



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

**Case Reference** : **MAN/00BN/HNA/2021/0015**

**Property** : **16, Saxon Street, Manchester M40 7BY**

**Applicant** : **Mr I Mbachu**

**Respondent** : **Manchester City Council**

**Type of application** : **Appeal against a financial penalty –  
Section 249A & Schedule 13A to the  
Housing Act 2004**

**Tribunal Members** : **Tribunal Judge C Wood  
Tribunal Member N Swain  
Tribunal Member P Mountain**

**Date of Decision** : **3 August 2021**

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**ORDER**

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## **Order**

1. In accordance with paragraph 10(4) of Schedule 13A to the Housing Act 2004, (“the Act”), the Tribunal varies the final notice dated 30 June 2020 by reducing the financial penalty from £12500 to £9999.

## **Application**

2. By an application dated 13 October 2020, (“the Application”), the Applicant appealed against a financial penalty under section 249(a) of the Act. In accepting the Application, the Tribunal had extended the period for making an appeal against a financial penalty.
3. In a case management note dated 11 March 2021, the Tribunal explained the reasons why it was not willing to re-visit its decision to extend the period for making the Application.
4. Directions dated 25 March 2021 were issued pursuant to which both parties submitted written representations.
5. The Application was determined following a remote video hearing held on 1 July 2021 attended in person by the Applicant, Mr. Mbachu and at which the Respondent was represented by Ms C Parmar of Counsel. Ms Rachel Ransome and Ms Amanda Battle, witnesses for the Respondent, were also present.

## **Law and Guidance - Power to impose financial penalties**

6. New provisions were inserted into the 2004 Act by section 126 and Schedule 9 of the Housing and Planning Act 2016. One of those provisions was section 249A, which came into force on 6 April 2017. It enables a local housing authority to impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person’s conduct amounts to a ‘relevant housing offence’ in respect of premises in England.
7. Relevant housing offences are listed in section 249A(2). They include the offence, under section 30 of the 2004 Act, of failing to comply with an improvement notice.
8. Only one financial penalty under section 249A may be imposed on a person in respect of the same conduct. The amount of that penalty is determined by the local housing authority (but it may not exceed £30,000), and its imposition is an alternative to instituting criminal proceedings for the offence in question.

## **Procedural requirements**

9. Schedule 13A to the 2004 Act sets out the procedure which local housing authorities must follow in relation to financial penalties imposed under section 249A. Before imposing such a penalty on a person, the local housing authority must give him or her a notice of intent setting out:
  - the amount of the proposed financial penalty;

- the reasons for proposing to impose it; and
  - information about the right to make representations.
10. Unless the conduct to which the financial penalty relates is continuing, that notice must be given before the end of the period of six months beginning on the first day on which the local housing authority has sufficient evidence of that conduct.
  11. A person who is given a notice of intent has the right to make written representations to the local housing authority about the proposal to impose a financial penalty. Any such representations must be made within the period of 28 days beginning with the day after that on which the notice of intent was given. After the end of that period, the local housing authority must decide whether to impose a financial penalty and, if a penalty is to be imposed, its amount.
  12. If the local housing authority decides to impose a financial penalty on a person, it must give that person a final notice setting out:
    - the amount of the financial penalty;
    - the reasons for imposing it;
    - information about how to pay the penalty;
    - the period for payment of the penalty;
    - information about rights of appeal; and
    - the consequences of failure to comply with the notice.

### **Relevant guidance**

13. A local housing authority must have regard to any guidance given by the Secretary of State about the exercise of its functions in respect of the imposition of financial penalties. Such guidance (“the HCLG Guidance”) was issued by the Ministry of Housing, Communities and Local Government in April 2018: Civil penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities. It states that local housing authorities are expected to develop and document their own policy on when to prosecute and when to issue a financial penalty and should decide which option to pursue on a case by case basis. The HCLG Guidance also states that local housing authorities should develop and document their own policy on determining the appropriate level of penalty in a particular case. However, it goes on to state: “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.”
14. The HCLG Guidance also sets out the following list of factors which local housing authorities should consider to help ensure that financial penalties are set at an appropriate level:
  - a. Severity of the offence.

