FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**MM/LON/00AT/HMF/2024/0626**
Property	:	**16 Kendal Close, TW14 9QG**
Applicant	:	**(1) Kyle Hutchings** **(2) Dominique Karis Amponsah** **(3) Gabriel Sawyer (aka Esme Sawyer)**
Representative	:	**Mr. Leacock (Justice for Tenants)**
Respondent	:	**(1) Ketan Gohil** **(2) Shwetaben Gohil**
Representative	:	**Mr. Richards (Crystal Solicitors)**
Type of application	:	**Application for a rent repayment order by tenant – sections 40, 41, 43, & 44 Housing and Planning Act 2016**
Tribunal members	:	**Judge Sarah McKeown** **Mr. M. Cairns**
Date and Venue of hearing	:	**9 May 2025 at** **10 Alfred Place, London, WC1E 7LR**
Date of decision	:	**13 May 2025**

DECISION

Decision of the Tribunal

(1) The Tribunal is satisfied beyond reasonable doubt that the Respondent landlord committed an offence under Section 72(1) of the Housing Act 2004

(2) The Tribunal has determined that it is appropriate to make a rent repayment order.

(3) The Tribunal makes a rent repayment order in favour of the First Applicant against the Respondents, in the sum of £11,250 (to be apportioned as set out below), to be paid within 28 days of the date of this decision:

(i) Kyle Hutchings - £3,150
(ii) Dominique Karis Amponsah - £3,150
(iii) Gabriel Sawyer (aka Esme Sawyer) - £4,950

(4) The Tribunal determines that the Respondent shall pay the Applicants an additional £320 as reimbursement of Tribunal fees to be paid within 28 days of the date of this decision.

Introduction

1. This is a decision on an application for a rent repayment order under section 41 of the Housing and Planning Act 2016 ("the 2016 Act").

Application and Background

2. By an application dated 20 August 2024 (A145) the Applicants applied for a rent repayment order. The application was brought on the ground that the Respondent had committed an offence of having control or management of an unlicensed House in Multiple Occupation ("HMO") for failing to have a HMO licence ("licence") for 16 Kendal Close, Feltham, TW14 9QG ("the Property"), an offence under section 72(1) of the Housing Act 2004 ("the 2004 Act").

3. The Property is a terraced house with a shared kitchen and bathroom. The Applicants are said to be the tenants of the Property.

4. The Applicants claim £15,000 being the rent paid Applicants from 18 August 2022-17 August 2023. The rent was paid from the bank account of the Second Applicant and the other tenants paid their share of rent into her bank account. The Fourth Applicant contributed towards the rent even after moving out on 27 December 2022 but he is not an Applicant, and no claim is made for his "share" of the rent paid (A193).

5. On 13 November 2024 the Tribunal issued Directions for the determination of the application (A137), providing for the parties to provide details of their cases and the preparation of a hearing bundle.

Documentation

6. The Applicant has provided a bundle of documents comprising a total of 295 pages (references to which will be prefixed by "A__"). The Applicants have also provided a Skeleton Argument.

7. The Respondent provided a bundle to the Tribunal and to the Applicants at just after 9am on the morning of the hearing (references to which will be prefixed by "R__"). The Tribunal's decision as to whether to have regard to this bundle is set out below.

8. The Tribunal has had regard primarily to the documents to which it was referred during the hearing.

The Position of the Parties

9. The Applicant contends, in summary, as follows:

10. The Property was situated within an additional licensing area as designated by the LB of Hounslow. The scheme came into force on 1 August 2020 and it applies to the whole of the LB of Hounslow. It is said that the premises met all the criteria to be licensed and that the Property was occupied by at least three people living in two or more separate households occupying the Property as their main residence:

    (a) The Third Applicant – 18 August 2022-24 August 2023;
    (b) The First and Second Applicants – 18 August 2022-24 August 2023;
    (c) Mr. Lucas – 18 August 2022-27 December 2022.

11. It is alleged that there was a breach of the requirements from 18 August 2022-17 August 2023.

12. There is a witness statement from the First Applicant (A16). In it he confirms that the occupants lived in three households and that Mr. O'Brien of the local authority (A119, A256) confirmed that the Property required a licence but he could not provide evidence that one had been obtained. He raises concerns about the Property as follows:

    (a) The Property only had one fire alarm – a battery powered smoke alarm on the ground floor;
    (b) No fire doors;
    (c) No CO2 alarm (but rectified early on into the tenancy);
    (d) No locks on bedroom doors, save upstairs bedroom had bolt locks;

(e) No centralised fire-detection system as only one alarm;
(f) No fire blankets or fire extinguishers;
(g) Central hearing not working during winter;
(h) Annexe building had no central heating and a number of possessions were ruined by mould;
(i) Check-in report (A62) was inaccurate and required amendments;
(j) When concerns were reported, they were told the Property was a two-bedroom property (A116), but they mentioned they needed three bedrooms during the viewing (A118, A120);
(k) Still owed £410 of the deposit (A117).

