FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BK/HMF/2023/011**
Property	:	**31 Ellaline Road, London W6 9NZ**
Applicants	:	**(1) Jake Aaron Cable** **(2) Elizabeth Hingley** **(3) Clarence Fung** **(4) Fanny Chavanne** **(5 Veronica Elizabeth Pellerin.**
Representative	:	**Mr C Neilson, of Justice for Tenants**
Respondent	:	**(1) Maureen Susan Parslow** **(2) Hazel Linda Enness Carvalho**
Representative	:	**No appearance**
Type of Application	:	**Application for a rent repayment order by a tenant**
Tribunal Members	:	**Tribunal Judge Prof R Percival** **Ms F Macleod MCIEH**
Date and venue of Hearing	:	**8 September 2023** **10 Alfred Place**
Date of Decision	:	**29 September 2023**

DECISION

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Orders

(1) The Tribunal make a rent repayment order against both Respondents jointly and severally in favour of the Applicants of £17,160, to be paid within 28 days.

(2) The Tribunal orders under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 13(2) that the Respondents reimburse the Applicants together the application and hearing fees in respect of this application in the sum of £300.

The application

1. On 27 April 2023, the Tribunal received an application under section 41 of the Housing and Planning Act 2016 ("the 2016 Act") for Rent Repayment Orders ("RROs") under Part 2, Chapter 4 of the Housing and Planning Act 2016. Directions were given on 23 June 2023, and amended on 27 July 2023.

2. In accordance with the directions, we were provided with a bundle prepared by the Applicants of 294 pages.

The hearing

Introductory

3. Mr Neilson of Justice for Tenants represented the Applicants. The Applicants attended (save Ms Chavanne).

4. The Respondents are sisters. Only the first Respondent has engaged with the Tribunal expressly. She had done so in person, and had indicated that neither Respondent would be attending the Tribunal, until 16.41 on 6 September 2023, when solicitors (Bates) contacted the Tribunal. They asked that alternative arrangements to a face to face hearing be made, in the view of the health of the Respondents. The Tribunal sought to arrange a video hearing, but it provide impossible to do so in the time available. We heard the application in a face to face hearing, having satisfied ourselves that it was in the interests of justice to proceed with the hearing. It was clear that the Respondents had had adequate notice of the hearing, and could and should have sought to have made alternative arrangements well before the email from the solicitors.

5. The property is a four bedroom, two storey terraced house. On the ground floor there is a living room, a kitchen and a third reception room, used as a bedroom during the relevant period. It is designated

room 1. Upstairs are three bedrooms, two doubles (rooms 2 and 3) and a small single bedroom (room 4).

6. The following table shows the Applicants' case as to occupation of the property:

	Period of occupation	**Tenant**
Room 1	02.11.2019 – 30.11.2022	Jake Cable
Room 2	09.10.2021 – 06.04.2022	Fanny Chavanne
	07.04.2022 – Nov 2022	Veronica Pellerin
Room 3	April 2020 – 30.12.2021	Mathew Fishman
	31.12.2021 – 30.11.2022	Clarence Fung
Room 4	01.08.2019 – 30.11.2022	Elizabeth Hingley

7. Mr Cable and Ms Hingley entered into a relationship, and so may have constituted a household. Accordingly, there were at all times four tenants, in more than two households.

8. The Respondents have not contested this occupation history.

9. At the outset of the hearing, we proposed that Mr Neilson take us through the allegation of the criminal offence, and the process as set out in *Acheampong v Roman and Others* [2022] UKUT 239 (LC) (see below at paragraphs [24] to [26]) as to the amount of any RRO by way of submissions, with evidence from one or more of the Applicants as necessary. Mr Neilson agreed. In the event, we mostly heard evidence from Mr Cable, with some additional evidence from Ms Hingley.

The alleged criminal offence

10. The Applicants allege that the Respondent was guilty of the having control of, or managing, an unlicensed house in multiple occupation contrary to Housing Act 2004 ("the 2004 Act"), section 72(1). The offence is set out in Housing and Planning Act 2016, section 40(3), as one of the offences which, if committed, allows the Tribunal to make a rent repayment order under Part 2, chapter 4 of the 2016 Act.

