



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

Case Reference(s) : **BIR/00FY/HSD/2024/0001**

Properties : **67 Shrewsbury Road Nottingham NG2 4HN**

Applicant : **Nottingham City Council**

Representative : **Sarah Whitehurst (Compliance Officer)**

Respondent : **Robson Homes Limited**

Types of Application : **An application for a Rent Repayment Order by
a Local Authority.
Sections 40, 41, 43, & 44 of the Housing and
Planning Act 2016**

Tribunal : **Judge D Barlow
Mr A McMurdo**

Date of Decision : **24 January 2026**

DECISION

SUMMARY OF DECISION

The Tribunal orders Respondent to repay to the Applicant the sum of £6,582.16 by way of a rent repayment order within 28 days of the date of this decision.

Background and procedural history

1. On 5 August 2011 the Respondent entered into a tenancy agreement with Mrs SE France (nee Plewinski) for the premises 67 Shrewsbury Avenue, Sneiton, Nottingham NG2 4HN ("the Property"). The tenancy agreement was granted for an initial term of 12 months. She continues to occupy the Property under the statutory continuance with her two children. Mrs France pays £150.00 per month (initially to the Respondent but since September 2022 to the Respondent's agent GW Estate Agents). The balance of the rent (£438.48 - £506.32 4xweekly) is paid as Housing Benefit by the DWP direct to the Respondent
2. The Property is in an area designated as a selective licensing area by Nottingham City Council under a five-year scheme which came into effect from 1 August 2018. It was therefore necessary for any landlord letting a property within the scheme area to hold a licence (or for a temporary exemption notice to be in force) to avoid potentially committing a criminal offence under section 95 of the Housing Act 2004 ("the 2004 Act").
3. It is common ground that the Respondent did not apply for a licence until 15 November 2022.
4. On 20 July 2023 the Applicant served a notice of intended prosecution to the Respondent in compliance with section 42 of the 2016 Act. No response was received.
5. On 23 July 2024, the Applicant applied to the Tribunal under section 41(3) of the Housing and Planning Act 2016 ("the 2016 Act") for an order that the Tribunal should make a rent repayment order in its favour.
6. Directions were issued on 26 February 2025 requiring the parties to provide statements of case and supporting documents in document bundles. The Applicant complied with those directions. The Respondent did not. Directions were issued on 18 June 2025 warning that a barring order may be made if the Respondent did not comply with directions. The Respondent failed to respond to the warning notice.
7. On 8 September 2025, the Respondent was barred from taking further part in the proceedings, pursuant to rule 9 (3) (a) and rule 9 (7) (a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("The Rules"). The Applicant requested a paper determination given that the principal facts were undisputed and the Respondent barred. Directions were issued on 2 October 2025 concerning this, following which, on 8 October 2025, the Respondent sought further directions on lifting the bar.
8. On 28 October 2025 further directions were issued which required the Respondent to file a statement explaining:
 - a. Why it has failed to participate in the proceedings prior to the 8 October 2025.
 - b. Why it failed to obtain a selective licence for the property.
 - c. Whether it has been the subject of any previous enforcement actions under the Housing Acts – and if so what and when.
 - d. Its financial position.
9. The Respondent filed an email letter on 28 October 2025 in response. The Applicant objected to the bar being lifted on the grounds that the letter failed to adequately address these points. The Tribunal heard further oral submissions on this issue at the start of the hearing and determined that it would not lift the bar but would consider the Respondent's submissions.
10. The hearing of the application took place by Video Hearing Service link on 4 November 2025. The Applicant attended, represented by Ms Siobhan Metcalf of Nottingham City Council. The Respondent was represented by its director Ms Deborah Clark.
11. This is the decision of the Tribunal on the application, with the reasons for our decision appearing in the paragraphs below.

