



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

Case reference: : **MAN/30UD/HNA/2020/0055**

**HMCTS code
(audio,video,paper)** : **V:FVH REMOTE**

Property: : **9 Adamson Street Burnley BB12 6RB**

Applicant: : **Mr Belal Ahmed**

Respondent: : **Burnley Council**

Type of Application: : **Appeal against financial penalty-
Section 249A and Schedule 13A to the
Housing Act 2004**

Tribunal Members: : **Judge J.M.Going
J.Faulkner FRICS**

Date of Hearing : **15 July 2021**

Date of Decision : **23 July 2021**

DECISION

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Covid -19 pandemic: description of hearing:

This has been a remote Full Video Hearing which has been consented to by the parties. The form of remote hearing was V.FVHREMOTE. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the Tribunal was referred to were in a series of electronic document bundles, statements, and submissions as described below, the contents of which were noted.

The Decision and Order

The Final Notice is to be varied by amending the financial penalty to £4000.

Preliminary

1. By an Application received on 21 August 2020 the Applicant (“Mr Ahmed”) has appealed to the First-Tier Tribunal Property Chamber (Residential Property) (“the Tribunal”) under paragraph 10 of Schedule 13A of the Housing Act 2004 (“the Act”) against the Respondent (“the Council”)’s issue of a Penalty Charge Notice dated 3 August 2020 (“the Final Notice”) requiring the payment of a penalty charge of £5000, after it had been satisfied that he had committed an offence under section 95(2) of the Act.
2. Section 95(2) states that a person commits an offence if –
 - (a) he is a licence holder...., and
 - (b) he fails to comply with any condition of the licence.
3. The Tribunal gave Directions.
4. Both parties provided relevant documents including written submissions which were copied to the other.
5. A Full Video Hearing was held on 15 July 2021. Mr Ahmed represented himself. The Council was represented by Mr Underwood, a barrister. Also in attendance and employed by the Council were Ms Jackson its Private Sector Housing Manager, Ms Dickens a Project Officer for Selective Licensing, and Ms Ridgeway a Senior Legal Officer.

The Property

6. The Tribunal did not inspect the property, but understands it is a terraced residential property which was let to tenants at the material times.

The Facts and Chronology

7. The following facts and timeline of events are confirmed from an analysis of the papers. None have been disputed, except where specifically referred to.

15 July 2014	The Council in exercise of its powers under the Act designated the Gannow area of Burnley, which includes the property, as a selective licence area for a 5 year period ending on 14 July 2019.
21 April 2015	Mr Ahmed purchased the property. Land Registry entries refer to the price stated to have been paid as £78,000.
6 April 2016	The Council granted Mr Ahmed a selective licence in respect of the property, which included various mandatory, prescribed, and other conditions relating to its management, condition and security and the amenity of the neighbourhood.
	Clause 22 of the Licence confirmed that “the Licence Holder must inform the licensing team of the Authority within 10 working days of any changes in circumstances which would affect the management of the property, namely: – . details of any unspent convictions not previously disclosed to the Authority that may be relevant to the Licence Holder... and their fit and proper person status and in particular any such conviction in respect of an offence involving fraud, dishonesty, violence and drugs or any offence listed in schedule 3 to the Sexual Offences Act 2003; ...”.
18 September 2018	Mr Ahmed was tried and convicted on indictment in the Crown Court at Snaresbrook.
12 October 2018	He was sentenced to 14 years imprisonment, comprising 11 years and an extension of 3 years and placed on the sexual offenders register indefinitely.
1 November 2019	Following expiry of the previous designation of the Gannow area as a selective licence area on 15 July 2019, it was redesignated as such for a further 5 year period beginning on 1 November 2019.
17 January 2020	A letter was written by the Council to Mr Ahmed at his previously noted home address, referred to a letter on 12 November 2019, reminding him of the need to apply for a new licence.
27 January 2020	Mr Ahmed responded to the Council with a letter from Swaleside prison referring to his brother having visited the Council “to enquire on my behalf and also to inform you of my current situation... I’m currently serving a 11 year incarceration, the earliest possible release will be 2025... I do not have any income or savings... I would like to know which

