UPPER TRIBUNAL (LANDS CHAMBER)

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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

HOUSING – CIVIL PENALTY – Housing Act 2004 – licences for rented property – financial penalty notice - the approach to be taken by courts and tribunals on appeals from decisions taken by a local authority in accordance with a lawful policy

AN APPEAL AGAINST DECISIONS OF THE FIRST TIER TRIBUNAL (PROPERTY CHAMBER)

BETWEEN:

LONDON BOROUGH OF WALTHAM FOREST **Appellant**

and

ALLAN MARSHALL

Respondent

Re: 17 Horner Court, South Birkbeck Road, London, E11 4HY

Appellant

LONDON BOROUGH OF WALTHAM FOREST

and **Respondent**

HUSEYIN USTEK

Re: 6 Flempton Road, Leyton, London E10 7NH

Upper Tribunal Judge Elizabeth Cooke
14 January 2020
Royal Courts of Justice

Mr Underwood, Ms O'Leary and Mr Calzavara and for the appellant, instructed by Sharpe Pritchard LLP
The respondents did not appear and were not represented

The following cases are referred to in this decision:

Brent London Borough Council v Reynolds [2001] EWCA Civ 1843

British Oxygen Co Ltd v Minister of Technology [1971] AC 610

Clark v Manchester City Council [2015] UKUT 129 (LC)

Darlington BC v Kaye [2004] EWHC 2836 (Admin) *R (Hope and Glory Public House Ltd) v City of Westminster Magistrates' Court* [2011] EWCA Civ 31

R v Chester Crown Court, ex p Pascoe and Jones (1987) 151 JP 752, QB

R (Hope and Glory Public House Ltd) v City of Westminster Magistrates' Court [2011] EWCA Civ 31

R v Sheffield Crown Court ex p Consterdine (1998) 34 LLR 19, QB

R (Townlink Ltd) v Thames Magistrates Court [2011] EWHC 898 (Admin)

R (Westminster City Council) v Middlesex Crown Court, Chorion plc and Fred Proud [2002] EWHC 1104 (Admin)

Sagnata Investments Ltd v Norwich Corporation [1971] 2 QB 614

Stepney Borough Council v Joffe [1949] 1 KB 599

Introduction

1. The Tribunal has heard two appeals by the London Borough of Waltham Forest from decisions made by the First-tier Tribunal ("the FTT"). One was the FTT's decision of 15 April 2019 in Mr Allan Marshall's appeal from a financial penalty notice imposed for failure to have a licence pursuant to the Housing Act 2004 for his property which he was renting out; the other was the decision of 28 May 2019 in Mr Huseyin Ustek's appeal from a financial penalty notice, again imposed for failure to have a licence for rented property. In both cases the FTT conducted a re-hearing, as the statute requires, and upheld the imposition of a penalty but substituted in each case a significantly lower amount.

2. The appellant sought, and was granted, permission to appeal in each case on the grounds, first, that the FTT was wrong to depart from, or to ignore, the appellant's policy for the determination of the amount of financial penalties and, second, that the FTT's decision in each case was based on inadequate or irrelevant considerations. I shall have more to say later about the relationship between those two grounds; as will be seen, they are two sides of the same coin. The two appeals raise an important issue about the respect to be paid by the FTT to a local housing authority's policy in making a decision following a re-hearing of this kind.

3. The appellant has applied to amend its grounds of appeal; it seemed to me that the amended grounds amounted to no more than a different and more complicated way of expressing the appellant's case and I therefore refused the application.

4. I heard the two appeals together on 14 January 2020 at the Royal Courts of Justice; the appellant was represented by Mr Underwood and Mr Calzavara in the appeal relating to Mr Marshall, and by Mr Underwood and Ms O'Leary in the appeal relating to Mr Uztek, and I am grateful to them all for their helpful arguments. Neither Mr Marshall nor Mr Uztek attended the hearing.

5. Mr Marshall filed a respondent's notice and wrote to the Tribunal on 26th September with his response to the appellant's grounds of appeal and further submissions. He was informed of the hearing date. He is a teacher and it may be that he has been unable to attend because of his professional commitments. Mr Ustek has not filed a respondent's notice and has taken no part on the appeal, but has been informed of the hearing date.

6. Rule 46 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 states that the Tribunal may proceed with a hearing in a party's absence if it is satisfied that reasonable steps have been taken to notify him of the hearing and considers that it is in the interests of justice to proceed. I am satisfied that reasonable steps have been taken to inform both Mr Marshall and Mr Uztek of the hearing date. At the hearing I took the view that it was in the interests of justice to proceed in view of the fact that all parties have been informed of the hearing date and that counsel for the appellant were present and prepared; it seemed unlikely that either respondent would attend if I adjourned.

7. In the paragraphs that follow I set out the background to these appeals in the relevant statutory provisions and in government and local policy. I then summarise the factual

background and the two decisions of the FTT. I consider the first ground of appeal, which is a matter of law and is common to both appeals, and finally the second ground separately in each case.

The statutory and policy background

8. The Housing Act 2004 ("the 2004 Act") introduced a new regime for the licensing of rented property, replacing the earlier scheme under the Housing Act 1985. As well as imposing licensing requirements for houses in multiple occupation, it enables local housing authorities to designate all or part of their district as subject to selective licensing, if prescribed conditions (for example, low housing demand, or persistent problems with anti-social behaviour in the area) are met.

9. When the Bill that preceded the 2004 Act was introduced in Parliament for its second reading, the Minister for Housing and Planning said that it would "help to create a fairer and better housing market and to protect the most vulnerable in housing", and would "give local authorities new powers selectively to license private landlords … and … set new and higher standards of management in such properties" (Hansard, 12 January 2004, C 53).

10. If such a designation is made then, within the designated area, houses to which Part 3 of the 2004 Act applies must be licensed (section 85 of the 2004 Act), and it is an offence for a person to have control of or to manage such a house if it is not so licensed (section 95).

11. Section 249A of the 2004 Act provides that where a local housing authority is satisfied beyond reasonable doubt that a person's conduct amounts to an offence under section 95 it may impose a financial penalty upon that person, provided the person has not been convicted of the offence and criminal proceedings are not under way. In other words, the financial penalty is an alternative to prosecution. The penalty must not be more than £30,000 (section 249A(4)).

