



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

<b>Case References</b>	: CHI/45UB/HNA/2018/0004
<b>Property</b>	: 15A Ingleside Crescent, Lancing, West Sussex BN15 8EN
<b>Appellant</b>	: Robert Roy Cook
<b>Representative</b>	: In person
<b>Respondent</b>	: Adur and Worthing Council
<b>Representative</b>	: Ms S Lovegrove of counsel
<b>Type of Application</b>	: Appeal against Financial Penalty Para 10 of Sch.13A Housing Act 2004
<b>Tribunal Members</b>	: Judge M Loveday Mr K Ridgway FRICS Judge A Lock
<b>Date / venue of hearing</b>	: 15 November 2018, Havant Justice Centre 20 November 2018 (Inspection/reconvene)
<b>Date of Decision</b>	: 8 January 2019

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**DETERMINATION**

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## Summary

1. This is an appeal under para 10 of Sch.13A to the Housing Act 2004 (“the Act”) against a decision by the Respondent to impose a financial penalty of £22,100. A Final Notice imposing the penalty was given to the Appellant on 20 June 2018. This alleged a failure to comply with an Improvement Notice relating to 15A Ingleside Crescent, Lancing, West Sussex BN15 8EN.
2. A hearing took place on 15 November 2018. The Appellant appeared in person and the Respondent was represented by Ms S Lovegrove of counsel. The Tribunal inspected on 20 November 2018 and reconvened after the inspection to determine the appeal.

## The Premises

3. 15 Ingleside Crescent is a bungalow c.1950 in a residential area, close to the centre of Lancing. 15A Ingleside Crescent is the former garage for the bungalow which has been converted into self-contained residential accommodation. On inspection, 15A was accessed from the street across along a concrete driveway running along the flank of the main house and under a timber framed car port roofed with corrugated plastic sheets. Between the main house and 15A is a solid timber gate (“the side gate”) giving access to a small enclosed area. The side gate can be operated internally by a thumb latch. On the left-hand side of this enclosed area is a raised area with a door to the kitchen of the house and a gate to the rear yard (“the garden gate”). On the right-hand side, at slightly lower level, is the main door to 15A (“the main door”). In the yard, towards the back on the right-hand side adjacent to 15A is a raised plinth which is consistent with the position of the former “summer house” referred to below. The right-hand edge of this plinth (now covered) is approximately 300mm from a uPVC glazed window set into the left-hand flank wall of 15A (“the bedroom window”).
4. 15A itself is a brick-built structure with a felt covered flat roof. The Tribunal’s inspection suggested the external walls were solid brickwork and there was no external evidence of any membrane or chemical-injection type Damp Proof Course. The Tribunal did not inspect the roof, but the skylight and exterior suggested there was limited scope for a cavity or insulation between the ceiling and roofing felt.
5. Internally, the accommodation comprises:
  - A living room to the front, with a window onto the car port. The main door is on the left-hand side of the living room. On the left-hand side there is also a small separate kitchen area with its own uPVC window looking onto the rear yard. Opposite the kitchen area on the right-hand wall is an enclosure with a small fridge. A door at the rear of the living room gives access to the bedroom. The kitchen area is heated with a portable oil-filled electric heater and there is a wall-mounted electric extractor fan (which appeared to operate satisfactorily). There are mains-powered smoke

detectors which again appear to operate properly. The living room has laminated flooring which is lifting in parts revealing that it is laid directly on the concrete screed below.

- A bedroom to the rear. This has a window to the rear, a skylight set into the ceiling and the bedroom window to the yard mentioned above. Although the bedroom window was behind a bed on the day of inspection, the Tribunal was shown that it opened outwards and was secured with a lockable handle. There were again mains-powered smoke detectors.
- On the left-hand side of the bedroom is a small shower room with its own uPVC window onto the yard. The room has a shower enclosure, WC and wash handbasin. It is heated with an electric wall mounted fan heater and there is another wall mounted electric extractor fan. Both appear to work satisfactorily.

The rear yard is rather cluttered, with seating and tables. The Tribunal was shown some minor storm damage to felt attached to the kitchen roof of the bungalow. Power to 15A is connected to an RDL M100 single tariff coin-operated meter.

6. However, it is also necessary to set out a brief history of the premises. The Appellant has been the registered proprietor of 15 Ingleside Crescent since April 1994. At least 15 years ago, the Appellant converted the garage into a residential unit and applied the street address of 15A to this property. At some stage before 2016, the Appellant constructed a timber framed and clad single storey outbuilding in the yard which has been described as a “summer house”. It was built in the position described above, close to the left-hand flank wall of 15A. At that stage, the wall of the summer house facing 15A Ingleside Crescent was uninterrupted, and it was built so close to the flank wall of 15A that the bedroom window could not open outwards fully. There was no access on foot from the bedroom of 15A into the yard, except by a circuitous route leading through the living room and main door of 15A, then through the covered area and garden gate into the yard.

## **The Law**

7. The matter under appeal is a financial penalty imposed on a person under s.249A of the Act for failing to comply with an Improvement Notice. That penalty is an alternative to prosecution for an offence under s.30(1) of the Act. If no appeal is brought against the Improvement Notice, s.30(2)(a) of the Act provides that “compliance with an improvement notice means, in relation to each hazard, beginning and completing any remedial action specified in the notice ... not later than the date specified under section 13(2)(e) and within the period specified under section 13(2)(f)”. The amount of the penalty must not be more than £30,000: see s.249A(4) of the Act. Prior to imposing the financial penalty, the local housing authority must give an initial Notice of Intent and a Final Notice. Sch.13A to the Act contains the requirements for these notices.
8. In any proceedings, it is a defence that the person had a “reasonable excuse for failing to comply with the” Final Notice: see s.30(4) of the Act

In this respect, there is a material decision of the High Court in *Haringey LBC v Goremsandhu* [2013] EWHC 3834 (Admin). The Tribunal will return to this case below.

9. The person on whom the penalty is imposed may appeal to the Tribunal. An appeal is by way of re-hearing: see para 10(3) of Sch.13A. The Tribunal can confirm, vary or cancel the Final Notice. The same criminal standard of proof is required for a civil penalty as for a prosecution – and this is the standard which the Tribunal must apply on appeal. On appeal, the Respondent must therefore be able to demonstrate beyond reasonable doubt that the Appellant has committed an offence under s.30(1) of the Act.
  