	property your letter is for, and have already paid for the licence previously for 9 Adamson St... and did not expect another fee”.
3 February 2020	The Council replied to Mr Ahmed’s letter explaining that all landlords within the Gannow area were required to apply for new licence under the new designation. It then went on to confirm “your previous licence was granted with a set of conditions, one of which was the requirement to inform the licensing team of any changes in circumstances which affect the management of the property, including details of any convictions previously undisclosed to the Council which may be relevant to the fit and proper person status of the licence holder. Failure to inform the Council of a conviction is considered a breach of licence. Given the circumstances and nature of the above breach, the Council will not grant a licence to you at this time...” The letter then set out the action required for nominating the new licence holder and asked for confirmation of who Mr Ahmed had designated control of the property to during his incarceration and who was currently managing the property.
6 February 2020	Mr Ahmed wrote in response “first of all thank you for ...answering my questions. However just to clarify I was convicted in October 2018 and have been stressed out since. I am suffering depression and anxiety since my conviction. The last thing on my mind was conditions of the licensing. I was under the impression that it was a one off thing which I had paid for before conviction. Therefore I have not breached any condition of my licence. I am currently managing my property and also have control of the property and will do for the remainder of my incarceration. Just because I’m incarcerated doesn’t mean cannot manage my own affairs.” He offered to pay the fees for the new licence at a rate of £20 a month.
5 March 2020	After a further letter from Mr Ahmed suggesting that his grandmother might apply for the licence, the Council said “we have since spoken to your managing agents, Falcon and Foxglove, who confirmed that they are still managing the property. They also confirm that they correspond with your brother(s) of Ahmed enterprises. Given that they are the parties dealing with the managing agent it would be more appropriate for them to apply for the licence.”
10March 2020	Mr Ahmed replied “Falcon and Foxglove do manage the letting of the property and I did ask if they could apply for the licence on my behalf to which they could not. Ahmed enterprises is not a registered company. It is the name I use as a sole trader. It is also the name of my bank account to which the rent is paid and mortgage is deducted. My brother has third-party access to this via a power of attorney. He does not manage my properties”.

17 March 2020	The Council replied in response to requests made by Mr Ahmed by confirming “we currently offer the option for landlords to pay the licence fee over a period of 24 months. There is currently no reason to suggest that you would not be eligible for this”.
20 June 2020	The Council served a Notice of Intent to impose a Financial Penalty of £5000 on Mr Ahmed, stating as its reason the failure to comply with condition 22 the Selective Licence. The notice included a copy of the Council’s “Policy and matrix for the use of Civil penalties” (“the Council’s policy”) and explained Mr Ahmed’s right make written representations
1 July 2020	Mr Ahmed made representations to the Council in response to the Notice of intent. Those representations (inter alia) referred to various items set out in this timeline. He stated that the letter enclosing notice “has come as a shock to me... As I had written at the earliest time to notify you of my circumstances... As you can imagine I was under a lot of stress as I was due for my first trial in April 2018. Which was a mis-trial as the jury were undecided. During this time I became depressed which I am prescribed medicine for and still am. I had a lot of my mind and my life has fallen apart since. My second trial started in September and the outcome is known. Since this date on which I was found guilty I have been under enormous mental health issues, my life has been turned upside down. At no point during this time was I thinking of a licensing condition as to which I was not aware of. When I purchased 9 Adamson St I was 21 years of age and the company that I bought it off had given me trouble... I then changed managements and signed off on the licensing not reading any conditions I just wanted to have a hasslefree rental property....During the time I’ve been inside I’ve had problem after problem... I believe I had informed the Council at the earliest possible time I could namely 27 January 2020.... The only income I have is from rent received and after insurance and mortgage repayments I am left with roughly £50 sent to me in prison for me to buy food and essentials.... I’m already being punished for a crime I was wrongly convicted of and did not commit. Which has changed my life and well-being for the worse....”
3 August 2020	The Council considered and responded to each of Mr Ahmed’s representations when issuing the Final Notice but concluded that the penalty should remain at £5000. The Notice also detailed Mr Ahmed’s rights of appeal.
21 August 2020	Mr Ahmed lodged his appeal against the Penalty Charge with the Tribunal.