12. Schedule 13A to the 2004 Act prescribes the procedure for imposing financial penalties, which involves the service of a notice of intent, an opportunity for the person to make representations, and the service of a final notice imposing a penalty. Paragraph 12 of that Schedule requires local housing authorities to have regard to any guidance given by the Secretary of State about financial penalties.

13. Schedule 13A also provides that a person to whom a final notice is given may appeal to the FTT (paragraph 10) against the decision to impose the penalty or the amount; the appeal is to be "a re-hearing of the local housing authority's decision" but it may be determined having regard to matters of which the authority was unaware (paragraph 10(3)).

14. The Secretary of State published guidance in 2016, which was re-issued in 2018, and is relevant to offences under the 2004 Act (including the offence under section 95) and under the Housing and Planning Act 2016. In its foreword there is a reference to the increase in the maximum penalty to £30,000 "because a smaller fine may not be significant enough for landlords who flout the law to think seriously about their behaviour and provide good quality accommodation for their tenants."

15. At paragraph 1.2 the guidance states that "local housing authorities must have regard to this guidance in the exercise of their functions"; at paragraph 6.3 it says that the FTT is not bound by the guidance but "will have regard to it". At paragraph 3.5 the guidance says that local authorities should develop and document their own policy on determining the appropriate level of civil penalty in a particular case; it adds that "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." The paragraph goes on to set out the matters that local housing authorities "should consider" "to help ensure that the civil penalty is 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. Deter the offender from repeating the offence.

    f. Deter others from committing similar offences.

    g. Remove any financial benefit the offender may have obtained as a result of committing the offence.

16. On 24 June 2014 the appellant determined to designate the whole of its area as a Selective Licensing Area pursuant to section 80 of the 2004 Act. Before doing so it undertook a consultation exercise with landlords, tenants, and representative groups. The scheme came into effect on 1 April 2015, and had the effect that most privately rented homes in the borough, including (it is not in dispute) the properties relevant to each of these appeals, had to be licensed.

17. In accordance with the Secretary of State's guidance the appellant in April 2017 adopted a policy about the use of financial penalties ("the Policy"). It states that the aims of the Policy are "to protect public health, reduce anti-social behaviour and safeguard housing standards by ensuring compliance with the relevant legislation, whilst recognising the needs of local businesses". It incorporates, at Appendix I, the seven factors set out in the Secretary of State's guidance (a – g above). It then sets out a "Civil Penalties Matrix" which is said to indicate a minimum "tariff" for various categories of offence, "with the final level of the civil penalty adjusted in each case to take into account other relevant or aggravating factors." The matrix is as follows:

Band number	Severity of offence	Band width (£)
1	Moderate	0 – 4,999
2		5,000 – 9,999
3	Serious	10,000 – 14,999
4		15,000 – 19,999
5	Severe	20,000 – 24,999
6		25,000 – 30,000

18. The Policy goes on to say how the bands and levels of severity are applied for particular offences. Under "Failure to licence a property under the Council's Selective Licensing Scheme" the Policy states that failure to obtain such a licence is regarded as a serious issue, because it means that tenants and the wider community are not protected by the regulatory control that licensing affords. The civil penalty for a landlord controlling five or fewer dwellings, with no other relevant factors or aggravating features, is regarded as a moderate band 2 offence, attracting a penalty of no less than £5,000. Where a landlord has a significant property portfolio or has demonstrated experience in letting and managing property, the failure to obtain a selective licence is said to be viewed as "severe", attracting a penalty of £15,000 or above (a band 4 offence); as will be seen from the use of band 4 in one of the present appeals (paragraph 36 below), probably "serious" is meant, rather than "severe".

19. Potential aggravating features are said to be the condition of the property and the presence of hazards, or poor management, lack of amenities or fire safety precautions, or overcrowding; evidence that the landlord was familiar with the need to obtain a property licence, for example their being a named licence holder or manager in respect of an already licensed property, is also an aggravating feature, as is a previous history of non-compliance.

20. I asked Mr Underwood what fell into Band 1; if I have understood correctly Band 1 is reserved for minor offences where there is a licence in place, and so has no role in a case of failure to obtain a licence (save to leave room for a penalty to fall below £5,000 where a discount is applied (as discussed below).

The factual background and the FTT's decisions

21. The following facts are either not in dispute or are set out in evidence that the FTT accepted.

Mr Marshall

22. Mr Marshall bought a long leasehold interest in flat 17, Horner Court, South Birkbeck Road, London E11 4HY with his partner in 2002, with the assistance of a mortgage, and they lived there as their home. In 2007 the flat was transferred to Mr Marshall and he was registered as sole proprietor. He moved out and began to let the flat in 2007 and has been letting it ever since. This is the only property that he lets; he is joint owner of another property where he and his partner live. He is a teacher, with a heavy burden of marking and preparation; the FTT found that he had a "generally rather relaxed approach to his paperwork."

23. Mr Marshall responded to the consultation that took place prior to the Selective Licensing Designation which came into force on 1 April 2015. On 22 April 2015 Mr Marshall created an online account for the purpose of making a licence application, but did not make one; his evidence, which the FTT accepted, was that he became frustrated with the process. Applications could only be made on line.

24. In May 2017 Mr Marshall granted a tenancy to Mr and Ms Cygal, who occupied it with their son. In September 2017 Ms Cygal applied for housing benefit, and the appellant's housing benefit team notified the licensing team which then investigated whether the property required a licence. On 20 December 2017 the appellant wrote to Mr Marshall asking him to apply for a licence within 14 days and informing him that failure to have a licence amounted to the commission of an offence, that the amount of a fine for that offence was unlimited, and that as an alternative to prosecution the appellant could impose a civil penalty of up to £30,000.

25. In January 2018 Mr Marshall tried to make an application on line but did not complete it. On 1 May 2018 he contacted the appellant by email to explain why he was having difficulties – he could not provide an email address for his mortgagee, which the form required – and asked if he could apply by post. The appellant, by its employee Mr Omoregie, responded on the same day with a solution to the email address problem, and told him that the application must be completed online. Mr Marshall emailed back on 2 May to thank Mr Omoregie, and the latter offered further assistance if needed.

