



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

Case Reference : **CHI/00HC/HNA/2020/0011**
CHI/00HC/HNA/2020/0012
CHI/00HC/HNA/2020/0013

Properties : **50 Sandford Road, Weston-Super-**
Mare, BS23 3EY, 0011
5a Mendip Road, Weston-Super-
Mare, BS23 3HA, 0012
5b Mendip Road, Weston-Super-
Mare, BS23 3HA, 0013

Applicant : **Honeylark Ltd, represented by Mr.**
Allan Simpson, Director

Respondent : **North Somerset Council**

Respondent's : **Ms. Emma Williams, Counsel**
Representative

Type of Application : **Appeals against financial penalties**
under s249A of the Housing Act
2004

Tribunal Members : **Judge Professor David Clarke**
Mr. Michael Donaldson, FRICS
Mr. Michael Jenkinson

Date : **8 April 2021**

DETERMINATION AND STATEMENT OF REASONS

© Crown Copyright 2021

DETERMINATION

The Tribunal determines that, in the light of all the evidence, and in respect of all three cases, the decision of the Respondent Council to impose a penalty under section 249A of the Housing Act 2004 was justified.

The Tribunal determines that the amount of the penalty in each of the three cases was excessive and by virtue of paragraph 4 of Schedule 13A of the Housing Act 2004 varies the final notice in each case.

The Tribunal determines that the penalty and costs payable in respect of 50 Sandford Road is varied and reduced to £4,838.50.

The Tribunal determines that the penalty and costs payable in respect of 5a Mendip Road is varied and reduced to £3,330.70.

The Tribunal determines that the penalty and costs payable in respect of 5b Mendip Road is varied and reduced to £7,151.

The total penalty and costs payable by the Applicant in respect of all three conjoined appeals is therefore £15,320.20.

STATEMENT OF REASONS

Background

1. This case is three joined appeals by the Applicant, Honeylark Limited, made in respect of three separate Notices of Intent to Impose a Financial Penalty made by the Respondent North Somerset Council under section 249A of the Housing Act 2004 (“the Act”). Each notice of intent is dated 5 May 2020; each appeal is dated 14 August 2020. The cases concern properties located close to each other; indeed, they are registered as a single title at HM Land Registry. That title consists of three former dwelling houses known as 5 Mendip Road, 7 Mendip Road, and 50 Sandford Road (also called ‘Mendip Manor’ in some of the notices) respectively. Taken together, they are situated on the corner of Mendip Road and Sandford Road. This case is not however concerned with 7 Mendip Road. Two of the notices concern 5 Mendip Road which now consists of two flats known as 5a and 5b. The third notice relates to the whole of 50 Sandford Road which is divided into seven flats.

2. The Improvement Notices were issued by the Respondent on different dates. That relating to 50 Sandford Road is undated but was issued during 2019 and expired on 11 October 2019. The Applicant has not taken issue with the fact that the notice itself is undated. In respect of flat 5a Mendip Road, the notice is dated 11 May 2018; in relation to flat 5b it is dated 5 May 2018. In all three cases, the Respondent concluded after inspections that the terms of the Improvement Notices had not been complied with and issued the notices of intent to issue a financial penalty. The Financial Penalty Notices in each case are dated 21 July 2020. The financial penalties imposed by virtue of those notices are as follows:

(1) In respect of 50 Sandford Road, £12,180.70 plus £901 costs.

(2) In respect of 5a Mendip Road, £7,505.70 plus £630.70 costs.

(3) In respect of 5b Mendip Road, £13,230.70 plus £901.00 costs.

The Tribunal notes that the total penalty, excluding costs, is £32, 917.10 and exceeds the sum of £30,000 that is the maximum permitted by virtue of s249A (4) of the Act for a single penalty imposed under that section. By virtue of s249A (3) only one financial penalty may be imposed in respect of the same conduct but the approach of the respondent is that three separate notices are appropriate.