The Hearing and the submissions

8. The parties written submissions reiterated and reemphasised a number of the matters referred to above. Exhibits included full copies of the Application, Directions, Notice of Intent, the Final Notice, the Selective Licence, the conditions attaching to the same, and the Certificate of conviction, as well as the emails and other correspondence previously been referred to.
9. Further correspondence, as well as Land Registry entries obtained by the Council showed that Mr Ahmed was also the sole registered proprietor of properties at 83 and 85 Accrington Road, Burnley purchased in June 2016.
10. Mr Ahmed in a letter to the Council responding to the Final Notice stated that it was being very unreasonable and as a result his mental health had deteriorated due to the additional stress. He reiterated his belief that he had notified Council “at the earliest possible time given that I had a lot to deal with, which you have not understood and disregarded. Namely being prison and the stress of it and my case and the impact on me and my family” with personal relationships broken and his car repossessed. He confirmed that he was appealing his conviction and provided copies of prescription slips from the prison services to show that he was on medication for his mental health problems. He stated “I feel suicidal and have requested medical help from the prison”. He confirmed that if the fine £5000 stood he could not pay it in full and would be requesting time to pay in monthly instalments based on his limited disposable income.
11. Mr Ahmed provided bank statements for business loan accounts in the name of Ahmed Enterprises which was explained as being a trading name rather than the limited company. He confirmed that he was the sole owner of the property i.e. 9 Adamson Street, but that numbers 83 and 85 Accrington Road were actually owned jointly with his brother and in equal shares. A copy of a one page handwritten signed and witnessed Business Agreement, dated at time of their purchase, was produced as supporting evidence, together with a corroborating statement from the witness. He also provided schedules of expenditure relating to repairs and improvements to the 3 properties. All 3 properties were mortgaged to Lloyds Bank. Mr Ahmed explained that he had requested copies of the mandate under the business account, but that his brother, who was able to draw on the same, was unwilling for statements to be exhibited, on the basis that they would refer not just to the properties, but also to other transactions which Mr Ahmed’s brother considered to be private.
12. The Council confirmed that, if it had been made aware of the conviction and change in circumstances as required under the conditions of the licence, it would have taken steps to revoke it. It did not accept that Mr Ahmed had notified it at the earliest possible time, taking the view that Mr Ahmed had had ample opportunity to consider the conditions by which he was bound. The Council did not accept that ignorance of those conditions constituted mitigating circumstances. The Council confirmed that it did not dispute that Mr Ahmed was suffering poor mental health during his incarceration but felt that “it would be prudent given his health circumstances to contact the (Council) and explain his circumstances at an earlier stage.” Whilst not

disputing Mr Ahmed's continuing poor mental health, it was not satisfied that this had a bearing on the offence. It refuted that the suggestion that correspondence relating to the need for a new license contained any indication that the Council would not take any action in respect of the alleged offence. It was not satisfied that the evidence provided by Mr Ahmed as to his financial difficulties provided a full picture of his finances. It did not feel that the expenditure on the properties was exceptional and noted that the lists were not corroborated by invoices or receipts. It noted that statements relating to the business account had not been provided and that it was not clear as to why Mr Ahmed could not do so without the permission of his brother.

