FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00DA/HNA/2025/0635**
Property	:	**Flat 19, York Towers, 383 York Road, Leeds LS9 6FB**
Appellant	:	**Mr R P Nicol & Mrs A V Nicol**
Respondent	:	**Leeds City Council**
Type of Application	:	**Housing Act 2004 Section 249A & Schedule 13A**
Tribunal Members	:	**P. Barber (Tribunal Judge)** **J Jacobs (Valuer Member)**

DECISION AND REASONS

DECISION

The Appeal is refused.

The Tribunal confirms the financial penalty of £2825.00 under section 249A of the Housing Act 2004 for the offence of failing to comply with a selective licencing requirement under section 95(2) of the Housing Act 2004.

Reason

1. The Appellants are joint owners of a flat known as 19 York Towers, 383 York Road, Leeds LS9 6FB (the Property). It is alleged that the flat was managed or controlled by the Appellants in a selective licencing area

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without a licence, contrary to section 95(1) of the Housing Act 2004. The Respondent imposed a civil penalty under section 249A of that Act in the sum of £2825.00. The Appellants appealed to the Tribunal, and we had an oral hearing of the appeal by video link on the 20 April 2026. This is our decision and reasons for that decision.

The Legal Framework

2. By section 249A of the Housing Act 2004:

> (1) The local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England.
>
> (2) In this section "relevant housing offence" means an offence under—
> …………
>
> (c)section 95 (licensing of houses under Part 3),
> ………..

3. Section 95 of the Act provides that "(1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed…but is not so licensed."

4. Section 95(4) provides that "it is a defence that he had a reasonable excuse…(b) for failing to comply with the condition".

5. By subsection (4) of section 249A the maximum penalty is £30,000 and subsection (6) provides that the procedure for imposing such a fine and for an appeal against the financial penalty is as set out in schedule 13A to the Act.

6. Paragraphs 1 to 3 of Schedule 13A set out the provisions in relation to a "Notice of Intent" which must be served before imposing a financial penalty. Paragraph 2 provides that the notice must be served within 6 months unless the failure to act is continuing (which is the case in this appeal) and paragraph 3 sets out the information which must be contained within the Notice.

7. After service of the Notice of Intent and following consideration of any representation made, paragraph 6 provides for the service of a "Final Notice", which must set out the amount of the financial penalty and the information required in paragraph 8: i.e., the amount, the reasons, how to pay and information about the right of appeal.

8. Paragraph 10 of schedule 13A sets out the provisions in relation to such an appeal:

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> (1) A person to whom a final notice is given may appeal to the First-tier Tribunal against—
>
> (a) the decision to impose the penalty, or
>
> (b) the amount of the penalty.
>
> (2) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.
>
> (3) An appeal under this paragraph—
>
> (a) is to be a re-hearing of the local housing authority's decision, but
>
> (b) may be determined having regard to matters of which the authority was unaware.
>
> (4) On an appeal under this paragraph the First-tier Tribunal may confirm, vary or cancel the final notice.
>
> (5) The final notice may not be varied under sub-paragraph (4) so as to make it impose a financial penalty of more than the local housing authority could have imposed.

9. Accordingly, the Tribunal, in this appeal, has jurisdiction over the decision to impose a penalty; the amount of the penalty and can confirm, vary or cancel the final notice including increasing, if it so determines, the amount of the penalty. The appeal is by way of a re-hearing, which we have conducted.

10. We had to be satisfied beyond reasonable doubt that the conduct of the Appellants amounts to a “relevant housing offence” under section 95 of the Act – i.e. that Mr & Mrs Nicol failed to comply with licensing condition under Part 3 and in particular section 90 of the Housing Act 2004.

The Issues for Determination

11. The Tribunal identified the following issues:

> (1) Whether the Appellants were persons managing or having control of the property;
> (2) Whether the property required a licence and was unlicensed during the relevant period;

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(3) Whether the offence under section 95(1) is proved beyond reasonable doubt;
(4) Whether the Respondent complied with the statutory procedure;
(5) Whether the Appellants have established a reasonable excuse;
(6) The appropriate level of any financial penalty.

Findings of Fact and Reasons

Ownership, Location and Letting

12. The Tribunal finds that the Appellants were the leasehold owners of the Property and that during the relevant period the property was occupied under a tenancy agreement and rental income was received by or on behalf of the Appellants.

13. We find that the property was situated in the Harehills selective licensing area and that the scheme came into force on the 06 January 2020 and remained in force until 5 January 2025. The Tribunal is satisfied that the designation was lawfully made and adequately published through extensive consultation and ongoing publicity measures. Examples of the type of action taken by the Respondent are included in the bundle and many First-tier Tribunals, together with the higher courts on appeal have confirmed that the level of publicity and public awareness undertaken by the Respondent (and other Local Housing Authorities) is sufficient to bring the scheme to public attention.

14. The Appellants had appointed a professional managing agent for the purpose of managing the Property and the Tribunal accepts that day to day management of the flat was delegated to that agent. The agent advertised the property for let, selected tenants and prepared tenancy agreements, collected rent and such-like. We accept that the Appellant relied to a significant extent on the agent for compliance with statutory obligations, and that this was included in their agreement with the agent.