Law

Statute

12. The applicable statutory provisions are set out in the Appendix

The Application

13. The Applicant seeks a rent repayment order of £6,582.16 representing the Housing Benefits paid during the 12-month period prior to 15 November 2022 during which the Respondent was committing an offence under section 95(1) of the 2004 Act.
14. The Applicant seeks a maximum order under on the grounds that the Respondent has a prior history of relevant offences relating to this Property and properties at 56 Sneinton Boulevard, Nottingham NG2 4FE and 4 Kilby Avenue, Nottingham, NG3 7DD. On 13 June 2023 Civil Penalty Notices (Final) were issued to the Respondent on all three properties for failure to licence them under Part 3 of the Act. The Notices were not challenged or appealed but the financial penalties imposed have not been paid.

Facts

15. The basic ingredients of the offence are not disputed. The Respondent admits that the Property should have been licenced under Part 3 of the 2004 Act during the relevant 12-month period and was not. The amount of Housing Benefit paid to the Respondent has not been challenged.
16. The Applicant filed a statement of case and supporting evidence which includes a map showing the Property within the area of designation for selective licensing, a copy of the tenancy agreement, a witness statement of Mrs France (the tenant) confirming the contractual basis of the tenancy, a record of Mrs France's benefit payment history and letters to the Respondent at its registered office which include a warning notice, a copy of the section 42 notice of intended proceedings and a copy of the Civil Penalty final notice. The Respondent has not disputed this evidence but has put forward reasons for its failure to seek a licence which is dealt with below.
17. We therefore find as a fact that the Property was required to be licensed during the relevant period and was not. The elements of an offence under section 95(1) of the 2004 Act are established beyond reasonable doubt. Therefore, unless the Respondent can avail itself of the statutory defence of reasonable excuse under section 95(4), an offence of failure to licence the Property under section 95(1) was committed for the whole of the relevant period.

Respondents case

18. In the email submitted by Deborah Clark on 28 October 2025, she provides a very brief explanation for the Respondent's failure to licence and a partial explanation for the Respondent's failure to participate in the proceedings. She does not comment on prior enforcement proceedings or give more than scant details of the company's financial position. The explanation for the company's failure to licence is a misapprehension of the seriousness of such failure and poor advice received from a letting agent who told them not to worry about it. She also alleges that her co-director, Rob Lill, spoke to someone at the Tribunal office when they received notice of this application and was told not to worry about it for three months.
19. No witness statement was provided from either director or the letting agent. No details of the date of the alleged call to the tribunal office was provided and no explanation of why after the period of three months had elapsed, the Respondent's failure to participate continued.
20. The email asks the Tribunal to take account of the fact that the licence has now been in place for several years, that the company has financial difficulties due to the escalating costs of maintaining and managing the Property, and that this is an isolated case.
21. Ms Clark attended the hearing on 4 November 2025 and made further submissions. She could not provide any additional details of Rob Lill's call to the Tribunal office. She admitted receiving the Tribunal's correspondence in June 2025 attaching the barring warning notice but

said she didn't read the attachment properly because there was so much going on at the time. Ms Clark said that she knew about the requirement to licence the company's properties and spoke to a letting agent at the time. The letting agent also knew about the scheme but told her not to worry about applying for a licence because no one else was doing it.

22. Ms Clark said the company owned about 14 residential properties (of the top of her head she couldn't be sure of the exact number) all of which are now licenced. Ms Clark and Rob Lill manage all but one of the properties. That one is managed by a letting agent. She said the company was suffering financial hardship due to the running costs of the properties, all of which are mortgaged, and the failure of some tenants to pay rent or council tax. She did not deny the offence but submitted the reason for not licensing was poor advice from the letting agent she spoke to.
23. The Tribunal determined that the Respondent had failed to provide any reasonable excuse for its failure to comply with directions or meaningfully participate in the proceedings prior to the letter of 28 October 2025. The excuses put forward were not supported by any evidence other than Ms Clark's letter and oral submissions which amounted to little more than an initial misapprehension, followed by a period when the directors were too busy to give the proceedings any attention. This was insufficient for the Tribunal to consider it fair and just to lift the bar.
24. Consequently, the Tribunal was not obliged to consider the Respondent's letter of 28 October 2025, Ms Clark's oral evidence, or any closing submissions she was invited to put forward. However, the Tribunal determined that it would consider the Respondent's late evidence (such as it was) and her submissions on the basis that the Respondent had already filed a supplemental statement in response to the letter of 28 October 2025, and the oral evidence did not add much to what was in the letter. There was therefore no real prejudice to the Applicant.
25. I will mention here that the Respondent filed no evidence contradicting the Applicant's evidence of the three civil penalties imposed on the company on 13 June 2023. Ms Clark did not dispute the evidence in her letter of 28 October 2025, or in oral evidence. She did not address the point until invited to make a closing submission when for the first time she denied any knowledge of the civil penalties, stating that if they had been served on the registered office she didn't get them.