13. The video hearing was initially delayed because of connectivity issues.
14. Mr Ahmed disagreed with the Council's assessment of his culpability as being negligent. He described how, after buying the property, he had had problems with the developer who sold it to him, and who was then supposed to, but did not, manage the property properly. As a consequence, the property was vacant for approximately a year and Mr Ahmed put in place new management engaging the letting agents, Falcon and Foxglove. He was a young first time Landlord, not focused when the licence was put in place. "I signed it, I didn't read it".
15. Ms Dickens confirmed that Mr Ahmed had passed all the normal checks before the licence had been put in place, and that the Council had not received any complaints or notice of any problems with the property or its management, throughout the lifetime of the licence.
16. Mr Underwood gave a detailed description of the procedural requirements relating to the imposition of a civil penalty submitting that they had been fully complied. Mr Ahmed confirmed that he had no dispute about that.
17. He did however stress that it was relevant, and that the Council had paid insufficient regard to the emotional stress that he was under when in prison, initially on remand, that he had had to go through 2 trials, the first without a result, and that he was on a lot of medication for his deteriorating mental health and depression, particularly at the time of his conviction, which he is attempting to appeal.
18. Ms Jackson explained that she had been responsible for and intimately involved in the drafting of the Council's policy on civil penalties. She gave interesting insights as to how that had been created following the advent of the legislation, by reference to the Government Guidance and consideration of the policies of other and neighbouring local authorities, and where she explained that one of the objectives was to try to achieve consistency over a wider area.
19. She confirmed that she had reviewed the decision-making in this case and the calculations of the penalty under the Final Notice which was then signed off by Mr Gatrell, Head of the Council's Housing and Development Control Unit.
20. She agreed that the Council's policy did not provide any examples of what it referred to as aggravating and mitigating factors, which could move a fine

from the starting point dictated by a matrix. She also confirmed that the Council did not have or utilise a checklist to help with that task, but that individual cases were reviewed against past decisions.

21. The Tribunal listed various examples of what other authorities including those at Gateshead and Sheffield had signalled might be regarded either as a mitigating or aggravating factor.
22. Ms Jackson was asked for examples of what the Council would consider to be aggravating or mitigating factors, and whether, if one had evidence of mental health issues and indeed suicidal thoughts, she would regard that as a mitigating factor. Her answer was to refer to it having been decided in the circumstances of this case that Mr Ahmed's mental state was not relevant to consideration of whether he had a reasonable excuse. She gave two examples of what she considered as being possible aggravating factors, being an offender deliberately trying to cover up an offence, or being a repeat offender.
23. Mr Underwood defended the lack of explicit examples of aggravating or mitigating factors within the Council's policy, stating that one could not possibly list all the possibilities. He acknowledged however, that many authorities included, and generally accepted, as a mitigating factor, the medical circumstances of an offender as it related to the offence, but for the reasons referred to in his subsequent submissions, he did not feel that was relevant to the circumstances of the present case.
24. He also confirmed that, after the hearing, he would enter into discussion with the Council as to whether its policy should include examples.
25. Mr Ahmed contended that his mental health was an issue which should be factored into the calculation.
26. He also confirmed that in 2016 or 2017 he had been awarded a gold certificate by the Council, which he thought was for the standard of the property in question, albeit that might not have been for the property itself. When questioned, Mr Dickens confirmed this was a certificate confirming that he had qualified for and entered into the Council's "Good Landlord and Agent Accreditation Scheme" which she explained was a voluntary scheme running alongside licensing. She also confirmed that Mr Ahmed's letting agents, Falcon and Foxglove, have a good reputation, and that Mr Ahmed's brother had been granted a new selective licence in respect of the property.
27. There were detailed discussions as to Mr Ahmed's financial circumstances. He agreed that the capital value of the property might now be in the region of £80,000 and that the mortgage to the bank, as confirmed in the statement that he had supplied, amounted to approximately £43,000.
28. It was agreed that the 2 properties at Accrington Road had been purchased at the same time for £45,000 each. Mr Ahmed thought that their value might now have increased. He also confirmed that the mortgage debt secured on those two properties now amounted to approximately £47,000 which again was apparent from the statement that he had supplied. He agreed that he

would be entitled to 50% of the equity in those 2 properties, and if they were sold his share would amount to something over £20,000. He was adamant that he did not want to sell any of the properties and is anxious that he should have something when released from prison.