- b. Culpability and track record of the offender.
  - c. The harm caused to the tenant.
  - d. Punishment of the offender.
  - e. Deterrence of the offender from repeating the offence.
  - f. Deterrence of others from committing similar offences.
  - g. Removal of any financial benefit the offender may have obtained as a result of committing the offence.
15. In recognition of the expectation that local housing authorities will develop and document their own policies on financial penalties, the Respondent, as a member of the Association of Greater Manchester Authorities, (“AGMA”), has adopted the AGMA Policy on Civil (Financial) Penalties as an Alternative to Prosecution under the Housing and Planning Act 2016 (a copy of which is attached at pages 28-36 of the Respondent’s Statement of Case), (“the Policy”). We make further reference to the Policy later in these reasons.

### **Appeals**

16. A final notice given under Schedule 13A to the 2004 Act must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was given. However, this is subject to the right of the person to whom a final notice is given to appeal to the Tribunal (under paragraph 10 of Schedule 13A).
17. Such an appeal may be made against the decision to impose the penalty, or the amount of the penalty. It must be made within 28 days after the date on which the final notice was sent to the appellant. The final notice is then suspended until the appeal is finally determined or withdrawn.
18. The appeal is by way of a re-hearing of the local housing authority’s decision, but may be determined by the Tribunal having regard to matters of which the authority was unaware. The Tribunal may confirm, vary or cancel the final notice. However, the Tribunal may not vary a final notice so as to make it impose a financial penalty of more than the local housing authority could have imposed.

### **Evidence**

19. The Applicant, Mr. Mbachu, made initial oral submissions to the Tribunal, summarised as follows:
- (1) the imposition of a financial penalty is unfair;
  - (2) at the 1<sup>st</sup> inspection, the only defect identified was the absence of a working fire alarm which was installed immediately afterwards;
  - (3) the defect in the front window is a crack only, i.e it is not broken or unsafe;

- (4) there is nothing inherently wrong with the patio door being of half-wood and half-glass;
  - (5) he is not a “trouble-maker” and has no objection to fixing defects at the house; he had considered installing double-glazing throughout which would have resolved the issues with the window and door;
  - (6) he needed more time to complete the works because of personal and financial difficulties and, subsequently, difficulties caused by the pandemic/lockdowns;
  - (7) these personal and financial difficulties were made clear at the PACE interview in February 2020;
  - (8) he had tried repeatedly to sort out the window; his mistaken assumption that he would need to replace the window rather than just the glass had delayed matters; when he had replaced the glass in late April 2020 he had notified Ms Battle but did not realise until later that she was away from work;
  - (9) he did not know about the Respondent’s intention to impose a financial penalty until receipt of the final notice dated 30 June 2020, (“the Final Notice”), because the notice of intent dated 16 March 2020, (“the Notice of Intent”) was sent to the Property address which had he had not visited since March 2020 (because of lockdown restrictions).
20. The hearing was adjourned briefly to allow all parties an opportunity to re-read the Case Management Note which set out the Tribunal’s reasoning for not reviewing its decision to extend the time for the making of the appeal by Mr. Mbachu against the imposition of a financial penalty. On resumption, the Tribunal made it clear that this matter had been fully addressed and would not be re-visited at this hearing.
21. Mr. Mbachu concluded his opening submissions with a request that the Tribunal “throw out” the charge of £12500 on the basis that it was “unfair”. All of the works had been done by early May 2020, other than the patio door which was satisfactory in its existing state.
22. Ms Parmar, Counsel for the Respondent, made opening submissions, summarised as following:
- (1) a referral was made to the Respondent in August 2019 which led to the Respondent ascertaining that Mr.Mbachu was the person responsible for the Property and to the 1<sup>st</sup> inspection on 16 August 2019;
  - (2) Category 1 and 2 hazards were identified at that 1<sup>st</sup> inspection, the most important of which was the lack of any working fire detection equipment. This was remedied on 27 August 2019;
  - (3) there were 3 tenants in occupation at that 1<sup>st</sup> inspection;