26. On 1 May the appellant again asked Mr Marshall to apply for a licence and reminded him of the consequences of failing to do so. It also told him that it would be inspecting the property on 9 May 2018. The inspection took place and the appellant's officers spoke to Ms Cygal. On 17 May 2018 the appellant served on Mr Marshall a notice of its intention to impose a financial penalty of £5,000. The FTT had before it the witness statement of Jon Fine, a Team manager in the appellant's Private Sector Housing and licensing Scheme, which explains that the £5,000 was imposed as the minimum penalty in Band 2 which, as we have seen, is appropriate for a landlord controlling five or fewer dwellings, with no other relevant factors or aggravating features. The notice pointed out that if a penalty was imposed then there would be a 20% discount if by then an application for a licence had

been made; and that a 20% discount from the original penalty would be applied if a penalty was imposed and paid in 28 days. No representations were made in response. The FTT found that the notice was correctly served; it accepted Mr Marshall's evidence that he had no recollection of receiving it and would have taken action if he had.

27. On 6 August 2018 the appellant served a final notice on Mr Marshall informing him of the financial penalty of £5,000, offering a discount of20%, £1,000, if the penalty was paid within 28 days. On 7 August, however, Mr Marshall left for a 5-and-a-half week holiday in Bangkok. He returned on 31 August. On 9 September Mr Marshall emailed the appellant indicating his wish to appeal the penalty, explaining that he had been away on holiday and was only now able to deal with his post because he was busy doing preparation at the start of a new teaching job (he had been made redundant earlier in the summer).

28. On 30 September 2018 Mr Marshall made an application to the FTT, claiming not to have received the final notice; he later agreed that he received it. The FTT extended time for him to make the application.

29. On 23 January 2019 Mr Marshall applied for a licence for the property, having been under the impression that the need to do so was suspended during the appeal; the appellant's solicitors wrote to him with a reminder on 18 January. On 24 January the appellant offered to reduce the penalty to £4,500 but Mr Marshall rejected that offer, suggesting instead a penalty of £1,000 which the appellant rejected.

30. The FTT heard the appeal on 8 April and delivered its decision on 15 April 2019. It upheld the penalty, but varied the amount to £1,500. I will look at the detail of the FTT's decision when I come to consider the grounds of appeal.

Mr Ustek

31. Mr Ustek is Turkish and does not read or write English. He had a Turkish interpreter at the hearing before the FTT. On 12 February 2004 he bought the freehold of 6, Flempton Road, London E10 7NH. In March 2010 he applied for an HMO licence for it, and a licence was granted on 29 September 2010, for a period of five years. He gave his correspondence address as 175 Lea Bridge Road (as to which property, see below). In 2013 Mr Ustek let the property to Mr Weng and Mrs Wang, and when the HMO licence expired in 2015 he did not apply to renew it. It was not now an HMO, but fell within the Selective Licensing Designation.

32. In Aril 2008 Mr Ustek bought a 15-year lease of 175 Lea Bridge Road, E10 7PN. He still holds that lease; the ground floor is a kebab shop run by his son, and there is a 2-bedroom flat upstairs at 175A. In April 2004 Mr Ustek bought a 15-year lease of 173 Lea Bridge Road, which comprises a café on the ground floor and a 2-bedroom flat upstairs at 173A. In March 2016 Mr Ustek applied for a selective licence for the flat at 175A Lea Bridge Road, again giving his contact address as 175 Lea Bridge Road.

33. On 9 February 2017 the appellant wrote to Mr Ustek at that address warning him of the need to licence 6 Flempton Road; Mr Ustek's evidence was that he was in Turkey at the

time and did not see the letter. The appellant wrote again on 24 February with a further warning, and informing him that it intended to inspect the property on 7 March 2017. Mr Ustek's evidence was that he did not receive the letter. The inspection took place and the appellant's representative spoke to Mrs Wang.

34. On 27 February 2018, after two reminders from the appellant, Mr Ustek applied for a licence in respect of the occupation of the flat at 173A on 27 February 2018, stating that his address was 10 Mapleton Road, Enfield EN1 3PE

35. On 5 June 2018 the appellant visited 6 Flempton Road again, and Mrs Wang provided a witness statement. On 16 July 2018 the appellant wrote to Mr Ustek at 10 Mapleton Road warning him of the need to licence 6 Flempton Road. Mr Ustek's evidence was that he received the letter but did not read it, and that he took the letter to a friend, Didar Sahin, in September 2018 to ask her to translate and explain it to him.

36. On 11 September 2018 the appellant sent to Mr Ustek, a notice of intent to impose a financial penalty of £15,000, with an explanation of the available discounts. No representations were made in response. £15,000 is the minimum penalty in band 4, which was regarded as appropriate because Mr Ustek had experience in letting and managing property, held other licences, and had a history of non-compliance with improvement notices (see paragraphs 18 and 19 above). On 15 September 2018 Mr Ustek applied for a licence for 6 Flempton Road. A final notice of the decision to impose a financial penalty of £12,000 was served on 23 October 2018. The notice stated that the full penalty was £15,000, but that in view of his having made an application it was reduced by 20% to £12,000.

37. On 11 March 2019 the FTT dismissed Mr Ustek's appeal against financial penalties imposed for his failure to comply with improvement notices served by the appellant in respect of 173A and 175A Lea Bridge Road.

38. On 22 March 2019 the FTT – a different tribunal from the one that heard Mr Marshall's appeal - heard Mr Ustek's appeal against the financial penalty for failure to licence 6 Flempton Road. By its decision of 28 May 2019 it upheld the penalty but reduced it to £4,000. Again, I will come on to the detail of that decision in due course.

The grounds of appeal

39. In both cases the appellant says that the FTT was not entitled to "depart from and/or ignore the Policy" (I quote from the grounds of appeal from the decision relating to Mr Ustek) or that it was inappropriate for the FTT "to look behind and/or ignore the Policy" (grounds of appeal from the decision relating to Mr Marshall). The second ground of appeal was that the FTT's decision reducing the penalty in each case was inappropriate because no, or no adequate, explanation was given for that decision.

40. In the light of Mr Underwood's exposition of those grounds in his skeleton argument and at the hearing. I take the view that the two grounds are two sides of the same coin. What is said is that the FTT made a mistake of law in giving insufficient weight – indeed,

practically no weight at all – to the local housing authority's policy. Its decisions as to the amount of the penalty departed from the policy, and the FTT was not entitled to do so unless the landlord in each case produced exceptional reasons justifying a departure; put another way, it is argued that the FTT should not have departed from the policy unless it found that the appellant's decision in each case was wrong. Moreover, when considering such a departure the FTT should have reminded itself of the objectives of the policy and considered whether those objectives would still be achieved if it made a decision outwith the policy. What it did, instead of approaching the matter correctly, was to ignore the policy and to make decisions which were based on irrelevant or incorrect considerations.