29. He said that his income was very limited, and that the monthly mortgage repayments left only a small net balance of rental income. He confirmed that he had last been advised by his brother that there was only £600 credit in what was effectively the joint business account.
30. Mr Underwood asked as to what other assets Mr Ahmed might have, in particular whether he had his own sole account for day-to-day expenses. Mr Ahmed said that he had had an account at Barclays which was overdrawn when he had been put on remand, that it had not been used since, and he assumed that it had now lapsed. He confirmed that apart from his rental income he had no other sources of income other than his prison job which paid £18 a week.
31. Mr Underwood when making closing submissions stated that Mr Ahmed had clearly failed to comply with the conditions attached to the licence, emphasising that the letters from the Council at the time of its completion had specifically warned of the need to read the same, and that whatever Mr Ahmed's mental state at the time of his conviction the fact that he had acknowledged that he had not read the conditions could not be regarded as an excuse or a reasonable excuse. Mr Underwood said that there was no question that the procedural requirements had been dealt with properly, and so that the amount of the penalty was what the case was really all about. He submitted that the Council had in fact been generous in its assessment of culpability by classifying the matter as negligent rather than reckless, pointing out that the Tribunal could, when making its own assessment, quite legitimately regard the admission that the conditions had not been read as being reckless, not just negligent. He urged the Tribunal to regard the failure to inform the Council as a grave aggravating factor, seriously undermining the objectives of the licensing scheme, which require an authority to be kept informed of circumstances when a licence holder no longer qualifies as a fit and proper person. He also submitted that Mr Ahmed's mental health should not be regarded as a mitigating factor because his failure to notify the Council was not because of his mental health, but because of his ignorance of the terms of the licence, due to not having read the same. Mr Underwood confirmed that as regards finances the Council had not been given the full picture, but what was clear was that there was a significant equity in the 3 properties and that Mr Ahmed was clearly the owner of significant assets. As Mr Underwood had confirmed during the hearing it might be possible that payment could be instalments and/or secured by way of a further charge over the properties.
32. Mr Ahmed in his closing submissions noted that much had been said, when discussing the relevant case law, of the need for the Tribunal to stand in the shoes of the Council, but that he urged the Tribunal to try and also stand in his shoes. He emphasised that he had been very young, 21 or 22, when the property had been purchased, an inexperienced first time landlord trying to embark on making a nest egg for his future. He asked the Tribunal to fully

consider the stress that he had been under at the relevant times, his mental health issues, and that the properties were the only things he will have when released.

The Statutory Framework and Guidance

33. Section 249A(1) of the 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...”
34. A list of relevant housing offences is set out in Section 249A(2), which includes the offence, under Section 95(2) of the Act, of being a licence holder who fails to comply with any condition of the licence. Section 95(4) states that “it is a defence that he had a reasonable excuse for failing to comply with the Notice”.
35. Section 249A(3) 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 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.
36. The procedural requirements are set out in Schedule 13A of the Act.
37. Before imposing a penalty the local housing authority must issue a “notice of intent” which must set out
 - the amount of the proposed financial penalty,
 - reasons for proposing to impose it, and
 - information about the right to make representations. (Paras 1 and 3)
38. 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)
39. 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)
40. 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)
41. The final notice must set out: –
 - the amount of the financial penalty,
 - the reasons for imposing it,
 - information about how to pay it,

- the period for payment,
 - information about rights to appeal; and
 - the consequences of failure to comply with the notice. (Para 8)
42. The local housing authority in exercising its functions under Schedule 13A or section 249A of the Act must have regard to any guidance given by the Secretary of State.(Para 12)
43. Such guidance (“the Guidance”) was issued by the Ministry of Housing Communities and Local Government in April 2018 and is entitled “Civil penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities”.
44. Paragraphs 3.3 and 3.5 of the Guidance confirm that the local housing authority is expected to develop and document their own policies on when to prosecute and when to issue a civil penalty and the appropriate levels of such penalties and should make such decisions on a case-by-case basis in line with those policies.
45. The Guidance states “Generally we would expect the maximum amount to be reserved for the very worst offenders. The actual amount levied in any particular case should reflect the severity of the offence as well as taking account of the landlord’s previous record of offending. Local housing authorities should consider the following factors to help ensure that the... penalty is set at an appropriate level:
- 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...
46. 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 Act).
47. The final notice is suspended until the appeal is finally determined or withdrawn. (Para 10(2))
48. 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))