13. There is a witness statement from the Third Applicant (A121). She confirms that the occupants lived in three households. She also states:

(a) The inventory was inaccurate;
(b) There was no CO2 alarm when they moved in;
(c) There was only one fire alarm, no fire alarms and no fire safety equipment;
(d) They are still owed £410 from the deposit;
(e) Items were ruined by mould as a result of the annexe not having central heating and having poor ventilation.

14. There is a witness statement from the Second Applicant (A128). She confirms that the Property was advertised as a three-bedroom property and the occupants lived in three households. She also states:

(a) The inventory was inaccurate;
(b) There was no CO2 alarm when they moved in;
(c) There was only one fire alarm, no fire alarms and no fire safety equipment;
(d) They are still owed £410 from the deposit;
(e) Items were ruined by mould as a result of the annexe not having central heating and having poor ventilation;
(f) The Property was dirty and there were some issues with the Property when they moved in;
(g) She did not recall being give a Gas Safety Certificate, EPC or Electrical Safety Certificate;

15. There was no response from the Respondents until a Notice of Acting was sent to the Tribunal on 7 May 2025, the First Respondent confirmed his attendance at the Tribunal with a solicitor on 8 May 2025 and at just after 9am on the

morning of the hearing, the Tribunal received a bundle from the Respondents, which included a witness statement from the First Respondent.

The Hearing

16. All of the Applicants attended and were represented by Mr. Leacock. The First Respondent attended and was represented by Mr. Richards (who also represented the Second Respondent).

17. As stated above, the Tribunal was sent a bundle by the Respondents just after 9am on the morning of the hearing. The directions order had provided for the Respondent's evidence to be filed and served by 24 February 2025. The directions did provide that if the Respondents failed to comply with the directions, the Tribunal may bar them from taking any further part in all or part of the proceedings and may determine all issues against them.

18. Mr. Richards confirmed that he had been instructed on this matter late in the day, on 7 May 2025. He had had a hearing yesterday. He said that he had been pressed to take the matters on and had taken a statement from the First Respondent, which he was still doing at close to midnight yesterday. He said that he had tried to call the Applicants, had made a couple of phone calls but the phone had gone straight to voicemail, and he had then emailed them. When asked why the Respondents had instructed solicitors so late, he said that there was an attempt to instruct them earlier, but he had turned down that request – this was in about March 2025. He said that there was nothing new to the Applicant in the paperwork, they know this matter, and no prejudice if the bundle was put into evidence. He said that the bundle was helpful and he could ask some questions on it. The representatives for the Applicant were very experienced and the bundle mainly comprised correspondence between the parties. He said that it was in the interests of justice that the Tribunal had regard to it. If the Respondents could not rely on it, they could not make out a reasonable defence.

19. The Applicants opposed the Tribunal having regard to the Respondents' bundle. Mr. Leacock said that directions had been given on 13 November 2024 and the Respondents had had six months to prepare for the hearing. Their evidence was to be filed and served by 24 February 2025. Mr. Richards had declined to act for the Respondents in March 2025 but had accepted instructions 2 days ago, which was not a reasonable course of action. Admission of bundle would prejudice the Applicants as they had only received it this morning and had not had time to read it properly. From what he had read, it raised new matters which prejudiced the Applicants – one was that a representation was made that the Applicants were related, which was a new submission. Mr. Leacock referred to the test in *Denton v TH White Ltd* [2014] EWCA Civ 906 (it was pointed out to him that this was not a case concerning the Tribunal rules but the Civil Procedure Rules but he said that the case could be used for guidance). He said