10. As to the level of any financial penalty, para 10(12) of Sch.13A of the Act provides that a local housing authority must have regard to any guidance given by the Secretary of State about the exercise of its functions under the Schedule or s.249A. The relevant guidance is contained in *Guidance for Local Authorities: Civil Penalties under the Housing and Planning Act 2016* (April 2018) made under this provision (“the Guidance”). In particular, para 3.5 of the Guidance sets out a list of factors to be taken into account when assessing the level, of penalty:
  - Severity of the offence.
  - Culpability and track record of the offender.
  - The harm caused to the tenant.
  - Punishment of the offender.
  - Deter the offender from repeating the offence.
  - Deter others from committing similar offences.
  - Remove any financial benefit the offender may have obtained as a result of committing the offence.

### **Evidence: The Respondent**

11. The main evidence for the Respondent was given by Mr James Elliott, a senior Environmental Health Officer.
  
12. On 8 March 2016, the Respondent served Demolition Orders under s.265 of the Housing Act 1985 to remove two structures from the yard (including the summer house) by 6 May 2016.
  
13. On 17 May 2016, the Respondent served an Improvement Notice on the Appellant under ss.11 and 12 of the Act. In essence, Sch.1 to the Improvement Notice stated that the Respondent was satisfied the following Category 1 hazards existed on the premises:
  - (a) Excess Cold. The notice stated that “the heating is inadequate to heat the unit based on thermal insulation and room sizes, and supplementary heaters were in use”. It also stated that “the electricity for the property is spurred off the supply for 15 Ingleside and funded through single tariff rate coin meter” so it was “not economic to operate”.

(b) Fire. The notice stated that “the bedroom is an inner room, accessed through an open plan kitchen/living room”. The “proximity of the adjacent shed” meant “the only window cannot be opened fully”, resulting in there being “no place of final safety”. There was also no provision for smoke detection, and the door between the bedroom and kitchen was “not a fire door”. The supplementary heaters resulted in fire risk. Finally, the door to 15A “requires a key to open and so may prevent escape in an emergency”.

It was also satisfied that the following Category 2 hazards existed:

- (a) Damp and mould growth. The notice referred to heating which was inadequate to control condensation in the bedroom and damage to the laminated floor suggesting water ingress. The “likely cause of this would be the absence or failure of the damp proof course”. There was no mechanical air extractor in the bathroom and no heating. Similarly, the kitchen lacked mechanical ventilation.
- (b) Electrical hazards. There was evidence of overloading of sockets in the unit.

Sch.3 to the Improvement Notice set out three items of works (relating to fire safety) to be completed by 18 June 2016 and a further seven to be completed by 20 August 2016. These items are set out in full in the first three columns of the Schedule at Appx.A to this determination.

14. There was no appeal against the Improvement Notice.
15. Following service of the Improvement Notice, two meetings took place on 31 May and 14 June 2016, details of which were given in a letter from the Respondent dated 20 June 2016. The meetings related to both the Improvement Notice and to the Demolition Orders. The letter suggests that at the meetings, the Appellant admitted he “had not carried out any works to comply with the first timescale” in the Improvement Notice. As far as the Demolition Orders were concerned, the Appellant stated he had said he wished to appeal them but had not yet done so.
16. On 21 June 2016, Mr Elliott inspected the premises with a Building Control Officer named Pamela Savidge and (according to Mr Elliott) a Private Sector Housing Manager named Bruce Reynolds. Smoke detection had been installed to the living room and bedroom, but the layout had not changed. The Appellant had cut a hole in the wall of the summer house approx. 60cm wide opposite the bedroom window to allow the window to open fully. The Appellant was advised this did not fully comply with the Improvement Notice, and Ms Savidge again advised him he would have to make a regularisation application for the works in the notice.
17. On 1 August 2016, the Appellant emailed Mr Elliott stating that he had come to see him on 4 July 2016, when he had given Mr Elliott a photo of the bedroom window. Mr Elliott replied on the same day, stating that “To re-iterate, the replacement window hinges allow the bedroom hinges for 15A Ingleside Crescent to open at 90 degrees which would comply with the criteria for an escape window. Once the timber structure has been removed from the rear garden of 15 Ingleside

Crescent, and all locks have been removed from the gates separating the rear garden of 15 Ingleside Crescent from the final exit gate then we would accept this as a viable means of escape.”

18. Mr Elliott attended the premises again on 12 and 18 October 2016. He was unable to gain access on the former date, but he was able to do so on 18 October 2016. His file note records that at that stage:
- Item 3 of Sch.3 to the Improvement Notice: The internal layout “had not been changed”. However, a hole had been cut in the wall of the summer house facing the bedroom window, so that the window could now open outwards to its full extent. In the gap between 15A and the summer house, a piece of chipboard had been laid over some breeze blocks laid on their ends to provide level access from the window to the hole cut into the summer house wall. Mr Elliott records that “I commented to Mr Cook that this was still not acceptable, he challenged why and I told him that the room was still an inner room and escape through a shed was not acceptable. He said he was going to get a second opinion.”
  - Items 6 and 7 of Sch.3 to the Improvement Notice: The laminate floor still showed signs of water damage and there were high damp readings in several areas. It could be seen that in places the laminated floor covering was laid directly on the concrete screed below, with no thermal insulation. There was mould growth to one wall of the premises with high damp meter readings.
  - Item 8 of Sch.3 to the Improvement Notice: no fixed heating had been installed, but there was a new 2kW electric downflow heater in the bathroom.
  - Items 9 and 10 of Sch.3 to the Improvement Notice: Extractor fans had been installed in the bathroom and kitchen.

Mr Elliott spoke on that occasion to a person called “Mark” who identified himself as the tenant of 15A. Mr Elliott suggests that when he asked for a surname and asked how long “Mark” had occupied the premises, the Appellant told this person not to answer. Mr Elliott took photographs which were provided to the Tribunal.

19. It later transpired that the person referred to above was called Mark Paine. There is an invoice to Mr Paine dated 8 August 2017 for repayment of rent of £500 advanced to him to secure a flat at 125C Clifton Road. This invoice is addressed to Mr Paine at the premises.
20. On 1 November 2016, Mr Elliott found an advert on the Friday-Ad website for letting 15A. A copy was produced, which listed the premises as:  
*“Flat for rent self-contained in Lancing, Ground floor, inclusive bills, except electricity. Wifi included £700 per month. 1 Month in advance Phone 01903 763055”.*
21. The Appellant was interviewed under caution on 4 November 2016, and a transcript was provided. He admitted that two people lived in 15A Ingleside Crescent named “Amanda” and “Mark” (who Mr Elliott had met).