3. The provision for appeals against the imposition of financial penalties is contained in section 249A(6)(b) and Schedule 13A of the Act. Paragraph 10 of Schedule 13A permits an appeal either against the decision to impose a penalty, or the amount of the penalty, or both. The appeal has suspended the notice pending determination. The appeal is to be a rehearing of the original decision and may be determined having regard to factors of which the Local Housing Authority was unaware. On an appeal, a Tribunal may confirm, vary, or cancel the final notice.

The Applicant’s case

4. In the three appeals filed against the three notices on 14 August 2020, the Applicant’s submissions were substantially similar in each case. The following were common to all the appeals.

- (1) The Applicant gained no financial benefit for any delay in undertaking the improvements required.
- (2) The penalties imposed in each case was unjustified, disproportionate, and excessive.
- (3) The penalties imposed will cause the Applicant financial hardship.
- (4) The Respondent had shown bias and not treated the Applicant fairly.
- (5) There was no intention to act unlawfully, and any culpability is not high.

5. In respect of 50 Sandford Road, the Applicant accepted that the works had not been completed within the time frame required but further contended that the lack of co-operation from tenants provided a valid and genuine reason for the failure. In respect of 5a Mendip Road, the Applicant contended that more of the required works had been completed (only 3 out of 20 were not met whereas the Respondent contended that 8 out of 20 were not complied with) and that the Applicant had had serious difficulty gaining access. In respect of 5b Mendip Road, the Applicant contended that the sitting tenant caused difficulties in the Applicant gaining access, but that the required work was completed before the financial penalty was imposed.

6. Following the submission of the Respondent's Statement of Case, summarized below, the Applicant provided a Reply to all three cases. This was prepared by the Applicant's former Counsel. The three principal submissions made in the Reply were the same in all three cases. They were:

- (1) The decision to penalise, and the quantification of the penalty, had not been informed by a full and correct assessment of the relevant facts.
- (2) The penalty applied erred in departing from the Respondent's policy.
- (3) The financial circumstances of the Applicant call for a reduction in any penalty.

The Respondent's Case

7. In respect of 50 Sandford Road, the case can be summarized as follows.

- (1) The required works had not been done by the completion date of 11 October 2019.
- (2) The inspection on 14 October revealed flats without heating or hot water, rotten window frames, damp living conditions, no gas safety reports and no working fire detection.
- (3) The Applicant declined the opportunity of an interview to give reasons but did send a letter.
- (4) A second inspection on 30 January 2020 revealed works had commenced to deal with the damp, and some electric heating was in place but there were still no gas safety certificates or working fire detection.
- (5) Evidence was provided by exhibits of documents and photographs to the statement.
- (6) The subsequent Council procedure and method of calculating the assessment of the penalty was set out.

8. In respect of 5a Mendip Road, the case can be summarized as follows.

- (1) An Improvement Notice was served on 11 May 2018 and the completion date was 19 October 2018.

- (2) The Applicant went into Receivership on 23 August 2018. The flat was vacant from 9 March 2018 to 24 April 2019 when a new tenant took possession. The Receivership had terminated on 5 March 2019.
 - (3) The Applicant stated in May 2019 that the works had been done but an inspection on 4 June 2019 revealed that 6 out of the 8 matters were outstanding. The Respondent permitted a period for the works to be completed with a new completion date of 6 August 2019.
 - (4) The Respondent had difficulty in accessing the flat to inspect after 6 August 2019 and despite receiving some documentation remained concerned that works had not been completed.
 - (5) The Applicant declined the opportunity of an interview to give reasons but did send a letter. The Applicant stated all works had been completed.
 - (6) A further inspection on 30 January 2020 revealed the tenant had vacated on 22 November 2019. Four of the eight items required by the Improvement notice had not been completed.
 - (7) Evidence was provided by exhibits of documents and photographs to the statement.
 - (8) The subsequent Council procedure and method of calculating the assessment of the penalty was set out.
9. In respect of 5b Mendip Road, the case can be summarized as follows.
- (1) An Improvement Notice was served on 9 April 2018 and the completion date was 14 August 2018.
 - (2) The Applicant went into Receivership on 23 August 2018. The Receivership terminated on 5 March 2019. A new tenant took possession on 11 March 2019.
 - (3) An inspection on 4 June 2019 revealed that only 2 out of 20 required works had been completed. The Respondent permitted a period for the works to be completed with a new completion date of 6 August 2019.
 - (4) The Respondent inspected on 7 August 2019 and 5 of the 20 required works had been completed.
 - (5) The Applicant subsequently said further works had been done and sent documentation. The Applicant declined the opportunity of an interview to discuss the works or give reasons but did send a letter saying all the works had now been done.
 - (6) A further inspection on 30 January 2020 revealed that now 8 of the 20 items required by the Improvement notice had been completed.
 - (7) Evidence was provided by exhibits of documents and photographs to the statement.
 - (8) The subsequent Council procedure and method of calculating the assessment of the penalty was set out.