41. That is my understanding of the grounds of appeal. At the hearing Mr Underwood's argument encompassed not only the circumstances in which the FTT might depart from the local housing authority's policy, but also the weight that it should afford to the housing authority's decision (within the policy), and although that point is not expressly raised in the grounds of appeal it seems to me that the case law on that point is so closely interwoven with the cases that discuss the approach to be taken to policies, that it cannot be omitted, and so I have had no hesitation in giving it full consideration. I now turn to the relevant authorities, of which Mr Underwood gave me a very impressive guided tour; for the most part I agree with what he says although I do not think that the case law goes quite so far as he says it does. In the light of that qualification, and also of the fact that I have not had the assistance of legal argument for either of the respondents, I go through the authorities at some length.

The authorities on appeals from decisions taken in accordance with a policy

Administrative decision-making and the role of policy

42. The starting point is that the appellant was entitled to adopt a policy about financial penalties, pursuant to the Secretary of State's guidance (see paragraph 15 above). And it is trite law that in applying such a policy it must not fetter its discretion. It must be "willing to listen to anyone with something new to say": *British Oxygen Co Ltd v Minister of Technology* [1971] AC 610, Lord Reid at p.625. As Lord Denning MR put it in *Sagnata Investments Ltd v Norwich Corporation* [1971] 2 QB 614 at p.626, "the administrative body must not apply the policy so rigidly as to reject an applicant without hearing what he has to say."

43. The decision in *Sagnata* flows from the principle in *British Oxygen Co Ltd*, as well as providing an introduction to the way the court should approach policies and decisions of local authorities. The applicant for judicial review had applied, under the Betting, Gaming and Lotteries Act 1963, to a committee of the Norwich Corporation for a licence for an amusement arcade. The committee followed the Corporation's policy not to allow amusement arcades in the city, in order to safeguard young people, and refused the licence. The decision was reversed on appeal to the quarter sessions by a recorder, Michael Havers QC. The Divisional Court upheld his decision, as did the Court of Appeal, by a majority. Edmund Davies LJ (at p.632D) explained that the recorder found that the local authority was entitled to have such a policy, but that it had applied it so rigidly that no application could succeed. Looking at the matter afresh the recorder expressly stated that he did not

overlook the Corporation's policy decision (p.633A), but he came to the conclusion that there was no evidence of any risk to young people if the licence were conferred, and allowed the appeal. The Court of Appeal, by a majority, regarded this as a proper approach.

44. Philimore LJ at p.639F said:

> "I think that the recorder was clearly right and that his judgment should not be disturbed. This is a case where he was satisfied that the council's committee had failed to keep an open mind and had applied their policy without regard to the facts of the individual case."

45. At p.640 he went on to describe the approach to be taken by the courts:

> "of course, [a judge] will bear in mind the view expressed by the local authority, and he will be slow to disagree; but if he is satisfied, as he was in this case, that they regarded themselves as tied hand and foot by a policy decision without liberty to look at the facts of the particular case, I should hope that he would do as the recorder did in this case and allow the appeal of the citizen."

46. There will be more to say about *Sagnata* in due course. For now, it demonstrates that one circumstance in which a court will depart from a local authority's policy will be where the policy was applied too rigidly.

47. Turning to the issues raised in this appeal, Mr Underwood placed the authorities in three groups, and I follow that grouping before turning to his argument about the Tribunal's decision in *Clark v Manchester City Council* [2015] UKUT 0129 (LC).

Appeals from decisions taken in accordance with a lawful policy

(i) the approach to policy

48. Mr Underwood took me to three decisions that explain the approach to be taken by a court to a local authority's policy. In *R v Chester Crown Court, ex p Pascoe and Jones* (1987) 151 JP 752, QB the applicants for judicial review had applied for a licence for a Tesco store in Chester to sell alcohol on a self-service basis, rather than separately in the kind of shop-within-a-shop that some of us are old enough to remember. The application was refused. The licensing justices had a policy of refusing such applications, in the light of the need to protect young people and to prevent theft; in publishing their policy they said that they would deviate from their policy in appropriate circumstances. The applicants appealed to the Crown Court, which upheld the justices' decision. They appealed to the Divisional Court of the Queen's Bench Division. Glidewell LJ said at pp. 755 and 757:

> "It is clear law … that licensing justices are entitled to adopt a general policy to be applied in the majority of cases… But they must always be prepared to consider each application on its merits and allow exceptions to the general policy.

> … If that is true of licensing justices, the same must be true of the crown court. The crown court, it was urged upon us … should normally speaking adopt the same general policy as the licensing justices… But it, like the justices, must consider whether the circumstances of the particular case do justify allowing an exception to the policy."
>
> … I agree that where there is a general policy and an applicant is seeking to persuade a court … to make a proper departure from it, that amongst the most important of the matters which the court … must consider is the reason for the policy and whether, if they were to grant what is sought by way of exception, those reasons would still be met".

49. It is important to note that the appeal succeeded. The Divisional Court found that the Crown Court bench did not "properly consider the matters that they ought to have considered in deciding whether or not to grant the appeal by way of exception from the general policy, and thus they did not properly exercise their discretion." The Crown Court had to start from the policy; but the appeal succeeded because the court had not given proper consideration to the possibility of departing from the policy. The court had fallen into the same error as had the original decision-maker in *Sagnata*, of staying too close to the policy.

50. *R v Sheffield Crown Court ex p Consterdine* (1998) 34 LLR 19, QB was a judicial review of the Crown Court's dismissal of an appeal from the magistrates' decision to refuse a provisional on-licence. Again, the justices had a policy which they applied; the Crown Court this time started from the policy and found, on proper consideration, that there were no reasons to depart from it; and the application for judicial review of the Crown Court's decision was refused. Turner J cited *ex p Pascoe and Jones* and said at 23:

> "Given that it is, in general, reasonable for there to be a policy and that there is no challenge to it, the question then arises whether it is incumbent on the committee to have to justify its decision to apply the policy, or is it for the applicant to demonstrate, if it can, that in the circumstances … the policy should not apply for reasons which it has advanced and made good? … [If] the proposition that it is for the committee to prove that the policy or the reasons which underpin it will be jeopardised unless the application is refused, this appears to stand the rationale for having the policy on its head…. In other words it is for the party seeking to persuade the committee to depart from its policy to show that it can be done without imperilling it or the reasons which underlie it."