They were moving out on 25 November 2016 “under a Notice”. They had lived there perhaps 1-3 months and had no tenancy agreement. But he admitted that “I charged them £700 [a] month” in cash. When asked why he had not complied with the Improvement Notice, the Appellant stated that this was “because I haven’t had any response from yourself ... and I haven’t had a response from Building Regulations”. He stated that he had sent an email to the Respondent’s Building regulations team “because I wanted to know about the window, the window, is that acceptable”. The Appellant then mentioned Pamela Savidge of the Respondent’s building regulations department. The Appellant repeated that he had sent Mr Elliott a photograph of the bedroom window and Mr Elliott had promised on 4 July 2016 to let him know if the window was acceptable. He had “not heard [Mr Elliott’s] reply yet”. On 1 August 2016 he emailed Mr Elliott with a reminder and on 3 August 2016 he also emailed Ms Savidge. The first email is mentioned above, while the email to Ms Savidge as her to “e-mail me, [to] let me [kn]ow if you have seen the photo of 15a Ingleside Crescent” Landing BN15 8EN bedroom window”. Ms Savidge replied on 5 August 2016 that she would endeavour to respond ... early next week”. The interview transcript states that the Appellant then said that:

“When Pamela Savidge came over to me, she said that if the window opened 90° and I removed all the locks from the summer house and the gate house and everything else, that the window would be acceptable.”

Mr Elliott’s response was:

“I remember that meeting that’s the meeting you were at as well as Mr Reynolds when we were there. But we said to you at that time that it opens into another building and Pamela Savidge expressed her concern about climbing out of the window and into another building and that wasn’t acceptable. I remember that because I was there. At no point were you told the window was acceptable. It was made clear that it wasn’t an acceptable means of escape. from an inner room bedroom. The Notice did not specify change in the window. The notice specified change the layout of the property.”

The Appellant then referred to a letter dated 9 March 2016 from Mr Garry Goacher in Building Control (“the Goacher letter”). Mr Elliott replied that the Garry Goacher letter was in fact sent on behalf of Ms Savidge. The letter suggested the Appellant might choose to make a regularisation application for building control purposes. In fact, the Appellant had not made any such application. But the Applicant still “failed to comply with the Improvement Notice”. When asked why he had failed to comply with the notice, the he had “basically” relied in the Goacher letter “and not responding to emails as well”. The Appellant specifically referred to the phrase in the Goacher letter which stated “we will not undertake enforcement”, to which Mr Elliott responded that:

“that is Building Control ... but you now need to complete works to comply with the Private Sector Housing Team Notice that I served on you the Improvement Notice on the 17<sup>th</sup> May and those works, because you are carrying them out, will be subject to Building Regulations”.

22. Mr Elliott refers to an appeal by the Appellant against the Demolition Orders. He produced a copy of a decision of this Tribunal dated 9 November 2016 confirming the orders. But which required them to be demolished by 27 January 2017. The Appellant apparently applied for permission to appeal to the Upper Tribunal and there was an application for judicial review to the High Court (Case no.CO/2514/2017), presumably relating to a refusal of permission to appeal by the Upper Tribunal. Mr Elliott attended the premises on 3 May 2017 and was refused access, apparently as a result of the pending appeals.
23. Mr Elliott was able to gain access on 25 July 2017 using a warrant. He took photographs and made a file note. The premises seemed occupied. He noted there was by this stage a “fixed panel heater in each room”. He also noted that the quick release catch to the side gate had been changed back to a key operated lock.
24. The Appellant was again interviewed under caution on 13 September 2016. In interview, he stated that 15A was occupied by his wife, who lived in the house at the same time. She did not sleep in the bungalow because there were guests living there. The last time 15A had been “tenanted” was a year before (i.e. September 2016), when the tenant was a Ms Victoria Scarley. She had lived there for a couple of months. The Appellant then said Ms Scarley had not been charged a rent, because she was his sister’s daughter. The Appellant refused to answer questions about why he had not completed the works.
25. On 10 November 2017, the Respondent was granted a further warrant to enter the premises in respect of the Demolition Orders under Housing Act 2004.
26. On 28 February 2018, officers from the Respondent executed the warrant and demolished the two structures including the summer house. Mr Elliott attended and inspected. His findings and set out in the fourth to sixth columns of a Scott Schedule provided to the Appellant on 20 June 2018. This is the Schedule which appears in Appx.A to this determination. While doing so, Mr Elliott spoke to a Ms Bethany Inscoe, who identified herself as the tenant. She provided a copy of a tenancy agreement beginning on 25 October 2017 at a rent of £700 per month. The Tribunal was shown a copy of that tenancy agreement. Again, Mr Elliott took photographs which were produced to the Tribunal.
27. Ms Inscoe apparently moved out of the premises on 6 March 2018.
28. On 7 March 2018, the Respondent determined that a Civil Penalty Notice should be issued in the light of the Respondent’s Private Sector Housing Enforcement Policy (a copy of which was provided to the Tribunal) and the Guidance. He completed a decision-making document dated 4 May 2018 which assessed the level of penalty on a points basis. A copy was provided to the Tribunal.