that the breach was serious and significant and as Mr. Richards had declined to accept instructions in March but had accepted them 2 days before the hearing there was no good reason for the breach. Turning to the totality of the circumstances, admitting the evidence was not in the interests of justice to all. It was very late and raised new issues and new allegations. Mr. Leacock was asked what more the Applicant could say about the matters raised even if they had more time. He said that there was prejudice as this was the first time the claim had been put forward. He had not gone through the bundle with a fine-tooth comb. He said that there was prejudice as it did raise new issues: the allegations about being related, some issues with a pet, some about the tenants trying to claim back rent. If the Respondents wished to submit this, it should have been done in time in accordance with the directions. He said that there would be significant prejudice to the Applicants. When asked what that was, he said that they had not got a chance to see what the allegations are. The directions were given on 13 November 2024 and the Respondents' evidence was due on 24 February 2025. Even if the material had been produced a month earlier it may have eased the situation, but it was the morning of the hearing and they were seeing the allegations for the first time. There was serious non-compliance, and no good reason. He was asked by the Tribunal whether the Respondent would need to be able to participate in the hearing in any event in relation to any reasonable excuse defence. He said that they would and when the First Respondent was giving evidence, he would be able to orally submit whatever he wanted but the Applicants opposed the admission of the bundle as it raised new matters, and the Respondents had had ample time to submit it, and if it had been done on time, the Applicants would have had a chance to make a reply. As it was, they were left in the dark until this morning. It was said that the Respondents could raise whatever matters they wanted in oral evidence but the Applicants opposed the admission of the bundle.

20. Mr. Richards responded by saying that the issue of the pet was a simple one and the Applicants could respond. They already knew of these matters. The issue of their relationships was one that they could confirm or not confirm, but there was paper evidence to show that at least 3 of them lived together. The bundle would help the Tribunal to find the truth. The Applicants were aware of all these matters, this was just the first time that they were in paper format. The Applicants could read them and refresh their minds.

21. The Tribunal did allow the Respondents to rely on the bundle. It had regard to rule 8 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 which provided that:

> (1) An irregularity resulting from a failure to comply with any provision of these Rules, a practice direction or a direction does not of itself render void the proceedings or any step taken in the proceedings.
>
> (2) If a party has failed to comply with a requirement in these Rules, a practice direction or a direction, the Tribunal may take such action as the Tribunal considers just, which may include—

(a)waiving the requirement;

(b)requiring the failure to be remedied;

(c)exercising its power under rule 9 (striking out a party's case);

(d)exercising its power under paragraph (5); or

(e)barring or restricting a party's participation in the proceedings.

22. The Respondents' evidence was late, the directions having been sent out on 14 November 2024. Despite this, the Respondents had not instructed solicitors until this week. There was no good reason, but even if the *Denton* principles applied (even by analogy), the Tribunal had to have regard to all the circumstances. The Tribunal would need to hear from the Respondents on any reasonable excuse defence and this was acknowledged by Mr. Leacock. It was therefore better that the evidence was in a written form. There were a number of documents attached to the First Respondent's witness statement but the Applicants could be taken to them, and they would be given time to look at then and significant leeway. The options were therefore to proceed today taking account of the evidence or adjourn. The hearing would proceed and if it reached a point where an adjournment was needed because of the late introduction of the evidence, the Tribunal would adjourn at that point and would hear any application for costs made as a result of any adjournment caused by the late submission of evidence. It was stressed that the Applicants could be given significant leeway in dealing with the matters sprung on them this morning.

23. The First Applicant and adopted his witness statement (A16). He said that he and the Second Applicant had been in a relationship for about 5 years, since late 2019, 2020. He and the Third Applicant were friends and had lived together on and off. He and Mr. Lucas had met in 2021. He and the Second Applicant had lived with Mr. Lucas for 12m prior to moving into the Property. Other than his relationship with the Second Applicant, he was not related to any of the Applicants. He said that no representation was made by him or any of the Applicants to the effect that they were related, and, to the contrary, during the viewing they made clear that they were looking for 3 bedrooms and were 4 friends moving in. He said that he had a different last name to Mr. Lucas.

24. He said that there were inconsistencies in the inventory report (A62), to do with the condition of the Property when they moved in. When they moved in, the Property was in a poor condition and this was communication between him and the First Respondent as the Applicants tried to recover some of the costs for cleaning and their time. They came to an agreement that no such costs would be covered by the First Applicant and the matter was considered closed. The check-in report was missing a lot of key details: damage to toilet; poorly done repairs in the upstairs bathroom with towel rails sticking out; issues with the back gate not locking properly, mould everywhere in the bathrooms. These were all detailed at the time of check in. He made a response to the check-in report which was accepted by the inventory company, who initialled the report

and then attached his comments. The comments were signed off by both parties as agreed remarks.

