



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

Case reference: MAN/00CH/HNA/2020/0074,0075,0076

**HMCTS code
(audio,video,paper):** V:FVHREMOTE

Properties: 5 Westfield Terrace Gateshead, Tyne &
Wear NE8 4LD and 147 & 149
Eastbourne Avenue, Gateshead, Tyne &
Wear NE8 4NJ

Applicant: Mrs F. Rafique Mohammed

Respondent: Gateshead 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** : 18 January 2022 and
30 March 2022

Date of Decision : 23 April 2022

DECISION

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 document bundles, statements, and submissions as described below, the contents of which were noted.

The Decision and Order

The Final Notices are to be varied by amending the financial penalties relating to 5 Westfield Terrace to £3100, 147 Eastbourne Avenue to £3100, and 149 Eastbourne Avenue to £5975 (which when added together amount to £12175) to be paid within the period of 28 days beginning with the day after that on which this Decision is posted to the parties.

Preliminary

1. By 3 Applications emailed to the First-Tier Tribunal Property Chamber (Residential Property) (“the Tribunal”) on 4 December 2020 the Applicant (“Mrs Rafique Mohammed”) has appealed under paragraph 10 of Schedule 13A of the Housing Act 2004 (“the Act”) against the Respondent (“the Council”)’s issue on 5 and 6 November 2020 of 3 separate Penalty Charge Notices (“the Final Notices”) requiring the payment of penalty charges of £8300, £4300, and £4300 , after it had been satisfied that she had failed to licence the 3 properties when they were required to be licensed thereby in each case having committed an offence under section 95 of the Act.
2. The Tribunal gave Directions.
3. Both parties provided bundles of relevant documents including written submissions which were copied to the other.
4. A Full Video Hearing was held over 2 days on 18 January and 30 March 2022. Mrs Rafique Mohammed was represented by Mr Knowles, a barrister appointed under the direct access scheme. She and her husband Mr Mohammed were in attendance on 18 January, as was an adviser Mr Gate, who observed. The Council was represented by its solicitor, Mr Currie. Mrs France, a technical officer and Mrs Oates an environmental health officer within its Private Sector Housing team attended as did their manager Ms Crosby, who observed. Ms Crow, the mother of the tenant to 149 Eastbourne Avenue gave evidence late on the first day. Judge Maclean, a newly appointed member of the Tribunal also observed the first day of the hearing.

The Properties

5. The Tribunal did not inspect the 3 properties but understands that 147 and 149 Eastbourne Avenue are mid-terrace “Tyneside flats”, one over the other, one with 3 bedrooms and the other with 2, and that 5 Westfield Terrace is a 3-storey 3 bed roomed end of terrace house. They are all located within the Avenues district of Gateshead.

The Facts and Chronology

6. The Tribunal was provided with a wealth of paperwork extending to over 1300 pages (albeit with duplications). These included the Applicant’s and Respondent’s statements of case, various bundles including witness statements, statements, letters, emails, land registry entries, notes of telephone conversations and meetings, policies and guidance, a tenancy agreement, checklists and calculation sheets, notices and photographs.

7. All of the written evidence was carefully considered by the Tribunal before, during the hearing where it was referred to, and after it. The oral evidence at the hearing was also carefully considered.

8. Because of the extent of the paperwork, which is on record and which the parties have access to, it would be superfluous and counter-productive to attempt to relate its full detail in this decision.

9. The Tribunal has highlighted only those issues which it found particularly relevant to, and to help explain, its decision-making.

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

	Land Registry entries show that each of the 3 properties as owned Mrs Rafique Mohammed throughout the relevant periods. 147 and 149 Eastbourne Avenue are registered under the same freehold title and in the name of Fatima Rafique Mohammed. 5 Westfield Terrace is registered under a separate freehold title and in the name of Fatima Rafique.
	The written submissions attested to each of the 3 properties being let out as assured shorthold tenancies throughout the relevant periods. In each case it is understood that the landlord is FR Properties, a trading name used by Mr and Mrs Mohammed.
21 March February 2017	The Council sent 3 letters to Mr and Mrs Mohammed’s home address as part of a consultation prior to the possible introduction of a selective licence area. One was addressed to Fatima Rafique, another to Fatima Mohammed and the third to Kashif Mahboob.
25 January 2018	The Council in exercise of its powers under the Act designated the area described as Phase 1 of the Avenues area

	of Gateshead, which includes the 3 properties, as a selective licence area for a 5-year period beginning on 30 October 2018 until 29 October 2023.
2 February 2018	The Council sent 3 letters to Mr and Mrs Mohammed's home address confirming the designation and inviting applications to licence the properties.
14 May 2018	A Post-Office certificate of posting (later submitted by Mr Mohammed) refers to items being sent from the Chillingham Road post office at Heaton to the Council's Housing Sector address.
2 August 2018	3 further letters were sent to Mr and Mrs Mohammed's home address advising of the requirement to apply for a licence.
18 September 2018	A Post-Office certificate of posting referred to items being sent from the post office at the Clevedon centre in Middlesbrough to the Council's Housing Sector address at 10.09.
18 September 2018	A further Post-Office certificate of posting referred to items being sent from the Chillingham Road post office at Heaton to the Council's Civic Centre address also at 10.09.
30 October 2018	The need for the properties to be licensed became operative.
30 November 2018	The Council wrote reminder letters to Mr and Mrs Mohammed's home address, advising that no applications had been received.
3 December 2018	Mrs Oates on behalf of the Council made an unannounced property inspection at 5 Westfield Terrace "as there has been no licence application received for the selective landlord licensing scheme" and thereafter sent an email to FR Properties saying "there was substantial disrepair noted" and "there were no working smoke alarms in situ at the property". The email also stated "I must remind you it is an offence to rent a property within the designated licensing area and not apply for a licence".
4 December 2018	Mr Mohammed sent two emails to the Council. In the first he confirmed that alarms would be fitted that day and in the second that they had been. His second email also stated "I will be going to see my bookkeeper to get the proof of postage certificate regarding the licence. I had sent it in well before deadline date".
9 January 2019	Further "final reminder" letters were sent by the Council in respect of each property. These (inter alia) referred to various possible sanctions for failing to apply for a licence ranging from prosecution, civil penalty charges, rent repayment orders, and restrictions on possession orders.
9 January 2019	Mr Mohammed telephoned the Council to request a meeting in relation to the applications.
14 January 2019	Mr Mohammed met with a Council officer, Mrs Craig, at its offices and advised that he had posted application forms prior to the "go live" date but had not kept a copy. He was requested to provide proof of postage which he said he would