11. The Applicants' case is that the property was situated within an additional licensing area as designated by London Borough of Hammersmith and Fulham ("the council"). Two licensing schemes are relevant. One started on 5 April 2017, and ceased to have effect on 4 June 2022. The second commenced on the following day. Both schemes applied to the borough as a whole. The period of breach upon which the Applicants rely is 1 December 2021 to 30 November 2022.

12. The Respondents did not contest that the property should have had an additional licence during the relevant period, and did not have a licence. However, Mrs Parslow provided material which may have been

capable of establishing a reasonable excuse (section 72(5) of the 2004 Act).

13. In correspondence to the Tribunal and the Applicants, Mrs Parslow said that when her letting agent advised her that there were “new rules”, she consulted the Council’s website. She saw a list of streets there, in which Ellaline Road did not feature, and concluded that she did not need a licence. She accepted that this was a misunderstanding. Email correspondence with an officer of the Council in May and June of 2023, also produced by Ms Parslow, showed her seeking to apply for a retrospective additional licence.

14. In support of her submission that she had a reasonable excuse, she produced a printout of pages from the Council’s website. The printout shows, half way down the first page, a heading “Selective licensing”, some text explaining that a selective licence is necessary if a landlord is letting a property in a list of streets, which did not include Ellaline Road. The date at the top left hand corner of the print out is 12 May 2023.

15. The Applicants have produced a printout of a more complete version of the relevant webpages, dated 26 June 2023. The text in the section of this printout that also features in the Respondents’ printout is identical with it. The Applicants invite us to infer that the earlier text would likewise the same at the time when Mrs Parslow printed the pages she produced.

16. The opening heading to the webpage is “Property licensing for landlords and letting agents”. The next sub-heading is “New discretionary licensing schemes approved”, which is followed by text explaining that the Council had approved “the renewal of our discretionary licensing schemes. The renewed additional licensing scheme and the selective licensing scheme will be effective from 5 June when the old scheme ends.” At the end of this text is the statement “There are 3 property licensing schemes in H&F. Read the descriptions below to find out which one you need.”

17. There follows three sections, headed “Mandatory HMO licences”, “Additional HMO licencing” and “Selective licencing”. The additional licensing section states “you will need an Additional house in multiple occupation (HMO) license if you are a landlord of a rented house ...”, and then gives the basic criteria for an HMO not covered by mandatory licensing. There then follows, under the further heading “Selective licensing” the criteria for that scheme, including the list of streets.

18. It is not clear when Mrs Parslow originally consulted the website. However, we are prepared to assume that Mrs Parslow did consult the website at a time such that, if the defence were to be made out, it would at least very largely be effective to negative her liability for an RRO.

That, of course, includes the assumption that the webpage was the same when she read it, but as she relies on text printed out later as representing text she would have read at an earlier, undefined, time, that is an assumption we are confident we should make.

19. Underpinning Mrs Parslow's argument that the Respondents have a reasonable excuse is the explanation that she is 74 years old, and has "very limited technical expertise". She explains elsewhere that she can email and text, but not write letters (ie using a PC), scan, or make up pdf files.

20. We are satisfied, having seen the webpage, that it is entirely clear in its presentation and terms. Any reasonable person reading it would understand that additional licensing and selective licensing were different things, and that the list of streets related to selective licensing. We do not consider that doing so requires any technical skill at all, apart from the ability to visit a website in the first place. It is clear that Mrs Parslow is able to do that. Her misunderstanding of the significance of the list does not constitute a defence of reasonable excuse.

21. There was no suggestion that she relied on (or at any point received) advice from a third party, in particular, her letting agent. Had she sought to argue that acting on such advice constituted a reasonable excuse, it is inevitable that the criteria for such reliance to be effective in *Aytan v Moore* [2022] UKUT 27 (LC) would not have been made out.

22. An alternative way of putting the same conclusion would be to say that the Respondents did not have any proper system in place to enquire as to what their legal responsibilities were. In such circumstances, ignorance or mistake as to those obligations does not constitute a reasonable excuse.

23. We accordingly conclude, beyond a reasonable doubt, that the Respondents committed the offence in section 71(1) of the 2004 Act.