29. The Respondent served a Notice of Intent dated 8 May 2018 by first-class post. The Applicant acknowledged receipt on 29 May 2018. On 13 June 2018 the Respondent served the Final Notice which is appealed against.
30. Mr Elliott was cross-examined by the Appellant with the assistance of the Tribunal.
31. First, it was put to Mr Elliott that the bedroom window itself met the requirements for an “escape window”. Mr Elliott responded that the nature and the dimensions of the window itself was acceptable as an “escape window”, but that this did not in itself meet the requirements of the Improvement Notice. There was no sufficient means of egress to a place of safety – initially because the summer house prevented the window from opening, and afterwards because of the locked gates across the fire escape route.
32. Secondly, the Appellant challenged the account of events at the meetings on 31 May and 14 June 2016. Mr Elliott did not accept that Mr Reynolds was not present. The Appellant put to Mr Elliott that at the meeting, the Appellant asked what he had to do to comply with the Improvement Notice. He suggested that Ms Savidge replied it would be acceptable if the Appellant (1) enabled the window to turn at 90° and (2) removed the lock to the side gate. Mr Elliott denied this. He maintained that what Ms Savidge said was that the means of escape would not be acceptable if it went through another building. Mr Elliott accepted he had not made a note of the conversation at the time. As to the email from Mr Elliott of 1 August 2016, he did not accept this confirmed the Appellant’s version of events.
33. Third, the Appellant made a sustained attack on Mr Elliott’s veracity. This line of questioning arose from para 17 of the decision of the First-tier Tribunal (Property Chamber) on 9 November 2017. This refers to information given to Mr Elliott by Mr Paine in October and November 2016, which was relied upon by the Respondent in the appeal against the Demolition Orders. The Appellant put to Mr Elliott that Mr Paine did not pay his rent, that he was a violent individual, and that he had later admitted misleading the previous Tribunal. Mr Elliott responded that he had only met Mr Paine on 3-4 occasions and that the latter had never admitted lying. The Appellant then put to Mr Elliott that he “promised to help Mr Paine out with the rent” in return for giving helpful evidence. The Council was “putting words into [Mr Paine’s] mouth”. Mr Elliott refuted the allegation and referred to his note of the inspection on 18 October 2016. That was the first time he had met Mr Paine, but following that, Mr Paine had voluntarily come to the Respondent’s offices. Mr Elliott admitted the Respondent had provided Mr Paine with housing assistance by providing £500 in advance rent to secure another tenancy. But that was not connected with the evidence given to the First-tier Tribunal in November 2016 – and in any event the Respondent had asked for repayment of the money advanced.

34. Fourth, the Appellant took Mr Elliott through the information the Respondent had about occupiers from time to time. Mr Elliott referred to an occupier named Steven Pickett, who had lived at 15A for three years up to June 2016. Then there was Mr Paine, who had lived there with his partner from June 2016. There was Ms Victoria Scarley, Ms Inscoe and the current occupier, Mr Robert Harris. The Appellant put to Mr Elliott that there was no evidence any of them paid money to him, but Mr Elliott referred to the copy of Ms Inscoe's tenancy agreement produced to the Tribunal.
35. The Respondent also relied on evidence from Ms Colley Nikita Colley, a Private Sector Housing Officer who relied on a statement dated 17 August 2018. Ms Colley was party to the meeting on 8 May 2018 where the decision was made to impose the financial penalty. She helped complete the decision-making document with Mr Elliott.

### **The Respondent's submissions**

36. Ms Lovegrove relied on the Respondent's Statement of Case dated 12 August 2018, which she expanded upon at the hearing.
37. Ms Lovegrove submitted that on any issue of fact, the Appellant's evidence lacked credibility. A previous Tribunal had found this in other proceedings. He had sought to portray himself in this case as confused, but he was fully "cognisant". His approach was to fish around for remedies. For example, he went to Building Control and even Brighton and Hove City Council for "ammunition". But the second opinion he eventually obtained from Brighton Council did not help with the Improvement Notice at all. There was no tangible basis for any criticism of Mr Elliott, and the allegation against Mr Paine was made without substance. Parts of his evidence were demonstrably false.
38. Counsel contended that the Improvement Notice had not been appealed and that it was unassailable. The Notice of Intent and Final Notice were regular. As to the breaches of the Improvement Notice, Ms Lovegrove relied upon Mr Elliott's evidence of fact, and in particular his inspection on 28 February 2018, which is summarised in Appx.A to this determination. The Respondent further submitted that:
- (a) Mr Elliott was not lying. He had nothing to gain in doing so.
  - (b) There had been several forms of enforcement action taken against the Appellant.
  - (c) The material relied on by the Appellant dealt with enforcement of Building Regulation and Planning, not the Improvement Notice.
  - (d) There is nothing to suggest no enforcement action would be taken for failure to comply with the Improvement Notice. Indeed, the letter of 20 June 2016 and the email of 1 August 2016 were clear.
  - (e) The inspection on 28 August 2018 showed there was a failure to comply some 16 months after the Improvement Notice was given.
39. As to the level of financial penalty, Ms Lovegrove accepted the Tribunal could have regard to matters other than the factors set out in section 3.3

of the Guidance, provided it took those factors into account. She referred to the decision-making document. She urged the Tribunal to take a similar approach to that taken by the Respondent, and to confirm the penalty of £22,100.

40. Finally, the Tribunal raised an issue about the maximum level of penalty, principally under the first factor in the Guidance. If there was a maximum penalty of £30,000, it might be said that such a penalty ought only to be reserved for the most severe offence and the most notorious offender. For example, it could not be said that the Appellant in this case fell into the same category as the late Peter Rachman. However, counsel invited the Tribunal to take into account that a civil penalty was only one of two remedies for breach of an Improvement Notice. The most severe offences and the most notorious offenders would be prosecuted in the magistrates' court. The maximum financial penalty of £30,000 could be imposed even where the failure to comply with an Improvement Notice did not fall into the highest category of offence.

### **The Appellant's evidence and submissions**

41. The Appellant was unclear about whether he accepted the procedural requirements of s.30 and Sch.13A were met, so the Tribunal indicated the Respondent would need to prove this was the case.
42. As to the alleged failure to take the remedial actions specified in Appx.3 to the Improvement Notice, the Appellant was taken to the schedule reproduced in Appx.A to this determination. His position was as follows:
- (a) Item 1: The Appellant contended he installed automatic fire detection and alarms within the property before 18 June 2016. He accepted he had not provided a certificate to show these were "suitable for the layout and risk". The units were installed by a qualified electrician named Paul Pursley. When asked by the Tribunal, the Appellant said he paid Mr Pursley £300 in cash for this work, but that he had no receipts.
  - (b) Item 2: The Appellant accepted the evidence given by Mr Elliott about alterations to the internal layout of the property to make the bedroom and 'inner room'.
  - (c) Item 3: The Appellant again accepted the evidence given by Mr Elliott about the side gate.
  - (d) Items 4 and 5: The Appellant accepted no Domestic Electrical Installation Periodic Report had been provided. However, the electrical installations had been put in by Mr Pursley, a qualified electrician.
  - (e) Item 6: The Appellant wholly rejected the assertion he failed to ensure the thermal insulation met the requirements of current Building Regulations. He had installed a new floor and insulation to the walls. When asked by the Tribunal, the Appellant described the thermal insulation as "wool insulation" for written evidence to confirm this work (such as contractor receipts, work specifications etc.), the Appellant invited the Tribunal to "rely on my word that it has been done".

