FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	CHI/00HG/HNA/2020/0008
Property:	Flat 4, 83 Citadel Road, Plymouth PL1 2QA
Applicant:	Mr Fred Keeling
Representative:	In Person
Respondent:	Plymouth City Council
Representative:	Ms Helen Morris, solicitor
Type of Application:	Appeal Against Financial Penalty – Section 249A & Schedule 13A of the Housing Act 2004 ("the Act")
Tribunal Members:	Judge A Cresswell (Chairman) Mr M Woodrow MRICS Mr P Gammon MBE
Date and venue of Hearing:	24 November 2020 by Video proceedings
Date of Decision:	30 November 2020

DECISION

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The Application

1. By an Application dated 17 June 2020 the Applicant appealed to the First-tier Tribunal Property Chamber (Residential Property) ("the Tribunal") under Section 249A and paragraph 10 of Schedule 13A of the Housing Act 2004 ("the 2004 Act") against the Respondent ("the Council")'s issue on 3 June 2020 of a Financial Penalty Notice ("the Final Notice") requiring the Applicant to pay a financial penalty of £6,811.20, having been satisfied that the Applicant had committed an offence relating to the property under section 30(1) of the Act of failing to comply with an Improvement Notice.

Inspection and Description of Property

2. The Tribunal did not undertake an inspection of the Property; it was not necessary for the determination of the appeal.

Summary Decision

3. The Tribunal varies the Financial Penalty Notice to one of £5,000 and orders the Applicant to pay the sum of £5,000 to the Respondent within 28 days of the day after the date of this Decision.

Directions

4. Directions were issued on various dates. The Directions provided for the matter to be heard on the basis of an oral hearing, and for any statements and documents upon which the parties intended to rely to be provided to the Tribunal. This has been a remote hearing which was not objected to by the parties. The form of remote hearing was Video, (video all fully remote). A face to face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing.

5. This determination is made in the light of the documentation submitted in response to those Directions and the evidence and submissions made at the hearing. Evidence was given to the hearing by the Applicant and by Ms A Marshall, the Respondent's senior community connections officer. At the end of the hearing, the Applicant and Ms Morris told the Tribunal that they had had an opportunity to say all that they wished and had nothing further to add.

The Law

6. Section 30 Offence of failing to comply with improvement notice:

   (1) Where an improvement notice has become operative, the person on whom the notice was served commits an offence if he fails to comply with it.

   (2) For the purposes of this Chapter compliance with an improvement notice means, in relation to each hazard, beginning and completing any remedial action specified in the notice--

   (a) (if no appeal is brought against the notice) not later than the date specified under section 13(2)(e) and within the period specified under section 13(2)(f);

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(b) (if an appeal is brought against the notice and is not withdrawn) not later than such date and within such period as may be fixed by the tribunal determining the appeal; and

(c) (if an appeal brought against the notice is withdrawn) not later than the 21st day after the date on which the notice becomes operative and within the period (beginning on that 21st day) specified in the notice under section 13(2)(f).

(3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse for failing to comply with the notice.

(5) The obligation to take any remedial action specified in the notice in relation to a hazard continues despite the fact that the period for completion of the action has expired.

(6) In this section any reference to any remedial action specified in a notice includes a reference to any part of any remedial action which is required to be completed within a particular period specified in the notice.

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

(8) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.]

7. Section 249A(1) of the 2004 Act (inserted by the Housing and Planning Act 2016) states that a "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..."

8. Section 249A(2) sets out what amounts to a housing offence and includes at, Section 249A(2)(a) an offence under section 30 of the Act, namely a failure to comply with an Improvement Notice.

9. Section 249A(3) of the 2004 Act confirms only one financial penalty may be imposed in respect of the same conduct and subsection (4) confirms that whilst the penalty is to be determined by the local housing authority it must not exceed £30,000. Subsection (5) makes it clear that the imposition of a financial penalty is an alternative to instituting criminal proceedings.

10. Four decisions of the Upper Tribunal have established the questions that should be addressed when considering an appeal against a financial penalty. Those are **London Borough of Waltham Forest v Younis** [2019] UKUT 0362 (LC), **London Borough of Waltham Forest v Marshall & Another** [2020] UKUT 0035 (LC), **IR Management Services Ltd v Salford City Council**

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[2020] UKUT 0081 (LC) and **Sutton & Another v Norwich City Council** [2020] UKUT 0090 (LC).

