood Heath Road.

14 The Respondent's officers also had sight of an assured shorthold tenancy agreement for 632 Washwood Heath Road which was dated 11 June 2025. Once again, the landlord was the Applicant's father.

15 The Respondent's officers were satisfied that as of 19 June 2025 the Properties were within the selective licensing area, were tenanted and required a licence, but were not so licensed.

16 The Respondent's officers say that they informed the Applicant's father at the meeting at the Properties on 19 June 2025 that the Properties required licensing. The Applicant was not present and is unable to confirm or deny whether this was the case.

17 The Respondent's officers wrote to the Applicant by email on 20 June 2025 regarding the visit on 19 June and setting out some of the issues found. The email did not mention that the Properties were not licensed and required licensing.

18 On 4 July 2025, the Applicant began the process of applying for a licence for 630a online, but could not complete the application as the Applicant was waiting for her father's return to provide some necessary information.

19 On 23 September 2025 the Respondent served a Notice of Intent to Issue a Financial Penalty (Notice of Intent) on the Respondent pursuant to section 249A and Schedule 13A Housing Act 2004 for the Properties. The Respondent failed to provide a date by which the Applicant was to respond to the notice and on 7 October 2025 re-served the notices by hand at the Applicant's home address.

20 The Notice of Intent for the Properties had an offence date of 19 June 2025 and advised the Applicant that a financial penalty of £12,500 was proposed in relation to each property for to a failure to licence the Properties.

21 On 23 September 2025 the Applicant responded to the first Notice of Intent by email to the Respondent. The Applicant stated that in relation to 630a, the Applicant didn't deal with the property, it was her father. The Applicant's father had asked her to apply for the licence and she had started the online application, but didn't have answers to all the questions and was waiting for her father to return from abroad.

22 After the notices were reserved, the Applicant made further representations on 6 and 7 October 2025 by email. The Applicant raised an issue with the Respondent referring to an incorrect property in an email on 4 June 2025 in relation to requiring access for an inspection and that this caused confusion. The Applicant stated that had the correct property been referenced the Applicant would have applied for a licence. The Applicant also stated that she does not recall receiving letters from the Respondent from July and September 2024 which were referenced by the Respondent.

23 The Applicant stated that she had had correspondence from the Respondent specifically asking her to licence another property which she owned and had done that. The Applicant states that the failure to licence was not deliberate and that she had always cooperated and applied for a licence where she was aware that a licence was required. The Applicant also raises issue with the Respondent referring to 634 Washwood Heath Road and causing confusion.

24 The Applicant paid the appropriate fee and uploaded documents for the licence for 630a on or around 6 October 2025.

25 The Applicant paid the appropriate fee and uploaded documents for the licence for 632 on or around 21 October 2025.

26 On 9 December 2025 the Respondent sent to the Applicant by first class post, a Final Notice to Issue a Financial Penalty (the Final Notice) pursuant to section 249A and Schedule 13A of the 2004 Act. The Final Notice imposed a penalty of £10,000 for each of the Properties. The Respondent reduced the amount financial penalty on the basis that licences had been applied for. The Final Notice stated that the financial penalty had to be paid by 11 January 2026.

27 On 29 December 2025 the licence was granted for 630a Washwood Heath Road.

28 The Respondent appealed to the Tribunal by applications dated 5 January 2026.

29 On 12 January 2026 the licence was granted for 632 Washwood Heath Road.

The Law

30 The regime of financial penalties as an alternative to prosecution for certain housing offences came into force on 6 April 2017. The Housing Act 2004 has been amended by the Renters Rights Act 2025. However, the alleged offences were committed before the changes made by the Renters Rights Act 2025 and so the law at the time of the alleged offence is the relevant law and is set out below

31 Section 95 of the 2004 Act prescribes offences in relation to licensing of houses under Part 3 (Selective Licensing).

(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) 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) .....

as the case may be.

32 Section 249A of the 2004 Act, provides

(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—

(a).....
(b).....
(c) section 95 (licensing of houses under Part 3),
(d).....
(e).....