25. He said that he could not give an exact figure as to how much they had spent on fixing issues when they moved in, but it was in the region of a few hundred pounds. He said that they initially moved in in stressful circumstances, as they were doing it last minute, so they moved in and quickly got to work cleaning. He sent responses to the check in report and he could not remember the dates but he had emailed the First Respondent detailing in depth each part of the Property they felt unhappy with, as well as list of costs they had at the time, but he did not believe that this email was in the bundle. He said that he honestly felt that they could have made earlier attempts to raise issues, as they were made after they had taken a financial cost on themselves and they did not want to make the relationship with the Respondents poor. He accepted that they did not do due diligence in terms of the Property before taking it on. He said that pretty much all correspondence was done primarily between him and the First Respondent. Occasionally it was with the agent but that was usually for more formal affairs, e.g. Mr. Lucas leaving.

26. He was asked what his motive was in cleaning the Property and then informing the First Respondent. He said that they wanted to get it cleaned so they could move in as soon as possible. They had spent a week in an alternative property due to the slow nature of the referral paperwork and they were late in finding a property. It was a stressful time, and once they found a place, they needed additional weekly accommodation. Once they had the keys, they wanted to move in.

27. In respect of the deposit, he said that at the time they moved out it was another stressful move and they were struggling find somewhere to live. The Respondents did extend the tenancy by another week, and they did a "walk through" with both the Respondents on the day they moved out, and it was deemed a good enough standard. A few weeks after that time, on the Deposit Protection Scheme, the Respondents made claim over email rather than through the DPS for £410 with a list of items said to have been damaged. The Applicants responded the same evening or the next day, going through each and every claim, in some cases they accepted the allegation but not for all. The primary issue was that no evidence of cost was given, just numbers. When they went through the scheme, all the claims lumped in to one, so they did not have the ability to dispute them individually so they had no option but to deny them all. Since that time, September 2022 Sep, the DPS has still been waiting for a response from the Respondents.

28. He was then asked questions by Mr Richards. He was asked who had gone to the viewing of the Property and he confirmed it was all four Applicants. He disputed the contention that Mr. Lucas was not there. He said that he, the Second Applicant and Mr. Lucas lived about 30 seconds walk away so it was very easy for them and they had booked about 3-4 other viewings the same day. He denied that he told the First Respondent that he and Mr. Lucas were related. He said that he could not say the specifics of the language he used (i.e. whether

he had told the First Respondent that they were friends). He said that he had not explicitly to the best of his knowledge, told the First Respondent that he and Mr. Lucas were not related. He confirmed that he said that he, the Second Applicant and Mr. Lucas lived together and that he was in a relationship with the Second Applicant. He denied that he told the First Respondent that the Third Applicant was in a relationship with Mr. Lucas – at the time she was in a relationship with someone else.

29. He was taken to the tenancy agreement (R101), cl. 4.8 and he was asked if he knew the Property was a HMO if the Applicants were not related. He said that he did not understand licensing requirements, but he interpreted the clause as talking about the maximum number of permitted occupiers and the permitted occupiers were those named in the tenancy agreement. It was put to him that this showed that the Respondents had looked at the possibility of the Property being a HMO when the Applicants moved in, and he said that at no point in the conversation was the idea of a HMO mentioned. It was put to him that this was because the First Respondent was under the impression he and Mr. Lucas were related and they were both moving in with their partners. He said that he would question how they left that impression, where was the correspondence or proof that the Respondents had done due diligence to ensure that that was not the case to protect themselves? He said that there was no evidence any of the Applicants claimed a familial relationship or any relationship between the Third Applicant and Mr. Lucas. He confirmed that he and Mr. Lucas were not related. He was asked what evidence he had of that – he said that they were different people with different surnames who did not meet until 2022. He confirmed that they had been living together as housemates. It was put to him that if they had lived together for a year, that property was also occupied as a HMO. He said that he did not have that information, that his landlord would deal with it, and it was not his responsibility to understand the legislation, it was the responsibility of his landlord.

30. He was asked if he had taken his previous landlord to court in respect of the HMO. He said that he had not and said that he did not think to check about a licence for the previous property, and the only reason he did this time around was that he had looked at it during negotiations in the period in which Mr. Lucas said he wanted to leave and they then did a "very deep dive" on the legislation around the matter. He confirmed that was in December 2022 and he said that they looked into the possibility of Mr. Lucas wanting to get out of his contract, so they investigated whether there was a law or fire regulation which may give grounds to allow him to exit the contract.