51. Those latter two cases are about appeals from licensing justices. Closer to the present appeals is *R (Westminster City Council) v Middlesex Crown Court, Chorion plc and Fred Proud* [2002] EWHC 1104 (Admin), where the local authority sought to review the decision of the Crown Court, which allowed an appeal by re-hearing from the local authority's refusal of an entertainment licence in accordance with its policy not to grant any more late-night entertainment licences in Westminster. It was concerned that the Crown Court was tending to allow appeals where the applicant (as in this case) was a fit and proper person and the premises were well-managed. It sought declarations (i) that

where the policy applied it was to be construed as a presumption, and (ii) that the presumption was not rebuttable solely on proof that the premises would be well-managed and had not been the subject of complaint.

52. Scott Baker J acknowledged that it was lawful for the local authority to have a policy about the grant of licences, and reiterated the rule that the policy must not be applied without consideration of exceptions (paragraph 19). At paragraph 21 he said:

> "How should a Crown Court (or a Magistrates Court) approach an appeal where the council has a policy? In my judgment it must accept the policy and apply it as if it was standing in the shoes of the council considering the application, Neither the Magistrates Court nor the Crown Court is the right place to challenge the policy. The remedy, if it is alleged that a policy has been unlawfully established, is an application to the Administrative Court for judicial review."

53. I pause to note that the equally the FTT is not the place to challenge the policy about financial penalties, nor was there any challenge to the content of the policy in either of the present appeals. Reverting to the words quoted above, I observe that the words "must accept the policy and apply it" do not mean that the court cannot depart from the policy. It is worth reiterating the words used in *Pascoe and Jones*, which Scott Baker quoted at his paragraph 23: the court "should *normally* speaking adopt the same general policy as the licensing justices" (my emphasis). Most importantly, the claim for judicial review in *Chorion* failed. There was no declaration that the policy was to be construed as a presumption, and the Crown Court's decision was upheld.

54. These three cases, taken together with *Sagnata*, establish a consistent approach which is supportive of the policy under consideration. The court can and should depart from the policy that lies behind an administrative decision, but only in certain circumstances. The court is to start from the policy, and it must give proper consideration to arguments that it should depart from it. It is the appellant who has the burden of persuading it to do so. In considering reasons for doing so, it must look at the objectives of the policy and ask itself whether those objectives will be met if the policy is not followed. Thus far I am in agreement with the principles that Mr Underwood seeks to draw from the above cases.

55. Nothing in these cases, or in the present appeals, detracts from the court's or a tribunal's ability to set aside a decision that was inconsistent with the decision-maker's own policy. Nor have the above cases said anything to cast doubt upon the ability of a court or tribunal on appeal to substitute its own decision for the appealed decision but without departing from the policy. Again, that was not in issue either in these cases or in the present appeals. It goes without saying that if a court or tribunal on appeal finds, for example, that there were mitigating or aggravating circumstances of which the original decision-maker was unaware, or which of which it took insufficient account, it can substitute its own decision on that basis. What the above cases contribute to the present appeals is the approach to be taken when the court or tribunal is minded to make a decision that is not compliant with the policy, which is what the FTT did in both the present appeals.

(ii) the weight to be accorded to the decision of an elected authority

56. In starting from the policy, and considering the appellant's arguments and the rationale for the policy as discussed above, what weight should be given to the decision that the local authority in fact took? Mr Underwood referred me to a trio of cases on this point.

57. In *Stepney Borough Council v Joffe* [1949] 1 KB 599 a magistrate had heard, and allowed, appeals under section 25(1) of the London County Council (General Powers) Act 1947 by three street traders whose licences had been revoked by the local authority because they had been convicted of offences. Before the Divisional Court it was argued that the magistrate had been wrong to substitute his own opinion for that of the borough council. Lord Goddard CJ at 602 rejected the argument that the appeal was purely on a question of law, so that the magistrate could only decide whether there was any evidence on the basis of which the council could have made its decision:

> "It seems to me that section 25, sub-s. 1, gives an unrestricted right of appeal, and … it is for the court of appeal to substitute its own opinion for the opinion of the borough council. That does not mean to say that the court of appeal, in this case the metropolitan magistrate, ought not to pay great attention to the fact that the duly constituted and elected local authority have come to an opinion on the matter, and it ought not lightly to reverse their opinion. It is constantly said (although I am not sure that it is always sufficiently remembered) that the function of a court of appeal is to exercise its powers when it is satisfied that the judgment below was wrong, not merely because it is not satisfied that the judgment was right."

58. The next of Mr Underwood's trio is *Sagnata*, which I have discussed above at paragraph [45], where Lord Denning made the same point, that the local authority is an elected body and that its decisions deserve respect for that reason. The Court of Appeal in *Sagnata* was of one mind on the respect to be afforded to the local authority's decision, although as we have seen that led Lord Denning to a different conclusion from that of his brethren.

59. In *Sagnata* the same question arose as in *Joffe*, as to the nature of the appeal. Was the recorder in *Sagnata* supposed to conduct a re-hearing *de novo*, that is, a fresh start where he heard the evidence and answered the question on a clean slate, or was he to depart from the local authority's decision only if it was wrong? Edmund Davies LJ at p.633 E and F explained that there was a half-way house between the two. At 635 E he noted that the court in *Joffe*, discussed above, rejected the contention that the courts "are bound by the decision of the local authority and their reasons unless it can be shown that they were wrong". This was a complete re-hearing; but the court was to give considerable weight to the local authority's decision. Edmund Davies LJ then quoted the words that I quoted above at paragraph 57.

60. So there is a puzzle here, which Mr Underwood did not explore. The words quoted above say that the court will depart from the decision when it is satisfied that it was wrong. But Edmund Davies LJ said that the court in Joffe expressly rejected the idea that the courts are bound by the decision unless it was wrong.

