



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

**Case reference:** **MAN/ooBW/HMF/2023/0026**

**Property:** **10 New Street, Platt Bridge, Wigan WN2 5JB**

**Applicant:** **Chukwuemeka Obichukwu**

**Respondent:** **Daniel Richardson**

**Type of Application:** **Application for a rent repayment order  
under Section 41 of the Housing and Planning  
Act 2016**

**Tribunal Members:** **Judge J.M. Going  
A Davis MRICS**

**Date of Hearing:** **19 March 2024**

**Date of Decision:** **4 April 2024**

**Date of Determination:** **22 April 2024**

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**DECISION**

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## **The Decision and Order**

**Mr Richardson is ordered to repay rent of £250 to Mr Obichukwu within 28 days of Mr Obichukwu providing Mr Richardson sufficient information to allow that to be paid.**

## **Background**

1. By an Application (“the Application”) dated 14 June 2023 the Applicant (“Mr Obichukwu”) applied to the First-Tier Tribunal Property Chamber (Residential Property) (“the Tribunal”) under Section 41 of the Housing and Planning Act 2016 (“the 2016 Act”) for a rent repayment order in respect of rents paid to the Respondent (“Mr Richardson”) or his company in respect of Mr Obichukwu’s occupation of the property (“10 New Street”).

2. The Tribunal issued Directions on 23 November 2023 setting out the issues for it to consider, how the parties should prepare for the hearing and timetables for the provision of relevant documents. The Directions confirmed that the Tribunal wished to deal with the matter by way of a video hearing.

3. The bundle of documents supplied by Mr Obichukwu included his statements of case and responses, detailed submissions as to the relevant legislation and case law, copies of bank payment confirmations, emails, text messages (including some photographs of the property), letters from Wigan Council, emails from a legal representative and his own witness statements. He also submitted some audio recordings understood to be from his phone.

4. Mr Richardson also provided his own statements of case and witness statements illustrated with copies of various texts messages and emails. He also provided witness statements from 2 other occupiers of the property and his son, as well as phone audio and video recordings.

5. Mr Obichukwu objected to the recordings submitted by Mr Richardson being admitted, saying they had been fabricated and/or tampered with and that their authenticity could not be established. Mr Obichukwu also sought a witness summons to compel the attendance of a particular witness, and for a direction that additional documents be disclosed. Regional Judge Holbrook issued a case management note on 13 February 2024 confirming that it was for the Tribunal at the final hearing to decide whether all or part of the video and audio evidence should be admitted and refused the applications to issue a witness summons and for the disclosure of additional documents. He also directed that the hearing should be held in person (not by video conferencing) at the Tribunal’s hearing centre in Manchester.

6. The Hearing was then set down to be so held on 19 March 2024.

7. On 14 March 2024 Mr Obichukwu by email, citing disability and an inability to make suitable travel and adequate childcare arrangements, requested that there should be video hearing. Having considered the request, the Tribunal confirmed that it would proceed with arrangements to facilitate a “hybrid” hearing whereby the Mr

Obichukwu would be allowed to join via a video link, provided that suitable tests were undertaken beforehand to ensure that the technology would allow.

## **The Property**

8. 10 New Street is a semi-detached house with a recently completed loft conversion and rear ground floor extension. It is described in the application as having four ensuite bedrooms and communal kitchen and laundry facilities. The Tribunal has not inspected it but has been assisted by the internal photographs from within the papers and external photographs that can be seen on Google's Street view.

## **Facts and chronology**

9. Because of the extent of the paperwork, which is on record and which the individual parties have access to, it would be superfluous and, in the Tribunal's opinion, counter-productive to attempt to set out its full detail or every submission and response in this decision.

10. The Tribunal has instead highlighted those issues which it found particularly relevant to, or that help explain, its decision-making.

11. The following matters are evident from the papers. The existence and contents of the documents that are referred to have not been disputed. What is in dispute is how events should be interpreted. Both Mr Obichukwu and Mr Richardson accuse the other of lying and being selective in telling the truth. Both have exhibited a wealth of text messages, and it is readily apparent that there were also telephone calls, conversations and meetings.

At or around 20 October 2022	Mr Obichukwu following a 4-day booking through Airbnb began renting a room from Mr Richardson at 105 Castle Hill Road Hindley. He continued to stay there until 20 December 2022.
10 November 2022	A building regulations completion certificate referring to "single storey rear extension and loft conversion" at 10 New Street was dated and issued by jhai Ltd.
20 December 2022	Mr Obichukwu moved from 105 Castle Hill Road to 10 New Street with assistance from Mr Richardson.
12 May 2023	"Spur Legal – Legal practitioners, corporate consultants and Associates" sent, marked By Email Only, a letter dated 10 May 2023 to Mr Richardson headed "Letter of Demand". It stated "We are solicitors to our client Mr Obichukwu... and on whose instruction" before setting out in 18 numbered paragraphs various allegations and referring to a claim for special damages of £1350 relating to unspecified medical expenses, and general damages relating to heating problems and issues with hot water computed at £9380 together with legal fees of £1000 (with no reference to VAT) resulting in a total amount claimed of £11,730, and concluding with the words "We therefore wish to notify you that failure to pay off our client's demands, to the total tune of £11,730... within 7 days period of receipt of this notice would force our hands in taking legal steps to secure our claim as well as any recurring legal expenses and damages". The