11. The three questions are:
    1. Has the Housing Authority followed the correct procedure when imposing the financial penalty? The procedure is set out from paragraph 15 below.
    2. Has the relevant housing offence been proved to the correct standard? Here, the Upper Tribunal has confirmed a Tribunal must be satisfied beyond reasonable doubt an offence has been committed.
    3. Is the amount of penalty appropriate in the circumstances? This should be considered in the light of a local authority's policy, where one exists.

12. In **Sutton** it was said:

"It is an important feature of the system of civil penalties that they are imposed in the first instance by local housing authorities, and not by courts or tribunals. The local housing authority will be aware of housing conditions in its locality and will know if particular practices or behaviours are prevalent and ought to be deterred. The authority is well placed to formulate its policy and in **London Borough of Waltham Forest v Marshall** [2020] UKUT 35 (LC) the Tribunal (Judge Cooke) gave guidance on the respect that should be afforded to a local authority's policy by the FTT when hearing an appeal from a civil penalty imposed by the authority. As Wilkie J put it, concerning the approach which should be taken by magistrates, in **Darlington Borough Council v Kaye** [2004] EWHC 2836 (Admin): "*The Justices ... ought to have regard to the fact that the local authority has a policy and should not lightly reverse the local authority's decision or, to put it another way, the Justices may accept the policy and apply it as if it was standing in the shoes of the council considering the application.*"

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

13. In the **Waltham Forest** decision it was said at paragraph 76:

"... if a court or tribunal finds, for example, that there were mitigating or aggravating circumstances of which the original decision-maker was unaware, or of which it took insufficient account, it can substitute its own decision on that basis."

14. Sutton v Norwich City Council (2020) UKUT 90 (LC):

- *The ability to pay, or the means of the offender, is relevant to any financial punishment; although not mentioned specifically in the Secretary of State's Guidance, it is an important component of both punishment and deterrence.*

- *A corporate or individual appellant who wishes the Tribunal to have regard to their own financial standing when considering the appropriate financial penalty to impose, should provide up-to-date evidence of their assets and liabilities.*

15. Thurrock Council v Daoudi [2020] UKUT 209 (LC), **I R Management Services Limited v Salford Council** *[2020] UKUT 81(LC)* and **Nicholas Sutton (1) Faiths' Lane Apartments Limited (in administration) (2) v Norwich City Council** *[2020] UKUT 90(LC)* dealt with the question of

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reasonable excuse as a defence to the imposition of financial penalties under section 249A of the Housing Act 2004. The decisions have equal application to the corresponding situation under Section 30 when the defence of reasonable excuse is pleaded. The principles applied by the above authorities:

a) The proper construction of section 72(1) of the 2004 Act is clear. There is no justification for ignoring the separation of the elements of the Offence and the defence of reasonable excuse under section 95(4).

b) The offence of failing to comply with section 72(1) is one of strict liability subject only to the statutory defence of reasonable excuse.

c) The elements of the offence are set out comprehensively in section 72(1). Those elements do not refer to the absence of reasonable excuse which therefore does not form an ingredient of the offence, and is not one of the matters which must be established by the Tenant.

d) The burden of proving a reasonable excuse falls on the Landlord, and that it need only be established on the balance of probabilities.

e) The burden does not place excessive difficulties on the Landlord to establish a reasonable excuse. In this case the Landlord relied on the fact that he did not know the property required to be licensed. Only the Landlord can give evidence of his state of knowledge at the time. The Tenant, on the other hand, has no means of knowing the state of knowledge of the Landlord. It is very difficult for the Tenant to disprove a negative.

f) Whether an excuse is reasonable or not is an objective question for the Tribunal to decide. Lack of knowledge or belief could be a relevant factor for a Tribunal to consider whether the Landlord had a reasonable excuse for the offence of no licence. If lack of knowledge is relied on it must be an honest belief (subjective test). Additionally, there have to be reasonable grounds for the holding of that belief (objective).

g) In order for lack of knowledge to constitute a reasonable excuse as a defence to the offence of having no licence, it must refer to the facts which caused the property to be licensed under section 72(1) of the Act. Ignorance of the law does not constitute a reasonable excuse.

h) Where the Landlord is unrepresented the Tribunal should consider the defence of reasonable excuse even if it is not specifically raised.