49. 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))
50. The Upper Tribunal has, in various cases, confirmed that:
- the Tribunal’s task is not simply to review whether a penalty imposed by a Council was reasonable, it must make its own determination having regard to all the available evidence,
 - in so doing, it should have regard to the 7 factors specified in the Guidance,
 - it should also have particular regard to the Council’s own policy. *Sutton and another v Norwich City Council [2020] UKUT 90 (LC)*,
 - the Tribunal’s starting point in any particular case should normally be to apply that policy as if it were standing in the Council’s shoes, and
 - whilst a Tribunal must afford great respect (and thus special weight) to the decision reached by the Council in reliance on its own policy, it must be mindful of the fact that it is conducting a rehearing, not a review; the Tribunal must use its own judgement and it can vary the Council’s decision where it disagrees with it, despite having given it that special weight. If, for example, the Tribunal finds that there are mitigating or aggravating circumstances which the Council was unaware of, or of which it took insufficient account, the Tribunal can substitute its own decision on that basis. *London Borough of Waltham Forest v Marshall and another [2020] UKUT 0035 (LC)*.

The Tribunal’s Reasons and Conclusions

51. There are three substantive issues for the Tribunal to address: –
- whether the Tribunal is satisfied beyond reasonable doubt that Mr Ahmed has committed a “relevant housing offence” in respect of the property,
 - whether the Council has complied with all the necessary procedural requirements relating to the imposition of the financial penalty, and
 - whether a financial penalty is appropriate and, if so, has been set at the appropriate level.

Dealing with each of these issues in turn:-

52. Mr Ahmed has readily conceded that he did not notify the Council of his conviction of an offence under the Sexual Offences Act either within 10 days of conviction (i.e. the timescale set by the Selective Licence) or indeed during any part of the subsequent 9- ½ months of the life of the licence, and the Tribunal finds that Mr Ahmed did not have a reasonable excuse for this failure.
53. It was noted that he did not engage at all with the Council during the period in question.

54. Mr Ahmed has provided a plausible explanation for the omission, but the Tribunal does not find that this amounts to either an excuse, or indeed an excuse which could be classed as a reasonable excuse.
55. As the owner, landlord and licence holder of a property he had a responsibility to ensure that relevant legislation is complied with. Whatever his mental or emotional state at the time that the offence was being committed, it is not an excuse to explain that he was oblivious of the requirement, because he had chosen not to read (at least read adequately) the licence conditions which he had agreed to.
56. The case of *IR Management Services Ltd v Salford City Council [2020]UKUT 0081(LC)* confirms that for Mr Ahmed to have made out the defence of having a “reasonable excuse” he would have needed to have established, on the balance of probabilities, that he had such an excuse. The Tribunal finds that he has not done so.
57. The Tribunal is satisfied, beyond reasonable doubt, that his conduct amounts to an offence under Section 95(2) of the Act.
58. The Tribunal carefully reviewed the actions taken by the Council and the timing and information set out in its different notices and concluded that it has satisfied the necessary procedural requirements to be able to impose a financial penalty.
59. The Tribunal then considered the appropriateness and amount of a penalty.
60. The Tribunal is satisfied that it is appropriate to impose a financial penalty in respect of the offence, which as confirmed in the Guidance is an alternative to prosecution.
61. The Tribunal began the task of assessing the appropriate amount of the fine by a review of the actions of the parties and an evaluation of the evidence. In so doing it has had particular regard to the 7 factors specified in the Guidance referred to in paragraph 45 above.
62. Whilst not bound by it, the Tribunal also carefully reviewed the Council’s policy and found that (subject to the reservations referred to below) it provides a sound basis for quantifying financial penalties in a reasonable, objective and consistent basis. The Tribunal accepts that the policy results from a process whereby the Council has sought to fulfil its statutory duty to provide a clear and rational basis for its determinations on a case-by-case basis. As confirmed by the Upper Tribunal in the *Sutton* case, the local authority is well placed to formulate its policy on penalties, taking into account the Guidance, and that “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”.