The amount of the RRO

24. In considering the amount of an RRO, the Tribunal will take the approach set out in *Acheampong v Roman and Others* [2022] UKUT 239 (LC) at paragraph 20:

> "The following approach will ensure consistency with the authorities:
> (a) Ascertain the whole of the rent for the relevant period;
> (b) Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. ...

> (c) Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made … and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step:
> (d) Consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4)."

25. We add that at stage (d), it is also appropriate to consider any other of the circumstances of the case that the Tribunal considers relevant.

26. In respect of the relationship between stages (c) and (d), in *Acheampong* Judge Cooke went on to say at paragraph [21]

> "I would add that step (c) above is part of what is required under section 44(4)(a) [conduct of the parties]. It is an assessment of the conduct of the landlord specifically in the context of the offence itself; how badly has this landlord behaved in committing the offence? I have set it out as a separate step because it is the matter that has most frequently been overlooked."

27. As to stage (a), by sections 44(2) and (3) of the 2016 Act, the maximum possible RRO is the rent paid during a period of 12 months, minus any universal credit (or Housing Benefit – section 51) paid during that period.

28. During the relevant period, Mr Cable acted as lead tenant as far as payment of rent is concerned. The other Applicants paid Mr Cable, and he paid the Respondents. Proof of payment was provided.

29. The Respondents do not contest the Applicants' evidence that at no time were any of them in receipt of a relevant benefit.

30. The tenancy agreement provides for the tenants to pay utility bills. There is accordingly no payments for utilities by the landlord to be subtracted.

31. At the beginning of the period, Mr Cable received the sum of £680 from Mr Fishman (Mr Fung's predecessor in room 3), who is not an applicant. That sum accordingly falls to be subtracted from the total rent paid by Mr Cable in determining the maximum RRO.

32. The final figure for the maximum RRO is £24,520.

33. In assessing the seriousness starting point under stage (c), there are two axes of seriousness. The first is the seriousness of the offence, compared to the other offences specified in section 41 of the 2004 Act. The offence under section 72(1) is significantly less serious than those in rows 1, 2 and 7 in the table in section 40 of the 2016 Act, and we take that into account. It is also the case that this is the offence most often encountered by the Tribunal, by a substantial margin.

34. We turn to the seriousness of the offence committed by the Respondents compared to other offences against section 72(1).

35. The nature of a landlord has been held to be relevant to the seriousness of the offence. In some cases, it has been argued that there is a distinction to be drawn between "professional" and "non-professional" landlords, seriousness being aggravated in the case of the former. The proper approach is as set out by the Deputy President in *Daff v Gyalui* [2023] UKUT 134 (LC), at paragraph 52:

> "The circumstances in which a landlord lets property and the scale on which they do so, are relevant considerations when determining the amount of a rent repayment order but the temptation to classify or caricature a landlord as "professional" or "amateur" should be resisted, particularly if that classification is taken to be a threshold to an entirely different level of penalty. … The penalty appropriate to a particular offence must take account of all of the relevant circumstances."

36. Mrs Parslow's evidence was that the property had originally been the family home. She started to let it, some 25 years ago, originally to pay for her mother's residential home fees. It now constituted her pension. She did not have any other properties that she let. Although expressed as relating only to herself, we assume that the same is true of the second Respondent.

37. As to the condition of the property, we consider that there are two main issues bearing on the seriousness of the offence.

38. The first relates to fire safety. The Applicants' case was that the fire precautions were inadequate. It was agreed that two smoke alarms had been installed in August 2020. Mr Cable's evidence was that one was in the upstairs hall, the second in the ground floor hall, outside the kitchen. He said that they were battery operated. An alarm sounded when batteries required changing, and they did not display a constant light when functioning properly, as had been the case with other mains-wired alarms he was familiar with. On the other hand, the domestic electrical installation certificate issued at the time of installation describes them as mains operated.

39. The licensing standards applied by the Council for two storey HMOs would, however, have required an inter-linked mains-wired smoke alarm with battery back up in each bedsit and living room, in addition to the escape routes (here, the halls) and a heat alarm in the kitchen. So even if the two installed smoke alarms were mains-wired (with battery back-ups), there should have been seven, not two. The alarms were also required to be interlinked.