(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) .....
(7) .....
(8) .....
(9) For the purposes of this section a person's conduct includes a failure to act.

33 Section 263 of the 2004 Act defines the meaning of "person having control" and "person managing" as follows:

(1) In this Act "person having control" , in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.
(3) In this Act "person managing" means, in relation to premises, the person who, being an owner or lessee of the premises–
(a) receives (whether directly or through an agent or trustee) rents or other payments from–
(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and
(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or
(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;
and includes, where those rents or other payments are received through another person as agent or trustee, that other person.
(4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).
(5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

34 Paragraphs 1 – 8 of Schedule 13A of the 2004 Act provides the procedure to be followed by local housing authorities before imposing a financial penalty which includes:

i. Service of a notice of intent within 6 months before the end of a 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 and which states the amount of financial penalty, the reasons for such penalty and the right to make representations;
ii. Service of a final notice if the authority decides to impose a financial penalty, which must include information about the amount of financial penalty, the reasons for such penalty, the payment period, the right to appeal and consequences of failure to comply.
iii. The final notice must require the financial penalty to be paid with a period of 28 days beginning with the day after the day on which the notice is given.

35 By paragraph 10(1) Schedule 13A of the 2004 Act, a person to whom 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

36 By paragraph 10(3) of Schedule 13A of the 2004 Act, an appeal under this paragraph is to be a rehearing of the local housing authority's decision, but may be determined having regard to matters which the authority is unaware, and by clause 10(4), the Tribunal may confirm, vary or cancel the final notice.

Determination of the Tribunal

The preliminary issue

37 The Tribunal is first required to decide a preliminary issue. That is whether the Final Notice complied with the requirements of schedule 13A of the 2004 Act and if it did not, whether that renders the Final Notice invalid.

38 Paragraph 7 of schedule 13A of the 2004 Act states:

> *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.*[Emphasis added]

39 The Respondent has provided a certificate of service which states that the Final Notice was sent to the Respondent by first class post on 9 December 2026.

40 The Tribunal consider that the Final Notice was given, when it was served on the Applicant (see section 7 Interpretation Act 1978 and London Borough of Waltham Forest v Great House (Buildings) Limited [2026] UKUT 218 (LC))

41 Neither the Applicant nor the Respondent know when the Final Notice was actually received.

42 There is no provision within the 2004 Act which provides for a date of deemed service. There are certain deeming provisions contained elsewhere, but which are not relevant to the 2004 Act or to these proceedings, which deem a date of service for a document sent by first class post as being the second business day after posting (see Civil Procedure Rules Part 6.26).

43 The Tribunal notes that the Royal Mail states that it aims for next day delivery of first class mail.

44 The Tribunal finds, in the absence of any direct evidence as to the actual date that the Final Notice was given, that the Final Notice was given on the second business day after posting, that is on 11 December 2026 (London Borough of Waltham Forest v Great House (Buildings) Limited [2026] UKUT 218 (LC) [33]).

45 The Tribunal notes that where a provision provides a time period which begins on the date that a notice is given, that the date such notice is given is included in the time calculation (London Borough of Waltham Forest v Great House (Buildings) Limited [2026] UKUT 218 (LC) [19]).

46 Tribunal therefore finds that 28 days beginning with the date that the Final Notice was given was 7 January 2026 and that is the date that should have been included within the Final Notice. The actual date given was 11 January 2026 and therefore the Final Notice did not comply with the requirements of schedule 13A of the 2004 Act.

47 The Respondent referred the Tribunal to the decision of Deputy Chamber President Martin Rodger KC in Welwyn Hatfield Borough Council v Wang [2024] UKUT 24 (LC) (the Wang case).