61. The answer to the conundrum is that the idea "unless it is wrong" is being used in two different senses. Both in *Joffe* and in *Sagnata* the court rejected the idea that the lower court was exercising a narrow jurisdiction and could assess only whether the original decision was one that could have been reached on the evidence. The idea that the original decision stands "unless it was wrong", that is, wrong in law, is expressly rejected. In both cases the court stressed that this was a re-hearing and not (to use a modern term) a review. But in both cases – in *Joffe* in the words I quoted at paragraph 57 and in *Sagnata* by reference to those quoted words - the court stressed that the original decision caries a lot of weight; and it is in this sense that it is true that the courts will not vary it unless it is wrong. Here "wrong" means a decision with which the court disagrees; the court can vary that decision where it disagrees with it, despite having given it that special weight.

62. That is why I do not accept without qualification the proposition that Mr Underwood seeks to derive from this group of cases, which is that the court – or the FTT as Mr Underwood says – must not allow the appeal or vary the local authority's decision unless it is satisfied that it is wrong. The authorities we have looked at so far do use those words, but they make it very clear that the court uses its own judgment. It is not simply carrying out a review; the court is to afford considerable weight to the local authority's decision but may vary it if it disagrees with the local authority's conclusion. Mr Underwood did not suggest that the FTT is only to carry out a review. But to understand the cases properly it is important to appreciate the two different ways in which the word "wrong" is used. For that reason I think that it is potentially confusing to elevate, as Mr Underwood seeks to do, the idea that a court "should not depart from the decision unless satisfied that it is wrong" to the status of a separate proposition of law; it adds nothing to the fact that the court (and of course, as we shall see, a tribunal) is carrying out a rehearing not a review, but is starting from the decision-maker's policy where relevant and is affording great respect to its decision.

63. In *Brent London Borough Council v Reynolds* [2001] EWCA Civ 1843 the Court of Appeal had to consider Part XI of the Housing Act 1985 and its provisions about houses in multiple occupation ("HMOs") – provisions that have now been superseded by those of the Housing Act 2004. So we are now much closer to home. Mr Reynolds had applied for an HMO licence and had been turned down; section 348(3) gave him an appeal to the county court. The county court judge allowed his appeal, and required the local authority to grant the licence subject to conditions. The authority appealed to the Court of Appeal, and its appeal was allowed. Buxton LJ, with whom Lord Woolf CJ and Mummery LJ agreed, explained why the judge had been wrong about the meaning of some of the statutory provisions (which do not concern us here) and that he had paid insufficient regard to the local authority's policy and objectives (at paragraph 28). At paragraph 16 he said:

> "Mr Arden QC, who appeared before us for Brent, accepted that the appeal was a complete rehearing. Accordingly, the judge heard evidence and makes up his own mind on the facts: and his task is to make his own decision on the application, in place of that made by the local housing authority, and not merely to act as a court of review of the LHA decision., That said, however, the county court's jurisdiction is subject to the very significant condition that the court should pay great attention to any view expressed by the local housing authority, and should be slow to disagree with it. That principle is to be found in the

> judgments of the majority of this court in *Sagnata Investments Ltd v Norwich Corporation* [1971] 2 QB 614."

64. This is entirely consistent with the earlier cases and a useful summary of them.

(iii) Bringing the authorities together; Darlington *and* Hope and Glory

65. Mr Underwood suggested that those two lines of authority, the one on the approach to be taken to policy and the other on the weight to be afforded to decisions, are brought together in *Darlington BC v* Kaye [2004] EWHC 2836 (Admin) and then *R (Hope and Glory Public House Ltd) v City of Westminster Magistrates' Court* [2011] EWCA Civ 31.

66. *Darlington BC v Kaye* concerned a local authority's policy to require taxi drivers to pass a test before renewing their licence. The central issue in the case was about whether that requirement was lawful, and the High Court found that it was. Just two of the 30 paragraphs in the decision address a suggestion that the justices who heard the taxi driver's appeal should have reached a decision about his eligibility for a licence without regard to the authority's policy. Wilkie J, who relied on *Sagnata* and on *Chorion* and said that in these circumstances

> "… the justices … ought to have regard to the fact that the local authority has a policy and should not lightly reverse the local authority's decision or, to put it another way, the justices must accept the policy and apply it as if it was standing in the shoes of the council considering the application."

67. That is a helpful demonstration of the closeness of the arguments about the respect to be paid to policy, on the one hand, and to the policy-maker's decision on the other.

68. *R (Hope and Glory Public House Ltd) v City of Westminster Magistrates' Court* takes us back to the world of licensing. The Westminster City Council, by its licensing committee, attached a condition to the claimant's licence. The condition prevented outdoor drinking after 6 p.m. because of the noise and nuisance it was causing to nearby residents. On appeal to the magistrates' court the district judge upheld that decision. On appeal, Burton J in the High Court upheld the district judge, as did the Court of Appeal. It was argued that the district judge had misdirected himself in saying that he must reverse the city council's decision "only … if I am satisfied it is wrong." It was argued that the judge had placed too much reliance on what was said in *Sagnata* and in *Joffe* about the weight to be attached to the local authority's decision, because in this case it was not a policy-driven decision.

69. Toulson LJ said at paragraph 45:

> "It is right in all cases that the magistrates' court should pay careful attention to the reasons given by the licensing authority, bearing in mind that Parliament has chosen to place responsibility for making such decisions on local authorities. The weight which magistrates should ultimately attach to those reasons is ultimately a

> matter for their judgment, taking into account the fullness and clarity of the reasons, the nature of the issues and the evidence given on the appeal."

70. At paragraphs 34 and 46 Toulson LJ approved what was said in *Sagnata* and in *Joffe* to the effect that the judge will depart from the local authority's decisions if it is satisfied that it is wrong. He added nothing to it.

71. Mr Underwood helpfully referred me to *R (Townlink Ltd) v Thames Magistrates Court* [2011] EWHC 898 (Admin), a judicial review of a district judge's decision on appeal from a licensing committee. Mr Underwood referred to it on the basis that it might be said to assist the respondents' case in that it might be regarded as having watered down what was said in *Hope and Glory*. I agree with him that it does not. It confirms that "wrong" in this context does not mean "wrong in law". At paragraph 36 Lindblom J said:

> "Bearing in mind the decision of the Council's licensing sub-committee and the significance of that decision as the result of the democratically elected members having applied their minds to the issue, the District Judge nevertheless had to adopt the approach approved by the court in *Joffe*, *Saganata*, and *Hope and Glory*. He had to do this by considering "whether, because he [disagreed] with the decision below in the light of the evidence before him, it [[was] therefore wrong" (see per Burton J in paragraph 45 of his judgment at first instance in *Hope and Glory*.[1]
>
> 37. Mr Gouriet also submits, and I agree, that the District Judge went wrong in appearing to equate the idea of a "wrong" decision with that of an "illegal" decision. … Such an approach has been deprecated (see for example the judgment of Edmund Davies LJ in *Sagnata* at paragraphs 30 to 32".