- (f) Item 7: Again, the Appellant said that damp proofing required by the Improvement Notice had been “completely done”. An “all new floor” had been provided “months ago”. When asked by the Tribunal the Appellant said the damp work was carried out by a Mr Mick Miller in June 2016. He paid him £700-£800 to do this work. The Appellant did not provide any written evidence to confirm the work was carried out.
  - (g) Item 8. The Appellant accepted he had not complied with this requirement.
  - (h) Items 9 and 10: The Appellant said he had installed the two extractor fans required before 20 August 2018. Again, they had been installed by Mr Pursley, but he accepted no certificate had been provided by the electrician.
43. As to the breaches which are admitted, the Appellant gave evidence for the reasons he had not complied. As soon as the Appellant received the Improvement Notice, he got someone to carry out all the works. Mr Paul Pursley was an electrician who lived across the road from the Appellant. He installed smoke detectors and extractor fans and checked the wiring throughout. There was no problem with the wiring. He promised to give the Appellant with a certificate as soon as the summer house was sorted out.
44. He said “my argument is that everyone told me I did not need to comply with the Improvement Notice. If Mr Elliott had accepted the escape window (like Pamela Savidge did), the Improvement Notice would have been completed within the time stated in the notice”. He referred to meetings on 31 May and 14 June 2016, and Ms Savidge’s statements about the bedroom window. There was also the Goacher letter, which expressly stated that “we will not undertake enforcement”. Mr Elliott later refused to accept the escape window: see email from Mr Elliott dated 1 August 2016 referred to above. The Appellant therefore approached building control officers at Brighton & Hove City Council. In an email dated 23 November 2016, he asked “I just wanted to [know] if my escape window meet building reg”. Mr Conor Stevens (a Building Control Surveyor) reassured him that:
- “I can confirm than an egress window will be acceptable providing that the window has a clear opening space at least 450mm in one dimension and a total area of 0.33m<sup>2</sup>. The window must also be situated no higher than 1.1m from finished floor level”.
45. The Appellant was asked to address the seven factors which should be taken into account in deciding the amount of any civil penalty in section 3.3 to the Guidance. He submitted as follows:
- (a) Severity of the Offence. There was no real default and no “danger” to anyone.
  - (b) Culpability and track record. The Appellant had always tried to be obliging to the Respondent, although he had got annoyed with them on occasion.
  - (c) The harm caused to the tenant. No harm was caused to the tenants.

- (d) Punishment of the offender. It was relevant that he had been caused considerable inconvenience over the past 3 years in dealing with the Notice. He had also been the victim of violence from Mr Paine, who had slashed the Appellant's car tyres.
- (e) Deter the offender from repeating the offence. The Appellant did not intend to be in breach, and would not repeat the offence.
- (f) Deter others from committing similar offences.
- (g) Remove any financial benefit the offender may have obtained as a result of committing the offence. He had not received anything like the suggested rent of £16,000 over the past three years, and had to pay Council Tax for 15A in any event.

46. As to other considerations, the Appellant stated that when "Mr Elliott demolished my shed [in February 2018], he tore off the roof" of the bungalow. Repairs to the roof cost £3,386. As a result, he had recently agreed a Debt Management Plan. He was retired, and received a state pension of £186/week, a private pension of £250/week and £26.67 from other investments. He received no rental income and owned no other properties than this one.
47. The Appellant was cross-examined by counsel. It was put to him that he had "not put in a 'fixed' heating system", to which the Appellant answered "No, I put in oil fired radiators". He considered that all the works required by the Improvement Notice had been done. He accepted he had not previously mentioned either Mr Pursley or Mr Miller, but the Respondent put this down to "lack of experience on my part". As to the allegations against Mr Elliott, it was suggested that there was no reason for him to lie, to which the Appellant stated that Mr Elliott was dragging things out and had had no reason to "look into" his house.
48. In relation to the alleged statements about the bedroom window, counsel took the Appellant through the emails and correspondence. The letter of 20 June 2016 gave details of the meetings on 31 May and 14 June 2016 involving the Appellant, Clare Pink, Mr Elliott and Ms Savidge. The Appellant accepted he was told that at that stage that the works required a regularisation certificate. He was whether he "confirmed" at the meetings "that you had not carried out any works to comply with the first timescale [in the Improvement Notice]", as suggested in the letter. The Appellant said "I didn't say that at the meeting. I had done *some* works". Counsel put to the Appellant that whatever he may have previously understood about the bedroom window, from the time of Mr Elliott's email of 1 August 2016, the position was abundantly clear. The bedroom window hinges complied with the building regulation criteria for an escape window, but to comply with the Improvement Notice (i) the "timber structures" in the yard had to be removed and (ii) locks had to be removed from gates separating the yard from final exit gate. The only answer the Appellant could give was that he could "not think" and was "lost now". Counsel then took the Appellant to the similar statement in the file note of the inspection of 18 October 2016, when Mr Elliott had told the Appellant the bedroom "was still an inner room and escape through a shed was not acceptable". The Appellant stated he

relied on what he had previously been told by Ms Savidge. As to the laminated floor, the Appellant agreed it was in the condition suggested by Mr Elliott when he inspected on 18 October 2016. But the Appellant did the works as soon as he got the Improvement Notice. Counsel put the photographs of the floor to the witness, and he agreed it did not show new flooring. But he suggested this was a patch between the bedroom and living room which had not been replaced.

49. Counsel then cross-examined about occupation. The Appellant accepted the premises were capable of housing a family from March 2015 onwards. The Appellant accepted that Ms Inscoc had a tenancy agreement for a year from 26 October 2017, but he she moved out on 6 March 2018. It was also put to the Appellant that in the course of the previous Tribunal proceedings, he had denied that the summer house was being used for habitable accommodation. On this question, the Tribunal was unable to conclude that the Appellant was “an honest and reliable witness”: see para 25 of the Tribunal’s decision. The Appellant said he had told no lies and did not feel he was being dishonest “one little bit”. The premises had been empty for 18mo-2yrs out of the last three years. The current occupier paid no rent. He simply did work for the Appellant, perhaps 2-3 days at a time. His name was Robert Harris.
50. It was suggested that the Applicant had tried to frustrate implementation of the works and contested matters at every step. He had refused access, so that the Respondent had to obtain warrants on at least two occasions. The Appellant agreed he had contested them. It was also suggested he had temporarily installed a lock on the side gate, and appealed the Demolition Order, all to frustrate the works.