Procedural requirements

16. Schedule 13A of the Act sets out the procedural requirements a local authority must follow when seeking to impose a financial penalty. A local authority must have regard to any guidance issued by the Secretary of State relating to the imposition of financial penalties. The Ministry of Housing issues such guidance ("the DCLG Guidance) in April 2018: Civil penalties under the Housing and Planning Act 2016-Guidance for Local Authorities. This requires a local authority to develop its own policy regarding when or if to prosecute or issue a financial penalty.

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17. The Guidance advises the local authority to "consider the following factors to help ensure that the civil penalty is set at an appropriate level". They are (the headings only):

- 1) Severity of the offence.
- 2) Culpability and track record of the offender.
- 3) The harm caused to the tenant.
- 4) Punishment of the offender.
- 5) Deter the offender from repeating the offence.
- 6) Deter others from committing similar offences.
- 7) Remove any financial benefit the offender may have obtained as a result of committing the offence.

18. Plymouth City Council has developed its own policy ("the Policy") that follows the DCLG Guidance in setting out the criteria to be taken into account when determining any penalty.

19. The DCLG Guidance states the Council will determine the level of the penalty by using the culpability and harm factors set out.

20. The policy sets out scores leading to a financial penalty for a range of offences, including failing to comply with an Improvement Notice. The points are accumulated by reference to severity of the offence; culpability and track record of the offender; the harm caused to the tenant. This leads to an indicative penalty charge; followed by an assessment to remove any financial benefit the offender may have obtained as a result of committing the crime.

21. Further factors, where relevant, are

- How to deal with multiple offenders;
- Punishment of the offender (A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrates the consequences of not complying with their responsibilities.);
- Deter the offender from repeating the offence (The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.);
- Deter others from committing similar offences (While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels

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when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.); and

- Reductions, which involve
- Level of compliance by perpetrator, their attitude in doing so, and early payment **(**Where the decision has been taken that a prosecution is appropriate, or subsequently a civil penalty notice should be issued, it is unlikely that the perpetrator could be deemed as compliant. However if there is a clear behavioural change and a will to ensure future compliance, followed by a payment within the prescribed 28 days a reduction of 10% may be attributed to the total.) and
- Financial hardship **(**Local housing authorities should make an assessment of a landlord's assets and any income (not just rental income) they receive when determining an appropriate penalty. The perpetrator will have the opportunity to make representations following the service of the Notice of Intent and may decide to set out any financial hardship in those representations. It will be for the perpetrator to provide sufficient documented evidence of income when relying upon such representations. The Council reserves the right to request further information to support any financial claim, and where this is incomplete, appears to be inaccurate or is not sufficiently evidenced may determine that the representation should not be considered. It is possible that financial hardship could be a factor when a perpetrator makes representations, particularly for lesser portfolio landlords, but this is not an easily predictable measure and needs to be judged on a case by case basis.)

22. Before imposing a financial penalty the local authority must give a person notice of their intention to do so, by means of a Notice of Intent.

23. A Notice of Intent must be given be given within 6 months of the local authority becoming aware of the offence to which the penalty relates, unless the conduct of the offence is continuing, when other time limits are then relevant.

24. The Notice of Intent must set out:
    • the amount of the proposed financial penalty
    • the reasons for imposing the penalty
    • information about the right to make representations regarding the Penalty

25. Unless the conduct to which the penalty relates (which can include a failure to act) is continuing, the Notice of intent must be given before the end of the period of 6 months beginning on the first day on which the authority has sufficient evidence of that conduct. (Para 2)

26. A person given Notice of intent has the right to make written representations within the period of 28 days beginning with the day after that on which the Notice was given. (Para 4)
27. If the housing authority then decides to impose a financial penalty it must give a "Final Notice" imposing that penalty requiring it to be paid within 28 days beginning with the day after that on which the final Notice was given. (Paras 6 and 7)

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28. The Final Notice must set out:
    • the amount of the financial penalty
    • the reasons for imposing the penalty
    • information about how to pay the penalty
    • the period for the payment of the penalty
    • information about rights of appeal
    the consequences of failure to comply with the notice.

29. A person receiving a Final Notice has the right of appeal to the Tribunal against the decision to impose a penalty or the amount of the penalty (under paragraph 10 of Schedule 13A of the 2004 Act).