	find. He had with him what Mrs Craig described as a partially completed application form. Due to the “poor quality of the application presented and the nature of the discussion” the officer suspected that the application had not previously been completed or sent. She also concluded that if an application had been sent, “then it would not have been of such quality that would have been accepted or duly made”.
January 2019	The Council’s mail book was checked for incoming and received deliveries, but no record of the subject applications was found.
21 January 2019	An application was received and acknowledged by a letter from the Council. That confirmed “your applications are currently being considered. A decision to approve or refuse the application will be made within 12 weeks...” The proposed licence holder was stated as FR Properties and Mr Mohammed who signed the application was named as the responsible person.
The end of June 2019	The Council began the detailed review and processing of applications.
4 July 2019	Following a telephone call on the previous day advising that the applications were deficient, an email was sent by the Council to Mr Mohammed confirming that “there are outstanding requirements for me to be able to make the applications complete”. The outstanding requirements were listed in 15 bullet points. Mr Mohammed was invited to make an appointment “to come in and bring all the information”.
4 July 2019	An email, with some unspecified attachments, was sent by FR Properties to the Council.
5 July 2019	The Council responded “the copies are not legible when printed off. If you could make copies and bring in with the rest of information that would be great”.
22 July 2019	Mrs France and Mrs Craig made a prearranged visit to Mr Mohammed at his shop with a view to picking up the completed application forms. It was obvious to them that the forms were still incomplete. The shop was busy, and with no other staff in place it “was too difficult to complete the forms in situ however the application forms were again “marked” as to where further information was required. The forms were left with Mr Mohammed to complete and arrangements made for Mr Mohammed to return the forms in person to the Civic Centre ... by the end of the same week”.
26 July 2019	Mr Mohammed visited the Civic Centre, but the application forms were again found to be deficient and again given back to him to complete after advice had been given.
16 August 2019	The Applications were received at the Civic Centre but still found to be incomplete with key documents missing, and a telephone call was made to Mr Mohammed.
22 August 2019	The Council sent an email to FR Properties referring to having inspected 149 Eastbourne Avenue that morning stating that a schedule of work would follow as soon as

	possible but also “of immediate concern is the lack of smoke alarms within the property”.
30 August 2019	The Council sent letters returning the applications, confirming that despite the applications being resubmitted “key information remains outstanding”, which was referred to in a schedule, and advising (inter alia) that the outstanding information should be returned within 7 days failing which the applications would be refused for which there would also be a processing charge.
9 September 2019	Mr Mohammed emailed the Council to say “sorry the evictions took more stress on me that I can handle if I’m honest”. Ms France replied “could I respectfully advise that you consider engaging the services of a managing agent... If this is a route you want to go down the team can suggest a few agents... that would also act as licence holders...”.
12 September 2019	The Council issued formal Notices of the proposal to refuse to grant a licence in respect of each of the 3 properties, to both Mr and Mrs Mohammed, stating as its reasons that the applications were “incomplete and not duly made” and setting out that representations could be made within 14 days.
13 September 2019	The Council sent Mr Mohammed a schedule of works required to 149 Eastbourne Avenue which included reference to various Category 2 hazards as assessed under the Housing Health and Safety Rating System including “Throughout the flat the carpet appears to be “rucked” and loose. This presents a trip hazard. Works required Lift and refit carpet in all areas where it is loose. Pay attention to lounge and the main front bedroom”...
24 September 2019	The Council wrote to Mrs Rafique Mohammed inviting her to attend a formal interview conducted in accordance with the Police and Criminal Evidence Act 1984 (“a PACE interview”).
27 September 2019	Mr Mohammed visited the Council offices with further application forms. “The application was found to be deficient, but after further guidance and completion during the meeting was then accepted for processing”
9 October 2019	The Council wrote to Mr Mohammed inviting him to attend a PACE interview, together with a further letter and invitation to Mrs Rafique Mohammed.
22 October 2019	Invoices were sent in respect of the Selective Licence fees and a phased payment plan.
24 October 2019	Mr Mohammed called to question the calculation of the fees which was explained.
14 November 2019	Mr Mohammed was contacted by the Council and advised that the application fees remained outstanding and needed to be paid without delay. As requested an email confirming position was sent to FR Properties.
15 November 2019	Mr Mohammed was spoken to by the Council as regards the requested repairs at 149 Eastbourne Avenue and a follow up

	email was sent confirming that an Improvement Notice might need to be served as the work was not completed.
19 November 2019	Mr Mohammed telephoned the Council advising that the outstanding repairs to 149 Eastbourne Avenue would be completed by the following week and was reminded that the properties continued to operate without the necessary licences and that the application fees had not been paid. Mr Mohammed advised that he intended to discuss the outstanding fees with a team manager.
22 November 2019	The Council sent an email advising that the annual gas safety certificate for 149 Eastbourne Avenue had expired on 4 November 2019 and requested that a new inspection be completed and certificate issued.
1 December 2019	The second licence fee payment as set out in the payment plan became due but remained unpaid.
6 December 2019	A letter was sent by the Council setting out the calculation of its licence fees, confirming that without the necessary fees the applications remained incomplete and the offence of operating without a licence continued.
6 December 2019	The relevant officer was notified that the licence application fee had been received by the Council on 5 December 2019 albeit a second fee payment due on 1 December 2019 was still outstanding. As a consequence of the application fee having been made the Council accepted that the applications were duly made on 5 December 2019.
24 January 2020	A third letter was sent inviting both Mr and Mrs Mohammed to attend rearranged PACE interviews but without any response from Mrs Rafique Mohammed.
29 January 2020	Mrs France visited 149 Eastbourne Avenue to establish whether the works referred to in the schedule of works sent out on 13 September 2019 had been completed. The tenant Mr Dickinson was present as was her mother Mrs Crow. As attested to in their respective witness statements Mrs Crow advised Mrs France that she had the previous afternoon tripped over a raised area of carpet in the living room. Mrs Crow's witness statement confirmed that subsequent x-rays showed that her right ankle/leg had been broken. Mrs France having established that several of the requested repairs remained outstanding decided that an Improvement Notice would need to be served.
3 February 2020	The Council served an Improvement Notice on Mrs Rafique Mohammed in respect of 149 Eastbourne Avenue.
14 February 2020	The Council sent out proposed grants of licence to appropriate parties including Mrs Rafique Mohammed.
25 February 2020	The Council were provided with a signed handwritten letter ostensibly from Mr Mohammed's bookkeeper which concluded with the words, "if you need any more information please do not hesitate to get in contact" with the signature followed by the name Teresa Conlin and the address of 92 Meldon Terrace Heaton.