	letter did not have a web address and contained no reference to Spur Legal being authorised and regulated by the Solicitors Regulation Authority or any registration number. The letter requested a “reply- all” email to both Spur Legal and Mr Obichukwu’s respective gmail addresses.
16 May 2023	Mr Richardson together with his son visited 10 New Street. There were verbal exchanges between Mr Richardson and Mr Obichukwu.
20 May 2023	The police visited the property to undertake a welfare check.
24 May 2023	An email from Spur Legal to Mr Richardson (copied at the same time to Mr Obichukwu) stated “...We would like to notify you that we have made multiple attempts to contact you and amicably correspond with you in order to address the letter of demand that was sent to you, but these attempts have been futile, as you have acted belligerent and uncooperative. Please be advised that our willingness to discuss the contents of the letter with you has reached its limit, and you leave us no other option but to utilise all legal methods to recover our claim from you..”
29 May 2023	In a text to Mr Richardson, Mr Obichukwu wrote “The reason Court hasn’t been done yet is because, currently, I ALWAYS give an opportunity for amicable resolution in matters in general. There was a time in the past when I was a “rugged” person and resorted to certain rugged ways in matters; but at present I live a changed life (I try to anyways). The Demand Letter and conversations is the amicable opportunity to resolve the matter..”
7 June 2023	Mr Obichukwu sent an email to Mr Richardson headed “final offer to settle” referring to the Demand Letter and an intention to apply for a Rent Prepayment Order stating, inter alia, “in the spirit of compromise good faith and to facilitate an amicable resolution (despite your initial refusal to amicably remedy this matter) I can consider accepting a full and final settlement figure for this matter of £2500... which shall be paid to my account within 7 days of offer acceptance and execution of agreement, along with further compensation in kind (details to be discussed)...”.
8 June 2023	Paul Bolton an Environmental health officer with Wigan Council emailed Mr Richardson stating “... I am writing to make you aware that I have received a complaint about your HMO at 10 New Street. I presume this is the property that you contacted me about in the last couple of weeks. I visited there yesterday. In the first instance I would point out that the time of my visit I believe that the property is a licensable HMO. The ground floor rear constituting 2 people (an adult and two under 10s), with three other occupied rooms. I also noted a number of items which you need to address, <ul style="list-style-type: none"> <li>a. None of the fire doors I saw had self-closing devices fitted.</li> <li>b. There is no handrail to the main staircase.</li> </ul>

	c. There is no fire blanket or dry powder extinguisher in the kitchen....
9 June 2023	Mr Richardson replied “I will organise a handrail and a fire blanket. The property has been signed off by building control and does not require door closers. As per my previous telephone conversation with you. The property is only for 4 people. The tenant on the ground floor is keeping his children there without my consent.....”
14 June 2023	Mr Obichukwu submitted the Application to the Tribunal.
6 July 2023	Mr Bolton wrote to Mr Obichukwu stating “...On visiting the property on 7 June 2023 it was apparent from the information you provided that the property was occupied by three individuals in addition to you and your two children. Occupied in this manner the property would require to be licensed under Part 2 of the Housing Act 2004. Operating without such a licence is an offence. I subsequently raised this issue with your landlord, Mr Daniel Richardson, advising him of the need to apply for a HMO licence. To date no such application has been made. I will be formally interviewing Mr Richardson as part of my investigation in due course”.
19 July 2023	The police attended the property.
23 July 2023	There was a fight at the property involving Mr Obichukwu and Michael Broughton. The police were called and attended.
2 August 2023	An email from Mr Richardson to Mr Obichukwu stated “After speaking with the police after the incidents at the property. I was informed along with the other tenants that you have left the property. The police also informed us that you are not to return to the property. Due to this fact I have collected your remaining items and placed in safe storage for you to collect or alternatively we can drop off for you. Let me know. Mike Broughton has asked me to message you regarding the assault charges. He has agreed to drop all charges providing he doesn’t have to see you anymore.”
3 August 2023	Mr Obichukwu responded with an email specifically referencing his issues with Mr Broughton and promising a further email relating to his issues with Mr Richardson.
7 August 2023	Mr Obichukwu sent a further email to Mr Richardson stating, inter alia, “we didn’t move out nor end our tenancy, and you’ve been granting access to, accessing and accessed, our private space and entire belongings without my consent. Your email describes illegal eviction, punishable by prison time and unlimited fine” before going on to “offer an amicable settlement option yet again...”
13 December 2023	Helen Baskett, a Senior Enforcement Officer with Wigan Council, wrote to Mr Richardson stating “I am writing with regards to the investigation we carried out in relation to the above named address whereby an allegation had been made that it was operating as a house of multiple occupation with 5 or more residents. As you are aware we interviewed you under

	<p>caution in relation to this allegation as a potential breach of the Housing Act 2004 Part 72 (1) - Offences in relation to licensing of HMOs.</p> <p>The investigation determined that there was insufficient evidence to substantiate these allegations and as such, we closed the case on this basis.</p> <p>You applied for a licence for the property on the 21/7/2023 which was granted on the 25/9/2023 for a period of 5 years”.</p>
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### **Mr Obichukwu's written submissions**

12. Mr Obichukwu referred in his statement of case to various alleged housing offences. Under the heading “Main Allegation/Offence” stating that “the property was licensable under the Mandatory Licensing Scheme... having five or more occupants from more than one household and was not so licensed.” He also said that the property was licensable under what he described as the Additional Licensing Scheme and an offence committed by having three or more occupants from more than one household without a licence. He further alleged that he and his children had been harassed and illegally evicted. Under a heading of “Additional (Minor) Allegation/Offence” he referred to a failure to protect a deposit of £320 paid at the start of the tenancy in an authorised scheme.