30. The Final Notice is suspended until the appeal is finally determined or withdrawn. (Para 10(2))

31. The appeal is by way of rehearing, but the Tribunal may have regard to matters which the local authority was unaware of. (Para 10 (3))

32. The Tribunal may confirm, vary or cancel the Final Notice but cannot impose a financial penalty of more than the authority could have imposed. (Paras 10 (4) and (5))

Agreed History

33. The Tribunal first records the relevant history specifically agreed by the parties or where there is no challenge made to the case stated by the Applicant.

34. The Applicant is owner of the property.

35. By its Decision of 17 September 2019, the Tribunal confirmed an Improvement Notice served upon the Applicant and dated 2 May 2019. As well as confirming the Improvement Notice in respect of the requirement for the installation of a Grade A fire alarm system, the Tribunal also confirmed the requirement of 30-minute fire-resisting doors for each flat entrance with an added requirement of adequate sealing of the doors. The Tribunal ordered compliance with the Improvement Notice within 2 months of 17 September 2019.

36. On 4 November 2019, the Respondent inspected the property and found no further works had been undertaken by the Applicant.

37. A further formal inspection arranged for 18 December 2019 was cancelled by the Applicant.

38. There was correspondence between the parties thereafter from which it was clear that the works had not been completed.

39. On 20 March 2020, the Respondent served a Notice of Intention to impose a Financial Penalty.

40. The Applicant made Representations in his email to the Respondent of 2 April 2020.

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41. On 3 June 2020, the Respondent served a Final Financial Penalty Notice on the Applicant in the sum of £6,811.20.

42. No issue is taken by the Applicant in relation to the Respondent's compliance with the procedures required for the imposition of the Financial Penalty.

The Issues Before the Tribunal
The Applicant

43. The Applicant said that the Tribunal's decision following his appeal against the Improvement Notice had arrived sooner than he had anticipated. He was in hospital for an overnight stay following a day surgery keyhole operation 3 or 4 days after the hearing. He was quite weakened by the operation and was advised to rest.

44. He believed that the date for compliance was slightly extended to 18 or 17 December by the Respondent (Amy Marshall).

45. He went to Spain for about 5 days in the first or second week of October as he had a tenancy situation he had to deal with there.

46. That, however, was not the primary or secondary cause of the delay. He had a string of financial issues. A tenant on the ground floor of the property reported on a Friday evening, about 24 January, that the boiler was not working and needed to be replaced. It was replaced at a cost of about £2,000.

47. A couple of weeks earlier, the tenant apologised about being late with her rent and, about 31 January 2020, gave 2 weeks' notice of moving out and did not pay any more rent.

48. He thinks that it was about November 2019 that he was the subject of an Inland Revenue scam when he lost about £6,000 (a figure of £6,200 is mentioned in the Notice of Intent).

49. He was sourcing materials from eBay and quite successfully too. He was let down by one supplier, but when a control unit came up on eBay, he got it. He believes that was in April 2020.

50. He was then let down by a prospective installer and decided to do the job himself. His neighbour's child is a whizz kid and he helped him with the installation. The fire detection system is now operative, but there are more problems with batteries than he thought. It was installed probably late June 2020, but he could not swear to that date.

51. His neighbour's advice was that the maintenance contract would act as confirmation that the system was in good electrical order. He has not entered into a maintenance contract yet due to lack of funds.

52. There were only minor issues with the doors. Again, he had problems finding someone skilled enough to resolve the difficulties and was let down by a prospective carpenter.

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53. He tackled the doors himself. He replaced the top seal on the door of the top floor flat very quickly and did the other doors as time allowed. He finished them in August 2020.

54. He had actually paid someone to fit the doors, £400 or £500. It was a cash transaction but he may have a receipt. He has been in dispute since it became clear that the doors were not fitted properly.

55. He spent about £2,000 on electronic kit. He believes he paid £400 for the control box. The replacement fire doors cost about £55 each.

56. He was trying his very best to comply with the Improvement Notice. He could not use Section 21 to evict tenants because of the Improvement Notice.

57. He rents 4 apartments at the property and lives in one. He also has a Spanish property, where the rent pays the mortgage. He was earning approximately £2,000 income per month in October 2019. He has been a landlord for 25 years or so.

58. The Respondent had wanted to do the necessary works at a charge of 8%.

59. He received advice that the works were not required to comply with building regulations after the service of the Hazard Awareness Notice.