The hearing and summary of oral evidence and submissions

10. The hearing of the three conjoined cases took place on 8 April 2021, virtually. (The hearing was marred and made difficult by significant problems with the technology).

11. By the date of the hearing, the Applicant had again been placed in receivership and the Applicant's solicitor had given notice of discontinuance. The Applicant was therefore

represented by its only existing director, Mr. Allan Simpson and oral evidence was also given by Ms. Alexia Brimecome, who appears from the voluminous paperwork to be either the only employee of the Applicant company or at least the only one involved in these three properties.

12. The Respondent was represented by Ms. Emma Williams of Counsel with oral evidence given by Ms Carla Howard and Ms Kathryn Tackle, both of whom are employees of the Respondent Council. Ms. Tackle is the Senior Housing Standards Officer responsible for 50 Sandford Road. Ms Howard is the Senior Housing Standards Officer responsible for 5a and 5b Mendip Road.

13. There are certain matters on which the Applicant made no submissions, nor did it offer any evidence on those issues, either in the written submissions when the three cases were submitted, or in the written Reply prepared by Counsel, or in oral evidence. This narrows the scope of the issues that are before the Tribunal. Those matters, which could have been raised as part of an appeal, but were not the basis of any challenge, are the following:

- (1) There is no suggestion that the procedure that the Respondent adopted is in any way not in accordance with the statutory requirements (though the Reply does suggest that the penalty applied departed from the Respondent's established policy). From the considerable paperwork in the bundle before the Tribunal, it does appear that the Respondent did follow the required procedure.
- (2) There is no sustained challenge by the Applicant to the results and conclusions of the inspections of the properties undertaken to ascertain if the works required by the improvement notices had been completed. Certainly, in both written submissions and oral evidence, the Applicant disputed the conclusions on some individual items. But while the Respondent supported its submissions with photographs taken at each inspection, the Applicant did not support the submissions made on any of those disputed items with photographs, reports from contractors, or invoices for work completed.

14. Schedule 13A of the Act permits an appeal to be against the decision to impose the penalty and at the commencement of the hearing, Mr. Simpson indicated that he did wish the Tribunal to take the appeal on that point, as well as considering the amount of the penalty imposed.

15. The oral submissions of the Applicant can be summarized as follows.

- (1) The main reason not all the works had been done was that the Applicant had been unable to gain access to do the works. Some works (damp proofing) required the flat to be empty. For the others, access was often frustrated. The tenants would ask the Council to get the works done but then either refuse access on the arranged date or not be there when appointments were arranged.
- (2) Some of the problems identified by the improvement notices were created by the tenants. It was alleged that they deliberately created mould and damp by throwing water around the flats to create the appearance of damp, and some