48 The Wang case quotes Lord Justice Males in DPP v McFarlane [2020] 1 Cr. *App. R. 4 , at [25] as follows:*

> *"That approach is, broadly speaking, that the effect of procedural defects does not depend upon whether the requirements in question should be*

classified as mandatory or directory but on what Parliament intended to be the consequences of non-compliance. Parliament should not be taken to have intended that the consequences of non-compliance will be to render the proceedings a nullity, except in clear cases, and, in particular, should not be taken to have so intended when that would defeat the purpose of the legislation in question and when the non-compliance has caused no injustice to the defendant"

49 The correct approach to these questions is the principled approach set out R v Soneji [2005] UKHL 49 and in A1 Properties (Sunderland) Limited v Tudor Studios RTM Company Limited [2024] UKSC 27 where the scheme has been identified and there has been non-compliance. This can be summarised as follows:

i. Look at the structure of the scheme and which requirements have not been complied with.

ii. Does the scheme set out the consequences which follow from such non-compliance?

iii. If the consequences are clearly set out within the scheme, then there is no need to go any further and the consequences provided should be applied.

iv. Where the consequences are not set out clearly, a purposive approach is required to decide what consequences best match the non-compliance having regard to the overall purpose of the scheme.

v. If, having regard to the overall purpose of the scheme, the consequence of non-compliance appears to be to invalidity, the particular facts of the case should be considered and what if any prejudice or injustice might arise to the party if, despite the non-compliance, the step is found to be valid.

50 Taking a principled approach to the facts of this case. There is not set out within section 13A of the 2004 Act, any clear consequence for failing to comply with paragraph 7 of that schedule.

51 In Waltham Forest LBC v Younis [2019] UKUT 362 (LC) Martin Rodger KC stated at paragraph 74 in relation to a Notice of Intent served under schedule 13A of the 2004 Act:

"The seriousness of the offences for which civil penalties can be imposed, the relative shortness of the time available to a local authority to take action, and the availability of a right of appeal on the merits before an independent tribunal, are all features of the statutory scheme which militate against the adoption of an excessively technical approach to procedural compliance."

52 The whole of purpose of the statutory scheme at schedule 13A of the 2004 Act is to provide for a statutory procedure whereby a person who may be the subject of a financial penalty can be notified of what a local authority intend to do and why. The scheme provides for a person who may be subject to financial penalty to make representations before a final decision is taken and to appeal against a final decision when that is made.

53 In terms of the specific requirement at paragraph 7 of schedule 13A, it appears that the purpose of imposing the requirement to notify a person subject to a

financial penalty that payment must be made within 28 days, is to ensure that a local authority cannot require payment of the financial penalty immediately and before the recipient has had an opportunity to consider and lodge an appeal.

54 In such circumstances, it does not appear to have been Parliament's intention that a failure to comply with paragraph 7 would be to invalidate the Final Notice.

55 In any event, in this case the Applicant was given more time to pay the financial penalty. The Applicant appealed to the Tribunal in time and by virtue of paragraph 10(2) of schedule 13A, the Applicant is not required to pay the financial penalty until the appeal is finally determined or withdrawn.

56 There is no prejudice to the Applicant in terms of the Respondent stating a longer period for payment of the financial penalty and it serves the overall purpose of schedule 13A and the interests of justice to determine that the Final Notice is valid.

The Application.

57 As the Tribunal has found that the Final Notice is valid, it must decide the Applicant's application.

58 The Tribunal considered the application in three parts –

(i) Whether the Tribunal was satisfied beyond reasonable doubt that the Applicant's conduct amount to a 'relevant housing offence' for the purposes of section 249A of the 2004 Act. A 'relevant housing offence' includes offences under section 95 of the 2004 Act.

(ii) Whether the Respondent complied with the requirements and procedures regarding the imposition of the financial penalty contained within section 249A and schedule 13A of the 2004 Act.

(iii) Whether the Financial Penalty was set at an appropriate level, having regard to any relevant factors, including:

(a) the offender's means;

(b) the severity of the offence;

(c) the culpability and track record of the offender;

(d) the harm (if any) caused to a tenant of the premises;

(e) the need to punish the offender, to deter repetition of the offence or to deter others from committing similar offences; and/or

(f) the need to remove any financial benefit the offender may have obtained as a result of committing the offence.