- (4) the other defects identified were: the crack in the glass in the front window; the defective condition of the patio door; an excessive number of extension cables in bed and living rooms due to an inadequate number of electric sockets; the location of electrical sockets in the kitchen; the condition of the kitchen units;
- (5) Mr.Mbachu appeared reluctant to engage in any discussion with the Respondent about these matters at the inspection or afterwards;
- (6) because Category 1 hazards had been identified at the inspection, the Respondent was obliged to take enforcement action and the improvement notice dated 6 September 2019, (“the Improvement Notice”), was issued, together with a demand for a fee of £300. The Improvement Notice required completion of the works by 13 November 2019;
- (7) the Property was re-inspected on 17 January 2020. Mr. Mbachu was not present. None of the defects set out in the Improvement Notice had been remedied;
- (8) following the 2<sup>nd</sup> inspection, Mr.Mbachu contacted the Respondent in January 2020 by telephone to confirm that the window would be repaired but this did not happen until April 2020;
- (9) Mr.Mbachu was first advised of the possibility of a financial penalty notice being issued in that telephone call;
- (10) during the PACE interview held on 28 February 2020, Mr.Mbachu confirmed his correspondence address as the Property, which is why the Notice of Intent and the Final Notice were both sent to this address. (A transcript of the PACE interview was available to the Tribunal as part of the Respondent’s written evidence.);
- (11) in the period from the 1<sup>st</sup> inspection on 16 August 2019 until the issue of the Final Notice in June 2020, and including at the PACE interview, Mr.Mbachu had not mentioned any financial difficulties he was experiencing. At the PACE interview, the Respondent considered that Mr.Mbachu was being evasive when asked for information regarding the tenancies at the Property and the rents being received. Experian searches undertaken by the Respondent in April 2021 disclosed Mr.Mbachu as having cash deposits in 2 separate accounts of £426 and in excess of £300,000 respectively;
- (12) the suggestion that the Respondent had “gone after” Mr.Mbachu “for no good reason” was disputed: the Respondent was legally required to undertake an inspection following the referral of the Property to it; following the 1<sup>st</sup> inspection, the defects identified and the remedial works required were clearly set out for Mr.Mbachu in the Improvement Notice; he was given more time to carry out the remedial works than that prescribed in the Improvement Notice, (13 November 2019), as the 2<sup>nd</sup> inspection did not take place until 5 months later on 17 January 2020;

- (13) the period between the issue of the Improvement Notice and the 2<sup>nd</sup> inspection on 17 January 2020 was not affected by any restrictions on movement and/or access to the Property as the result of covid-19 pandemic;
  - (14) at the PACE interview, Mr.Mbachu said that he had not read the Improvement Notice, which the Respondent considered to be evidence of Mr.Mbachu's failure to engage in the process;
  - (15) the Respondent considered Mr. Mbachu's failure to undertake any of the remedial works constituted a deliberate breach of the Improvement Notice;
  - (16) it was acknowledged by the Respondent that Mr.Mbachu, as the owner of one property, had no relevant track record of previous failures of compliance with enforcement action. It was also acknowledged that the harm to which the tenants had been exposed by Mr. Mbachu's failure of compliance with the Improvement Notice was low but that, nonetheless, they had been exposed to harm;
  - (17) the Respondent considered the issue of a financial penalty notice to be appropriate as a deterrent against future offending by Mr. Mbachu and to remove the financial benefit received during the period of non-compliance;
  - (18) it was noted that Mr.Mbachu had not appealed against the banding of the financial penalty as determined by the Respondent in accordance with the Policy.
23. Ms Rachel Ransome (Neighbourhood Team Lead for the Respondent) confirmed to the Tribunal as follows:
- (1) she was present at the inspection on 17 January 2020 (but not at the inspection on 16 August 2019); she received a telephone call from Mr. Mbachu on 20 January 2020 to say that he had not received the notice confirming the details of the 2<sup>nd</sup> inspection but that he would be doing the works;
  - (2) a further call was received on 22 October 2020 (and followed up in an email dated 23 October 2020) to say that the works had been carried out in May/June 2020.
24. In response to a question from the Tribunal regarding the Respondent's determination of "high culpability", Ms Amanda Battle, (Neighbourhood Compliance Officer for the Respondent), confirmed as follows:
- (1) at the PACE interview, Mr.Mbachu accepted sole responsibility for the Property;
  - (2) following the 1<sup>st</sup> inspection, the defects identified at the Property and the remedial works required were set out clearly in the Improvement Notice;