2 March 2020	Ms France visited 149 Eastbourne Avenue and reported speaking to a workman who advised that he would try and improve the fitting of the carpet in the lounge but had already told Mr Mohammed that the carpet was too old and needed to be replaced.
9 March 2020	Mr Mohammed called Ms France indicating that all the required work to 149 Eastbourne Avenue should be completed by the end of the week.
8 April 2020	Mrs France spoke to Ms Dickinson the tenant of 149 Eastbourne Avenue who as a consequence of the first national full lockdown was staying with her mother. She however reported that the carpet was in the same condition and the leak in the bathroom persisted.
19 April 2020	After further telephone calls and emails the Council was advised that the works required under the Improvement Notice were close to completion.
15 May 2020	Notices of intention to issue financial penalties were served by the Council (following earlier Notices issued on the 5 and 6 May having been withdrawn). The calculation of the penalty charge relating to 149 Eastbourne Avenue began from the starting amount of £8000 from which £333.33 was deducted on account of Mrs Rafique Mohammed's track record (whereby 3 mitigating factors were balanced against 2 aggravating factors) but to which £4673.25 was added for what was regarded as her financial gain over a period of 45 weeks together with a further £300 in respect of costs resulting in an overall figure of £12,639.92. The calculation of each of the 2 further penalty charges relating to 147 Eastbourne Avenue and 5 Westfield Terrace began from a starting point of £4000 from which £166.67 was deducted due to the track record before adding £4673.25 in respect of financial gain and £300 for costs thereby arriving at a figure in each case of £8806.58. The composite amount of the 3 proposed fines taken together came to £30,253.80.
20 May 2020	The Council granted separate licences in respect of each of the 3 properties to FR Properties with Mr Mohammed named as the responsible person.
26 May 2020	The Council were advised by the tenant that all works referred to in the Improvement Notice relating to 149 Eastbourne Avenue had been completed.
12 June 2020	Mrs Rafique Mohammed made various representations in response to the Notices of intent, and in particular that her properties had always been maintained to an acceptable level with no complaints from the tenants, she had all times cooperated with the licence application process, that there were underlying health issues with both children which should be seen as a mitigating factor, that the Notices of intent had been superseded by the issue of the licences and that the level of the proposed penalties would jeopardise her livelihood.

6 November 2020	The Council sent a detailed response to Mrs Mohammed's representations marginally changing its scoring of the mitigating factors but making the major change of deleting the references to whole of its previous calculation of "financial gain" following and in response to consideration of the totality principle. It at the same time served its Final Notices confirming the imposition of 3 Financial Penalties totalling £16,900 and included a sheet setting out the detail of how those figures had been calculated, together with details of notes on the rights of appeal.
4 December 2020	Mrs Rafique Mohammed lodged her appeal with the Tribunal.

The Council's calculation of the 3 Financial Penalties in the Final Notices

11. The Council when assessing 147 Eastbourne Avenue and 5 Westfield Terrace in each case rated Mrs Rafique Mohammed's culpability as reckless, described in its policy as acting with foresight or wilful blindness, and the seriousness of harm as low. In the Final Notices it calculated that the penalty charge for each of those 2 properties should be £4300 by including the following elements: –

Penalty Charge Starting Amount	£4000
2 mitigating factors	-£333.33
2 aggravating factors	+£333.33
Financial benefit from committing the offence	£0
Investigative charges	+ £300
	£4300

12. When calculating the financial penalty for 149 Eastbourne Avenue the Council again rated the culpability as reckless but assessed the seriousness of harm as medium. The amounts allocated to mitigating and aggravating factors balanced each other out and £300 was included for investigative charges. The resultant figure was £8300.

13. Consequently, the total of the 3 separate financial penalties was £16,900.

The Hearing and the submissions

14. The written submissions referred to various matters as detailed as in the timeline.

15. The Council's written submissions also included reference to and copies of witness statements from its officers, Ms Crosby, Mrs France, Mrs Oates and Mrs Craig as well as from the tenant of 149 Eastbourne Avenue, Miss Dickinson and her mother Mrs Crow.

16. Mrs Rafique Mohammed's written submissions included reference to medical evidence in the form of letters from the family's doctor and medical practice, her son's dermatology consultant, and her daughter's school as well as statements from a property maintenance firm and mobile carpet fitter and photographs. She strongly questioned whether the fall alleged by Mrs Crow had actually taken place at 149 Eastbourne Avenue because of what had been said or not said at the time, and the true motivation for the claim. She confirmed that the carpets at 149 Eastbourne Avenue had been renewed in 2017 and that they were very good state of repair immediately before Miss Dickinson took up occupancy. She confirmed her husband's opinion was that the carpet had become rucked because of the Mrs Crow not lifting her feet due to obesity and other related illnesses. She said that attempts by carpet fitters to rectify any problems been frustrated by an inability to obtain access. She confirmed that all the properties had had working smoke alarms, and it was assumed that tenants had either not renewed batteries or removed alarms when decorating. She said that the licence applications had been posted in advance of the commencement date because of wanting to take advantage of the discounted fees then available and that the Council evidently struggled with post and had processing problems. She submitted that the Council had not given proper regard to medical problems being experienced by the family or the consequences of the covid pandemic. Mrs Rafique Mohammed pointed out that the Council had issued her with a licence before serving the Notices of intent.