31. He was asked why they continued to live in the Property once they found out it was an unlicensed HMO and he said that they did not know it was unlicensed. It was put to him that he knew it was a HMO, and he was looking at reasons to leave, and he said that they did not want to leave, but Mr. Lucas did and they did not want him to be out of pocket. He was asked when he found out the Property needed a licence. He said that he did not know whether it had a licence, but he had spoken to the First Respondent during discussions around Mr. Lucas's departure in the December 2022 period, and the First Respondent mentioned that he believed the Third Applicant and Mr. Lucas were in a

relationship, but he said nothing about the First Applicant and Mr. Lucas being related. He denied that the Third Applicant and Mr. Lucas were in a relationship and they had already made that clear, but even if they were, that would not change the classification as a HMO.

32. He was asked what led the First Respondent to believe that the Third Applicant and Mr. Lucas were in a relationship. He said he had no idea. It was put to him that the First Respondent was left with the impression that they were two couples. He said that they had not given that impression, they were specifically talking with the First Respondent about needing three bedrooms, the Property was listed as a three-bedroom property, the third bedroom was listed as the downstairs bedroom, not the annexe building – they were told by the First Respondent during the viewing that they could not use the annexe as a third bedroom and it would have to be the downstairs bedroom.

33. He was taken to R41. The First Applicant said that the Property was advertised as a three-bedroom property (A25) and it was mentioned in the check-in inventory. That room was not the living room (he referred to the floor plan – A23) and said that the living room was not the same as the bedroom to which he was referring. He said that the email was making up pointless information and there was no evidence they were two couples, on the contrary, there was evidence it was a three bedroom Property and no one was staying in living room. He said that there was a reply to this email.

34. He was taken to R58 (which is the reply he was referring to) and it was put to him that it was his omission in failing to tell the First Respondent of the nature of his relationship that led to the First Respondent to believe that they were two couples and that he was firm in that belief. The First Applicant said that the First Respondent could be firm in his belief, but there was no evidence. He said that they had told the truth and everything was clear. He said that no other landlord had assumed a relationship and they usually asked – if the First Respondent had asked, he would have been truthful. It was put to him that he had not volunteered his relationship and he asked why he would? He confirmed that Mr. Lucas had not told the First Respondent they were related, and that he hadn't confirmed that they weren't. He said that identification was provided during the referral process which showed they had different surnames and came from different countries. It was put to him that this did not mean that they were not related and he said that it was a stretch to assume they were, without them saying this and without any evidence.

35. The First Applicant confirmed that he had told the First Respondent that they all lived together and their previous landlord had given a reference. He was taken to R19, R23 and R27. He confirmed that the Second Respondent was not on the previous tenancy agreement.

36. It was put to him that he bore part of the responsibility for the First Respondent renting the Property to them when he told the First Respondent that he and Mr. Lucas were related and he said that he did not tell the First Respondent that.

He said that he did tell the First Respondent that he and the Second Applicant were in a relationship, and that Mr. Lucas had come to the viewing.

37. He was asked when he found out the Property did not have a licence and he said that he found it out for "definite" after they had moved out, when he contacted the local authority and even then, it was not confirmed that the Property definitely did not have a licence, but merely that it should be. He did not receive confirmation that the Property was unlicensed until Justice For Tenants got in touch with the local authority and they confirmed this. He was asked why he had not done "due diligence" and he said that it was not his responsibility.

38. It was put to him that he remained in the Property knowing it was not licensed when he had misled the First Respondent about his relationship with Mr. Lucas and waited until the end of the tenancy so he could claim for the maximum rent. He confirmed that this was the First Respondent's case but it was not fact. He said that there was no evidence at all of any attempt to mislead the First Respondent, there was no requirement for them as tenants to understand and be aware of the licensing requirements, that was the responsibility of the letting agent and professionals involved. They were the tenants and were not required to understand it.

39. He confirmed in re-examination that he was born in Wales but he had moved to the Isle of Man when he was 8 and remained there until he went to university. His passport would have said the Isle of Man. He said that Mr. Lucas came from Richmond/Kingston. He was taken to R58 and he confirmed that he had told the First Respondent in December 2022 that they were not two couples. He said that he knew for certain that the Property was unlicensed about 2 weeks ago when he read the bundle and saw the exhibited email from the local authority. He confirmed his qualifications were a PHD in information security and worked as a software engineer – he confirmed that he had no training in housing or in law.

40. He was asked some questions by the Tribunal. He confirmed that there was a smoke alarm in the kitchen, but none upstairs. He thought that the one in the kitchen was a battery-powered smoke alarm. There was no fire blanket. He did not think that the doors were fire doors and they did not self-close. He confirmed that he drew the floor plan (A23). He said that the annexe was a converted garage building and Mr. Lucas was not sleeping there – his room was between the living room and bathroom. He confirmed the Property was advertised as a three-bedroom Property. They were only told that the annex could not be used as bedroom.