- (3) as at the date of the 2<sup>nd</sup> inspection, no remedial works had been undertaken;
  - (4) “Medium culpability” was appropriate where some works have been undertaken; “high culpability” where nothing has been done;
  - (5) no further inspection of the Property was undertaken.
25. There was a further brief adjournment of the hearing. On resumption, Mr.Mbachu made the following submissions in response:
- (1) the Respondent had failed to demonstrate fairness in their actions;
  - (2) he had been reluctant to tell the Respondent much about his financial position as he was concerned about other people (particularly people living on the same street as the Property) becoming aware of this information. He subsequently stated that the issue throughout had been lack of finance which he had not hidden from the Respondent;
  - (3) he was unable to control the over-use of extension cables by the tenants. He was willing to install more electricity sockets but was focused on the replacement window. It was only much later that he realised that he only needed to replace the glass (and not the entire frame);
  - (4) he rejected the claim of lack of engagement on his part;
  - (5) the kitchen unit was one cupboard, used only by the Respondent when visiting the Property, which “wobbled”;
  - (6) it was unclear why the Respondent had not re-visited the Property;
  - (7) Mr. Mbachu made allegations of racism against his neighbours and that the Respondent’s action against him were, at least, in part “racially-motivated”;
  - (8) there was a fire alarm installed at the Property. The fire brigade replaced it free of charge following the 1<sup>st</sup> inspection;
  - (9) he had been “forced” to sell the Property, paid off the mortgage and had recently completed the purchase of another property in Liverpool (mortgage-free) and had retained sufficient monies to do necessary renovation works at his house in London;
  - (10) it would have been fairer if the Respondent had checked whether the works had been done before issuing the Final Notice.
26. In response to questions from the Tribunal, Mr. Mbachu stated as follows:
- (1) he confirmed that he had withheld details of his financial circumstances at the PACE interview because he was concerned about them being divulged to 3<sup>rd</sup> parties;



- (2) lack of finance was the reason for the delay in undertaking works and this had been discussed with Ms Battle;
- (3) he confirmed that he understood his duties as a landlord;
- (4) from April 2019 (when there were 4 tenants at the Property) until it was sold in November 2020, the monthly aggregate rental income was c£1190. He paid the utility bills from the rental income;
- (5) he confirmed the financial details of the sale of the Property (together with some adjoining land) initially as follows:

	£
Sale proceeds:	480000
Outstanding mortgage:	<u>70000</u>
Net sale proceeds:	410000
Purchase price – Liverpool property:	<u>135000</u>
Final balance:	<u>275000</u>
And then as follows:	£
Net sale proceeds:	307000
Purchase price – Liverpool property:	<u>135000</u>
Interim balance:	172000
Miscellaneous debts:	<u>45000</u>
Final balance:	<u>127000</u>

Mr.Mbachu had used £10,000 for renovation works at his property in London;

- (6) the last time he had visited the Property was in March 2020;
  - (7) he had sent a text/WhatsApp message to the Respondent on or about 8 June 2020 confirming that all works (other than the patio door) had been completed in May 2020. These messages were still available on his telephone.
27. Ms Parmar for the Respondent objected to the late submission of this evidence as Mr. Mbachu had been given plenty of opportunity prior to the hearing to submit it. Ms Battle confirmed that she no longer had possession of the work mobile to which any such messages would have been sent. Ms Parmar noted that, even if the Tribunal were to allow Mr. Mbachu to submit evidence of these messages, it would be impossible for the Respondent to confirm if the messages had been received and/or read.
28. The hearing was then adjourned for a lunch recess. Without prejudice to the Tribunal’s determination on their admissibility (which they would consider during the adjournment), Mr. Mbachu was instructed to use the time to see if he could find the messages to which he had referred.