Relevant Housing Offence under section 249A of the 2004 Act

The requirements of the offence

59 Tribunal is satisfied beyond reasonable doubt that, subject to the establishment of a reasonable excuse defence (see paragraphs 64 – 81 below), the Applicant, as the registered freehold owner of the Properties, had committed an offence listed in section 249A of the 2004 Act, namely an offence under section 95(1) of the 2004 Act, which provides –

(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

60 The Tribunal is satisfied that the Properties, as of 19 June 2025, were in an area which was subject to the Respondent's selective licensing scheme, were tenanted and were therefore required to have a licence, but were not so licensed. The Applicant does not dispute this.

61 The Tribunal is satisfied that at all material times, the Applicant fell within the definition of a person managing the Properties under section 263(3)(b) of the 2004 Act.

62 The Tribunal found that although the Applicant legally owned the properties, the Applicant was not acting as the landlord. Instead, the Applicant's father was the landlord and received the rent from the tenants. However, because the Applicant owned the properties, the Applicant would normally be entitled to receive the rental income herself. The only reason she did not receive the rent was because she had made an arrangement allowing her father, who had no ownership interest in the properties, to collect it instead. The Applicant therefore fell within the definition at section 263(3)(b) of the 2004 Act.

63 The Tribunal is satisfied that at the material time, there was no licence for the Properties.

Reasonable excuse defence

64 Although the Respondent did not expressly raise a defence of reasonable excuse under section 95(4) of the 2004 Act, the substance of the Respondent's representations require the Tribunal to consider whether the Respondent might have such a defence: see *IR Management Services Limited v Salford City Council* [2020] UKUT 81 (LC) at paragraph 31.

65 Section 95(3) and(4) provides –

(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) .....

as the case may be.

66 Although the Tribunal must be satisfied beyond reasonable doubt as to the elements of the offence listed in section 95(1), the standard of proof in relation to the defence in sections 95(3) and (4) is the balance of probabilities.

67 The Tribunal saw no evidence that there was any temporary exemption notice in force for the Properties.

68 The Tribunal noted that the first time any application process was started by the Applicant in relation to the Properties, was 4 July 2025 in relation to 630a Washwood Heath Road. That application was not progressed by the Applicant.

69 In relation to 630a the application for a licence was not duly made until 6 October 2025 when the Applicant paid the appropriate fee and uploaded documents for the licence. In relation to 632, the application was not duly made until 21 October 2025 when the Applicant paid the appropriate fee and uploaded documents for the licence. Therefore an offence in relation to each of the Properties was being committed until 6 October 2025 in respect of 630a and until 21 October 2025 in respect of 632.

70 The Applicant accepts that the Properties should have been licensed, but were not so licensed. The Applicant's case is that the failure to apply for a licence was a genuine administrative oversight and the failure to licence was not deliberate. As soon as the Applicant realised that a licence was required an application was made.

71 The Applicant states that with regard to 634 Washwood Heath Road, which the Applicant owns and which she was aware required licensing, a licence was applied for and no offence was committed in respect of that other property.

72 In relation to the licence for 634 Washwood Heath Road it simply refers to that address and the Applicant's case is that it was reasonable to assume that it referred to a licence for the building as a whole rather than a specific flat as 634 is also the address of the whole building.

73 The day to day management of the Properties was done by the Applicant's father and the Applicant has never even visited the Properties, she is simply the legal title holder. The Applicant has no record or recollection of receiving letters from the Respondent in July and September 2024 in relation to the Properties.

74 In the view of the Tribunal, the Applicant has failed to bring themselves within the scope of the reasonable excuse defence.

75 The Respondent has been the legal owner of land comprising 630 -634 (even) Washwood Heath Road since 2015 and is clearly well aware that what is owned comprises 3 separate flats.

76 The Applicant applied for and was granted a licence for 634 Washwood Heath Road in 2024, knowing that 634 was an individual flat. The licence applied for and granted is for a licence under Part 3 of the 2004 Act and the licence itself refers to selective licensing of residential accommodation.

77 It should have been obvious that the licence granted in relation to 634 Washwood Heath Road, was for that individual flat and not for the building as a whole.