13. Mr Obichukwu said that Mr Richardson was “aware from the start that there were three of us (I and my two children)” and the rent had been negotiated on that basis. “Rent will be £160/week. 2 weeks rent as deposit and first 2 weeks rent paid for move in. Then 2 weeks rent paid every 2 weeks”.

14. He applied for repayment of rent of £4160 “for 21/12/2022 to 21/06/2023, 26 weeks at £160 per week...together with repayment of the application fee of £100 and the £200 hearing fee”.

15. He alleged that Mr Richardson had harassed him and his children in various ways. A major complaint was “by remotely shutting down services (electricity getting shut off, and most importantly, the heat and hot water supply being shut-off and turned-off remotely by the landlord using a “hive boiler and heat/hot water remote-controlled system”. “I had made complaints to Daniel Richardson about urgent disrepair conditions, and subsequently later also about heating and hot water supply issues, but he failed to timely remedy them, taking months, and causing us (I and my 2 children) to suffer and endure unhealthy, hazardous, traumatizing conditions. I had decided to complain to the Council and also to take legal action to seek remedy on those issues”. As a result, we were intimidated, and harassed by Daniel Richardson, and he instigated other people to harass and assault us, and to steal my smartphone which had the evidences I needed to take legal action against him. These harassments and assaults caused I and my children to specifically fear for our safety and our lives, and the attacks upon us between 19 July 202(3) and 24 July 202(3) were very intense and traumatic, such that on 24 July 202(3) the assault caused injuries for which I had to be rushed to and treated at the Emergency Hospital Department A&E. And thereafter I and my children were so afraid to enter and stay in our home residence such that we had to seek a very temporary safe haven with family and friends while seeking redress to enable us feel at ease to be able return

and enter our residence at 10 New Street, as that was our main and only residence. However, Daniel Richardson sent a message on 7 August 2023, to inform us that he had unlawfully evicted us and unlawfully evacuated our belongings out of 10 New Street”.

16. Mr Obichukwu stated Mr Richardson “instigated other tenants and other people (including Mr Richardson’s son whom Mr Richardson brought on multiple occasions to demand rent at the Property) to act in same manner, including using abusive and insulting words and phrases directed to Mr Obichukwu and his minor children”.. and... “did not follow any legal or proper process/procedure to end the tenancy of Mr Obichukwu. Mr Richardson had on multiple occasions intimidated and was pressuring Mr Obichukwu to move out and leave”.

### **Mr Richardson’s written submissions**

17. Mr Richardson stated that Mr Obichukwu, when at 105 Castle Hill Road, initially said that he was on holiday and moving around, later that he had been sent over here by his American company to do some work and they would only let him know two days before booking his flight back to America, and that the children were staying at his sister’s, but due to working he needed some space and his company gave him an allowance for accommodation. “As time went on Mr Obichukwu said that he would be around for a longer stay (maybe a month, a maximum of two) and wanted to convert to a tenancy”. Mr Richardson explained that he wanted to keep the room at 105 Castle Hill Road on Airbnb. He confirmed that after initially considering been able to accommodate Mr Obichukwu “and his children at 10 New Street” and “mindful that given his record of overstaying at 105 Castle Hill Road..didn’t want to have the same thing happening at 10 New Street as I would then be unable to rent the other rooms as it would exceed the maximum occupancy of 4 people. I informed Mr Obichukwu of this situation and that I could only rent the room out for single occupancy.... I was hoping Mr Obichukwu would move on to somewhere else. However, he came back to and said that he had spoken to work and would now be staying long term with longer notice on flights so he would take the room for himself for private space and his children would stay at his sisters. I informed Mr Obichukwu that he could have his children over as guests but they could not live at the property. He agreed and said it wouldn’t be a problem”.

18. “Mr Obichukwu moved into the property at the agreed price of £160 per week. He had originally agreed to sign a contract complete with deposit. However, when asked about signing the contract he said it now wasn’t suitable for him as the company he works for had changed their mind on his long stay and again he would only get very short notice to leave which could be anytime. Because of this he opted to use the money set aside for the deposit as rent. He claimed he would keep around 4 weeks in advance on rent to put my mind at ease. If he was to leave early I could return any remaining money minus 2 weeks. I wasn’t happy about this as he had again manipulated me and was now living in the property”.

19. Mr Richardson disputed the complaints about disrepairs “everything was new... and all works completed to a high standard. The room .. was a new build extension recently completed with insulated walls, floor and ceiling..”. He stated that he addressed all issues relating to repairs in a timely manner referring the contemporaneous text messages.

20. He disputed the claims that the property was cold or the heating system unsatisfactory, maintaining that the complaints were manufactured and distorted by Mr Obichukwu deliberately moving the thermostat and manipulating the controls, and that this was confirmed by the other occupants, who also complained of the property being consequently too hot.

21. Mr Richardson referred to having received a phone call from one of the other occupants in May saying that they thought Mr Obichukwu's children were now living in the property being "always in the room with the door locked". Mr Richardson said that Mr Obichukwu denied this when it was put to him.

22. His version of what subsequently went on is very different from that of Mr Obichukwu.

23. Mr Richardson said that after an argument with Mr Obichukwu at the property on 16 May he and his son, who had stayed outside with some of the other occupiers, walked away and that the visit on 16 May "was the last time I entered the house until the end of July after he was removed by the police".

24. Mr Richardson stated "I believe that one of the other tenants rang the police with concerns for the children. According to the tenant the police arrived on 20 May to carry out a welfare check".