15. The Respondent wrote to the Appellants on the 03 June 2024 at the address recorded at the Land Registry informing them of the need to obtain a licence for the Property and inviting them to do so. The Appellants submit that they did not receive the letter. There is also an email in the bundle, which appears to be a general email, from the Managing Agents to the Appellant dated the 10 June 2024 which informed landlords of the licensing requirements. The Appellants also dispute receipt of that email, and the Tribunal heard evidence on the point. The Tribunal accepts that it cannot be definitively proven whether the letter or email were received and read, however, the Appellants accepted that had the email been received and read they would have understood its contents and meaning and that it was sent to the correct email address. Neither receipt of the letter or the email is determinative of the issues in this appeal.

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16. By October 2024, however, the Appellants had actual knowledge of the licensing requirements as they had received the PACE correspondence alerting them to the need to obtain a licence. Notwithstanding that knowledge they still failed to apply for a licence before the ending of the scheme in January 2025.

Whether the Offence is made out

17. The Tribunal is satisfied beyond reasonable doubt that the Property was in a designated selective licensing area during a period when it was required to be licensed but was not so licensed. The Tribunal is also satisfied beyond reasonable doubt that the Appellants were persons managing or controlling the property during the relevant period and accordingly, the Tribunal finds that the offence under section 95(1) is proven.

Reasonable excuse

18. The Appellants argue that they had a reasonable excuse for the control or management of the Property, which was required to be licensed, some of which has been touched upon above.

Lack of Knowledge

19. The claim is that the Appellant were unaware of the licensing requirements until October 2024. Even if this contention is accepted, the Tribunal finds that the Respondent undertook an extensive publicity campaign as set out in the bundle. The Appellants contend that they do not live in Leeds and would not have had access to the extensive local news and publicity surrounding the scheme, which had been present for many years. However, the Tribunal finds that the publicity also included a web presence on the Respondent's web pages and from 2020 onwards had the Appellant's looked at the Leeds City Council website, then they would have been alerted to the scheme. It follows that the Tribunal finds that the lack of awareness in these circumstances does not amount to a reasonable excuse.

Reliance on Managing Agents

20. The Appellants rely extensively on the fact that the Property was professionally managed during the relevant period and that this amounts to a reasonable excuse. The Tribunal rejects that submission. The statutory duty to obtain a license rests on the person having control or management of the property, which includes the Appellants. While an agent may assist in ensuring that a tenancy is compliant, it does not displace that duty. The Tribunal finds that a reasonable landlord would ensure that he or she was aware of statutory obligations and monitor compliance with such obligations so that they are fulfilled. Further, the

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Tribunal finds that notwithstanding knowledge in October 2024, the Appellant still failed to obtain a licence despite an obvious opportunity to do so.

Failure to Inform

21. The Appellants submit that the Respondent failed to property communicate and inform them of the obligation and that this amounts to a reasonable excuse. The Tribunal rejects that submission. As mentioned above, there is no statutory or other such requirement for the Respondent to notify landlords individually of a failure to obtain a selective license. The fact that notice was attempted to have been sent by Leeds City Council in June 2024 and not received provides no reasonable excuse. In any event, the Appellants had actual notice in October 2024 and still failed to obtain a licence.

Conclusions on Reasonable Excuse

22. It follows that none of the Appellants submissions in relation to a reasonable excuse stand up to scrutiny and the Tribunal finds that they have failed to establish a reasonable excuse for failing to obtain a licence.

Procedural Compliance

23. The Tribunal finds that the Respondent complied with the statutory requirements. A notice of intent was served; representations were considered and a final notice was issued. The penalty was reduced following further review and service was made on the Land Registry address in a lawful and sufficient manner.

The Amount of the Penalty

24. The Tribunal must have regard to the Respondent's published Civil Penalties Policy, contained within the bundle together with the statutory guidance and reminds itself that the aims of the Civil Penalty Scheme are to punish, deter and remove financial gain from any failure to comply.

25. The Respondent's scheme provides that, in the first instance, a civil penalty matrix of culpability and harm will be applied following which consideration will be given to financial gain.

26. The Tribunal accepts that the level of harm in selective licensing cases is generally low and there is no evidence of any direct harm to the tenant.

27. Whilst the Respondent initially assessed culpability as medium and made submissions as to why the Tribunal should increase culpability from low back to medium, we decided that culpability was correctly assessed as low. We take into account the fact that the Appellants owned a single property, that they engaged with the Respondent once they became aware

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of the requirement and there is a degree of uncertainty over the 2024 email. The Tribunal also takes into account the fact that the Appellants failed to act once they were clearly aware of the requirement in October 2024 but that this was an isolated occurrence. Whilst acknowledging that the Appellants' conduct after October 2024 is concerning, we decided that the uncertainty in relation to the earlier communication justifies retaining the lower categorisation. None of the Appellant's justification for failing the obtain a licence post October 2024 were, in the Tribunal's judgement, reasonably held. In the Tribunal's judgement a reasonable landlord faced with a clear indication that a licence should have been obtained would go on to obtain one and would have understood that any civil penalty procedure did not displace that obligation.

28. Low culpability and low harm might ordinarily give rise to a fine of £2500. From this mitigation of 5% for having no previous convictions is removed giving rise to a determinative amount of £2375.00

29. The Respondent's policy provides that any financial penalty should not be lower than the amount of financial gain made from the failure plus £2000 or 10% of the penalty, whichever is the greater. We note that the cost of a licence at the time was £850 and that the Appellants, gained £850 by the failure to obtain a licence. It follows that, in having regard to the Respondent's policy, the higher amount is the amount of financial gain plus £2000 giving rise to a penalty of £2850 which the Tribunal finds is consistent with the aims of the policy to punish, promote deterrence and properly reflects proportionality.

Signed Dated 06 May 2026

Phillip Barber, Judge of the First-tier Tribunal

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