78 As the Applicant had made an application in 2024 for a licence for 634 Washwood Heath Road, the Applicant was clearly aware of the selective licensing scheme.

79 It was incumbent on the Applicant to know what is required to operate in the private rented sector in the area in which the Properties are situated and keep up to date with statutory requirements. It is reasonably expected that the Applicant would do this as part of the management of its property portfolio. It

is not the responsibility of the Respondent to inform the Applicant of what the Applicant's legal responsibilities are for properties the Applicant owns.

80 It is not accepted that the Respondent's reference to different flat numbers had any material effect on the Applicant's failure to obtain a licence for the Properties. As stated above, the Applicant was well aware that the properties which made up the land that she owned, were separate residential units and well aware of which unit had a licence and which units did not. Once the Applicant raised the issue of incorrect address reference with the Respondent, the Respondent quickly clarified the issue.

81 The Tribunal is not satisfied, on the balance of probabilities that the Respondent had a reasonable excuse for failing to licence the Properties

82 However, in the view of the Tribunal, the matters referred to by the Applicant above, may be appropriate to assessing the level of any financial penalty.

Whether the Respondent complied with the relevant procedures

83 The Respondent discovered the failure to licence the Properties on 19 June 2025 and served a valid notice of intent on 7 October 2025.

84 The notice of intent set out why the financial penalty was being imposed, the amount of penalty and advised of the right to make representations.

85 The Applicant made representations and a Final Notice was served by sending the notice by first class post on 9 December 2025. Service is evidenced by certificates of service.

86 The Final Notice sets out the amount of penalty, the reasons for imposing the penalty and how to pay the penalty, The date for payment is incorrectly stated and the Final Notice is defective in that respect. The Tribunal has already dealt with the validity of the Final Notice above (paragraphs 37 - 56)

87 The Tribunal is satisfied that the Respondent complied with the procedures at schedule 13A of the 2004 Act in respect of the Notice of Intent and for reasons already given, the Tribunal is satisfied that the Final Notice should be treated as valid.

The amount of Financial Penalty

The Respondent's policy

88 The amount of financial penalty was calculated by the Respondent by reference to the Respondent's Regulation and Enforcement Policy (the Policy).

89 Paragraph 5 of the Policy sets out the Respondent's approach which includes working with businesses to advise on and assist with compliance, but the Respondent makes clear it will take enforcement action where necessary.

90 Paragraph 5.5 of the Policy sets out the approach of the Respondent to regulation and enforcement in relation to the sanctions and penalties available. The Policy aims to:

(a) Change the behaviour of the offender

(b) Change attitudes in society to offences which may not be serious in

themselves, but which are widespread

(c) Eliminate any financial gain or benefit from non-compliance

(d) Be responsive and consider what is appropriate for the offender and regulatory issue which can include punishment and the public stigma that should be associated with a criminal conviction

(e) Be proportionate to the nature of the offence and the harm caused

(f) Restore the harm caused by regulatory non-compliance, where appropriate and

(g) Deter future non-compliance

(h) Comply with statutory requirements.

91 Paragraph 7.2.1 of the Policy sets out what the Respondent will take into account in assessing what enforcement action is necessary and proportionate and includes:

(a) The seriousness of the compliance failure.

(b) The past and current performance of any business and/or individual concerned.

(c) Any obstruction on the part of the offender.

(d) The risks being controlled.

(e) Statutory guidance.

(f) Codes of Practice.

(g) Any legal advice.

(h) Policies and priorities of Government, Birmingham City Council and Birmingham City Council's Licensing and Public Protection Committee.

(i) A person's age in relation to young people (termed 'juveniles') aged under 18.

(j) The existence of a Primary Authority agreement.

(k) Any duty of a local authority or statutory provisions

92 The Policy includes a risk matrix at Appendix 1, which the Respondent states in the Policy will be used as a framework to support transparency and consistency of approach and decision making. Action being more likely to be taken where the following have relevance;

(a) Situations where it is evident that a vulnerable individual or vulnerable group has been exploited

(b) Obstruction of authorised officers of the service in the lawful execution of their duties.