The Issues

26. The Tribunal must determine the following issues:
 - a. Are the elements of an offence under section 95 of the 2004 Act established beyond reasonable doubt;
 - b. If so, has the Respondent made out a defence of reasonable excuse under section 95(4) of the 2004 Act;
 - c. If not, what amount should the Tribunal award by way of rent repayment order;
27. The Tribunal has made findings of fact in relation to the first issue which confirms the ingredients of the offence have been met.
28. The reasonable excuse defence in section 95 of the 2004 Act has been considered on several occasions by the Upper Tribunal. Of particular relevance, is the case of *Aytan v Moore* [2022] UKUT 027 (LC), the Upper Tribunal was considering whether a professional landlord with some ten properties could succeed in a reasonable excuse defence where the obligation to licence the property had arisen during the tenancy and that obligation had not been drawn to the landlord's notice by their agent. At paragraph 40, the Upper Tribunal said:

"We would add that a landlord's reliance upon an agent will rarely give rise to a defence of reasonable excuse. At the very least the landlord would need to show that there was a contractual obligation on the part of the agent to keep the landlord informed of licensing requirements; there would need to be evidence that the landlord had good reason to rely on the competence and experience of the agent; and in addition there would generally be a need

to show that there was a reason why the landlord could not inform themselves of the licensing requirements without relying upon an agent, for example because the landlord lived abroad.”

29. The Respondent's difficulty in this case there is no evidence that the Property was being managed by a letting agent who was contractually responsible for advising on and/or obtaining the licence. Ms Clark admits having been aware of the requirement to licence the Property but instead of properly informing herself of those requirements decided to rely on a conversation with a letting agent who may or may not have been under contract and was clearly not competent to give such advice. We do not find that it was reasonable to rely on that conversation. Furthermore, the Respondent was aware of the requirement to licence, so even had that reliance been reasonable, there comes a point when a reasonable landlord would question whether the advice “not to worry because no one was doing anything” was correct. At some point the Respondent ought reasonably to have reflected on the conversation and checked the licensing situation. That would have been very straight forward – a simple enquiry to the Council would have resolved the question. The duration of the period when the Property remained unlicensed renders the long-continued reliance on such questionable advice unreasonable.
30. We are therefore unable to determine that there is a reasonable excuse for failure to obtain a licence and are satisfied that the offence under section 95(1) of the 2004 Act has been committed.
31. We turn now to determination of the amount of rent that we should order be repaid. We are aware of the methodology set out in *Acheampong v Choudhury* [2022] UKUT 239 (LC), however, in this case we are required to consider whether the two conditions in section 46 of the 2016 Act (amount of order following conviction) are met, requiring a maximum order to be made.
32. The Applicant has provided a witness statement confirming that three financial penalties were made against the Respondent on 13 June 2025. The time for appealing the final notices has long expired and no notice of appeal has been received by the Applicant (s46(2)(b) and (4)). A copy of the final notice for this Property is annexed to the Applicant's statement of case. The Respondent has not challenged the evidence. Ms Clark made no reference to the evidence in her letter of 28 October 2025, despite being directed by the Tribunal to provide a statement confirming whether the Respondent had been the subject of enforcement proceedings. Her only comment came during closing submissions when she said if the notices had been served on the companies registered office, she had not seen them.
33. We do not find it credible that a competent, responsible, landlord would fail to act or comment on specific allegations of prior enforcement proceedings (supported by copies of the financial penalty notice) if it was genuinely unaware of such proceedings. We find therefore that Ms Clark's submission is either untrue or a consequence of the Respondent failing to open and deal with its post or read the pleadings in this case. Either way we are satisfied that Condition 1 is met (s46(2)(b)).
34. Condition 2 is that an order is made in favour of a local housing authority (s46(3)).
35. We are therefore satisfied that both conditions of section 46 are met and that the amount to be awarded must (subject to section 46(5)) be the maximum amount we have power to order (s46(1)).
36. Section 46(5) requires the Tribunal to consider whether there are exceptional circumstances that render it unreasonable to require the landlord to pay. No evidence of exceptional circumstances has been provided. Ms Clark stated that the Respondent owns 14 rental properties (she thinks). She made vague assertions of financial hardship without providing any hard facts or figures, despite also claiming to manage all but one of the properties jointly with Rob Lill. The Respondent's late engagement with the proceedings and failure to provide any evidence in support of its financial position is woefully insufficient for any finding of exceptional circumstances.