29. On resumption, Mr. Mbachu confirmed that he had been unable to find the messages. The Tribunal determined that Mr. Mbachu would be permitted 7 days from the date of the hearing to submit evidence of such messages to the Tribunal. This permission was granted on the basis that the messages would be treated by the Tribunal as evidence of Mr. Mbachu having sent them but not of receipt by the Respondent and/or the Respondent having read the messages and/or the Respondent having read and ignored them. Ms Parmar confirmed that, on those conditions, the Respondent had no objection to the submission of this evidence by Mr. Mbachu.
30. In response to questions from the Tribunal, Ms Battle confirmed that:
- (1) if they had received confirmation from Mr. Mbachu that he had undertaken the necessary remedial works to address the 2 Category 1 and 2 of the Category hazards, in normal circumstances, they would have in all probability re-inspected (although because of covid-19 restrictions they might not have done so in this case); and,
  - (2) subject to confirmation of the works having been satisfactorily undertaken, this would have been regarded as a mitigating factor justifying a reduction of £1000 to the fine (ie to £11,500);
  - (3) in the absence of inspection, they would have required photographic evidence of satisfactory completion of the works.
31. In closing submissions, Ms Parmar for the Respondent made the following points:
- (1) the Respondent has complied with all relevant laws and policies in its decision making leading to the issue of the Final Notice;
  - (2) there is no benefit to the Respondent in pursuing such action which is expensive and time-consuming;
  - (3) the Respondent recognises that Mr. Mbachu is a man of faith but this is a legal issue;
  - (4) the Respondent considers that there are some discrepancies in Mr. Mbachu's evidence, particularly in respect of his financial circumstances, and considered him to have been evasive in his responses to the Tribunal. Specifically, it was unclear how Mr. Mbachu had calculated the receipt of £307000 from the sale of the Property, or how he had been left with only £10,000;
  - (5) the remedial works in the Improvement Notice were not significant in terms of cost and no evidence of financial hardship had been provided to the Respondent which would have prevented Mr. Mbachu from undertaking them.

32. In closing submissions, Mr.Mbachu made the following points:
- (1) in further explanation of the application of the sale proceeds of the Property, he confirmed that he had paid £45000 to the mortgage company, paid some individuals unspecified amounts and the remaining £10000 has been used in the construction of an extension at his property in London. There are no monies remaining;
  - (2) the Respondent was made aware that he was suffering financial hardship;
  - (3) the Respondent should have been more pro-active in contacting him;
  - (4) the works were done in May 2020 and the Respondent was sent a message confirming this in June 2020. As such, there was no reason to issue the Final Notice. The Respondent should have come to inspect again;
  - (5) the Respondent should have realised that, because of the covid-19 restrictions, Mr. Mbachu would not visit the Property/would not receive correspondence there, and should have also sent correspondence relating to the financial penalty to his London address, as they had done with correspondence in the past;
  - (6) there is no reason for the imposition of a financial penalty and the Tribunal is requested to cancel it;
  - (7) Mr. Mbachu acknowledged that the Respondent had allowed him time to undertake the works but he had demonstrated that he was willing to undertake works (even where he did not agree they were necessary). The delay had been caused by not discovering until much later in the process that he could replace the glass only in the front window, rather than the frame.
33. By email dated 6 July 2021, Mr. Mbachu submitted to the Tribunal (with a copy to the Respondent) 3 photographs of text/WhatsApp messages as follows:
- (1) messages dated 21 January 2020 from “Amanda” confirming that she was in the office and would call Mr.Mbachu later that day, and his reply requesting that she do so;
  - (2) message dated 28 January 2020 to “Amanda” confirming that Mr. Mbachu is using B&Q’s “made to measure site for both door and window”;
  - (3) message dated 8 June 2020 from Mr. Mbachu to “Amanda” confirming that he had “fixed window, kitchen cupboards, the wiring for TV socket” and that “Just back door remaining and am looking at getting it fixed too”.