(c) Offences involving deceptions, fraud or negligence.

(d) Wilful disregard for the law.

(e) Risk to public health /safety

(f) Public nuisance

(g) Categories of offences which create significant financial burden to the taxpayer or impact at a community-wide level or that undermine public/business confidence in the City.

93 Paragraph 7.16 of the Policy refers to civil penalties. The Respondent makes clear that a financial penalty will only be imposed where the Respondent would otherwise be in a position to begin a prosecution, that is, there would have to be a realistic prospect of conviction based on the evidence and where it would be in the interests of justice to prosecute.

94 At Appendix 2 of the Policy is the Respondent's Civil Penalty Charging Policy (the Charging Policy) for the Private Rented Sector.

95 The Tribunal noted that the Charging Policy provided by the Respondent in the Respondent's bundle was not the Charging Policy which was in place at the time of the offences and at the time that the Respondent made its decisions as to the imposition and amount of financial penalty. This is clear from the Respondent's calculations within the Respondent's bundle which refers to a maximum penalty of £30,000 and by reference within those calculations to a 6 stage process.

96 The Tribunal took judicial note of the Respondent's Charging Policy which was in use at the relevant time (the Relevant Charging Policy).

97 At paragraph 3 of the Relevant Charging Policy the main principles for issuing a penalty charge are stated to be:

- *lower the risk to the tenants' health and safety and well-being*
- *promote compliance of landlords in the private rented sector*
- *eliminate any financial gain or benefit from non-compliance*
- *educate landlords on the associated risks of non-compliance*
- *be proportionate to the nature of the breach of legislation and the risk posed*
- *aim to prevent future non-compliance*

98 Paragraph 5.2 of the Relevant Charging Policy sets out the starting level of financial penalty ranging from mild to severe as follows:

Seriousness of the offence	Starting level
Mild	£2500
Moderate	£7500
Serious	£12500
Very serious	£17500
Severe	£22500

99 At paragraph 9.2 of the Relevant Charging Policy the Respondent considers that failing to obtain a licence under the selective licensing scheme is a significant issue meaning that tenants and the wider community are not protected by the additional regulatory controls afforded by licensing. Such failure to licence is viewed by the Respondent as serious and the starting point for financial penalty is £12,500.00

100 At paragraph 18 of the Relevant Charging Policy, a 25% reduction in the penalty is offered if at the first opportunity the landlord admits guilt for the offence and immediately remedies any outstanding issues. Payment of financial penalty (after reduction of the 25%) would have to be made within 28 days of service of the Final Notice and any outstanding works are carried out within the same period.

101 When considering civil penalties as an alternative to prosecution the Respondent follows the following stages for determining the amount of civil penalty:

> • ***Stage 1*** *determines the seriousness of the offence to identify a starting level of the penalty.*
>
> • ***Stage 2*** *determines aggravating factors such as culpability and the track record of the offender.*
>
> • ***Stage 3*** *determines whether there are any mitigating factors to reduce the penalty.*
>
> • ***Stage 4*** *ensures there is no financial benefit gained by committing the offence.*
>
> • ***Stage 5*** *provides how much may be added to the penalty amount for licensing offences as a result of the landlord's income.*
>
> • ***Stage 6*** *reviews the penalty amount to ensure it is proportionate – the total amount at this stage cannot go above £30,000.*

The Respondent's decision

102 The Respondent completed a risk matrix as set out at Appendix 1 of the Policy and scored a total of 17, which placed the breach at high risk where formal action should be considered.

103 After service of the Notice of Intent and representations from the Applicant, the Respondent calculated the amount of financial penalty as set out below.

104 At stage 1 the Respondent started at the starting level of £12,500 as this was a case involving a failure to obtain a selective licence,

105 At stages 2 and 3, aggravating and mitigating factors, the Respondent initially considered there was deliberate intent as the Applicant had licensed another property, that is 634 Washwood Heath Road, but did not licence the Properties and added 10%. However, on review by the Respondent's internal panel, this was removed.