72. In the light of the authorities, which are clear about the nature of the re-hearing on appeal from a decision taken by a local authority in accordance with a lawful policy, I turn to the final case Mr Underwood cited, and in which he says that this Tribunal took a wrong turn.

Clark v Manchester City Council

73. *Clark v Manchester City Council* [2015] UKUT 0129 (LC) brings us home to the Housing Act 2004. A landlord appealed the local authority's refusal to extend his HMO licence to enable him to rent rooms to 6 rather than 5 occupants, because the sixth room was too small. The FTT upheld that decision. The Upper Tribunal found that in doing so the FTT carried out a review rather than a re-hearing; and in the light of the authorities discussed above it should come as no surprise that the Tribunal reversed the FTT's decision and remitted it for re-hearing.

74. Of the authorities was have travelled through, only *London Borough of Brent v Reynolds* was cited to the Deputy President. At paragraph 39 he quoted Buxton LJ's words, set out

[1] I believe the square brackets in the quotation indicate merely that the tense has changed.

above at paragraph 63, which as we have seen summarise the earlier authorities. He added at paragraph 41:

> "On issues which depend on weighing and assessing a number of different factors (tasks which the FTT with its relevant experience and composition is well equipped to undertake) reasonable people may well arrive at different conclusions. On a rehearing an appellant is entitled to expect that the F-tT will make up its own mind,. In doing so it is not required to adopt the approach advocated by Mr Madden of starting with a blank sheet of paper, and it is entitled to have regard to the views of the local housing authority whose decision is under appeal. How influential those views will be is likely to depend on the subject matter; Buxton LJ's recommendation that a county court judge should be slow to disagree with the views of the authority does not seem to me to apply with the same force to a specialist tribunal."

75. Mr Underwood says that the Tribunal took a wrong turn here, because this is inconsistent with the earlier authorities and in particular with *Hope and Glory*, which was not cited. He says that the earlier authorities, with their emphasis on the local authority as the primiary decision-maker and the respect to be afforded to their decisions, apply as much to tribunals as to the courts.

76. I see no inconsistency between the Deputy President's words and the authorities we have looked at here. The FTT, like the county court in other jurisdictions, has to make its own decision, and – to a greater or lesser extent depending upon the context – it has a specialism and an expertise that a county court may not have. In *Clark* in particular the decision was about housing standards, room sizes and the suitability of a rather unusual layout in an attic bedroom; the FTT has a very broad experience of such questions, its members have seen the property and have seen other properties both in a judicial context and (many of them) in their daily work outside the FTT. Obviously, different decisions may not engage the FTT's expertise to the same extent; it will depend upon the nature of the decision in question.

The appeal relating to Mr Marshall

77. As we have seen, the FTT reduced the penalty imposed on Mr Marshall from £5,000 to £1, 500. Its reasons for doing so are set out in its paragraphs 56 to 66.

78. The FTT noted at paragraph 57 that it had heard evidence of which the local authority had not been aware, namely the rental income from the property and the amount of the mortgage, service charges and ground rent that Mr Marshall had to pay; his occupation and salary as a teacher; the fact that he did not receive the notice of intent and the letter offering discounts; and his limited property interests (namely the property, and his part-ownership of his own home).

79. It noted that Mr Marshall had not – as the FTT found – hda the opportunity to take advantage of the initial offer of discounts. But it was unimpressed with his explanation for his delayed response to the final notice. He did get home from holiday on 31 August,

within the 28-day period for the £1,000 discount, but did not get round to responding to the council until 9 September 2018.

80. The FTT went on to say that Mr Marshall did not fully appreciate that failure to apply for a licence was a criminal offence, because although the notice referred to "offence" and "prosecution" there is no reference to "crime", "criminal" or "courts". I pause to say that the idea that Mr Marshall, who is a teacher, might be unable to understand what "offence" and "prosecution" mean is at the edge of plausibility.

81. The FTT said at paragraph 63:

> "We considered the matrix used by the council. It was based on the DCLG guidance. We found it to be a logical method of applying the guidance to arrive at a view of the seriousness of an offence and the appropriate financial penalty to be imposed."

82. The FTT went on at paragraph 64 to set out 11 factors and circumstances to be taken into account:

a. Mr Marshall owns one private let flat from which he makes a modest profit

b. He is a part owner of his home.

c. He is a teacher with a relatively modest salary.

d. In late December 2017 he was made aware of the need to apply for a licence; he made ineffectual efforts to apply on line; he did not apply until 23 January 2019.

e. He did not have the opportunity to take advantage of the discounts offered in the letter of 17 May 2018.

f. He was dilatory, but not deceitful or deliberately avoiding his responsibility to apply for a licence.

g. There are no deficiencies in, or safety concerns about, the property, and so no harm to tenants.

h. There was no history of previous enforcement.

i. It was "unlikely that the penalty in this case will come to the attention of others or serve as a deterrence to others"

j. Committing an offence has not given Mr Marshall a financial benefit; on the contrary he had incurred a £400 tribunal fee.

k. The offence "is not trivial or to be take lightly or belittled, it is not the most serious or severe of offences under the Act."

83. As a result, the FTT concluded "bearing in mind the purposes of the financial penalty regime" that there were mitigating factors and that the penalty should be reduced to £1,500.

84. That decision gives rise to a number of concerns.

85. First, the FTT paid lip-service to the policy in paragraph 63, but then paid it no further attention. It did not even acknowledge that it was departing from the policy. Its conclusion placed the penalty towards the lower end of Band 1, which I am told is reserved for minor compliance matters where a licence is in place. As we have already established, where the FTT proposes to go outside the local authority's policy it must consider the objectives of that policy, and it did not do so. The failure to consider the need for consistency between offenders, which is one of the most basis reasons for having a policy and an essential component of fairness in the financial penalty system, is a glaring omission.

86. The FTT did pay lip-service to the reasons for the financial penalty regime (rather than the policy), but there is no sign that those reasons (to which I referred at paragraphs 9 and 14 above) had any effect on its own reasoning. It did not even say what they were.