### **Reasoning**

51. As explained above, the appeal is by way of rehearing.
52. The Tribunal first considered whether the procedural requirements of s.30 and Sch.13A were met. As far as the Improvement Notice is concerned, there has been no appeal against that notice. The Tribunal is therefore satisfied that the notice became “operative” within the meaning of s.30(1) of the Act. The Respondent produced copies of the Notice of Intent dated 8 May 2018 and the Final Notice dated 13 June 2018, and Mr Elliott gave evidence of service (which was not challenged). The Tribunal has considered both notices and it is satisfied they comply with the respective requirements of paras 2-3 and 7-8 of Sch.13A to the Act. The procedural requirements of s.30 and Sch.13A have therefore been met.
53. The Tribunal has next considered the alleged breaches of the requirements of the Improvement Notice. This is essentially a question of fact. Again, the Tribunal reminds itself that it must be satisfied of the facts beyond reasonable doubt.
54. The Tribunal heard oral evidence from both the Appellant and Mr Elliott. In assessing this evidence, the Tribunal found Mr Elliott to be an impressive and truthful witness. In particular, his evidence was supported by

notes of inspection and there were no obvious points on which his evidence was contradicted by correspondence or other written material. By contrast, the Tribunal was far less impressed with the oral evidence of the Appellant. His case lacked even the most basic documentation to support the wide-ranging assertions made. And where capable of being checked, they were frequently proved wrong. So, for example, the suggestion there was a new floor, thermal insulation etc. proved inaccurate when the Tribunal later inspected the premises. Moreover, the Applicant made a sustained attack on Mr Elliott's veracity based on an alleged arrangement with Mr Mark Paine in the previous Tribunal proceedings. This allegation was wholly unsupported by oral evidence from anyone other than the Appellant. There was no obvious motive for Mr Elliott to reach such an arrangement with Mr Paine, and none was suggested by the Appellant. The invoice to Mr Paine dated 8 August 2017 for repayment of rent of £500 is, in the Tribunal's view, incapable of supporting the suggested improper arrangement. It was a routine payment by another housing officer and made in relation to a completely separate property. More significantly, it was an invoice requiring Mr Paine to pay the Council, not the other way round. This Tribunal also cannot ignore that a previous Tribunal expressly found the Appellant to be untruthful, in proceedings involving the Demotion Order referred to in this matter. Where there is a difference between the parties on the factual evidence, the Tribunal prefers the evidence of Mr Elliott, and it attaches little weight to the oral evidence of the Appellant unless it is supported by documentation in the hearing bundle.

55. By reference to each of the remedial actions set out in Appx.A to this determination, it makes the following findings of fact:
- (a) Item 1. The Tribunal finds that the remedial action was only partly completed by the date completion date specified in the Improvement Notice, namely 18 June 2016. The Tribunal accepts the Appellant installed mains-powered smoke detectors within this timescale, since Mr Elliott recorded them as being there on 21 June 2016. But there is no evidence the detectors were "suitable for the layout and risk within the property", which is a specific requirement of the Improvement Notice. The Appellant accepted he has not provided any Minor Electrical Works certificate or other evidence from a qualified person to show the detectors were suitable.
  - (b) Item 2. The notice specified that action should be taken to ensure the bedroom was not an 'inner room', but it gave the Appellant a choice of how to achieve this objective. The notice suggested one method, namely the removal of the partition between living room and bedroom, so that that the occupiers of the bedroom had a fire escape along a designated route to a place of safety in the car port. This route would involve going through the main door and side gate (using a thumb latch to exit). In fact, the Appellant initially chose to provide an alternative means of fire escape from the bedroom window by the simple expedient of cutting a hole in the wall of the summer house and creating a chipboard and breeze block bridge across the gap between the two structures. The Tribunal finds that the bedroom did not cease to be an 'inner room' as a result of this arrangement, and

that this was the situation as at 18 June 2016 when the remedial action should have been completed. Subsequently, the Applicant chose a second method of providing suitable fire escape route by demolishing the summer house completely. The Tribunal accepts the yard was enclosed and cluttered and was not suitable as a place of safety for emergency escape purposes. In case of fire, the nearest place of safety was the car port, and removal of the summer house provided an escape route which involved a complex process of going through the bedroom window into the yard, through the garden gate and the enclosed area and then through the side gate into the car port. It follows that the Tribunal finds the remedial action specified in item 2 was not completed at all by the date set out in the Improvement Notice, namely 18 June 2016. It was partially completed when the summer house was demolished on 28 February 2018.

- (c) Item 3. The action to alter the “external access/egress door” (i.e. the side gate) was originally completed by the date set out in the Improvement Notice, namely 18 June 2016. For some reason, this was replaced by a lock (as seen on the inspection on 25 July 2017), but by 28 February 2018 had reverted back to a quick-release mechanism.
- (d) Items 4 and 5. The Appellant has not supplied Worthing Borough Council a current (or indeed any) Domestic Electrical Installation Periodic Report for the whole of the electrical installation in the building. It follows he has also failed to carry out work to remedy any Code 1 or Code 2 defects listed in such a report. The remedial actions in items 3 and 4 were not completed by the date set out in the Improvement Notice, namely 20 August 2016, and has not been completed by the hearing date.
- (e) Item 6. The Tribunal finds there is no effective thermal insulation to the premises. The external walls appear to be a single course of rendered brickwork with no layer of insulation. There was no evidence the felt roofing included any thermal insulation layer and the floor coverings were laid directly on top of the concrete screed. Moreover, it appears the power for the heating has always been supplied by the same single tariff coin-operated meter, which Schedule 1 to the Improvement Notice suggested was “not economic to operate”. The evidence of Mr Elliott, supported by the various inspection notes, suggests no work has been carried out in relation to thermal insulation since the Improvement Notice. The Tribunal rejects any suggestion by the Appellant that he installed a new floor and wall insulation since the Improvement Notice. On inspection, it was clear that the damaged laminate flooring was of some vintage, and it quite obviously pre-dated the Improvement Notice. Similarly, there was no evidence of work to the walls in recent times. If a new floor or wall insulation was provided, this plainly pre-dated the Improvement Notice. Since the Appellant has undertaken no “remedial actions specified in the notice” the issue of compliance with current building regulations does not arise.
- (f) Item 7. The Tribunal finds there is no effective damp proofing, whether in compliance with building regulations or at all. On inspection, there was no membrane or other means of preventing damp rising through the concrete screed to the floor. There was evidence of



damage to the laminated flooring consistent with damp. The evidence of Mr Elliott, supported by the various inspection notes, suggests no work has been carried out in relation to damp proofing since the Improvement Notice. Once again, the Tribunal rejects any suggestion by the Appellant that he undertook any damp proofing works to the floor “months ago”. This would have been impossible without lifting the laminate floor, which had plainly not been disturbed for some time. Since the Appellant has undertaken no “remedial actions specified in the notice” the issue of compliance with current building regulations does not arise. The remedial action in item 7 was therefore not completed by the date set out in the Improvement Notice, namely 20 August 2016, and has not been completed by the hearing date.