## Reasons

34. “Relevant housing offence”: the Tribunal was satisfied beyond reasonable doubt that the Applicant’s failure to comply with the Improvement Notice was conduct amounting to an offence under s30 of the Act, which constituted a “relevant housing offence” for the purposes of s249A of the Act, permitting the imposition of a financial penalty.
35. Procedural requirements: the Tribunal was satisfied that, in respect of the Notice of Intent and the Final Notice, the Respondent had complied with the following procedural requirements as required under Schedule 13A to the Act:
  - (1) the offence under s30 of the Act was continuing as at the date of the Notice of Intent, namely, 16 March 2020;
  - (2) the Notice of Intent and the Final Notice contained the information as required under paragraphs 3 and 8 of Schedule 13A to the Act; and,
  - (3) the Notice of Intent contained information about the right to make representations.
36. Financial hardship/financial circumstances: the Tribunal made the following findings:
  - (1) Mr. Mbachu had not provided any documentary evidence of his financial circumstances and/or of any financial hardship;
  - (2) it was not persuaded that Mr.Mbachu’s concern that information about his financial affairs would be disclosed to 3<sup>rd</sup> parties was a reasonable justification for withholding information from the Respondent at the PACE interview or subsequently regarding the rental income from the Property.
  - (3) at the PACE interview, Mr. Mbachu had referred to financial constraints as a reason for the delay in undertaking the remedial works;
  - (4) in view of Mr. Mbachu’s oral evidence that the sale of the Property was in November 2020 and the purchase of a further rental property in Liverpool had only completed recently, it was possible that the significant cash deposit of £320,354 identified in the Experian search carried out by the Respondent in April 2021 may have been related to the sale proceeds of the Property;
  - (5) Mr. Mbachu’s oral evidence at the hearing regarding the amount and subsequent application of the sale proceeds of the Property was confusing and lacked transparency. Specifically, the Tribunal was unable to reconcile the cash balance of £320,354 with Mr. Mbachu’s oral evidence regarding the amount and/or disbursement of those sale proceeds;
  - (6) there was no evidence that Mr. Mbachu was suffering financial hardship that would have prevented him from undertaking the works

required under the Improvement Notice or that should have been taken into account in determining the amount of the financial penalty;

- (7) the limited evidence that was available suggested that Mr. Mbachu had cash assets available at the date of the Final Notice sufficient to pay the financial penalty, and that, at the date of this determination, he has substantial property assets, one of which is mortgage-free.

37. Text messages: the Tribunal made the following findings:

- (1) the images appear to be of WhatsApp messages;
- (2) the messages of 21 and 28 January 2020 evidence that discussions did take place between Mr. Mbashu and the Respondent following the 2<sup>nd</sup> inspection;
- (3) whilst in the message of 28 January 2020, Mr.Mbachu says that he has placed orders for a new window and door, his subsequent written and oral evidence appears to contradict this. Specifically, Mr. Mbachu stated that the glass in the window was not replaced until May 2020, and that the remedial works to the patio door were never undertaken;
- (4) it is satisfied that Mr.Mbachu wrote a message on 8 June 2020 informing the Respondent that he had done works to the window, the kitchen cupboards and the TV socket;
- (5) successful transmission of a WhatsApp message is indicated by 2 grey ticks at the end of the message; these ticks turn blue when the message has been read. The one grey tick at the end of this message dated 8 June 2020 indicates that it was not successfully sent, although the Tribunal is satisfied that Mr. Mbachu intended that it should have been;
- (6) the Tribunal is therefore satisfied that the Respondent was not notified of the completion of some of the remedial works by this message and could not therefore have taken this into account as a mitigating factor prior to the issue of the Final Notice.