87. Third, the FTT's list of 11 points included a number that had already been taken into account by the appellant in placing the facts into the matrix – the lack of previous convictions, for enforcements, for example, the fact that Mr Marshall rented out only one property, and – most conspicuously – the fact that this is not the most serious offence under the Act. Those were all reasons why the appellant fixed the penalty at the minimum level in Band 2. Others are irrelevant – Mr Marshall's being a teacher, for example – or dubious – it is not clear why the FTT thought that the penalty would not come to the attention of others, since the appellant publishes penalties on its website.

88. In its reasons for refusing permission to appeal the FTT cited *Clark v Manchester City Council*, and the Deputy President's words at paragraph 41 (quoted above at paragraph 74); it said that it had had regard to the appellant's "broad policy objectives" but justified its decision on the basis that it had heard oral evidence. It said that it had "made an adjustment" to the penalty indicated by the tariff.

89. The FTT paid little or no regard to the decision taken by the local authority. Had it sought to understand the matrix it would have seen why the authority reached the conclusion it did. I bear in mind that the FTT is a specialist tribunal; but the Deputy President's observations in *Clark* do not detract from the need – well-established as we have seen – for the FTT to start from the local authority's policy, and to afford respect to its decision.

90. Mr Marshall has made written representations to the Tribunal. Understandably he has not engaged with the legal principles on the basis of which the FTT should have decided the appeal. He has reiterated the matters that he raised before the FTT, for example his not getting the initial notice, the absence of any harm to his tenants, his difficulties in making

the on-line application. He feels that the mitigating circumstances have not been taken into account in fixing the penalty. But they were. The penalty imposed was the very lowest possible for the offence of not having a licence.

91. I regard the FTT's decision as fundamentally flawed and I set it aside.

92. This is a case where the tribunal can substitute its own decision rather than remitting the matter to the FTT. I start from the policy and nothing that has been raised by Mr Marshall suggests to me that I should depart from it. I fully appreciate that the root of the problem here is that Mr Marshall did not appreciate the seriousness of the offence of not having a licence. He had problems with the on-line application and so he gave up. I do not regard that as a mitigating factor. The local authority's decision here was generous in placing the penalty at the lowest possible level on the matrix. Like the FTT I am unimpressed with Mr Marshall's explanation for his failure to respond promptly to the final notice after his return from holiday in August 2018, and so I see no reason to apply any discount. The penalty of £5,000 is reinstated.

The appeal relating to Mr Uztek

93. The FTT reduced the penalty imposed on Mr Uztek from £12,000 (after discount) to £4,000. It referred at its paragraph 57 to the appellant's policy and the matrix, and "considered that it worked effectively to distribute the weight of the allocated criteria across the range of possible fines up to £30,000", but noted that there was discretion within it. It noted that there was no evidence that the property was in a poor condition. It acknowledged that Mr Uztek had known that an HMO licence was needed; it accepted that his English is poor but that that is not a reasonable excuse for a failure to licence the property.

94. However, the FTT found at paragraph 57(e) that the appellant had not "considered that there is a duty to promote equality and that it cannot treat all landlords identically… The [FTT] accepted the authority's evidence that the scheme of selective licensing was well-publicized however it would have helped to have campaigns specifically targeted for minority groups".

95. The FTT accepted that the warning notice did not come to Mr Uztek's attention.

96. The FTT concluded:

> "Having regard to the fact that the no evidence was presented to the Tribunal that other than the failure to licence, the property was poorly managed, the tribunal is satisfied that the penalty ought to be assessed as a band 1 offence, and that the sum of £4,000 is the appropriate and proportionate penalty:
>
> 1. the Landlord controls five or less dwellings;

> 2. The [FTT] has determined that the Applicant's lack of knowledge of the requirement to licence on the circumstances of this case is not of itself, an aggravating feaure. The [FTT] in assessing the culpability of the Applicant has noted that he has had Improvement Notices served on him by the local authority in respect of other properties. However the Tribunal consider that these offences, although relating to properties managed by him, were different and have been the subject of discreet action by the local authority."

97. As in Mr Marshall's appeal, the FTT has paid lip-service to the policy. It has not acknowledged that it is going outside the policy by placing the offence in Band 1. It has not considered the objectives of the policy before departing from it. It has not even understood the policy, or the decision taken by the appellant, because if this were an offence by a landlord controlling five or fewer properties without the additional consideration of his demonstrated experience in letting and managing property and his familiarity with the need to obtain a licence (demonstrated by his holding other licences) (see paragraph 18 above), it would belong in Band 2. As it is, in view of those extra factors, it belongs in band 4.

98. The FTT regarded the failure to comply with improvement notices in respect of other properties as a matter that did not aggravate this offence. Yet it is one of the aggravating factors set out in the appellant's policy. No reason is given for departing from that; although I note that the offence belongs for the reasons stated above in Band 4, and the penalty imposed is at the minimum level in Band 4 so it does not appear that those failures in compliance had the effect of raising the penalty.

99. The FTT's observation about the need for the appellant to have had publicity campaigns specifically targeted at minority groups is puzzling. I am told that the point was not raised by Mr Uztek's solicitor at the hearing and that therefore the appellant has had no opportunity to comment on it. I regard the FTT's observation as being without foundation.

100. In its reasons for refusing permission to appeal the FTT said that it had carefully considered the appellant's policy; as we have seen, it did not. It also referred to *Clark v Manchester City Council* as authority for the proposition that the FTT must conduct a complete rehearing and make up its own mind. So it must; but as we have seen, that principle stands alongside a body of case law that require the FTT to start from the policy, and to pay proper attention to the appellant's decision and the reasoning behind it.

101. The decision, for the reasons given above, cannot stand. I allow the appeal. I substitute the Tribunal's own decision rather than remitting the matter to the FTT. No reason was given in evidence to the FTT that might justify departing from the appellant's policy and the penalties matrix in this case. I do not regard Mr Uztek's poor command of English, or his failure to pick up post from his addresses, as an excuse. He was familiar with the licensing system and therefore the offence stands squarely within Band 4. The authority was, again, generous in imposing the minimum penalty in Band 4, and Mr Uztek also benefits from a discount. I reinstate the penalty of £12,000.

Conclusion

102. Both appeals are allowed and the original penalty (£5,000 in the case of Mr Marshall, and £12,000 in the case of Mr Uztek) is reinstated in each case.

Judge Elizabeth Cooke

3 February 2020