- tenants ‘trashed’ the accommodation. The situation was made worse by overcrowding with other persons unlawfully resident, drug dealing and the presence of pets and animals that were not properly looked after.
- (3) The problems were exacerbated by significant arrears of rent – in one case leaving with £18,000 in arrears. It was also alleged that those not paying rent said that they had been told to do so by the Respondent Council’s officers (a claim firmly denied by both Ms Carla Howard and Ms Kathryn Tackle).
 - (4) A complaint was made against the Council in 2018 but this had never been dealt with.
 - (5) Some of the tenants had significant health problems or were vulnerable but no assistance was available for them from the Respondent Council.
 - (6) Overall, it was extremely unfair to put all the blame for the state of the properties on the Applicant when the reality was that many of the issues with the properties arose from the way the tenants had treated them.
 - (7) Finally, Mr. Simpson stated that he had no legal training and could not deal with specific points but relied on the written submissions.
16. In cross examination of the Applicant, the key issues were as follows.
- (1) In response to the question why the relevant improvement works were not completed in respect of 5a and 5b Mendip Road when the flats were vacant between tenancies, Mr. Simpson said that the nine-month vacancy in respect of 5b had been during the period of receivership and in respect of 5a, the required works had, in his judgement, been done during the vacant month prior to the reletting.
 - (2) The Applicant had been unable to use the courts during the pandemic to obtain possession because of the inability to get a possession order; but Ms. Williams pointed out that this explanation was not applicable to periods prior to January 2020.
 - (3) Ms Williams asked if the Applicant had an accountant and, if so, why accounts were not made available to the Tribunal to assist in assessing the financial position of the Applicant.
 - (4) In answer to questions about boilers not working and the lack of gas inspection certificates, Mr. Simpson said that the boilers had been turned off by tenants or the supply cut off by the utility companies for non-payment of bills and certificates could not be obtained if there was no supply.
 - (5) When questioned about the capital value of the properties owned by the Applicant, Mr. Simpson said that the Applicant was at the limit of what was possible to finance, and all its properties were heavily mortgaged. Though there was some equity value left on paper, a distressed sale by the receivers might leave little or nothing after such a sale.
 - (6) When questioned about vulnerable tenants, the reply was that other departments of the Council would refer potential tenants to the Applicant for housing in situations where other landlords would not consider tenants on low income or benefits.
 - (7) Mr. Simpson denied that the Applicant had a poor track record and considered many of the complaints were unjustified and that it had been unfairly targeted.

- (8) Mr. Simpson denied being aware of national and local press coverage that referred to the operation of the Applicant.
- (9) Finally, Ms Williams pressed Mr. Simpson on whether he understood the consequence of the improvement notices and why the work was not done given that the Respondent had given plenty of time for the works to be done. Mr. Simpson did not deny that he knew the consequences but claimed he always tried to work with the Council and do the works if money were available, contractors could be engaged and access to the properties could be obtained.

17. The oral submissions of the Respondent can be summarized as follows.

- (1) Ms. Howard gave evidence to support the considerable paperwork filed in relation to both flats at 5 Mendip Road. She stressed that she had commenced action with informal agreements with the Applicant that had not been adhered to. She had permitted additional time for the work to be completed and had not actioned matters during the 2018-19 period of receivership. She did not consider that access was as big a problem as had been maintained. Her inspections revealed the continuing existence of category one hazards. She always advised tenants to pay rent as it was in their best interests to do so and always tried to be fair and reasonable. Since there were two notices relating to this property, she had tried to ensure that there was no 'double-counting' in the penalties imposed. She accepted that some roof insulation had been installed but it did not meet that standards required.
- (2) Ms. Tackle gave evidence to support the considerable paperwork filed in relation to the flats at 50 Sandford Road. She confirmed that the inspections she had undertaken revealed works had not been completed. She accepted that there had been a breakdown of relationships with the tenant in Flat 2 and access for contractors had had to be arranged through her. In response to a question, she accepted the boiler was functioning but had a leak. In recognition of the fact that damp proofing could only be done when the flats were vacant, the amount of penalty had been reduced from over £18,000 to £13,230.70.
- (3) Both witnesses gave evidence as to how they had come to conclusions of the amount of the penalties. Ms. Howard elected for a very high culpability in respect of 5a Mendip Road because of the time that had elapsed, but the hazards merited a medium level of harm. There was a similar evidence in relation to 5b of the time to complete the works, but the remaining hazards were more serious and merited a categorization of a high likelihood of harm. She accepted however, that the resultant penalty was one of the highest she had been involved with but was justified by the significant hazards.
- (4) Ms. Tackle justified the considerable penalty in relation to 50 Sandford Road by referring to her opinion that the Applicant should have been aware of the issues; and the serious failings to remedy category one hazards relating to gas and fire safety merited an assessment of a high likelihood of harm.
- (5) Ms. Williams submitted that the evidence showed that the Respondent had properly considered all matters and had properly issued the improvement notices. The extensive photographic evidence provided the Tribunal with a