40. The Council's standards also required a heat alarm in the kitchen. Mr Cable's evidence was that there was none. The standards do not specifically state that a fire blanket is required in a communal kitchen, but a diagrammatic example of typical requirements shows one. We think it likely that a licence would have required one. We do not think it likely that a fire extinguisher would have been required (so do not accept the Applicants' submission that the lack of one should be taken into account).

41. The Applicants' evidence was that all of the internal doors were old and ill fitting. None had self-closing mechanisms. Mr Cable's evidence was that none of the doors were fire doors. He was familiar with the appearance and operation of fire doors. The Respondents did not assert that there were any fire doors in the property. We accept Mr Cable's evidence.

42. Further, the kitchen was so small that the refrigerator was located in the hall, an escape route. This is in breach of fire safety requirements that all escape routes are kept clear.

43. Finally, we note that the ceiling (or part of it) in the kitchen was composed of wood tongue and grove boards, and the ceiling in the sitting room was comprised of polystyrene tiles. Both are flammable. While this may or may not have a direct impact on licensing, both ceilings do substantially increase the risk of injury and death in the event of fire, particularly given the lack of fire doors to impede the spread of fire.

44. There was no evidence that a fire safety assessment had been carried out, another requirement of the Council's standards. Had one been undertaken, of course, it would have noted the serious defects set out above.

45. As to the size of the house and its relationship with the number of occupants, room 4 was, according to the Applicants' uncontested calculation, $4.59m^2$. The Council's standard minimum is $6.5m^2$. So the current arrangement for the occupation of the house would not have received a licence.

46. Mrs Parslow's response is that the Applicants could have used the downstairs sitting room as a bedroom, rather than room 4. Had that been the arrangement offered for licensing, however, it would have meant that the only communal area was the kitchen. We do not have dimensions for the kitchen, but we can get at least some impression from the photographs provided, and the evidence of Mr Cable was that the refrigerator was in the hall because there was insufficient space in the kitchen for a full size refrigerator. It is, therefore, not like a reasonably sized kitchen/diner, which could function as a realistic communal area. We do not think that room 4 could have functioned as a real communal area, given its size.

47. In the result, we conclude that the arrangements suggested by Mrs Parslow would have meant that it may not be a "house reasonably suitable for occupation by not more than the maximum number of ... persons [specified in conditions]" (section 64(3) of the 2004 Act), and accordingly would not have been licensable on that basis. Rather, our conclusion is that the property would only be licensed for three occupants. In coming to these conclusions, the Tribunal has applied its expertise in licensing decisions, specifically that of Ms Macleod.

48. The Applicants' made a series of other complaints. We deal with these briefly, as of less significance than the issues relating to fire safety and size/occupation numbers considered above.

49. First, the Applicants referred to events concerning a leak affecting the party wall in the kitchen. The Applicants' case (only clearly stated in Mr Cable's oral evidence) was that water ingress was caused by a leak, probably from the waste pipe, in the bathroom above. As a result, the wall became wet and was damaged. Builders attended to resolve the issue, but spent a long time doing so (about two months), and did so inadequately, as evidenced by a series of photographs presented by Mr Cable. The Respondents' case was that the leak was caused by a building defect in the neighbour's extension, and that the final result of the building work was satisfactory.

50. Our conclusion is that the Applicants have not demonstrated that the Respondents response to the leak (however caused) was inherently inadequate. Builders were instructed and attended. Insofar as we can come to conclusions – which we do only tentatively – the work carried out by the builders appears to have been shoddy and inadequate. It certainly took far too long. It would be fair to attribute these failings in part to inadequate supervision of the job by the Respondents. However, difficulties with builders, in terms both of quality and timeous attendance, are not uncommon in London.

51. The Applicants also complain that on (at least two, probably more) occasions, the builders attended without prior notice, and early in the morning. This is clearly inappropriate, and should have been taken in

hand by the Respondents promptly when complaint was made (evidence of complaint in the form of printouts of email exchanges was provided).

52. We take into account the other complaints made by the Applicants – old carpets, mice, draughts from ill-fitting doors, small leaks from radiators, a missing section of skirting board, and displaced polystyrene tiles in the sitting room – but do not consider that they have more than a marginal effect on the seriousness of the offence.