(g) Item 8. The remedial action specified in item 8 was fairly clear. The Improvement Notice required the Appellant to provide a fixed heating system that met certain standards. The Notice went on to give two options, namely (1) gas-fired central heating and (2) electrical heating including modern combi-storage heaters, a 2kW wall-mounted heater in the shower room and a dual tariff electric meter. The Appellant certainly fitted a 2kW wall-mounted heater in the shower room before October 2016, but plainly failed to go on to install any other elements of the “fixed” heating system. There is a photograph dated 28 February 2018 which shows a single electric panel heater attached to the wall of the living room, and some evidence that there may have been panel heaters in the past, but panel heaters were not seen on inspection. Portable oil-fired heaters do not meet the requirements for a “fixed” system. The Tribunal finds as a fact that no has been provided – whether “effective, efficient and economical” or otherwise. The remedial action in item 8 was not completed by the date set out in the Improvement Notice, namely 20 August 2016, and has not been completed by the hearing date. In any event, at the hearing the Appellant fully accepted he had not complied with item 8.

(h) Items 9 and 10. The Tribunal finds the Appellant installed extractor fans in the kitchen and shower room on or before the date specified in the Improvement Notice, namely 20 August 2016. The Appellant accepted he had not provided any Minor Electrical Works certificate or other evidence that the fans were installed by a suitably qualified person. The Tribunal is not therefore satisfied the fans are “suitable” as required by items 9 and 10 of the Improvement Notice. The remedial actions were only partially completed by the date set out in the Improvement Notice, namely 20 August 2016, and they remained only partially completed by the hearing date.

56. The Tribunal takes into account the general argument advanced by the Appellant that but for the bedroom window, he in fact complied with the Improvement Notice. This is patently wrong and the argument is rejected. The factual findings above are wholly inconsistent with this. Indeed, even if he was correct that the bedroom window was acceptable as a fire escape window (which the Respondent accepts), this did not in itself mean the bedroom ceased to be an “inner room” as required by Item

3 of Sch.3 to the Improvement Notice. That is quite apart from the failure to remedy other matters in Sch.3.

57. Under s.30(1), a person commits an offence if he fails to “comply” with an Improvement Notice once it has become operative. Unlike under s.198A of the Housing Act 1985, any failure to comply under s.30(1) does not have to be “intentional” on the part of the Applicant. Under s.30(2)(a) of the Act, “compliance” with an Improvement Notice means in relation to each hazard, beginning and completing any remedial action specified in the notice ... not later than the date specified under section 13(2)(e) and within the period specified under section 13(2)(f)”. The latter dates are given in Appx.A to this determination. By reason of the above findings of fact, the Tribunal is satisfied the Appellant failed to complete any of the ten “remedial actions” specified in Sch.3 to the Improvement Notice. The only remedial action which was wholly completed by the date specified in the Notice was Item 3. But the Tribunal notes the continued duty under s.30(5) of the Act to take remedial action after the period for completion specified in the notice has passed. For a period of time between 25 July 2017 and 28 February 2018, there was a breach of this continuing duty.
58. As explained, in proceedings against a person for an offence under subsection (1) it is a defence under s.30(4) that he had “a reasonable excuse for failing to comply with the notice”. In this respect, two propositions can be made derived from the decision of Ouseley J. in *Haringey LBC v Goremsandhu*:
- An honest but mistaken belief is not a reasonable excuse defence. It may be a part of a reasonable excuse defence when the surrounding circumstances to the holding of that belief are taken into account: para 25. This proposition was derived from the judgment of the Court of Appeal in *R v Unah* [2011] EWCA Crim 1837; [2012] 1 WLR 505.
  - There are two components to this defence: First, if a belief is relied on it must be an honest belief. Second, there have to be reasonable grounds for the holding of that belief. That is an objective question: para 27. This proposition was in turn derived from the another Court of Appeal judgment in *R v Y(A)* [2010] EWCA Crim 762; [2010] 1 WLR 2644.
59. The Appellant argued that he did not comply with the Improvement Notice because “everyone told me I did not need to comply with” it. Before dealing with the criteria set out above, it is worth considering each of the alleged matters relied on by the Appellant in this regard:
- (a) There is the alleged statement by Ms Savidge that “if the window opened 90° and [the Appellant] removed all the locks from the summer house and the gate house and everything else, that the window would be acceptable”. This was supposedly said at a meeting on 31 May or 14 June 2016. Insofar as it is suggested that Ms Savidge may have been saying that the Improvement Notice did not need to be complied with, this is rejected for a number of reasons. First, it is unlikely Ms Savidge would have commented on the

Improvement Notice. She worked for the Respondent's Building Control team, and was not responsible for the notice. The Tribunal also accepts Mr Elliott was present at the meeting. Otherwise his letter dated 20 June 2016 would have been a fabrication and his evidence to the Tribunal a lie. Mr Elliott's account of the meeting clearly suggests he told the Respondent he needed to comply with the Improvement Notice, and Ms Savidge did not demur.

- (b) The letter of 20 June 2016 does not suggest the Appellant need not comply with the Improvement Notice. Quite the opposite.
- (c) The email of 1 August 2016 from Mr Elliott clarified that whilst the bedroom window could comply with the criteria for a fire escape window, this would not be enough to comply with the Improvement Notice. The summer house still needed to be demolished.
- (d) The advice given by Brighton and Hove City Council was specifically given by a Building Control Surveyor in response to an enquiry by the Appellant as to whether the "escape window [would] meet building reg". It was nothing to do with Improvement Notices.
- (e) The Goacher letter simply does not support the argument advanced by the Appellant. The line in the Goacher letter stating that "we will not undertake enforcement" was taken out of context. The relevant passage is as follows:

"... although the planning enforcement case is closed on [the garage conversion] – the building control aspect of this development remains open. You would at the time of conversion required a building control application and although *we will not undertake enforcement*, the work still remains unauthorised and this will be revealed on any property searches which may affect any potential future sale of this property".