63. As such the Tribunal was content to use the Council’s policy as the starting point and as a tool to assist its own decision making, paying very close attention and respect to the views expressed by the Council, to see if after making its own decision (in place of that made by the Council) the Tribunal agrees or disagrees with the Council’s conclusions.
64. The Council’s policy is itself based on the factors specified in the Guidance and refers to 3 potential categories of Harm, being Low, Medium, and High, and 4 categories of Culpability being Low (low or no culpability), Medium (negligent act) High (reckless act) and Very High (deliberate act), and includes descriptions and examples of each.
65. The interrelation between harm and culpability then feeds into a matrix which determines which of 6 bands the penalty should fall into. The amount of the penalty is taken to be the starting point of the relevant band, subject further upwards or downwards adjustment (in increments of £1000) to take account of additional aggravating or mitigating factors. The six penalty bands are as follows.

Band 1	£1000-£4999
Band 2	£5000-£9999
Band 3	£10,000 -£14,999
Band 4	£15,000-£19,999
Band 5	£20,000-£24,999
Band 6	£25,000-£30,000

66. In this case, the Council assessed Mr Ahmed’s culpability as negligent and the seriousness of harm as low, and calculated the penalty charge at £5000 i.e. the starting point of Band 2 in its matrix. It did not consider that there were either any aggravating or mitigating factors which justified any shifting from that figure.
67. The Tribunal, having had careful regard to all the evidence before it, agreed with the Council’s assessment that that Mr Ahmed must be regarded as having acted negligently by not reading, or not reading properly, the licence conditions before confirming his acceptance of the same.
68. Whilst the Tribunal had sympathy with the view that when imprisoned, his mind was focusing on other matters, and that it was it was hardly likely that he would necessarily remember the detail of an administrative clause, in a document signed some years beforehand, which, one hopes that if he had then read properly, he would have concluded should never apply.
69. But it did apply and, as Mr Underwood submitted, for good purpose.
70. The Tribunal did not agree with Mr Ahmed’s assertions either there was no offence at all or that there was little or no fault. The Tribunal agreed on balance with the Council’s assessment, and that the correct culpability band was that which was described under the heading “negligent” in the Council’s policy.

71. The Tribunal noted that both the Council and Mr Ahmed had assessed the harm rating as low, and agreed with that, notwithstanding that any such assessment could and should include not just actual harm but also the potential for harm.
72. As the Council confirmed, whilst Mr Ahmed was in prison and the offence was being committed, he did not pose any potential threat to the tenants of the property. It was also relevant that, during that time, Mr Ahmed was paying for, and had delegated much of the management of the property to reputable and well-regarded letting agents.
73. Having found the culpability rating to be negligent, and the harm rating low, the starting point figure as dictated by the Council's policy was £5000.
74. The Tribunal then went on to the next stages in the policy which prompt a review of any aggravating or mitigating factors.
75. Here the Tribunal has criticisms of the Council's policy's lack of clarity as to what might or should be considered either as an aggravating or mitigating factor, in each instance specifically said to be worth £1000. For reasons that the Tribunal did not feel were adequately explained, the policy remains mute. Mr Underwood quite rightly said that there are myriad of factors that might come into play. Nevertheless, if the Council felt that it could quantify a tariff of £1000, it surely could, and in the Tribunal's opinion should, as other authorities have felt able to (both to assist and better explain the decision-making process, and to provide for consistency) provide examples of those individual items which it might regard as justifying the specified tariff.
76. Mr Ahmed's track record as a landlord is a matter of importance which is specifically flagged up in the Guidance. The Council both in the Notice of intent and the Final Notice stated "There is no evidence of you previously failing to comply with relevant legislation and there are no previous convictions, including civil penalties, recorded against you in relation to any such failure" but it is not all clear where or how this might have been factored into its calculation of the fine, if at all.
77. The Tribunal believes that if the Council had had, and used, a checklist of possible aggravating and mitigating factors, it would, for example, have been prompted to a more detailed consideration of Mr Ahmed's track record in the context of the Housing Act, at this stage of the calculation process.
78. The Tribunal was disappointed that the Council did not of its own volition when considering the Notice of intent, the Final Notice and in preparation for the hearing think it appropriate to refer to the fact that it had, itself, awarded Mr Ahmed, albeit in respect of another property, a certificate as to his inclusion within a voluntary scheme aimed at improving housing standards.
79. The Tribunal is of course aware that each authority has its own specific local needs and constraints and, as highlighted in the *Sutton* case, these come into play. Nevertheless the Tribunal is aware of other authorities which regard a