25. Mr Richardson denied the allegations that either he or his son had ever been aggressive towards Mr Obichukwu.

26. "After the 16th May the reports about altercations between tenants became a weekly occurrence. I was constantly being informed by all tenants regarding these issues. At first, I tried to help resolve issues but it was clear that this was beyond me. I informed all tenants that if they feel threatened that they need to call the police as this was not something I could deal with..." ... "Throughout the whole of the issues I remained impartial and let the police deal with the problems to which I believe they were called numerous times and visited the property at least 7 times".

27. Mr Richardson confirmed receiving numerous reports and complaints from the other occupiers of intimidating behaviour by Mr Obichukwu including incidents denying them access to the kitchen when he was there, denying them the use of the washing machine, demanding their guests leave, repeatedly locking them out of the house, sometimes for hours, deliberately antagonising them before taking out his phone to film them, and making multiple statements to the effect "that he used to be a gangster in America ... used to get what he wanted by violence...but is trying to change his ways" which "the two younger tenants Callum and Owen where particularly concerned by". Mr Richardson said he and his son had separately and on numerous occasions been told the same by Mr Obichukwu. "It was also apparent that Mr Obichukwu had numerous run ins with at least 2 neighbours over parking and various other things".

28. Mr Richardson "honestly couldn't believe" the email from Spur Legal regarding it as a "fake" but Mr Obichukwu "would then constantly ask me to settle." Over a dozen separate texts were exhibited in support.

29. Mr Richardson complained of, with exhibited copies, of “a barrage” of messages from Mr Obichukwu at all hours. “The messages became so constant that I had to block Mr Obichukwu from messaging me and only spoke via email as it was making me mentally ill with the constant claims for money and the accusations of me putting the tenants up to harassing Mr Obichukwu”.

30. The two parties’ respective versions of what took place between 19 and 23 July are completely different. Their detailed accounts are contained in the papers. Both versions refer to the police attending on both dates.

31. Mr Richardson later submitted to the Tribunal audio and video recordings supplied by the other occupiers from their phones of the fight between Mr Obichukwu and Mr Broughton on 23 July 2023.

32. Mr Richardson stated that on 23 July he was telephoned by one of the other occupants to say that the police were in attendance and that he needed to come. On arrival he “spoke to the police outside who explained to me that 3 tenants had made statements that Mr Obichukwu had attacked Mr Broughton and they was going to arrest Mr Obichukwu. Around ten minutes later the police came out and stated that they now wasn’t arresting Mr Obichukwu as he was complaining of heart problems and requested to go to the hospital....The police told me and the other 3 tenants that Mr Obichukwu was now not permitted to return to property. They stated that they had informed Mr Obichukwu of this and that he is not to return. The police asked the other tenants to call them if Mr Obichukwu returned. I was informed that later that night Mr Obichukwu returned to the property and the other tenants rang the police. Who arrived and instructed Mr Obichukwu to pack up all of his belongings and leave 10 New Street and not return. Mr Obichukwu’s sister arrived and helped with the removal of his belongings”.

33. “I emailed Mr Obichukwu on the 24 July to make him aware that I knew about the situation. He replied to accuse me of instigating everything and that the police removing him from the house was somehow unlawful eviction by me. Mr Obichukwu then went on to say that he had spy cameras set up in the house, which I thought was very unusual. I called to the house a few days later to speak to the other tenants. Whilst there a lady from social services called about Mr Obichukwu. She told me that Mr Obichukwu’s children could not return to the property and that she was now dealing with the issue and that was all that she could say.

After the 25 July I did not hear from Mr Obichukwu. The other tenants confirmed he had not returned. On the 2 August I opened the door to Mr Obichukwu’s room to find the lights and cooker hob had been left on...there were also around 10 boxes of food from the food bank and bags of rubbish and papers along with a few other items remaining in the room that I can only describe as rubbish. Mr Obichukwu had clearly taken anything of value and left. I carefully bagged everything up and stored the items under the stairs where I fitted a lock.

I then emailed Mr Obichukwu to explain that I had stored his remaining items and he could either collect them or I could drop them off for him. On 3 August 23 Mr Obichukwu replied to say that he wanted his missing phone off Michael Broughton and that was it.

4 days later on 7 August 23 Mr Obichukwu emailed again to say that he hadn’t moved out and that by touching his items I was performing an illegal eviction. Mr

Obichukwu demanded that I had 7 days to come up with a cash offer for this illegal eviction. I ignored the email and returned Mr Obichukwu's items to his room and locked the door so that he could re-enter his room.

After this time I hadn't been near the property or really spoke to the other tenants due to the stress that he had caused me until I received the email from the tribunal on the 24 November 23....

I spoke to the other tenants and asked if they had seen or heard from Mr Obichukwu and they said that they hadn't seen him and he hadn't been back to his room while they was home".

## **The Hearing**

34. The hearing took place at the Tribunal's Manchester hearing centre on 19 March 2024. Mr Richardson attended in person, and his son observed. Mr Obichukwu attended from a remote location via the CVP (common video platform).

35. The start was delayed because of connectivity issues, whereafter the parties were advised that the same rules applied as if all were in the actual courtroom. They were reminded that it is a criminal offence to record a hearing (by audio or video), to publish any such recording, or to take images (by photo or screenshot).

36. The parties were thanked for their written submissions and evidence, and it was confirmed that the Tribunal Members had each carefully studied the same prior to the Hearing.

37. The nature of the alleged offences was outlined, and the burden of proof explained. The statutory defences were also referred to.

38. It was quickly agreed that Mr Obichukwu's claim that the property might be subject to the requirement for Additional Licensing was not sustained by any evidence that the local Housing Authority had invoked such a scheme in the locality.