53. The Applicants' allege that various of their complaints breached the Management of Houses in Multiple Occupation (England) Regulations 2006. We accept that the fire safety situation amounted to breaches of regulation 4, and those were serious breaches. To the extent that what we might call the minor complaints amounted to breaches of regulation 8, they were not very serious breaches.

54. We consider one further issue under stage (c) (but note the close proximity between stages (c) and (d) – this matter could be categorised as conduct of the landlord under stage (d)). It relates to the electrical installation at an earlier period. The evidence of the Applicants was that in 2020, before the relevant period of this application, the property was re-wired. The Applicants' understanding had been that the electrician was attending to "add some additional sockets". The electrician, on the Applicants' account, found that there was no earth core serving the property, with the result that none of the electrical appliances, or the system as a whole, were earthed. As a result, the electrician, concluding that this constituted an immediate risk to them, asked the occupants then present to vacate the premises. Mr Cable's evidence that they were excluded for two days (for which they received a rent rebate). The Respondents agreed that the property had been re-wired, and they provided an invoice. They did not contest the evidence relating to the earth core.

55. If the Respondents had secured an electrical installation certificate at the outset of the use of the property as an HMO, as they should have, it would have revealed this serious defect. While this is conduct at some remove from the relevant period for the purposes of this application, we consider it appropriate to take it into account at this stage. It graphically illustrates that the legal obligations to secure electrical installation and gas safety certificates are not a merely technical requirements.

56. In assessing the quantum of the RROs at stage (c) (and, given the cross-over between the two, stage (d)), we have taken account of the guidance in the following cases, including particularly where the Upper Tribunal has substituted percentage reductions from the maxima: *Acheampong, Williams v Parmar and Others* [2021] UKUT 244 (UT), [2022] H.L.R. 8; *Aytan v Moore* [2022] UKUT 27 (LC); *Simpson House 3 Ltd v*

Osserman [2022] UKUT 164 (LC); [2022] HLR 37*Hallett v Parker* [2022] UKUT 239 (LC); *Hancher v David and Others* [2022] UKUT 277 (LC); *Dowd v Martins and Others* [2022] UKUT 249 (LC); and *Daff v Gyalui* [2023] UKUT 134.

57. In the light of our findings of fact above, we assess the stage (c) starting point at 75% of the maximum RRO. The very serious fire safety issues, combined with the room size/number of occupants issue, brings the case into the serious band occupied by such cases as *Choudhury v Razak* (heard and reported with *Acheampong*)(75%), *Simpson House 3 Ltd* (80%), *Williams v Palmer* (80%, a small bedroom case); and *Wilson v Arrow* (heard and reported with *Aytan v Moore*)(90%). The fact that the Respondents are single-property landlords and that the defects are, we conclude, a result of negligence (albeit serious negligence) rather than pursuance of a deliberate business model puts it towards the lower end of the serious band.

58. At stage (d), we must consider what effect the matters set out in section 44(4) have on our conclusions so far. Section 44(4) provides that in determining the amount of an RRO within the maximum, the Tribunal should have particular regard to the conduct of both parties, and to the financial circumstances of the landlord. We must have particular regard to these matters, but we may also have regard to such other matters as we consider relevant in the circumstances.

59. As Judge Cooke noted in *Acheampong*, there is a close relationship between stages (c) and (d). Insofar as we have already made findings in relation to the Respondents' conduct as it relates to the condition of the property, we do not double count them in considering the section 44(4) matters.

60. The Respondents do not make allegations against the conduct of the Applicants which we could take into account at stage (d), and we do not consider that they could properly have done so.

61. The Respondents provide evidence that they conducted themselves properly as landlords, referring, for instance, to the prompt provision of landlords' references to the Applicants. We do not think that instances of being a reasonable landlord amount to positive conduct that we should weigh in the balance at this point: *Dowd v Martins*, [34].

62. The Applicants submit that the Respondents' dealing with the deposit amounts to bad conduct. It is not disputed that the deposit originally paid by the first group of HMO tenants has been protected. As is very common in HMOs of this type, there was what HHJ Luba has referred to as a "churn" of tenants. Each time a new tenant moved into a room, he or she would reimburse an outgoing tenant a sum equivalent to their contribution to the deposit. In *Sturgis v Boddy*, Central London County Court, 19 July 2019 (available on BAILII under the informal reference

[2021] EW Misc 10 (CC)), HHJ Luba found that each churn amounted to a surrender and regrant of the tenancy, with the result that the obligation to protect the tenancy reoccurred on each occasion.