106 In mitigation, the Respondent's internal panel recognised that there were no previous convictions and reduced the amount by 10% and reduced the amount by a further 10% to take into account cooperation by the Applicant. This reduced the penalty to £10,000 for each property.

107 The Respondent states within the calculation that stages 4 and 5 were not applicable for a failure to licence.

108 At Stage 6, it was not considered necessary to alter the amount determined at the other stages.

109 The Tribunal noted that the Respondent had not set out how and why it considered it could have prosecuted the Applicant, which is a pre-requisite to

imposing a financial penalty (see paragraph 93 above). The Tribunal noted that the risk matrix did score the risk at a level which would ordinarily warrant prosecution.

The Tribunal's decision

110 The Tribunal is satisfied that the offence under section 95(1) of the 2004 Act was committed and given that the Applicant admits that the Properties should have been licensed, but were not so licensed and there being a lack of reasonable excuse, there was a realistic prospect of a conviction. Further, the Tribunal is satisfied that failing to licence a property under the selective licensing scheme is a serious matter for the same reasons given by the Respondent and the Tribunal is satisfied that it would have been in the interests of justice to prosecute.

111 The Tribunal, in line with the Policy, then conducted its own calculations in respect of the breach to ascertain the level of financial penalty.

112 In relation to stage one, the Tribunal noted at this stage it is just considering what the breach is, with other factors, such as aggravating and mitigating factors and proportionality to be considered at the later stages.

113 As stated above, a failure to licence is a serious matter and the Tribunal saw no reason to depart from the Relevant Charging Policy in respect of the starting level for such breaches. The Tribunal determines that the starting level should be £12,500

114 With regard to stages 2 and 3, the Tribunal agree with the Respondent that there were no aggravating factors and the Tribunal did not add anything in this category.

115 The Tribunal agreed that there should be a 10% reduction in respect of there being no previous convictions and a 10% reduction in respect of cooperation.

116 With regard to stages 4 and 5, the Tribunal noted that the Respondent stated that these were not relevant to a failure to licence.

117 The Tribunal calculated the amount of financial penalty, after stages 1 – 5 as being , Stage 1 - £12,500, Stage 2 £0 =£12,500, Stage 3 £12,500 -10% x2 = £10,000

118 With regard to stage 6 and stepping back and looking at the overall proportionality of the financial penalty. The Tribunal noted that it was not clear as to how the proportionality had been approached by the Respondent in determination of the final amount of financial penalty.

119 The Tribunal was satisfied that the Respondent has correctly dealt with the other stages and correctly applied discounts in relation to mitigating factors and did not add anything for an aggravating factors. On that basis, the Respondent correctly applied the Relevant Charging Policy.

120 The Tribunal is entitled to depart from the Respondent's policy where there is good reason to do so. The Tribunal did not consider that there were grounds to so depart.

121 Whilst the Tribunal understood that the Applicant considered the penalty imposed to be disproportionate, the Tribunal had to consider the overall objectives of the Respondent's Relevant Charging policy (see paragraph 97

above) and the fact that Parliament, at the time of the offences, allowed the Respondent to impose a penalty of up to £30,000.

120. On that basis, the Tribunal did not consider that it should alter the amount of financial penalty for each breach.

Summary

121. The Tribunal confirms the Final Notice and the the financial penalty imposed by the Respondent in respect of the offence under section 95(1) of the 2004 Act, in the sum of **£10,000** for each of the Properties (ten thousand pounds). The total financial penalty for the Properties is therefore £20,000

Appeal

122. If a party wishes to appeal this Decision, that appeal is to the Upper Tribunal (Lands Chamber). However, a party wishing to appeal must first make written application for permission to the First-tier Tribunal at the Regional office which has been dealing with the case.

123. The application for permission to appeal must be received by the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

124. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason(s) for not complying with the 28-day time limit. The Tribunal will then consider the reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

125. The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking.

16 October 2026

Stephen Haythorne
Deputy District Judge