17. The start of the hearing was delayed because of some initial internet connectivity issues.

18. The Tribunal began by asking various questions in order to clarify various matters from within the papers.

19. It was confirmed on behalf of Mr and Mrs Mohammed that Mrs Rafique Mohammed was variously referred to by that name and the separate names of Mrs Fatima Rafique and Mrs Mohammed, that Mr Mohammed was variously referred to also as Mr Kashif Mohammed and Mr Kashif Mohammed Mahboob, that they are married to each other, live together and act as a unit, but with Mr Mohammed being responsible for the day-to-day running of the rental properties, of which there are 10, and that they have been landlords for approximately 20 years. FR Properties (which was not a limited company) was confirmed as the trading name used for the portfolio of rental properties, the freeholds of which are registered in Mrs Rafique Mohammed's name. They have separate accounts for their corner shop in Heaton.

20. It was also confirmed that all of the 3 subject properties were tenanted throughout the periods in question, and each for a calendar monthly rental of £450.

21. Mr Currie confirmed on behalf of the Council that there was no risk of double punishment nor other proceedings being taken by the Council for recovery of monies in respect of the same alleged offence. He confirmed that the Council had deliberately not sought to impose a separate civil penalty against Mr Mohammed as the manager the property and on the basis and understanding that one set of fines would affect them both as a single family

unit. He also confirmed that the Council had not sought any separate rent repayment orders, if it had been entitled to do so, nor a separate civil penalty in relation to any non-compliance of the Improvement Notice issued in respect of 149 Eastbourne Avenue.

22. It was agreed that the main factual dispute was as to whether documents had been submitted to the Council in September 2018, that is before the due date and as to whether such documents constituted a duly made application.

23. The events as referred to in the timeline of events were discussed in detail.

24. Mr Mohammed confirmed the contents of his witness statement, that he remembered posting the applications to the Council from a post office in Teeside on 18 September 2018, and that it was his habit, in 90 percent of cases, to obtain a certificate of posting.

25. Questions were asked about three particular certificates of posting which Mr Mohammed had submitted to the Council during different parts of the proceedings, and which formed part of the exhibits. 2 were dated 18 September 2018. The first, issued from the Cleveland Centre at Middlesbrough, referred to an item addressed to the Council's Housing sector and its postcode, was date stamped and timed at 10.09. The second was issued from a post office on the same street as Mr and Mrs Mohammed's shop on Chillingham Road and referred to an item addressed to the Civic Centre and the Council's postcode. It was also date stamped and timed at 10.09.

26. Mr Mohammed was asked as to the coincidence of the timing. He said that he clearly remembered that the necessary applications for the selective licensing were posted from the Middlesbrough post office. He could not recall exactly what other documents may have been posted to the Council from the Chillingham Road post office. He assumed, but could not actually recall, that he may have made a telephone call whilst outside the Middlesbrough post office to ask, as was his habit, one of his staff or a customer to take a letter from the shop for posting at the Chillingham Road post office. He said that he had attempted to obtain telephone records to corroborate this assumption but that his provider had confirmed that they would no longer be available. Nor had he had any success in obtaining any further detail from the post office.

27. Mr Mohammed was also asked about the third certificate of posting to the Housing Sector Gateshead CC which predated the other two and referred to a posting from Chillingham Road post office on 14 May 2018. He could not remember or confirm exactly what the particular posting related to but was adamant that his applications for the 3 selective licences had been included in the letter sent from Middlesbrough post office on 18 September 2018.

28. He emphasised that at various times he had been under considerable stress, due to family circumstances which included the death of a sister-in-law, children's health issues, of which there was documentation in the papers, dealing with lockdowns, panic buying in the shop, and the theft of a motor vehicle.

29. Mr Mohammed was asked about a letter which he had produced to the Council dated 25 February 2020 which appeared to be signed by Teresa Conlin stating "I confirm due to illness that I had not been able to provide the information Kashif had asked for within a reasonable timescale. If you need any more information please do not hesitate to get in contact". He confirmed that, in fact, he had drafted, written and signed the letter on her behalf after seeking her authority at a time when she was unwell, to help explain why information requested by the Council was not available for a PACE interview which for various compelling reasons he had had to postpone on more than one occasion.

30. He described Ms Conlin as having worked for him providing bookkeeping services both in respect of shop and the properties up until just before Christmas 2021, and that she had immediately reported being upset both with the Council and him after Ms France later went to her house on 21 June 2021 and asked her about the letter.

31. Ms France described her recollection of the meeting with Ms Conlin. She agreed with Mr Mohammed that Ms Conlin had become anxious, upset and angry, not because of an unannounced visit to her home (where she described Ms Conlin as having been very welcoming) but because of Ms Conlin's concerns about Mr Mohammed writing and signing a letter in her name.

32. Ms France confirmed that the letter and the certificate of posting dated 18 September from the Chillingham Road post office had been deposited with the Council at sometime after Mr Mohammed's PACE interview on 6 February 2020.

33. Mr Mohammed confirmed that he had not kept a copy of the applications posted to the Council on 18 September 2018 and was asked why if those had then been completed and duly made with all the necessary information he had difficulty in duplicating the process with his resubmission on 21 January 2019 after a face-to-face advice meeting on 14 January. It was noted that when that resubmission was properly looked at by the Council in July, it after further telephone calls issued an email listing 15 bullet points of omissions. Mr Mohammed explained that events had moved on between September 2018 and January 2019 and that because of depression and various events within the family he was "not all there in a mental state" in January.

34. The Council did not challenge or seek to challenge the evidence presented as to the personal circumstances of the family.

35. Ms France was then asked about the Council's calculations of the fines. She confirmed that all 3 properties had been banded with the same culpability rating but because of the accident suffered by Mrs Crow at 149 Eastbourne Avenue it had been allocated with a higher harm rating. She confirmed that she had inspected both 147 and 149 Eastbourne Avenue and a colleague had separately inspected 5 Westfield Road.