63. The result is that there may be a breach of the obligation to protect a deposit (section 213 of the 2004 Act) on each churn. In *Sturgis*, the judge was considering a situation in which the "original" deposit was taken before the obligation to protect was in place; and the issue before him was whether the statutory penalty should be imposed, and if it should, what the multiplier should be.

64. *Sturgis* is a County Court decision, and no strictly binding on us. However, the case has been generally accepted as correctly decided and the reasoning applied.

65. On this application, we are considering not whether or not there has been a breach of the deposit protection obligation (whether a technical breach or a substantive one), but whether the landlords' acceptance of the practice of informal transfer of a tenant's share of a deposit on churn amounts to bad conduct that we should take into account at stage (d).

66. Mr Cable's evidence was that this practice was a problem, because it led to a lack of transparency in relation to shares of the deposit. We accept that, if there was what in reality was a dispute between an earlier and a later tenant as to what their proper share was, the dispute would at least have been clarified if the landlord had insisted upon formal surrender and regrant on each occasion. However, we note that there is no evidence that the Applicants objected to the use of the informal practice, and in general it suits tenants, both incoming and outgoing, for the informal practice to be followed. In the context of this application, we do not think that we should give any significant weight to the failure of the Respondents to insist on formal surrender and regrant at each tenancy churn.

67. The result at this stage is that there is nothing significant in the conduct of either landlords or tenants to add or subtract from our stage (c) starting point of an RRO at 75% of the maximum.

68. We are required also to consider the financial circumstances of the landlord under section 44(4).

69. The Respondents had not provided any specific submissions in respect of their financial circumstances, let alone any documentary evidence, in advance of the hearing. On the morning of the hearing, we were provided with a document from the Respondents. For the most part, the content had already been covered in Mrs Parslow's letters and

attachments already received. However, in that document, the Respondents did make references to their financial circumstances.

70. The document states that "one of us lives in rented accommodation and is in straitened circumstances", and that the award of an RRO would "cause us great financial distress". It also refers to the Respondents' health issues. There had been two references in earlier written material from Mrs Parslow to an RRO imposing a financial burden on the Respondents, but in the briefest terms.

71. In the light of this document, we put it to Mr Neilson that we had it in mind to allow the Respondents to make written submissions as to their financial circumstances, and asked for his submissions. Mr Neilson helpfully referred us to *Daff v Gyalui*, paragraphs [17] to [27]. In that case, the FTT was found to have overlooked material relevant to financial circumstances, but the Deputy President went on to accept the landlord's additional submission that

> "26 ... the FTT could have made more of the opportunity available to it to obtain relevant evidence. Ms Daff attended the hearing and was cross examined by the respondents' representative but appears not to have been asked any questions by the FTT (or at last none are referred to in the decision). In *Regent Management Limited v Jones* [2012] UKUT 369 (LC) the Tribunal (HHJ Mole QC) explained that it was "an honourable part of its function" for an expert tribunal to raise matters of its own volition which were relevant to the issues to be determined (in that case the quantum of a service charge). Any court or tribunal asked to make a decision on the basis of material which it considers to be incomplete is entitled to put questions of its own to the witnesses who give evidence before it. Where one or more of the parties is without professional representation, the tribunal's role in eliciting the information necessary to enable it to make a fair decision is doubly important.
>
> 27 ... I entirely accept that self-serving oral evidence which is unsupported by corroborative material may be of very limited assistance, but that does not discharge the FTT from the responsibility imposed on it by section 44(4)(b) to consider the financial circumstances of the landlord."

72. We also note that in this case, unlike *Daff v Gyalui*, the directions had not made any specific reference to the Respondents' providing evidence of their financial circumstances.

73. Mr Nielson submitted that allowing the Respondents the opportunity to make written submissions, and giving the Applicants the opportunity to respond to those submissions, would be the appropriate course for the Tribunal to take.