38. Completion of the works/further inspection: the Tribunal made the following findings:

- (1) there is no evidence of any communication from Mr. Mbachu to the Respondent following up on his message of 8 June 2020 (which it is presumed Mr. Mbachu believed had been sent);
- (2) there is no evidence that Mr.Mbachu provided the Respondent with any photographic evidence of the works said to have been undertaken in May 2020;
- (3) the obligation was on Mr. Mbachu to persuade the Respondent that there was a reason to re-inspect the Property;

- (4) there is no evidence that the remedial works said to have been undertaken in May 2020 were done in compliance with the Improvement Notice;
  - (5) there is no evidence that the remedial works to the patio door or the re-location of the electrical sockets in the kitchen were undertaken.
39. Determination of the financial penalty/application of the Policy: the Tribunal made the following findings:
- (1) it agreed with the Respondent’s categorisation of the harm as “low”;
  - (2) the Tribunal considered that the categorisation of culpability in accordance with the Policy should be “medium” rather than “high”, where “high” culpability refers to “serious or systemic failings, actual foresight or wilful blindness to risk of offending”, and “medium” culpability refers to “failure...to take reasonable care to put in place and enforce proper systems for avoiding commission of the offence” and, by way of example, “part compliance with a schedule of works, but failure to fully complete all schedule items within notice timescale”.

The Tribunal noted as follows:

- (i) there was no evidence before the Tribunal of any “serious or systemic failings” on Mr.Mbachu’s part, nor of “actual foresight...to risk of offending”;
  - (ii) the Respondent referred to Mr. Mbachu’s failure to engage with it in relation to the Improvement Notice. The Tribunal considered that there is evidence of engagement (albeit late and limited) by Mr. Mbachu with the Respondent including, without limitation, the telephone call and WhatApp messages in January 2020 following the inspection on 17 January 2020 (which also suggested some prior communication between the parties) and his attendance at the PACE interview;
  - (iii) the Tribunal accepted the WhatsApp message of 8 June 2020 as evidence that Mr. Mbachu had undertaken some of the remedial works as required under the Improvement Notice;
  - (iv) taken together, the Tribunal considered that the evidence of Mr.Mbachu’s conduct in paragraphs (ii) and (iii) did not support a determination of “wilful blindness” but was more indicative of a “failure to take reasonable care”;
- (3) on balance, the Tribunal therefore determined that a categorisation of “medium” culpability was more apposite to the circumstances in this case.
  - (4) Having regard to the Tribunal’s determination in paragraph (3) above, in accordance with the Policy, the relevant financial penalty banding for low harm/medium culpability is Band 2, where the range is from £5000 – 9999 with a starting point of £7500.

- (5) The Tribunal noted that the financial penalty should be set at an appropriate level in order to ensure that it reflects the factors set out in paragraph 4 of the Policy, including, without limitation, removing any financial benefit obtained from committing the offence.
- (6) The Tribunal noted that Mr. Mbachu had continued to receive rental income from the Property of c£1000 per month throughout the period of commission of the offence until the sale of the Property in or about November 2020, a period of 12 months.
- (7) The Tribunal determined that the starting point of £7500 was not an appropriate level to reflect the financial benefit obtained by Mr. Mbachu.
- (8) Further, the Tribunal had regard to paragraph 5.4 of the Policy which provides that the local authority may increase or reduce the financial penalty within the relevant banding where they “...are satisfied that the assets and income (not just the rental income) of the offender are such that it is just and appropriate” to do so.
- (9) The Tribunal was satisfied that it was appropriate to take into account Mr. Mbachu’s assets and income, including the following:
  - (i) the rental income from the Property during the period of the commission of the relevant housing offence until its sale in or about November 2020;
  - (ii) the mortgage-free property in Liverpool and the anticipated rental income from that property;
  - (iii) Mr.Mbachu’s property in London; and,
  - (iv) Mr. Mbachu’s failure to fully account for the application of the sale proceeds of the Property.
- (10) Having regard to the evidence of his assets and income as disclosed by Mr. Mbachu to the Tribunal, the Tribunal determined that it was just and appropriate to increase the financial penalty to the maximum amount of Band 2, namely, £9999.
- (11) In accordance with paragraph 10(4) of Schedule 13 to the Act, the Tribunal varied the Final Notice by reducing the amount of the financial penalty from £12500 to £9999.

C Wood  
Tribunal Judge  
3 August 2021