The passage in italics plainly and unambiguously refers to enforcement of building controls, not the Improvement Notice.

- (f) In the recorded interviews, Mr Elliott repeatedly stressed to the Appellant the difference between meeting building regulation requirements for an escape window and carrying out works under the Notice.
- (g) The bedroom window was not even mentioned in the Improvement Notice.

60. In the light of the above, the Tribunal is sure there is no reasonable excuse defence. The circumstances of the holding of the relevant belief were that there were requirements in building regulations for a window to be an escape window, and rather wider and different requirements set out in the Improvement Notice. This difference was repeatedly explained to the Appellant. Even if the Appellant honestly believed that complying with one would discharge his obligation to comply with the other, there were no objectively reasonable grounds for the holding of that belief. Everything the Appellant was told and read pointed to the opposite conclusion.

61. It follows that the Appellant has failed to comply with the Improvement Notice and has committed an offence under s.30(1).

## The Penalty

62. The Tribunal has considered the seven factors set out in section 3.3 of the Guidance in deciding the level of a civil penalty. It does so without adopting the points system used by the Respondent in its decision-making document, which is an approach that does not appear in the Guidance. It reaches the following conclusions in respect of each of the factors:

- (a) The Tribunal is satisfied that Category 1 hazards continued to be present on the property for a significant period of time. The Improvement Notice listed the Category 1 hazards as “excess cold” and “fire”. The works to remedy excess cold was present as a hazard on 20 August 2016, since no works were undertaken to remedy the lack of heating and the poor thermal insulation. The severity of this is exacerbated by (a) the fact this Category 1 hazard existed 18 months after the works should have been completed (b) there have been numerous reminders from the Respondent and (c) the premises have been periodically occupied by tenants and/or others. The Improvement Notice listed the Category 1 hazards as “excess cold” and “fire”. The works to remedy fire hazards were only partly undertaken before 20 August 2016. Lack of installation certificates for the smoke alarms are not serious, but the failure to carry out alterations to stop the bedroom being used as an inner room is a severe feature. This was only mitigated by the demolition of the summer house by the Respondent in February 2018. The Category 2 hazards were “Damp and Mould Growth” and “Electrical Hazards”. Failure to remedy these is necessarily less serious than the Category 1 hazards, but they still pose a risk to health, and the risks largely remain today. Both hazards are not towards the highest ends of the scale, since there is no actual evidence of harm having occurred. The Tribunal considers a moderate to serious offence has been committed.
- (b) Culpability and track record of the offender. This is not the first experience the Appellant has of the Respondent exercising statutory housing and other powers. There is the Demolition Order (upheld by the Tribunal), and at least two warrants for entry. It should also be noted that the Demolition Order was not complied with even after being upheld by the Tribunal, and the Respondent had to exercise its powers to demolish the structures. In terms of culpability, there is no doubt the Appellant deliberately failed to comply with such parts of the Improvement Order that he did not agree with. He knew he was in breach of his obligations. But against this, the Tribunal was not told about any previous civil penalty or prosecution of the Appellant. And he appears to be a small landlord, with only 15 and 15A available for letting. This is not a large professionally run landlord business. The Tribunal considers that culpability and track record can be described as “moderate”.
- (c) Harm to tenants. There is, as the Appellant suggested, no evidence of actual harm to the tenants. That is plainly a mitigating factor. There has been (and continues to be) a risk of harm to health, especially the Category 1 hazard of “Excess Cold”. The Respondent mentions that one tenant stated his electricity bills in cold weather could exceed £10

a day. This factor suggests the punishment should be set at a moderate level.

- (d) Punishment of the offender. On this point, the Tribunal does not agree with the submission by counsel that the 'scale' of civil penalties should effectively sit below those in a prosecution. The £30,000 maximum is in its view reserved for the most severe offences and offenders. So much is clear from the Guidance, which expressly states that "a civil penalty should not be regarded as an easy or lesser option compared to a prosecution". The limited information given about the Appellant's means and assets suggest that anything more than a nominal civil penalty would have a real economic impact on him. But it is clear that a substantial penalty is necessary to bring home to the Appellant the consequences of not complying with his responsibilities. He has ignored every warning from the Respondent over a long period of time. This factor suggests the punishment should be set at a moderate to serious level within the scale of £0-£30,000.
- (e) Deter the offender from repeating the offence. To some extent, this overlaps with punishment. In particular, the Appellant seems impervious to the consequences of keeping a property which he allows others to occupy where there are serious risks to their health. The penalty must be set at a level that deters the Appellant from continuing to do this. A moderate to serious penalty would be appropriate.
- (f) Deter others from committing similar offences. Plainly, a culture of poor quality "shed" housing is something to be discouraged. But there was no evidence that it was necessary to impose a more significant penalty to send a message to others. The penalty in this instance is likely to be significant, and (because of the appeal) very public. However, there is no special reason to increase it to deter others.
- (g) Remove any financial benefit the offender may have obtained as a result of committing the offence. This is a matter which seriously concerns the Tribunal. The Friday-Ad website advert, Ms Inscoe's tenancy agreement and the Appellant's evidence of what he charged Mr Paine, all pointed to a passing rent of £700 per week. The Appellant has been extremely evasive about the identities and periods of occupation of various occupiers over the years, and the Tribunal places no weight on his denial that 15A was tenanted for much of the time. But despite these uncertainties, the Tribunal is satisfied the Appellant has received significant financial benefit from letting out an unfit property. The Respondent suggests that as much as £16,000 could have been received for 15A since the Improvement Notice. In fact, a rent of £700 per month over the period to the hearing date would now exceed £21,000. Doing its best, the Tribunal considers a reasonable estimate would be that 75% of this figure has been received. Giving some allowance for costs such as Council Tax suggests that a net rent of £15,000 has probably been received. The penalty should be set at a level to remove this financial benefit.

63. In the light of all the above factors, the Tribunal considers a civil penalty of £15,000 would be appropriate.

## **Conclusions**

64. For the reasons given above, the Tribunal confirms the Final Notice dated 20 June 2018 under para 10(4) of Sch.13A to the Act. But it varies the Final Notice to impose a civil financial penalty of £15,000.

Judge Mark Loveday  
8 January 2018

## **Appeals**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.