74. We concluded that, in the circumstances of this case, particularly the fact that the Respondents were not present at the hearing, the obligation to make whatever enquiries are necessary to discharge the obligation imposed by section 44(4)(b) on the Tribunal to take the landlord's financial circumstances into account was best discharged by giving the Respondents the opportunity to make written submissions.

75. We accordingly gave directions allowing the Respondents 14 days to make written representations, and indicating the forms of documentary evidence that should be provided to support the submissions. We also made provision for the Applicants to reply within 14 days after receipt of the Respondents submissions.

76. Those directions were sent to the parties on the same day as the hearing, 8 September 2023. There was no doubt that the correspondence address available to the Tribunal had been effective, at least for Mrs Parslow (who, in any event, was de facto acting as the representative of her sister). No submissions were received after the 14 days specified had elapsed, and there had been no application for an extension of time. We confirmed on the date of this decision that this remained the case.

77. The Respondents have therefore had the opportunity to provide documentary or other evidence of their financial circumstances, and have failed to do so.

78. We must therefore consider whether we should take any account of what material relevant to their financial circumstances we do have. That comes down to the statements set out in paragraph [70] above.

79. We note that in the extract from *Daff v Gyalui* quoted above, the Deputy President notes that unsupported oral evidence may be of "very limited assistance", but that carries the implication that it may be of *some* assistance. What we have before us is, first, the bare assertion that the award of an RRO would cause financial distress, and that one of the Respondents (we suspect the second) is in rented accommodation and straightened circumstances. To that we can add what we do know about the Respondents. Mrs Parslow is 74, and we assume that her sister is close to her in age. She regards the income from the property as her pension (although we do not know what, if any, other pensions, including the state pension or other benefits, that she receives). We think it is fair to assume that, broadly, the same is or may be true of her sister. So we think that we have before us at least some material that suggests that the Respondents' financial circumstances should be taken into account, at least to a limited extent, despite their persistent failure to provide supporting material.

80. Against that, Mr Nielson argued at the hearing that it appeared that the Respondents held the property without a mortgage, and as an asset it

would no doubt have substantial value. We accept that this is the case. Despite their ages, we would expect that it would be possible for them to borrow against the asset if necessary.

81. We think that the most we can reasonably do on this basis is to reduce the stage (c) percentage by a 5%.

82. In the result, we conclude that the RRO should be set at 70% of the maximum possible. We have slightly rounded the final figure for convenience.

83. At the hearing, we asked Mr Neilson what form any RRO should take, were we to make one. As submitted, it appeared that the application was for an order in favour of Mr Cable for the whole amount. Mr Neilson, citing *Cobb v Jahanghir* [2021] UKUT 201 (LC), paragraph [42], submitted that it would be appropriate to make a single order in favour of all of the Applicants, for the total sum. Mr Neilson helpfully explained that the practice in cases in which Justice for Tenants represented applicants was for the RRO to be paid into Justice for Tenants client account, and thence to be distributed to each applicant according to their contribution to the rent. We accept Mr Neilson's invitation.

Reimbursement of Tribunal fees

84. The Applicant applied for the reimbursement of the application and hearing fees paid by the Applicants under Rule 13(2) of the Rules. In the light of our findings, we allow that application.

Rights of appeal

85. 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 London regional office.

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

87. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

88. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Name: Tribunal Judge Professor Richard Percival **Date:** 29 September 2023

Appendix of Relevant Legislation

Housing Act 2004

72 Offences in relation to licensing of HMOs

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

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 and 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 to that landlord.

	Act	*section*	*general description of offence*
1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house

	Act	*section*	*general description of offence*
7	This Act	section 21	breach of banning order

(4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

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) A tenant may apply for a rent repayment order only if –

(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and

(b) the offence was committed in the period of 12 months ending with the day on which the application is made.

(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 a 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 had 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 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 Amount of order: tenants

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

(2) The amount must relate to rent paid during the period mentioned in this table.

If the order is made on the ground that the landlord has committed	*the amount must relate to rent paid by the tenant in respect of*
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
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 –

(a) the rent in respect of that period, less

(b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

(4) In determining the amount the tribunal must, in particular, take into account –

(a) the conduct of the landlord and the tenant,

(b) the financial circumstances of the landlord,

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.