36. She explained that the rent element which had been added into the Council's calculations when issuing the Notices of intent and where the total

finer proposed exceeded £30,000, was subsequently taken out of the computation after a review and a lot of discussion with her line manager and colleagues before the issue of the Final Notices, where the global figure was reduced to £16,900. She did not necessarily agree that ignoring the rent element referred to in the Council's policy was a consequence of the time it had taken to process the applications but rather was due to an assessment that the overall figure referred to in the Notices of intent had been too much. She confirmed that the Council had been mindful of various factors including whilst it was considered that these to be serious offences, they were not the most serious which Council may have to deal with. She also pointed out that the Council had deliberately decided not to levy fines against both parties on the basis that the monies would presumably have to come out of one family pot. She gave an impassioned description of what she saw as the virtues of licensing saying that in 15 years' experience of licensing she had never known as much help advice and guidance having been given to a single landlord.

37. Mrs Rafique Mohammed confirmed the contents of her witness statement. She confirmed that she did not write the application forms, that she saw something to go to the Council but could not say what was on the forms.

38. Mrs Crow was then questioned, and confirmed that her witness statement was true, and that she had broken her ankle after tripping on the carpet in the living room at 149 Eastbourne Avenue on 28 January 2020, which she described as being "raised up". She was asked about having begun and then discontinued a personal injury claim. Mr Knowles described the claim as having been dismissed, but Mrs Crow, albeit with inconsistent testimony and/or recollection as to the timing and process of the withdrawal of the claim, said that she had decided to cancel the claim after a telephone call from Mr Mohammed and because she was frightened that "Mr Mohammed would kick me out of my property". She explained Mr Mohammed was the landlord of both properties.

39. When the hearing reconvened on 30 March, Mr Knowles Mr Mohammed, Mr Currie and Mrs France were all in attendance.

40. Mrs France explained how the Council's policy had been applied both when issuing the Notices of intent and in the Final Notices. She referred to the various stages set out in the Council's policy and confirmed that she had in each instance assessed the level of culpability as reckless rather than negligent. She took negligent to be something akin to an inadvertent omission, and had decided that Mrs Rafique Mohammed's actions had come squarely within the descriptions set out in the policy of "reckless behaviour - acting with foresight or wilful blindness" and which refer to falling "far short in their legal duties; for example by:

- failing to put in place measures that are recognised legal requirements and regulations
- ignoring warnings or requests raised by the local Council, tenants or others
- failing to take appropriate changes after being made aware of risks, breaches or offences

- allowing risks, breaches offences to continue over a long period of time...”

41. Mr Knowles drew distinctions between Mrs Rafique Mohammed’s culpability and that of her husband, stressing that she had left all of the management of the property to him, and that her actions should not be regarded as reckless. Mrs France confirmed that Mrs Rafique Mohammed was ultimately responsible, and that the Council could have sought civil penalties from both she and her husband but had held back from that basis that they were a single family unit.

42. Mr Knowles put it to Mrs France that her interpretation of the policy had been subjective and that her actions had been coloured by a lack of trust in Mr Mohammed. She acknowledged that she had checked directly with the plumber providing certain gas certificates, after having noted immediately sequential numbering on certificates for properties certified on different dates, but was satisfied with the explanations. She also confirmed that it was entirely natural for her to refer to a different department in the Council when Mr Mohammed’s fee cheque had been returned by his bank. Mrs France clearly disagreed with Mr Knowles suggestion that she had been subjective in her implementation of the Council’s policy.

43. Mrs France explained how the remaining stages in the Council’s policy had been applied, and that after receiving the responses to the Notices of intent and thereafter reviewing the matter particularly having regard to the totality principle it had been decided that the rental element which had been incorporated in the Notices of intent should best be removed.

44. Mr Knowles when discussing the financial benefit or profit was critical of Mr Mohammed not being advised in his PACE interview to provide accounts as evidence of financial circumstances. Mrs France said that she could not recall the detail of that interview because of the passage of time but did note that Mrs Rafique Mohammed had consistently ignored repeated requests to attend a PACE interview, saying “Mrs Mohammed didn’t respond to anything”. Mrs France confirmed that the Council had not considered or undertaken a full financial investigation because the individual fines fell outside the most serious penalty band.

45. Mr Knowles questioned whether the problems faced by the family as a consequence of the covid pandemic had been properly factored into the calculation. Mrs France pointed out that offence predated it.

46. Mr Currie in his closing submissions revisited Mr Mohammed’s evidence as to the submission of documents to the Council questioning its veracity and reliability. He confirmed that whilst it was for the Council to establish beyond reasonable doubt the offence of not having a licence when required, the onus of establishing a defence of having submitted a duly made application or of having a reasonable excuse, was on Mrs Rafique Mohammed. He urged that all the evidence went against the application having been duly made until many months after it was required. He said that it was clear Mr and Mrs Mohammed had been advised on many occasions that matters were outstanding and that

was not until 6 December 2019 that the application could be said to have been duly made. He acknowledged that the Council had taken longer to vet the applications than it had initially advised but explained that that delay had been factored out in its assessments, particularly after all reference to rents were taken out of account when applying the totality principle prior to the issue of the Final Notices. He confirmed that case-law had confirmed that it was incumbent on the Tribunal to give special weight to the Council's policy when making its own assessment, and that the Council's normal inclusion of rental income as a financial benefit was a reflection of the statutory guidance to ensure that is not cheaper to offend than comply but also to deter repetition and others.

47. Mr Knowles in his closing submissions said that the Council's issues were with Mr Mohammed not Mrs Rafique Mohammed and that it should more properly have proceeded against him. He maintained that the purpose of the enabling legislation was to root out bad or rogue landlords not to persecute or prosecute those whose paperwork fell short and who the Council were later able to agree were fit and proper persons to hold a licence. He said that the Council and the Tribunal had to find beyond reasonable doubt, that is be sure, that the application has not been duly made when Mr Mohammed had given evidence of posting to the Council in September 2018, and referred to Mrs France having freely acknowledged that post may not always have been correctly logged. He conceded that the paperwork submitted in January had been found to be wanting, but blamed the Council for a breakdown in trust, not properly helping its completion, and its own delays in pointing out the deficiencies. He said that Mrs France had been subjective in her assessment. He highlighted that she had said when reviewing the matter after receiving representations in response to the Notices of intent that it was then decided that the composite figure specified in those Notices of over £30,000 could be subject to severe criticism, and that the subsequent decision to so drastically reduce the fines showed how wrong the Council had been. He urged the Tribunal, if it felt that a fine was justified, to specify a nominal sum as a sanction.