41. The Second Applicant gave evidence. She confirmed her witness statement (A128). She said that she was dating the First Applicant and the Third Applicant was her friend. They decided to move into a larger property and to live together. She confirmed that she was not related to the others.

42. She said that the mould was primarily in the annexe as it had no heating – they used it as an office. As there was no window in Mr. Lucas's bedroom, it was set

up so he could spend time there. She noticed some of her jackets and hats and her office chair developed white mould. They spoke to the Second Respondent who said she would provide an oil radiator but she did not, although they did get an electric heater which the tenants paid for. The Second Respondent also said she would provide a spray but she did not. She said that Mr. Lucas's rooms did not have a window so it got stuffy and he had to keep the door open to the hallway, which was noisy. This was the primary reason he left.

43. In respect of the back gate she said that she was the primary driver, using the gate and the parking. When leaving the car to unpack, anyone could come in and unlatch the gate. If someone pushed it, they could get it open, it was not secure. The First Respondent looked at it and said that the lock was blown off in the wind, it was continuing issue, so the tenants secured it with bungee ties.

44. When asked how she had raised issues, she said that in the first few weeks of moving in, things had been left behind and she thought the Respondents would come with a truck. During visits, they discussed the gate and the washing machine. They did raise issues here and there, there was a lot of things wrong with Property but as they wanted to keep good relations they only wanted to draw to the attention main things.

45. In terms of the impact on her experience she said that Mr. Lucas was impacted the most, but he started to spend more time out of house and decided to leave, which was the worst case scenario, as the remaining tenants could not cover the whole rent, and this put a dampener on the house.

46. She confirmed that the tenants paid the utilities and none of them were on Universal Credit.

47. When asked questions by Mr. Richards, she confirmed that all four tenants viewed the property. She said she believed the downstairs room was a bedroom as it was advertised as such and they did not know it needed a window. She said that she did hear the First Applicant tell the First Respondent about their relationship, she said they all viewed it together and it was going to be her bedroom so it was pretty obvious. It was put to her that at the viewing, the First Respondent was told that they were two couples, she said that they asked about additional parking as the Third Respondent's partner would visit. She confirmed that she was not on the previous tenancy agreement.

48. The Third Respondent gave evidence and confirmed her witness statement (R121). She said that she was friends with the other tenants and that was the extent of their relationship. She was not in a relationship with any of them and was no related by blood. She was asked if there was any representation on her part or any conduct to suggest she was related or connected to the others. She said no, at no point were they holding hands, or using pet names. She said she had a long-term partner, at the time, and they discussed parking for when she came to visit, and it was quite clear she was in relationship with someone who was not there.

49. She was asked questions by Mr. Richards. She confirmed that all four of them had gone to the viewing. She said that she had previously lived with the First Applicant, then he had moved in with the Second Applicant. She said that she chose to move out of her previous property to move to the Property. She was taken to R113 and it was put to her that she had not signed electronically, she said that she had. It was put to her that there was no electronic stamp and that her signature had been added later. She said that she did not know. It was put to her that the First Respondent had the impression that she and Mr. Lucas were a couple, and she said that she had no idea where he got that impression and she said nothing to imply that. She was taken to R33 and she confirmed the cat was allowed to move in. She said that she had used the phrase "our garden" as the three Applicants had lived at the same house but not at the same time – she had moved in when the First and Second Applicants moved out. The cat was from that house.

50. She said that she could not recall any gas safety certificate but that did not mean there wasn't one. There was an EPC and Electrical Safety Certificate. She said that she thought that they got information about the deposit. There was no carbon monoxide alarm when they moved in but one was provided.

51. The First Respondent gave evidence. He confirmed his occupation was a mortgage advisor. He confirmed his witness statement at R4. He confirmed the Applicants had no arrears when they moved out and that utilities were not included in the rent. He said that the prescribed information, EPC, gas safety certificate were all sent by email. He said there was no fire risk assessment report. He could not remember if there was only one smoke alarm, he said there was maybe one or maybe two. He was asked if he knew what was required and he said one on the ground floor and one on the first floor. He said there was no carbon monoxide alarm but one was then provided. There was no fire blanket.