39. The parties helped describe the physical layout within the property. It was confirmed that it has a shared front door, a communal sitting room, and a communal kitchen/diner on the ground floor. The ground floor studio room occupied by Mr Obichukwu was confirmed as being within an extension off the kitchen with its own glass doors to the rear. It was described as containing its own kitchen area with a hob, sink and units and as having ensuite facilities with a shower and WC but no bath. It was let with one bed (a double). It was also confirmed that on the first floor there were two more smaller ensuite bedrooms, and a further ensuite bedroom on the second floor.

40. The events referred to in the written submissions were discussed and amplified.

41. Neither party disputed the timing or amount of the payments made by Mr Obichukwu to Mr Richardson as set out in the papers. What was disputed was whether £320 of the payments made at the outset should be regarded as a deposit or if it had been subsequently agreed to be a part payment of rent. (It was noted that the total payments made including the said £320 added up to £3840). It was also noted

and agreed between the parties that the only payment after 25 April 2023 was that of £640 made on 13 June 2023.

42. It was also agreed that when Mr Obichukwu arrived at 10 New Street and his tenancy began there were three other tenants occupying the first and second floor rooms being Michael Broughton, Callum Harrison, and a third occupant who was very rarely there, who subsequently left in March, and was then quickly replaced by Owen Ibbetson. Michael Broughton's occupation was understood to be somewhat intermittent, but the property was still considered to be properly regarded as his only or main residence. Mr Richardson said that Mr Broughton may have been in prison for a month or so, at sometime.

43. Mr Obichukwu confirmed that his two children Brian and Laura (now aged 11 and 9) had come to this country with him in October 2022 and had then been on holiday. He confirmed that immediately before that holiday the two children had been at school in another country. He did not wish to say where the children had then been residing, citing child safety issues where he was receiving assistance from a government agency. He confirmed that his sister resided in Atherton, Manchester (which is some 5-6 miles from the property), but that the children lived with him.

44. Mr Obichukwu said that the other tenants met the children regularly. He said that they slept in the double bed, and that he slept on a separate single bed. He took them to school by car.

45. Mr Richardson disputed that the children were living at the property from the outset. He confirmed that he had been told by Mr Obichukwu that they would be residing with his sister and that their private school was in Atherton. He had been clear that the room let to Mr Obichukwu was on a single occupancy basis.

46. At some time in May Mr Richardson contacted Paul Bolton at Wigan Council having become concerned that the children were by this time living in the property, albeit without his consent, and as to the question of whether the property might thereby need to be licensed. Reference was made to the exhibited correspondence and emails with the Council and the conclusions to be drawn from them.

47. After a short break for lunch, the hearing continued and particularly concentrated on those issues during the tenancy which had been highlighted in the papers.

48. When discussing Mr Obichukwu's allegations of the property suffering from excess cold Mr Richardson pointed out that the extension containing Mr Obichukwu's room was newly built, completed in accordance with building regulations, was very well insulated to the most modern standards and that the property was served by a new boiler. He said that he had not been deaf to Mr Obichukwu's complaints, and had offered and installed a much larger radiator, which was well over the capacity required for the room. He confirmed that he had constant complaints from the other tenants about how hot the house was because of Mr Obichukwu's actions and his repeated changing of the settings on the thermostat. Mr Richardson described when visiting Mr Obichukwu's room in May being "pushed back by the heat" which was "like being in a sauna". Mr Obichukwu referred to Mr Richardson's engineer as endorsing his view that the room was cold because of

draughts due to gaps, which were then sealed. Mr Richardson refuted this saying that he had been subsequently advised by the engineer that he did not consider the room cold and had installed additional foam simply to placate Mr Obichukwu.

49. The email from Spur Legal was reviewed. Mr Obichukwu said that he had had no prior contact with Spur Legal or its principal, Samuel Onowugbeda, having found them on the web after being unable to find specialist legal advice locally. He said that he had not visited the address stated on their email. He confirmed having undertaken his own research being helped with information from Shelter and Citizens Advice.

50. It was put to Mr Obichukwu that whilst the email from referred to being his appointed solicitor, there was no reference on its email to a web address or Spur Legal being regulated by the Solicitors Regulation Authority, and that the Solicitors Regulation Authority publicly available search engines show no reference to either Spur Legal or Mr Onowugbeda.

51. Mr Obichukwu said that he had simply related his situation to Spur Legal and had been totally reliant on them as to the amount claimed in the “Demand Letter”.

52. The Judge commented that for a solicitor to make unsolicited telephone calls to an unrepresented third-party on the other side with a view to pursuing a claim, would be unethical, a clear breach of professional practice rules, and could properly be regarded as harassment.

53. Mr Obichukwu could not recall what he had paid Spur Legal for their services.

54. There was then reference to the breakdown in the relationship between Mr Obichukwu and the other occupants of the property. Mr Obichukwu complained of another occupant’s use of the “n” word, “harassment by day and night”, and that Mr Richardson had spoken to the other occupants about the rent repayment application.

55. Mr Richardson complained about harassment by Mr Obichukwu and that the number and timing of the calls, texts and messages were such that he had eventually to block them. He related repeated complaints from the other occupants as to Mr Obichukwu’s antisocial behaviour including his refusal to allow them to use the kitchen and removing their clothes out of the washing machine and restricting its use. Mr Richardson confirmed that the other occupants had refused Mr Obichukwu’s suggestion that they overstate the number of residents within the property to facilitate a rent repayment application of their own.

56. It was confirmed that the Tribunal had considered, but rejected, the Mr Obichukwu’s request to exclude the phone and video evidence of the fight between the Mr Obichukwu and Mr Broughton on 23 July 2023. However, it was also noted that that the recordings of themselves did not clearly answer the questions as to who might have started, or been principally responsible for, the fight.