48. When discussing parts of the Council's policy he drew distinctions between rent and profit which only came after deduction of expenses, and said that the Council's costs figure, if accepted, should be limited to one figure of £300 not three. He said that the evidence relating to Mrs Crow's fall was subject to challenge and emphasised that her attendant personal injury claim had been dismissed. He also contended that because of the family problems which had been evidenced Mrs Rafique Mohammed had a reasonable excuse during the requisite periods. He concluded that if the Tribunal was not with him on this point then in any event the level of the fines set by the Council were disproportionately unfair.

The Statutory Framework and Guidance

49. 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..."

50. The list of relevant housing offences is set out in Section 249A(2), which includes the offence, under Section 95(1) of the Act of controlling or managing of an unlicensed house.

51. Section 95(3)(b) states that it is a defence, if at the material time an application for a licence had been duly made, which under Section 87(2) must be in accordance with such requirements as the authority may specify. Section 87(3) confirms that the authority may, in particular, require the application to be accompanied by a fee fixed by the authority.

52. Section 95(4) states that it is also a defence if the person committing the offence had a reasonable excuse.

53. 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.

54. The procedural requirements are set out in Schedule 13A of the Act.

55. 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)

56. Unless the conduct 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)

57. 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)

58. 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)

59. 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)

60. 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)

61. 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”.

62. 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.

63. 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...

64. The Council has documented its own “Housing and Planning Act 2016 Private Sector Housing Enforcement Policy and Enforcement Policy” and subsequently published online the “Gateshead Private Sector Housing Team Civil Penalties Enforcement Guidance” (together referred to as “the Council’s policy”) and included copies in the papers.

65. 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).

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

67. 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))

68. 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))

69. 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,
 - 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

70. There are three substantive issues for the Tribunal to address: –
- whether the Tribunal is satisfied beyond reasonable doubt that Mrs Rafique Mohammed has committed a “relevant housing offence” in respect of one or more of the properties,
 - 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:-

71. Mr Mohammed readily confirmed that all 3 properties were continuously let from 31 October 2018 to 5 December 2019, the date on which the Council agreed that it had received a duly made application for the necessary licences. It was also agreed, as well as being abundantly clear from the papers, that selective Licences were not granted for any of those properties until 2020.

72. There was no dispute therefore that all 3 properties were unlicensed at times when they were required to be licensed, and the Tribunal is satisfied, beyond any reasonable doubt, that the offence set out in Section 95(1) of the 2004 Act of having control or managing of an unlicensed house was committed in respect of each of the 3 properties.

73. The Tribunal had then next to determine whether Mrs Rafique Mohammed had a defence under Section 95(3)(b) that at the material time an application for a licence had been duly made and/or the separate defence under Section 95(4) of a reasonable excuse.

74. The case of *IR Management Services Ltd v Salford City Council [2020]UKUT 0081(LC)* confirms that the burden of proving such a defence falls on Mrs Rafique Mohammed, but which she would need only to establish on the balance of probability.

75. Dealing first with the question of whether before 31 October 2018 (or at any time before 5 December 2019) the necessary applications had been duly made. The Tribunal found that they had not.

76. Mr Mohammed's testimony that properly completed applications containing all the necessary paperwork and certificates relating to all 3 properties had been duly sent and posted to the Council on 18 September 2018 was not credible. The Tribunal was not convinced, on the balance of probability, by his attempts to explain how he had obtained two separate certificates of posting each referring to having been produced at the exact same minute, from two separate post offices many miles apart. It was not credible that he could remember with precision exactly what had been enclosed in one posting but had scant or no recollection of what the second posting might have contained. Nor was the Tribunal persuaded as to why, if applications sent to the Council had been complete in September, it would be so difficult for Mr Mohammed (or indeed someone else, if he was then unwell or distracted) to duplicate those applications over a period of months during which the Council made it repeatedly and abundantly clear that the applications could not be regarded as duly made whilst requisite and necessary information and certificates were outstanding. Sadly, the Tribunal also found that Mr Mohammed had misled the Council when submitting a letter which he confirmed, but only at the Hearing, had not (as anyone reading it would immediately assume) been signed or indeed written by one of his employees, but by him. The Tribunal also found that other and separate letters included in the evidence relating to laying of carpets in 149 Eastbourne Avenue were so similar in their wording that it was impossible to believe that they had been independently drafted by separate people. The Tribunal could not fail to have concerns that some of the evidence submitted by Mr and Mrs Mohammed may have been manufactured to fit.

77. The Tribunal then went on to consider whether Mrs Rafique Mohammed had a reasonable excuse for committing the offences, that is being in control of the properties which were unlicensed when they should have been. The Tribunal reminded itself that not applying for a licence is not the offence, and as has been recently reaffirmed in the Court of Appeal case of *Palmview Estates Ltd v Thurrock Council [2021] EWCA Civ 1871*, not applying for a licence and controlling a property without a necessary licence are not the same thing.

78. The Tribunal readily accepts that Mr and Mrs Mohammed had various compelling family issues to deal with particularly relating to their daughter. However, and having carefully considered all the circumstances, the Tribunal does not accept that such issues absolved them ensuring that that their statutory responsibilities were properly attended to for months on end. The Tribunal found that Mrs Rafique Mohammed is an experienced landlord and the owner of an extensive portfolio of properties, operating as a business, and which need to be managed properly. It was her and her husband's responsibility to ensure that statutory requirements are met in a timely manner and that if,

for whatever reason, the task was beyond them that they then engaged qualified help, paying for it if needs be.

79. The importance of failure to obtain a licence should not be underestimated. Unlicensed properties undermine the statutory objective to promote proper housing standards and a Housing Authority's regulatory role and poses a risk for harm. Mrs Rafique Mohammed as a landlord has a duty to ensure that relevant legislation is complied with. The Tribunal found it significant that when, as a direct consequence of the applications not having been duly made in a timely manner, the Council inspected the properties it found hazards in all of them, including 2 without working smoke alarms.