52. He was asked if he wanted the Tribunal to know anything about his finances. He said that he had moved into a house last year and had been living in a two-bedroom flat. He had spetd a lot of money renovating the house. He owned two other properties that were rented out – one was a flat and one was a house. He had not been convicted of any other Housing Act offences. He was not a member of any professional landlord organisation. He managed the properties himself (one had been managed by an agent in the past).

53. He said that he had been a landlord for 7 years. The property was rented out at the moment but was not licensed – it was let to a husband and wife and the husband's brother. He said that he was familiar with HMO licensing. He said he had not applied for a licence before as all the properties were let as "family units". He was asked how many tenants he usually had in the properties – he said in the Property there were three, there was a husband and wife with their child in the flat and in the other house a parent and son with the son's wife. It was put to him that the Property was rented as a three-bedroom property and he said it was a two-bedroom property. He was taken to A25 and he confirmed it was an advertisement for the Property. He said there was a room downstairs which was not a bedroom. He confirmed it was rented to four people. He said

that in the description of the Property it was mentioned that the ground floor was an additional room which was not a bedroom. He confirmed he believed that Mr. Lucas and the Third Applicants were a couple. He was asked why he thought that and he said that when they came to see the Property they told him. He said he spoke to the First Applicant about it, and he said that he was in a relationship with the Second Applicant and that he and Mr, Lucas were related and Mr. Lucas and the Third Applicant were partners.

54. He was taken to R58 and said that after he was informed on 13 December 2022 that they were not two couples, that he did not apply for a licence. He said that that was because they told him they were related and were a couple. It was put to him that he knew this was not true after the email, he said that there was an email from the agent that mentioned it as well. He confirmed he did not make an application for a licence.

55. He said he was aware of HMO licensing requirements. He was asked what they were, he said that he had to let the Property out to a single household. He said that if there was more than one household, the Property would need a licence, that if the people staying there were not related, it would need a licence. It was put to him that the First Applicant and Mr. Lucas had different last names, he said that they could if they were cousins or step-brothers, and there was no requirement on him to ask about relationship. He said that they told him that they were related but he had no proof as to how they were related, he said maybe "cousin-brothers" or step-brothers. It was put to him that if he had been told they were related, he would be able to say how they were related, he asked how they could prove they were not related. It was put to him that he was making this up and he said this was what he was told. He said he would not check a marriage certificate for a husband and wife or birth certificates for children.

56. It was put to him that even if his version of events was correct and they were related, the Property would still need a licence. He said that it was his impression that if they were brothers with their partners, that was family. He said that they told him they were related and what possible options were there? He said that the First Applicant had said he had a partner and lived with Mr. Lucas so what other combination could there be?

57. It was put to him that the Property would still need a licence, and he said not if they were brothers with their partners, and this was one household, one family. He confirmed his understanding was that if the Property had more than one household it would need a HMO licence. He was asked by the Tribunal if he was aware that there is a legal definition of household and he said that he had researched it after this happened. He was asked where his understanding had come from, he said that he had had a letter from LB of Hounslow (R71) and then came to the Property. He confirmed this was after the claim period.

58. It was put to him that he did not know what his obligations were. He said he read online that if he believed it was a single household, one family unit and it was advertised as a family unit, not room by room. He repeated that if there was more than one household the Property would need a licence. The Tribunal

asked him for his definition of household and he said that it was people related to each other.

59. It was put to him that even if his version of events was correct, that would still leave the Third Applicant and would mean they were two households. He said that she was with her partner and so it was one household. It was put to him that he had no reason believe the Third Applicant and Mr. Lucas were in a relationship. He said that the First Respondent told him that Mr. Lucas would be using the upstairs bedroom. It was put to him that he was making this up and he denied this.

60. It was put to him that the Property was in a messy condition when the Applicants moved in. He said the Property was in a tidy state and the photographs were taken 2 weeks after they moved in. It was put to him that the amendments to the check in report which were agreed showed it was not in a good condition. He said that he was living at the Property with his family for 8 years, and when they moved out he painted and put in a new kitchen. He said that if they had any issue they should have asked him at the time when they viewed it, not after 3 weeks. He said he was not aware of the Management of Houses in Multiple Occupation Regulations 2006. It was put to him that they said that the Property had to be in a tidy state and from the amendments to the report, it was not. He said it would in a good condition, and each person had a different definition of good condition or bad condition. He did accept the inventory report but he said that the amendments were not signed. He accepted the report had been signed on behalf of the Respondents.