57. Mr Obichukwu was asked about the allegations of having told the Mr Richardson, his son, and the other occupiers of the house that he had been a gangster in a past life. He was also asked about the text and reference to having been “rugged”. He explained this as referring to previous instances of seeking legal recourse

immediately in order to secure the maximum amount of a claim whereas now he would always look for a compromise and settlement. Mr Richardson said Mr Obichukwu when referring to having been a gangster had not at the same time made direct threats, but the references were nonetheless intimidatory and threatening. Mr Obichukwu said that he had never been a gangster.

58. Mr Obichukwu said he had had to be rushed to hospital following what he described as the assault and thereafter went to his sisters for his safety. He talked about having discussed a restraining order being made against the other occupants with the police.

59. Mr Richardson described having received a call from one of the other tenants advising him that the police were at the property and when he arrived the police indicated that they intended arresting Mr Obichukwu, that he had been told not come back to the property and that the social services were involved. However, when Mr Obichukwu said that he was having heart troubles and needed urgent medical care he was taken to hospital. On his subsequent return to the property, the police were again called. Mr Richardson described social services arriving a few days later and confirming that Mr Obichukwu would not be coming back.

60. Mr Richardson in his closing submissions reiterated that he had acted in good faith, taking Mr Obichukwu at his word, but that it had subsequently become clear that Mr Obichukwu had been lying about where the children were living. He referred to glowing references from other tenants which went contrary to Mr Obichukwu's accusations that he had been a bad landlord. He was a conscientious responsible landlord, attentive to any repairs that might be necessary, and as shown by various text messages had always been assiduous in refusing requests from those seeking more than single occupancy.

61. Mr Richardson confirmed that the electricity the house cost approximately £200 for every three weeks, or £3400 per annum, the gas £250 per month being approximately £3000 a year, the water £25 per month or £300 per annum and that the broadband was a similar charge. In addition, there was council tax of £1600 per year. He also confirmed that he had no convictions and a clean record. He estimated that the lost rent whilst the studio room remained unoccupied until November, when he first had notice from the Tribunal of the Application, amounted to approximately £4270. He agreed that he had income from other sources.

62. Mr Obichukwu in his closing submissions urged the tribunal to ignore hearsay evidence and refuted Mr Richardson's version of events and in particular as to his exclusion from the property.

## **The Law**

63. Since April 2006 it has been a national legal requirement for specified Houses in Multiple Occupation meeting certain designated tests to be licensed under part 2 of the Housing Act 2004 ("the 2004 Act") with a mandatory HMO licence. These included houses with 3 storeys, occupied by 5 or more people as their only or main residence, living as 2 or more households containing shared facilities such as a kitchen bathroom or toilet.

64. On 1 October 2018, the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 extended the types of buildings requiring a mandatory HMO licence to include those with less than 3 storeys, occupied by 5 or more people as their only or main residence, living as more than 1 household, containing shared facilities.

65. Section 40(3) of the 2016 Act lists 7 individual offences which if committed by a landlord entitle the Tribunal to make a rent repayment order.

66. The list, repeated in the Directions, includes: –

- the offence under Section 72 (1) of the 2004 Act of controlling or managing an unlicensed HMO, and
- the offences under Section 1 (2), (3) or (3A) of the Protection from Eviction Act 1977 of eviction or harassment of occupiers.

Each of those sections has been set out in the Schedule to this Decision.

67. The relevant law concerning rent repayment orders is set out in Sections 40 – 52 of the 2016 Act.

68. Section 41(2) provides that 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.

69. Section 43 of the 2016 Act provides that the Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that the landlord has committed one of the offences specified in Section 40(3).

70. When the Tribunal decides to make a rent repayment order in favour of a tenant, it must go on to determine the amount of that order in accordance with Section 44.

71. If the order is made on the ground that the landlord has committed the offence of eviction or harassment of occupiers, the amount must relate to rent paid during a period of 12 months ending with the date of the offence. If the order is made on the ground that the landlord has committed the offence of controlling or managing an unlicensed HMO, the amount must relate to rent paid during a period not exceeding 12 months, during which the landlord was committing the offence. (section 44(2)).

72. Section 44(3) confirms that the amount that the landlord may be required to repay must not exceed:

- (a) the rent paid in respect of the period in question, less
- (b) any relevant award of universal credit paid (to any person) in respect of rent and the tenancy during that period.

73. In cases such as this the Tribunal has a discretion in determining the amount, but Section 44(4) states that it must, in particular, take into account

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

- (b) the financial circumstances of the landlord, and
- (c) whether the landlord has at any time been convicted of any of the specified offences.

## **The Tribunal's Reasons and Conclusions**

74. The Tribunal has carefully considered and reviewed all the written and oral evidence, including the video and audio recordings, being particularly alert to anything that might properly be considered as hearsay.

75. The following facts are not in dispute: –

- Mr Obichukwu shared 10 New Street with occupiers who were not members of the same household and from 22 December 2022 to 23 July 2023 living there as his main residence;
- he had use of certain shared facilities including a living room and kitchen, but also a lock to and exclusive possession of the studio room;
- 10 New Street was at the relevant times an HMO, controlled or managed by Mr Richardson, who is an experienced landlord;
- it is tolerably clear that what was created late in December 2022 was a tenancy and an assured shorthold tenancy pursuant to sections 3 and 19A of the Housing Act 1988;
- any deposit should have been protected in one of the statutory schemes;
- occupiers are protected by the provisions of Protection from Eviction Act 1977.