useful insight into the shortcomings relating to these properties. The calculation of the penalties was sound and should be upheld.

Some issues of principle

18. It was suggested by the Applicant that, because the three properties were held under one title, the Respondent was only able to issue one improvement notice, thus ensuring that the penalty to be imposed could not exceed £30,000 (and the calculation might also be lower. The Tribunal does not accept that submission. There could be any number of properties on a single registered title. Improvement notices relate to a single property not to a registered title. This case illustrates that such notices may be required at different times and for different purposes.

19. The Applicant also drew attention to the fact that there was one notice relating to 50 Sandford Road, containing seven flats, and two different notices relating to 5 Mendip Road where there are two flats. It was suggested that there should be consistency and only one notice was appropriate for 5 Mendip Road. While there may be factual circumstances where a single improvement notice would be appropriate rather than two or more in the case of a property divided into flats, there cannot be a firm and fast rule. It may be appropriate where a property is divided into flats and vested in the same landlord to be subject to a single improvement notice – as in the case of 50 Sandford Road where work was required to three flats out of seven. It may equally be appropriate to issue separate improvement notices at different times in respect of flats in the same building, as in respect of 5 Mendip Road where the issues relating to each of the two flats were different and arose at different times and each flat was self-contained with separate entrances.

Assessment of the Tribunal of the evidence

20. There are a series of matters which were submitted by the Applicant that the Tribunal either rejects or considers has no bearing on the appeal.

- (1) The Applicant complains of bias. No evidence to support that serious contention was adduced and it is rejected by the Tribunal.
- (2) The Applicant, through its former Counsel's Reply, suggests that the Council departed from its policy. However, no details to support that submission were given. Apart from the reduction, in the Applicant's favour, of the penalty originally imposed in relation to 50 Sandford Road, which might be a departure from policy, the Tribunal cannot identify any such departure.
- (3) Mr. Simpson complained, both in his submissions and in cross examination, that the Respondent had not dealt with a formal complaint that he had made. It was explained to him that such a complaint was considered by a different department of the Respondent Council, and it was also submitted that it had been answered properly. However, this issue is not within the remit of the Tribunal and, in any event, whether it was dealt with properly or not, is not relevant to the issues arising under the appeal.

21. The Applicant's first submission was that it had gained no financial benefit. The issue of financial benefit does play a part in the assessment of the penalty (see

paragraphs 31 and 35 below) but is not relevant to the issue of whether the Council was justified in imposing a penalty in the first place.

22. The Tribunal does accept, however, that the Applicant is in financial difficulty. During the period of receivership in 2018-19, it would have been unable to finance works of improvement. The more recent current receivership, however, is too recent to have an impact on the reaction to the improvement notices and imposition of the penalties, though it has undoubtedly prevented the Applicant from having any legal representation at the hearing of these appeals which has not helped them present their case (their solicitor filed a notice of discontinuance). A second factor is the substantial rent arrears – the Tribunal accepts the Applicant’s evidence that some tenants did not pay and left leaving substantial and essentially unrecoverable rent arrears. The claim in relation to financial hardship would have been much stronger if accounts had been produced and gave evidential backing to the claims made.