80. The Tribunal found that Mrs Rafique Mohammed did not have a reasonable excuse for allowing the properties to remain unlicensed at the material times.

81. The Tribunal is satisfied therefore, beyond reasonable doubt, that offences under Section 95(1) of the 2004 Act were committed. It is also satisfied that Mrs Rafique Mohammed has not on the balance of probability established either the defence of a reasonable excuse, or of a duly made application having been made at the material times.

82. The Tribunal next carefully reviewed the actions taken by the Council and the timing and information set out in its different Notices and concluded that it had satisfied the necessary procedural requirements to be able to impose financial penalties respect of each of the 3 properties.

83. The Tribunal then considered the appropriateness and amounts of the penalties.

84. The Tribunal is satisfied that it is appropriate to impose a financial penalty in respect of each offence, which as confirmed in the Guidance is an alternative to prosecution.

85. The Tribunal began the task of assessing the appropriate amount of each 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 above.

86. Whilst not bound by it, the Tribunal also carefully reviewed the Council's policy and found that (subject, inter alia, 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”.

87. 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. In doing so it does not criticise the way in which the Council has approached the case, or the procedures which it has followed. Nor does it accept Mr Knowles’ assertions that Mrs France was overly suspicious of Mr or Mrs Mohammed, or unduly or unfairly subjective in her assessments. The Tribunal found Mrs France to be an honest and credible witness throughout the proceedings, and diligent in her duties.

88. The Council’s policy is itself based on the factors specified in the Guidance and refers to the 4 potential categories of Harm and Severity of Offence, being Low, Medium, High and Very High, and 4 categories of Culpability being Low (little or no fault of landlord), Negligent (failure to take reasonable care) Reckless (foresight or wilful blindness) and Deliberate (intentional breach) and includes descriptions of each.

89. It thereafter sets out the following table to determine which penalty band is to be applied :-

		Culpability			
		Low Little or no fault of landlord	Negligent failure to take reasonable care	Reckless foresight or wilful blindness	Deliberate Intentional breach
Harm	Low (Range)£	0 – 3000	2000 – 4000	3000 – 5000	4000 – 6000
And	Starting point	2000	3000	4000	5000
Severity	Medium (Range) £	2000 – 4000	4000 – 8000	6000 – 10,000	8000 – 12,000
Of	Starting point	3000	6000	8000	10,000
Offence	High (Range)£	2000 – 6000	6000 – 10,000	10,000 – 14,000	16,000 – 20,000
	Starting point	4000	8000	12,000	18,000
	Very High (Range)£	3000 – 7000	8000 – 12,000	16,000 – 20,000	20,000 – 30,000
	Starting point	5000	10,000	18,000	25,000

90. The Council's policy states that the process by which the amount of the financial penalties calculated is broken down into five main stages

- Stage 1 determines the penalty band for the offence. Each penalty band has a starting amount and a maximum amount.
- Stage 2 determines how much will be added as a result of the landlord's income and track record, including consideration of any relevant mitigating or aggravating factors
- Stage 3 considers any financial benefit that the landlord may obtain from committing the offence
- Stage 4 is where the costs of investigating determining and applying the penalty are calculated
- Stage 5 considers and combines the results of stages 1-4 and provides the final financial penalty amount.

91. The Tribunal, having had careful regard to all the evidence before it agreed with the Council's assessment that the correct culpability band was that as described in its policy under the heading "reckless", and that this was correct both for Mr Mohammed, and also for Mrs Rafique Mohammed. There is ample evidence of repeated warnings that the necessary steps had not been taken. The Tribunal agrees that Mrs Rafique Mohammed showed wilful blindness, and that her apparent almost total non-engagement with the process went beyond negligence.

92. The Tribunal also agreed with the Council's assessment of the harm classifications. There was no dispute that those relating to 5 Westfield Terrace and 147 Eastbourne Avenue should both be classed as low, notwithstanding that any such assessment could and should include not just actual harm but also the potential for harm.

93. The Tribunal agreed with the Council that events had shown that the harm rating relating to 149 Eastbourne Avenue should be more than that relating to the other two properties. The Tribunal believes that Mrs Crow did break her ankle at the property and that a contributing factor had been the ill-fitting and worn carpet. The Tribunal preferred her evidence, given in her witness statement and at the hearing together with that of her daughter's witness statement, to the suppositions prompted by Mr and Mrs Mohammed that the accident may have taken place elsewhere. The Tribunal also carefully noted the Council when sending its schedule of necessary works on 13 September 2019 had specifically flagged up the carpet as a category 2 hazard which needed to be rectified within 28 days. That was some three months before Mrs Crow's fall.

94. Having allocated such assessments to the appropriate penalty bands within the Council's policy matrix, the starting point figures were £4000 for each of 147 Eastbourne Avenue and 5 Westfield Terrace, and £8000 for 149 Eastbourne Avenue.

95. The Tribunal then went on to the next stages in the policy.

96. Stage 2 refers to consideration of the landlord's income and finances, and track record.

97. In its policy of the Council sets out 10 different types of "aggravating" factors to consider, stating that each instance would move the fine upwards proportionately from the starting point to the ceiling of the penalty band. It also refers to 6 different potential mitigating factors which could reduce the fine proportionately to the floor of the band.

98. The Council in the Final Notices decided that in each case that the value of 2 aggravating factors (being for the separate action under the Housing Act in respect of the Improvement Notice and for that not having been complied with within its time limits) were equally offset by 2 mitigating factors (being Mrs Rafique Mohammed's personal circumstances and that the offence had stopped) and the Tribunal agreed that each of those factors had been correctly included. However, the Tribunal also felt, because of Mr Mohammed's testimony that the strain of the various family circumstances had had adverse effect on his own mental health and directly impacted the ability to deal with matters in timely manner, that this warranted inclusion as a further mitigating factor, as it had been (albeit by reference to his daughter) when the Notices of intent had been issued. This was consistent with the Council having throughout effectively treated Mr and Mrs Mohammed as a family unit. As a consequence, £166.67 fell to be deducted from the starting point figures for 147 Eastbourne Avenue and 5 Westfield Terrace and £333.33 from that for 149 Eastbourne Avenue.