76. The Tribunal has made the following further findings which are relevant to its determination of those matters which are disputed: –

- Mr Richardson was found to be credible, measured and open with his responses, and anxious to tell the full truth in context, even when that might go against his case;
- the Tribunal did not always find Mr Obichukwu credible;
- Mr Obichukwu demonstrated patterns of coercive and controlling behaviour attempting to dominate and browbeat others into submission (for example, in the nature, timing and amount of his text messages and demands). At times, this was mirrored within the proceedings and during the hearing;
- such tactics were probably most clearly evident in the commissioning and use of the “Demand Letter” from what appears to be a bogus solicitor; Spur Legal and the signatory to its exhibited emails, Mr Onowugbeda, are not registered at the Solicitors Regulation Authority; and the address stated on their letterhead appears to be a part of student accommodation in Bradford;
- the Tribunal did not believe Mr Obichukwu’s testimony that having been unable to find suitable local legal representation, and without any prior knowledge of or connection with Spur Legal, he had engaged them as specialists after searching the internet; or that they were solely responsible for determining the amount referred to in the Demand Letter.

## **As to whether an offence has been committed**

77. The first issue for the Tribunal to address is whether it is satisfied, beyond reasonable doubt, that Mr Richardson has committed an offence mentioned in Section 40(3) of the 2016 Act.

## **The alleged offence under Section 72 (1) of the 2004 Act relating to the control or management of an unlicensed HMO**

78. There is no dispute that the property did not have an HMO licence at any time during Mr Obichukwu's tenancy.

79. Whether a mandatory licence was required depended on the number of the occupants, where a minimum of 5 was required, and as to whether the persons in question were occupying 10 New Street as their only or main residence.

80. The period in focus on was from the start of the tenancy late in December 2022 until the date on which Mr Richardson made his application for a licence, confirmed by Wigan Council as having been 21 July 2023. As was explained at the hearing, this is because of the defence of having duly made a licence application as set out in Section 72(4)(b) of the 2004 Act.

81. Mr Richardson confirmed that there were 3 other occupants from different households throughout that period, without there being any material break.

82. The question then became did, and if so when, did Mr Obichukwu's 2 children occupy 10 New Street as their only or main residence? It was not clear at the beginning of his tenancy that the children were going to, or did then, occupy 10 New Street as their only or main residence. Mr Obichukwu's evidence was that before October they had been living and schooled in a different country and that he had brought them to this country on holiday. The indications in the texts when the tenancy was agreed was that he could be going to America at short notice. In which case, both children being under the age of 10, would then need either to go with him or be living with someone else. Mr Obichukwu confirmed that he has a sister not far away. Mr Richardson's belief, and his assertion that Mr Obichukwu told him, that the children were and would be living with his sister and only occasional visitors to 10 New Street is entirely plausible. The accommodation itself (within an HMO) let with one bed (albeit a double) might well not be regarded as suitable for 2 young children's only or main residence.

83. The Tribunal was not satisfied, beyond reasonable doubt, that before the middle of May 2023 the 2 children were occupying the property as their only or main residence. That reasonable doubt existed is supported by Wigan Council's letter of 13 December 2023 and that their "investigation determined that there was insufficient evidence to substantiate these allegations."

84. However, at sometime in May 2023 it was recognised by another occupier of the house, and by Mr Richardson, that the children were by then living in the property as their only or main residence. There are references in both parties' papers to the matter being raised by one of the other occupiers with the police and other authorities.

85. Mr Richardson confirmed that being concerned that this was now the case he sought advice from Wigan Council as the licensing authority. Emails put that at about the middle of May.

86. The Tribunal is satisfied, beyond reasonable doubt, from this evidence that the property required a mandatory HMO licence from a date in May until the application for one was made on 21 July 2023.

87. The Tribunal next considered whether Mr Richardson might have the separate defence of having a reasonable excuse (referred to in Section 72(5)) noting that the burden of proving that, on the balance of probabilities, falls on him as explained in the case of *IR Management Services Ltd v Salford City Council (2020) UKUT 0081 (LC)*.

88. It decided that whilst he had been naïve, Mr Richardson should, particularly as a professional landlord, have been more alert to the possibility that the children's temporary visiting rights could, particularly as time went on, migrate into the property becoming their only or main residence.

89. As soon as it was clear to him that they were using it as such, the answer would have been to make an immediate application for a licence.

90. The Tribunal decided that whilst Mr Richardson could legitimately claim mitigating circumstances, he did not have a reasonable excuse for not licensing property, or applying for a licence immediately it was clear that a licence was required.

91. Consequently, the Tribunal is satisfied, beyond reasonable doubt that, from a date in May 2023 until 21 July 2023, Mr Richardson committed the offence of controlling or managing 10 New Street without the necessary HMO licence.

### **The alleged offences under Section 1(2),(3) or (3A) of the Protection from Eviction act 1977 relating to eviction or harassment**

92. The Tribunal is not satisfied that any of these 3 offences were committed by Mr Richardson.

93. He undoubtedly wanted Mr Obichukwu to leave the property, but the Tribunal found no compelling evidence that he was in anyway orchestrating his departure, interfering with Mr Obichukwu's peace or comfort or involved in any conduct designed to restrict his rights to quiet enjoyment. Rather than finding that Mr Richardson was harassing Mr Obichukwu, the Tribunal found evidence of Mr Obichukwu deliberately attempting to provoke and harass Mr Richardson and others.