60. He was reticent to provide financial information to Ms Marshall because he could not trust its privacy remaining intact. He is now with Step Change to help him to control his debts. He lost £10,000 in rent as he could not evict 2 tenants.

61. He believes that a huge mountain has been made out of a molehill. The rating system is out of date.

62. Mrs Marshall should have got a warrant so as to inspect again.

63. The basement flat is now empty and he cannot afford to have it repaired. It has been damaged by the Respondent's drainage issues in the street.

The Respondent

64. Mrs Marshall explained in her witness statement the steps which she had taken leading to the imposition of the Financial Penalty. She had scored the penalty in accordance with the Council's published policy which was based upon the Government's policy.

65. She told the Applicant that she could not vary or alter the date in the Tribunal's decision, but had indicated to him that she would not be able to reinspect until December 2019.

66. Apart from an email from the Applicant with reference to eBay, she had received no information that the necessary works had been done.

67. She was surprised by the Applicant's evidence that he had paid £2,000 for electrical kit. She pointed out that the boiler work was in January, post-dating the period set for compliance. She accepted that there was a need to recover

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from day surgery, but did not believe that a trip to Spain was a reasonable excuse.

68. The quotation that the Respondent obtained for 3 new fire doors was £2,550 inclusive of VAT. She would be surprised if the Applicant could get the doors for £55 each. She noted that the document from Totem submitted by the Applicant was a quote and not an invoice.

69. She had not been provided with any evidence of expenditure by the Applicant when assessing the Financial Penalty. She agreed that potentially such expenditure would be relevant, but she had no evidence of it.

70. Notwithstanding the issue with the Totem document, she agreed that it was likely that the 3 doors in issue were new doors purchased by the Applicant.

71. In assessing the penalty, she had taken account of a proposal for a grade A fire alarm system at a cost of £3,551 + VAT, being £4,261.20, and an estimate for 3 doors at £850 including VAT each, or £2,550. To deprive the Applicant of the opportunity to make a profit from non-compliance, she had increased the £5,000 penalty arising from an application of the Respondent's policy so as to reflect the actual costs of performing the works of £6,811.20 based upon an addition of the 2 estimates obtained.

72. The estimate for the cost of the doors came from Plymouth Home 4 Letting via whom the Respondent sourced its works. They had requested access, but this was denied by the Applicant. Initially the agent quoted £4,900, but this seemed excessive to Mrs Marshall and so she went back to the agents who came back with a second estimate of £2,550. She repeated that this estimate was reached without inspecting the property.

73. She denied that the Applicant was being treated differently because of who he was or that she was picking on him. She was not involved in access to records about which he complained, nor was she aware of a Council Tax issue. It was her own decision to impose the Financial Penalty, a decision supported by her line manager. Whilst her department had not imposed other Housing Improvement penalties during the last year, it had imposed in excess of 10 for failing to license HMOs.

74. The Applicant had not challenged the HHSRS score at the time of the earlier hearing, a fact noted in the decision.

75. She visited the property just once on 4 November 2019. She did attempt a further visit, but the Applicant had to cancel it and would not agree to further visits with a contractor and said that the Respondent would have to get a warrant.

76. She believed that the Applicant deliberately failed to comply as there had earlier been a Hazard Awareness Notice and an Improvement Notice and the works were still not complete at the end of the period set for compliance by the Tribunal's decision.

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77. Ms Morris submitted that it was clear that a reasonable action had been to issue a Financial Penalty.

78. The Applicant had not been singled out.

79. The correct issues had been considered by Mrs Marshall and she had followed the procedure correctly.

80. Whilst she had some sympathy with the Applicant, he had given very little detail in his representations. Most of the issues raised at the hearing occurred after the end of the compliance period.

81. The Respondent would not complain if the Tribunal felt it appropriate to reduce the Financial Penalty in the light of information available to it at the hearing.

The Tribunal's Findings and Decision

82. The Tribunal is satisfied beyond a reasonable doubt that the Applicant was committing an offence under section 30(1) of the Act by failing to comply with the Improvement Notice.

83. An offence under Section 30(1) of the Act is committed where an Improvement Notice has become operative, and the person on whom the Notice was served fails to comply with it and did not have a reasonable excuse for failing to comply.

84. The Improvement Notice became operative upon the Tribunal making its Decision of 17 September 2019 refusing the Applicant's appeal against the Improvement Notice and requiring the Applicant to comply with its terms within 2 months of that date, i.e. certainly by 18 November 2019.