23. The impression given, from all the evidence, is of a local property company struggling with limited financial resources and limited staffing to cope with tenants who took advantage by not paying rent and having little respect for the properties they occupied. But those factors are arguments in mitigation of the failure to take full action and not a justification for arguing that the decision to impose the penalty was wrong. In relation to the two flats in 5a and 5b Mendip Road, the Applicant claims the works required were completed but brings forward no evidence to justify that claim. Certainly, there was a dispute over some aspects of the works required, but no clear evidence to suggest in any way that the Council’s assessment (which was supported by photographs) on inspection, of the whether the works had been done or completed in a satisfactory manner, was wrong.

24. Moreover, both properties were vacant for a period before reletting. It would have been prudent to ensure all the works had been done to the Council’s satisfaction (by asking for a reinspection) before reletting. The matter would then be concluded, and the properties could be relet safely. In not taking this precaution, the Applicant took a risk and could not have been unaware of the consequences.

25. In relation to 50 Sandford Road, the Tribunal accepts that there were significant difficulties in obtaining access to Flats 1 and 2. But the failure to complete the fire detection works required, and ensure gas safety, are significant failings that could and should have been dealt with.

26. The Tribunal therefore determines that, in the light of all the evidence, and in respect of all three cases, the decision of the Respondent Council to impose a penalty under section 249A of the Housing Act 2004 was justified.

27. The Tribunal does consider that, in the light of the matters discussed above, the penalties imposed were excessive, both when independently calculated and as a totality.

The Respondent’s calculation of the penalties payable.

28. The Respondent has in place a checklist to assist with deciding the value of the civil penalty payable. It is similar in approach to the checklist in place for other local housing authorities. Its applicability has not been challenged by the Applicant and the Tribunal accepts it should be the basis for the Tribunal's assessment of the penalty payable.

(i) Culpability

29. The checklist requires a decision on the culpability of the offence, from one of four categories, namely, low, medium, high, or very high. There is then an assessment of the risk of harm, with three categories, namely, high, medium, and low likelihood of harm. Once those decisions have been made, there is a table of penalties that are appropriate for each level of assessment with a range, and a starting point. In each case, the resulting figure for the penalty can then be increased if aggravating factors are present or reduced if mitigating factors are present.

30. In each of the three cases, the Respondent classified the level of culpability as very high. This is defined as 'where the offender has intentionally breached or flagrantly disregarded the law or has a high public profile and knew that their actions were unlawful'. The Respondent explained that, in each case, the consequences of non-compliance had been explained, that having owned a medium sized portfolio of properties with the district for some years, the Applicant could be classed as a professional landlord, and that the failure to complete all the works required showed a flagrant disregard of the law.

31. The Tribunal has had the opportunity to consider all the evidence before it and has also had the advantage of the additional evidence of the financial difficulties of the Applicant as demonstrated by the financial report and the fact that the Applicant has been taken into receivership again. While the Tribunal does not accept the contention of the Applicants that the refusal of some tenants to pay rent was encouraged by the Respondent, it does accept that the Applicant had to cope with a significant shortfall in rent and some tenants who either damaged the properties or who did not fulfil the basic obligations of any tenant occupying property. The Applicant may have operated for some years, but it appeared to the Tribunal that the operation was run 'on a shoestring' by a single director and one employee who, however conscientious, did not have the support to do what was required.

32. The Tribunal does not therefore consider that in any of the cases was there a flagrant disregard of the law. In each of the three cases, some not inconsiderable efforts were made to meet the requirements of the work that needed to be done. The Tribunal therefore determines that the correct categorization of the offence is high, ('actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken') rather than very high. The Applicant had actual foresight of the risk of offending but the combination of financial problems, tenant non-co-operation, and poor professional oversight because of the limited resources, meant that works were not completed, or not completed to the required standard.

(ii) Category of harm

33. In the cases of 50 Sandford Road, and 5b Mendip road, the Respondent concluded that there was high likelihood of harm for the reasons outlined by the Respondent. In each case, some category one hazards had not been remedied and both properties continued to show fire hazards where the risk of serious harm is obvious if a fire occurs. In the case of 5a Mendip Road, the category of a medium risk of harm is agreed by the Tribunal to be correct.