94. The Tribunal accepts Mr Richardson's testimony that following his conversations with the police on 23 July 2023 he had reasonable cause to believe that Mr Obichukwu had ceased to reside in the premises. There was no evidence of locks being changed, or of him unlawfully depriving or attempting to deprive Mr Obichukwu of his occupation of the property. As months went on without any return, and without any payment of rent, the belief that Mr Obichukwu had ceased to reside in the property with no intention of returning, became more and more reasonable.

### **Jurisdiction**

95. Because of the finding that a relevant offence (i.e, of managing or controlling 10 New Street without an HMO licence when one was required) had been committed within the period of 12 months before the Application, the Tribunal is clear that it has jurisdiction to be able to make a rent repayment order.

### **As to whether rent repayments should be ordered**

96. After some hesitation because of the particular circumstances, the Tribunal decided that a rent repayment order should be made. The importance of failure to obtain a licence should not be underestimated. An unlicensed property undermines the Housing Authority's regulatory role and poses a risk for harm. Mr Richardson as a landlord has a duty to ensure that relevant legislation is complied with.

97. Having decided that an order should be made, the Tribunal then went on to carefully consider the amount of rent to be repaid.

### **The amount of the order**

98. Various Upper Tribunal cases have given guidance as to how an appropriate figure should be calculated. In *Acheampong v Roman* [2022] UKUT 239 (LC) it was stated : –

“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. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate.
- 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 whose relative seriousness can be seen from the relevant maximum sentences on conviction) 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 others factors set out in section 44(4)” .

99. Following this 4-stage approach the Tribunal made the following determinations: –

- a. the rent paid by Mr Obichukwu during the relevant period was the single payment of £640 (for 4 weeks rent) made on 13 June 2023 . The Court of Appeal in *Kowalek v Hassanein* [2022] EWCA 143 Civ 1041 has made it clear that a rent repayment order can only be made in respect of rent actually paid during the period the offence was committed.
- b. the next step was to calculate the appropriate deduction for the costs of utilities. Mr Richardson's evidence as to costs for the whole house was judged to be both reasonable and consistent with a figure referred to within the papers. By apportioning the stated figures for electricity, gas, water and internet between the 4 bedrooms and after making a slight adjustment because the studio room

was the largest, the Tribunal determined that £140 should be subtracted from the all-inclusive £640 figure referred to in a.

c. the Tribunal next considered the seriousness of the offence having particular regard to the benchmarks set in different cases, a number of which were referred to in Mr Obichukwu submissions. In doing so, it reminded itself that the offence lasted for relatively short period of time, that Mr Richardson took active steps to mitigate it by undertaking the works suggested by the licensing officer and making an application, which was then granted soon afterwards and without the need for any structural alterations to the property. The Tribunal decided that the appropriate reduction for this element should be 20%.

d. the Tribunal then considered the other factors specifically referred to in section 44 (4) being the conduct of the parties, the landlord's financial circumstances, and whether he has had any time been convicted of a specified offence, and whether there were any other material factors.

### **The conduct of the parties**

The Tribunal did not find compelling evidence of any material unreasonable or inappropriate conduct by Mr Richardson beyond his short delay in applying for a licence once it was clear that one was required. In contrast, the Tribunal found Mr Obichukwu's misconduct was in many instances serious and inexcusable. The Tribunal did not accept Mr Obichukwu's narrative that he was always the victim. It was found that he had, in concert with Spur Legal, sought to manifestly overstate his case and that his actions played a significant part in the deterioration in the relationship with the other occupiers resulting in the police being involved on numerous occasions.

### **Mr Richardson's financial circumstances**

Mr Richardson has not provided any evidence of his financial circumstances. It was however evident, and he readily confirmed, that he has income from various sources and employments.

### **Whether Mr Richardson has had any relevant convictions**

The Tribunal has no notice of any. Mr Richardson was adamant that he has not.

### **Any other relevant factors**

The Tribunal accepts as a mitigating factor that Mr Richardson's breach of licensing was unintentional and not deliberate and that he was misled by Mr Obichukwu. To reflect this and because of the misconduct of Mr Obichukwu the Tribunal decided that there should be a further reduction of 30%.

### **The Tribunal's determination**

100. By the calculations set out above, the Tribunal concluded that the amount of the rent repayment should be limited to £250 (being £640 less £140, then reduced by 50%) and Mr Richardson ordered to pay that within 28 days of Mr Obichukwu providing Mr Richardson with sufficient information to allow that to be paid, by confirming his bank details including sort code and account number.

### **Mr Obichukwu's application for an order that Mr Richardson reimburse the application and hearing fees paid to the Tribunal.**

101. Having regard to all the circumstances of the case, the Tribunal decided that it would not be reasonable to make such an order.

## **The Schedule**

### **The Relevant Statutory Provisions**

#### **Section 72 of the Housing Act 2004 – control or management of unlicensed HMO**

(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.

(2) A person commits an offence if –

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3)...

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time –

(a) a notification had been duly given in respect of the house under section 62(1), or  
(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse –

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

#### **Section 1 of the Protection from Eviction Act 1977 – unlawful eviction and harassment of occupiers**

(1) In this section “*residential occupier*”, in relation to any premises, means a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession of the premises.

(2) If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.

(3) If any person with intent to cause the residential occupier of any premises –

(a) to give up the occupation of the premises or any part thereof; or

(b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;

does acts [likely] to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.

(3A) Subject to subsection (3B) below, the landlord of a residential occupier or an agent of the landlord shall be guilty of an offence if—

(a) he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or

(b) he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,

and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.

(3B) A person shall not be guilty of an offence under subsection (3A) above if he proves that he had reasonable grounds for doing the acts or withdrawing or withholding the services in question.