85. The Applicant was aware of the Notice, he told the Tribunal, on or about 20 September 2019. He told the Tribunal that he had a procedure in hospital requiring an overnight stay and that he had travelled to Spain for 5 days to sort out a tenancy issue with a property he owns there. He said also that he had been trying to source relevant materials on eBay. He said that he was short of funds.

86. The Tribunal could not see how any of these factors, as detailed by the Applicant, could amount to a reasonable excuse for failing to comply.

87. He was able to travel to Spain notwithstanding the medical procedure; indeed, he prioritised a tenancy there notwithstanding his risking committing an offence under Section 30(1).

88. He was able to afford a trip to Spain notwithstanding his submission of a lack of funds. He was reticent about his finances, providing no documentation to support his claims other than information about his mortgage.

89. All of the materials necessary to comply with the Improvement Notice would be readily available from sources other than eBay.

90. It is illustrative also to reflect upon his behaviour after the compliance period had expired. His own expert's report showed that nothing had been done to

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meet the requirements as late as 10 June 2020. Indeed, there can be no certainty that the property meets the requirements of the Improvement Notice even today. The issues with the door, the Applicant told the Tribunal, had been dealt with by himself and a neighbour's child had helped him fit the sensors and a neighbour had installed the control box, which had yet to be tested by an authorised person. The Applicant's attitude showed a reluctance to accept the seriousness of the situation, still contending that the Improvement Notice should not have been served.

91. Taking account of all of the above, the Tribunal reached the conclusion that the Applicant had no reasonable excuse for his failure to comply with the Improvement Notice.

92. The Tribunal next considered whether the Respondent Council had followed the correct procedure when imposing the financial penalty and found that it had.

93. Paragraph 2, Schedule 13A of the Act specifies a local authority must serve a Notice of Intent within 6 months of it "*having sufficient evidence of the conduct to which the financial penalty relates*" or, if the conduct is continuing then "*at any time when the conduct is continuing, or within the period of 6 months beginning with the last day on which the conduct occurs*".

94. Here, the Council became aware of the Applicant's failure to comply with the Improvement Notice on 18 December 2019, when the Applicant emailed Ms Marshall and said that he was still awaiting some deliveries from eBay.

95. A Notice of Intent was not served until 20 March 2020, some 3 months later, when the works had still not been completed.

96. The Tribunal is therefore satisfied the Council has served the Notice of Intent within the periods required by Paragraph 2, Schedule 13A of the Act.

97. It also finds the remainder of the procedure required by Schedule 13A has been carried out and that the Notices served contained the correct information. This is not disputed by the Applicant.

98. The Council received Submissions from the Applicant on 2 April 2020, this being within the 28-day period allowed and thereafter issued a Final Notice to issue a Financial Penalty on 3 June 2020 in the sum of £6,811.20.

99. The Tribunal then considered the financial penalty in the sum of £6,811.20. The Tribunal has considered the Council's policy and finds the penalty has been applied in accordance with it. There is no flexibility within the policy for the Council to impose anything other than a minimum penalty of £5,000 for the failure to comply with an Improvement Notice. The policy thereafter allows for an additional penalty that can be moderated to reflect a person's conduct.

100. Here, the Tribunal noted the Respondent had imposed an additional penalty of £1,811.20 from using its policy. It scored higher for the removal of financial incentive.

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

102. The Tribunal must also have particular regard to the Respondent's Policy as advised by the Upper Tribunal (Lands Chamber) in **Sutton & Another v Norwich City Council.**

103. It follows that, in order to determine this appeal, it is necessary for the Tribunal to consider the provisions of the Respondent's Policy, together with the decision which the Respondent made in reliance upon that Policy in the Applicant's case.

104. The Applicant takes no issue with the policy or its application, save that he asserts that he did not deliberately fail to comply with the Improvement Notice.

105. The Respondent, the Tribunal finds, followed its policy correctly having determined that the Applicant deliberately failed to comply with the Improvement Notice and that it was right to so find. The Tribunal has found that the Applicant had no reasonable excuse for his failure to comply and has detailed above its reasons for doing so. The Applicant's behaviour was deliberate within the definition within the Respondent's policy.