(iii) Aggravating factors

34. In all three cases, the Respondent applied a 10% increase for the aggravating factor of a poor track record, citing the failure of the Applicant to comply with informal agreements and improvement notices in relation to other properties in North Somerset. The Applicant did not dispute the facts so alleged; the Tribunal therefore upholds this as an appropriate aggravating factor.

35. In all three cases again, the Respondent added a further 10% to the penalty on the basis that the Applicant was motivated by financial gain. The reason was that the Applicant was receiving rents and the fact that money was not spent was an indication of not wishing to spend money and therefore motivation of financial gain. The Tribunal disagrees. Even if the fact that this Applicant did not receive a large amount of rent, is put to one side, it is insufficient to show motivation of financial gain merely to point to the failure to spend money to complete the works required. In every case where improvement works are not done, it will be a case that money has not been spent. On the Respondent's approach to this aggravating factor, the 10% uplift would apply in every case. In the view of the Tribunal, there must therefore be some other evidence of motivation by financial gain if this aggravating factor is to apply.

36. In all three cases, again, a further 10% uplift was applied (under the 'other' category) on the basis that 'Honeylark Ltd have received national and local press coverage relating to sub-standard properties but there is still a failure to comply with the improvement notice'. The Respondent did not supply any detail about the nature of the press coverage and Mr. Simpson said he was unaware of the coverage. In any event, in the opinion of the Tribunal, this cannot be an aggravating factor. The veracity of such press coverage, and issues such as whether it is fair, why this company has been chosen and whether the facts presented are true or not, are not ones that a Tribunal can address. Such an uplift is therefore entirely inappropriate.

(iv) Mitigations

37. The mitigation reduction of 10% of the penalty in each case because the Applicant had no previous convictions is appropriate and accepted by the Tribunal. The further reduction in the cases of 50 Sandford Road and 5A Mendip Road in respect of the steps taken to mitigate the problems in each case is also agreed.

38. In the case of 50 Sandford Road, the Respondent made a further reduction of 30% after receiving representations as it accepted that damp-proofing works could only be undertaken once the flats were empty. The Tribunal considers that this was a fair and justified reduction.

Calculation of penalty – 50 Sandford Road

39. The calculation of the penalty payable, as determined by the Tribunal, is as follows.

High culpability, high likelihood of harm:	£6250
Aggravating factor, poor track record (+10%):	+£625
Mitigating factors, two (-20%):	-£1,250
Total:	£5,625
Reduction of 30% of penalty:	£1,687.50
Revised penalty:	£3,937.50
Add: Costs of investigation:	£ 901
Amount therefore payable:	£4,838.50.

40. The Tribunal determines that the amount payable in respect of 50 Sandford Road is varied and reduced to £4,838.50.

Calculation of penalty – 5a Mendip Road

41. The calculation of then penalty payable, as determined by the Tribunal, is as follows.

High culpability, medium likelihood of harm:	£3,000
Aggravating factor, poor track record (+10%):	+£300
Mitigating factors, two (-20%):	-£600
Total:	£2,700
Add: Costs of investigation:	£630.70
Amount therefore payable:	£3,330.70.

42. The Tribunal determines that the amount payable in respect of 5a Mendip Road is varied and reduced to £3,330.70.

Calculation of penalty – 5b Mendip Road

43. The calculation of then penalty payable, as determined by the Tribunal, is as follows.

High culpability, high likelihood of harm:	£6,250
Aggravating factor, poor track record (+10%):	+£625
Mitigating factor, no convictions (-10%):	-£625
Total:	£6,250
Add: Costs of investigation:	£901
Amount therefore payable:	£7,151.

44. The Tribunal determines that the penalty payable in respect of 5b Mendip Road is varied and reduced to £7,151.

Total Penalty

45. The total amount payable payable by the Applicant in respect of all three conjoined appeals in penalty and costs is therefore £15,320.20.

Closing remarks

46. The Tribunal wishes to express its appreciation for the very high quality of the bundles of documents.

Right of Appeal

47. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.

48. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

49. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

50. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result that the party who is making the application for permission to appeal is seeking.