99. Stage 3 of the Council's policy requires the amount of any financial benefit to be added to the penalty calculation. The policy states that "calculating the amount of financial benefit obtained will need to be done on a case-by-case basis" before giving some examples. In a case relating to offences relating to selective licensing, the examples of potential financial benefit refer to "rental income whilst the property was operating unlicensed...; the cost of complying with any works or conditions on the licence; the cost of the licence application fee".

100. In this instance the Council had, after a review, decided to remove from its calculations the weeks gross rent which had been included in each of the 3 Notices of intent having by then concluded, and having particular regard to the totality principle, that to include the same would result in a disproportionate composite figure which as Mrs France said at the Hearing could be subject to severe criticism. The Tribunal agrees with that conclusion. However, its reasons for concluding that the gross rent should not automatically (or in this case) be added as being as a part of any financial benefit that has been obtained by committing the offence are somewhat different. In this case it would have led, as the Council have acknowledged, to an unconscionable result. This is particularly so having regard to its own delays in processing the application between January and July 2019.

101. The main reason however is that the guiding principle referred to in the Council's policy, and taken from the Guidance, is that civil penalties should remove any financial benefit that may have obtained *as a result of committing*

the offence. Where the offence is not having a licence, that does not inevitably equate to gross rent, and nor is it a justification for necessarily adding all the rental income to the other elements in the computation. Any *resultant* benefit is by definition limited to any profits of not obtaining a licence; in most cases, this is likely to be restricted to the costs of any unpaid licence fee and any other outstanding expenditure needed to obtain the licence. However, it would not normally include gross rental income from the premises for the period during which the offence was being committed; not only is the gross rent unlikely to comprise pure profit, but it is also unlikely to be income which the landlord would not have received but for committing the offence.

102. The Council's policy states that "calculating the amount of financial benefit obtained will need to be done on a case-by-case basis". In this case it is understood that the subject tenancies all began before the need for selective licences, and that therefore the rent accruing from them cannot properly be regarded as a benefit resulting from the offence, the fees (which include a supplement for being late) have been paid or are being paid under a payment plan, and the Council have granted licences to Mrs Rafique Mohammed as the proprietor of FR Properties. The Tribunal has decided that, in what is a rehearing not simply a review, nothing needs to be added under the heading of financial benefit.

103. Stage 4 of the Council's policy "in keeping with the principle that the cost of enforcement should be borne by the offender" sets out a table of the costs it will apply in different cases. In the present cases the median figure quoted and applied was £300 for each property, which the Tribunal is content to adopt.

104. Combining all of the above, the figure computed for 149 Eastbourne Avenue was £7966.67 and those for each of 147 Eastbourne Avenue and 5 Westfield Terrace were £4133.33.

105. 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 just, reasonable and proportionate in all the circumstances.

106. As part of that process, and in the circumstances of the case, the Tribunal was minded that it should have regard to the "principle of totality" i.e. that whilst the total fines should reflect all of the offending behaviour they must also be just and proportionate. The 3 separate offences were clearly connected stemming from the same acts of culpability but did relate to 3 separate properties. The Tribunal concluded that it would not be just and proportionate to simply add together the 3 individual fines and decided that each should be discounted by a quarter to arrive at a just and proportionate overall total. The composite figure thus calculated amounted to £12175.

107. The Tribunal, when reviewing that figure (apportioned as to £5975 for 149 Eastbourne Avenue and £3100 for each of the other two properties), reminded itself that:-

- the initial application was not received until two and a half months after the scheme commencement date, despite and after various reminders and warnings. It was immediately apparent that it was manifestly deficient and incomplete. The second and subsequent submissions were also severely deficient and there were further delays in submission of basic paperwork which should have been readily to hand. There were also delays in the payment of the application fees. The Council also clearly gave considerable amounts of support and advice to Mr Mohammed.
- Mrs Rafique Mohammed, for her own part, and despite being an experienced landlord with an extensive portfolio of properties, failed to directly engage with the application process and avoided repeated requests to attend a PACE interview.
- the Council would have potentially been entitled to pursue separate financial penalties from Mr Mohammed in his capacity as the manager of the properties, and a further financial penalty in respect of the late compliance with the Improvement Notice but has deliberately chosen not to do so.
- various hazards were identified at each of the properties as a direct consequence of the process. Some of the defects were serious requiring immediate attention. Sadly at least one appears to have played a part in causing actual physical harm.
- it must consider all 7 factors referred to in the Guidance being the severity of the offence, the culpability and track record of the offender, the harm caused to the tenant, punishment of the offender, and the need to deter not just the offender but also others from repetition as well as removing any financial benefit obtained as a result of committing the offence.

The Tribunal also noted that the overall figure of £12175

- is the equivalent of approximately 9 months' rent for each of the 3 properties,
- and is 40.58% of the maximum penalty that the Council could have imposed by law for a single offence being £30,000, but which understandably the Guidance states generally would only be expected to be reserved for the very worst offenders.

108. The Tribunal also had regard to Mrs Rafique Mohammed's known financial circumstances. She had not attempted prior to the Hearing to provide any evidence in support of her general statement that the financial burden of the proposed penalty would cause cash flow problems and jeopardise her livelihood. There was no dispute as to her ownership of 10 properties, albeit with some being clearly mortgaged. Whilst the Tribunal was not unsympathetic to the potential, albeit unproven, adverse effect the pandemic on the family's rental and other corner-shop business, it is clear that, notwithstanding the mortgage indebtedness, Mrs Rafique Mohammed is the owner of substantial assets, and as such the Tribunal found no compelling reason to further limit the extent of the financial penalties. As the Guidance confirms "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”.

109. The Tribunal, having reviewed all of the evidence and carefully considered all the matters referred to in the Guidance, is content that the total figure of £12175 for the 3 properties together is just and proportionate in all the circumstances and sufficient to achieve the 7 objectives mentioned in the Guidance.

Tribunal Judge J Going
23 April 2022