106. The Tribunal also takes account of the following facts in concluding that the behaviour was deliberate. The Applicant has been a landlord for 25 years or so. He is clearly an intelligent man. He was served first with a Hazard Awareness Notice, an Improvement Notice and then the Tribunal's Decision after his appeal. He had a long time in which to remedy the defects. Indeed, the Notice of Intention, which was his last chance, was served some 6 months after the Tribunal's Decision.

107. Having reached a score of 32 points in accordance with the policy (see the Schedule below), the appropriate Financial Penalty was one of £5,000. Acting in accordance with the policy, the Respondent increased this sum so as to take account of the two estimates it had for necessary works and to deprive the Applicant of a financial gain by not completing the works and arrived at the sum of £6,811.20.

108. The Tribunal finds, however, that the Respondent was wrong to have so increased the Financial Penalty because of information known to it at the time of the Final Notice and information becoming apparent before and at the hearing. The Respondent knew that the Applicant had purchased 3 new fire doors and that they had been fitted (albeit incorrectly). It is now known that the Applicant has spent at least £262 on detectors from eBay. The Respondent had approached an agent which does not itself actually fit fire doors and that agent had merely provided widely varying estimates from an unnamed contractor even though neither the agent nor the contractor had viewed the inside of the

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property or been made aware that there were doors already in situ, which it may be possible to fix rather than replace. Whatever its nature, the document from Totem showed the availability of 3 x 30-minute fire doors and accessories at £269.97. The Tribunal can have no confidence in the estimate provided by Plymouth Homes 4 Letting for the above reasons. That being so, and given the expenditure by the Applicant also on electric items, the Tribunal cannot safely conclude that it would be appropriate to find that the Applicant would be making a hidden profit by his failure to comply and to increase the suggested Financial Penalty of £5,000.

109. The Tribunal noted the comments made by the Applicant regarding the financial hardship he would suffer, were the penalty to be confirmed. However, the Applicant did not provide the Tribunal with any documentary information regarding his financial circumstances to support this, save for information about his mortgage. The Tribunal noted that as well as this substantial property in Plymouth, the Applicant also owns a property in Spain.

110. On the basis of the information made available to it by the Applicant, the Tribunal could see no basis for finding that the Applicant had been singled out by the Respondent for any reason.

111. The Tribunal varies the penalty to £5,000 to be paid to the Respondent within 28 days of the day after the date of this Decision.

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RIGHTS OF APPEAL

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.

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Schedule

Housing Act 2004

30 Offence of failing to comply with improvement notice

(1) Where an improvement notice has become operative, the person on whom the notice was served commits an offence if he fails to comply with it.

(2) For the purposes of this Chapter compliance with an improvement notice means, in relation to each hazard, beginning and completing any remedial action specified in the notice—

(a) (if no appeal is brought against the notice) not later than the date specified under section 13(2)(e) and within the period specified under section 13(2)(f);

(b) (if an appeal is brought against the notice and is not withdrawn) not later than such date and within such period as may be fixed by the tribunal determining the appeal; and

(c) (if an appeal brought against the notice is withdrawn) not later than the 21st day after the date on which the notice becomes operative and within the period (beginning on that 21st day) specified in the notice under section 13(2)(f).

(3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse for failing to comply with the notice.

(5) The obligation to take any remedial action specified in the notice in relation to a hazard continues despite the fact that the period for completion of the action has expired.

(6) In this section any reference to any remedial action specified in a notice includes a reference to any part of any remedial action which is required to be completed within a particular period specified in the notice.

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

(8) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.]

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PLYMOUTH CITY COUNCIL

CALCULATION OF PENALTY INFORMATION:

Indicative penalty scoring	Points
Offence – S.30 Failure to comply with Improvement Notice	5
Culpability – Deliberate (Formal notices served, tribunal process upheld actions, but no compliance to date)	20
Licensable HMO	N/A
Track record – 1st Offence	5
Harm – Potential for harm but no vulnerability established	2
TOTAL	32 Points
Indicative Penalty Charge	£5,000
Removal of financial benefit	
Financial benefit considers the cost of the works that were/are required to be undertaken to comply with Improvement Notice. • Fire Detection System (Grade A) = £4261.20 (inc VAT) • Fire Doors (3 x doors including frames) = £2550.00 (inc VAT) ***Total = £6,811.20***	
Total Financial Benefit	£6,811.20
Financial benefit does outweigh the indicative fine	
Multiple Offenders:	No
N/A	
Factors to alter penalty:	**N/A**

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