Decision

37. Pursuant to section 44 of the 2016 Act, for the reasons set out above we order the Respondent to repay to the Applicant the sum of £6,582.16 by way of a rent repayment order.

D Barlow
Deputy Regional Judge

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix

Relevant Statutory provisions

Housing and Planning Act 2016

40 Introduction and key definitions

(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—

(a) repay an amount of rent paid by a tenant, or

(b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.

(3) A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
6	Housing Act 2004	section 95(1)	control or management of unlicensed house

41 Application for rent repayment order

(1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.

(2) ...

(3) A local housing authority may apply for a rent repayment order only if—

(a) the offence relates to housing in the authority's area, and

(b) the authority has complied with section 42.

(4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

42 Notice of intended proceedings

(1) Before applying for a rent repayment order a local housing authority must give the landlord a notice of intended proceedings.

(2) A notice of intended proceedings must—

(a) inform the landlord that the authority is proposing to apply for a rent repayment order and explain why,

(b) state the amount that the authority seeks to recover, and

(c) invite the landlord to make representations within a period specified in the notice of not less than 28 days (“the notice period”).

(3) The authority must consider any representations made during the notice period.

(4) The authority must wait until the notice period has ended before applying for a rent repayment order.

(5) A notice of intended proceedings may not be given after the end of the period of 12 months beginning with the day on which the landlord committed the offence to which

it relates.

43 Making of rent repayment order

- (1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).
- (2) A rent repayment order under this section may be made only on an application under section 41.
- (3) The amount of a rent repayment order under this section is to be determined in accordance with—
 - (a) section 44 (where the application is made by a tenant);
 - (b) section 45 (where the application is made by a local housing authority);
 - (c) section 46 (in certain cases where the landlord has been convicted etc).

44 ...

45 Amount of order: local housing authorities

- (1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a local housing authority, the amount is to be determined in accordance with this section.
- (2) The amount must relate to universal credit paid during the period mentioned in the table.

<i>In the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to universal credit paid in respect of</i>
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

- (3) The amount that the landlord may be required to repay in respect of a period must not exceed the amount of universal credit that the landlord received (directly or indirectly) in respect of rent under the tenancy for that period.
- (4) In determining the amount the tribunal must, in particular, take into account—
 - (a) the conduct of the landlord,
 - (b) the financial circumstances of the landlord, and
 - (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

46 Amount of order following conviction

- (1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 and both of the following conditions are met, the amount is to be the maximum that the tribunal has power to order in accordance with section 44 or 45 (but disregarding subsection (4) of those sections).
 - (2) Condition 1 is that the order—
 - (a) is made against a landlord who has been convicted of the offence, or
 - (b) is made against a landlord who has received a financial penalty in respect of the offence and is made at a time when there is no prospect of appeal against that penalty.
 - (3) Condition 2 is that the order is made—

- (a) in favour of a tenant on the ground that the landlord has committed an offence mentioned in row 1, 2, 3, 4 or 7 of the table in section 40(3), or
- (b) in favour of a local housing authority.

(4) For the purposes of subsection (2)(b) there is “no prospect of appeal”, in relation to a penalty, when the period for appealing the penalty has expired and any appeal has been finally determined or withdrawn.

(5) Nothing in this section requires the payment of any amount that, by reason of exceptional circumstances, the tribunal considers it would be unreasonable to require the landlord to pay.