good record of maintaining a property, and a previously unblemished housing record as being two separate mitigations.

80. In this case, working within the Council's own policy, the Tribunal decided that, on balance there were 2 relevant mitigating factors. The first being Mr Ahmed's track record as a young first-time landlord with no previous convictions who had clearly invested in managing the property. Secondly, his mental health and lack of focus during the continuance of the offence, which whilst not providing a reasonable excuse for not having read the licence conditions at the outset, did have a bearing on his being able to review the licence conditions at the points in time when he became obliged to notify the Council of the material change in his circumstances. The Tribunal accepts that when the offence was being committed Mr Ahmed did not have access to his papers, was depressed, and that his mental health impacted on his ability to then comply with the licence condition.
81. In considering whether there were any aggravating factors the Tribunal, on balance, agreed with Mr Underwood's urging that the Council being left in ignorance, for many months, of Mr Ahmed being in prison and convicted of very serious offence was in itself an aggravating matter, undermining the Council's ability to secure an important objective of the selective licence scheme, that is, to have in place a fit and proper licence holder.
82. Taken together, the Tribunal felt that the second mitigating factor it that had identified was offset by the 1 aggravating factor.
83. Having made its own assessment, by in effect standing in the Council's shoes, and applying the relevant facts as now known, the Tribunal calculation was as follows: – The starting figure set by the Councils policy matrix of £5000, increased by £1000 for 1 aggravating factor, and then reduced by £2000 for 2 mitigating factors, resulting in a final figure of £4000.
84. It is perfectly logical for a Housing Authority to use a formula (indeed the legislation has mandated that it should have a policy), but it is essential that it and, in this instance, the Tribunal, then review the answer given in a holistic way, to see if that answer in a particular case is able to pass the test of being reasonable and proportionate in all the circumstances.
85. The Tribunal, when reviewing the figure of £4000, noted that:-
 - it exceeds the sum estimated as the cost of applying for a new licence for the balance of the original licence period. The Tribunal found that the Council would have inevitably required that there be a new licence holder if it had been notified of Mr Ahmed's imprisonment at the requisite time. The amount of the fine satisfies the mandate under the Guidance relating to the removal of any financial benefit, and where it is stated that "the guiding principle here should be to ensure that the offender does not benefit as result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed"

- it is less than 1/7 of the maximum penalty that the Council could have imposed by law, being £30,000, which understandably the Guidance states generally would only be expected to be reserved for the very worst offenders.
86. Whilst the Tribunal was prepared to accept that Mr Ahmed’s net rental income after mortgage repayments and reasonable management and maintenance costs is limited, and that he does not have other major sources of income whilst incarcerated, it is clear that he does have a substantial equity value in 3 separate properties. The Tribunal found that, when taking into account both his income and capital, he does have the ability to pay, albeit over time, particularly if payment is allowed by instalments or secured by a charge. As the Guidance makes it clear “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 high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities”.
87. The Tribunal, having reviewed all of the evidence and carefully considered all the matters referred to in the Guidance, is content that that figure of £4000 is just and proportionate in all the circumstances.

JM Going
Tribunal Judge
23 July 2021