61. He was asked why he did not correct the latch on the back fence. He said the door was side and had to be locked from the inside. There were three different locks. He said he told the tenants they cannot lock it from the outside with two different locks. When asked about the mould he said they had been given a radiator, and when the First Respondent had moved out, the Property was painted and there was no issue when he was living there. He said they were given and spray to remove the mould and they had to ventilate the Property.

62. He was asked why he allowed Mr. Lucas's bedroom to be used without a window. He said that at the viewing, only three of them came. It was put to him it was advertised as a three-bedroom Property and that was how it was rented. He said that he told then it was a two-bedroom property and the downstairs room needed to be used as a dining room/office. It was put to him that this was not true and they were only told not to use the annex as a bedroom. He said they were told the downstairs rooms was an additional room. He said that he was told that Mr. Lucas and the Third Applicant would use the upstairs bedroom. He confirmed he had not applied for a licence and he said that they were one household as the First Applicant and Mr. Lucas were related - brothers, step-brothers, or cousin brothers, and the Property was not rented room by room. It was put to him that there was no evidence they were related. He said there was no legal requirement on him to ask and keep it on record. He said he took their word for it. It was put to him that he had no proof that the First Applicant and Mr. Lucas were in a relationship. He said that he assumed

it from the email about the cat. It was put to him that that was the basis of the assumption and he said that was what they told him at the time.

63. Mr. Richards then made submissions as follows. This is a unique case as usually HMO's have different people paying individual rents, here there are 4 people who have signed a tenancy agreement and one person paid the rent, with the rest contributing. It was accepted that the Property would still have needed a licence even if Mr. Lucas and the First Applicant had been brothers and if Ms. Lucas and the Third Applicant were in a relationship but it was said that it was relevant to the Tribunal's exercise of discretion as to what it ordered the Respondents to pay. The First Respondent's conduct and state of mind should also matter. It was accepted that the law said that two households would require a HMO licence. In mitigation, it was said that the Tribunal should look at who made him believe that – the estate agent also believed it was two couples. The First Respondent was clear in his conviction in his evidence, he was led to believe this, but it was said that it could have been a misunderstanding.

64. Mr. Richards asked when the Applicants came to the understanding that this was a HMO and it needed licence? The First Applicant said that it was about 2 weeks ago but they brought this case and stayed in the Property knowing it needed a licence, and at the point when they found out it needed licence, they then waited, paying rent, behaving like good tenants, knowing they could come to court and claim money. There is conduct there, and they bear some responsibility. The tenancy was even extended by a week. Why did they not take action and move out?

65. The local authority visited the Property (A256) after the Applicants had vacated and the offence has not been repeated. It will not continue and the Respondents have learned from it.

66. Mr. Leacock made submissions as follows:

67. Even if the Respondent's understanding was correct and even if they truly believed it, the Property still required a licence. In terms of staying at the Property, there was no break clause in the tenancy agreement so they had to stay. The Property needed a licence and did not have one (A257). In terms of reasonable excuse, there was no evidence that the First Applicant said that Mr. Lucas and he were related. But even if the Tribunal accepted this, the Property needed a licence. The lack of a licence was due to the Respondents not understanding their obligations as landlord so it cannot be a reasonable excuse. In *Thurrock Council v Khalid Daoudi* 2020 UKUT 209 (LC), para. [27] it was said that no matter how genuine a person's ignorance of the need to obtain a licence was, unless the failure was reasonable in all the circumstances, their ignorance cannot provide a complete defence. Here, it was not reasonable – it was not true the Applicants made representations, there was no reasonable basis to conclude that they had, the First Respondent could not outline what Mr. Lucas and the First Respondent's relationship was.

68. In *IR Management Services Ltd v Salford CC* 2020 UKUT 81 (LC), para. [30] it was said that it was expected of landlords that they would know their minimum legal obligations. The Respondents were clearly unaware of what the requirements for a licence are. The First Respondent has been a landlord for 7 years and has three properties rented out. Given he is unaware of his minimum obligations, there is no reasonable excuse.

69. The Applicants moved out on 24 August 2023 and the application was brought on 20 August 2024. They claim was brought within 12 months of the offence and they claim for 12 months of rent whilst the offence was ongoing. The period of the claim was clarified as 18 August 2022-17 August 2023.

70. It was also clarified that the Third Applicant paid £500 per month, and the First and Second Applicants paid £700 between them.

71. Mr. Leacock relied on his Skeleton Argument. He referred to *Newell v Abbot* [2024] UKUT 181 (LC) and said that the First Respondent was a professional landlord, the breach was not inadvertent (one of the bedrooms was not fit for habitation), there was a breach of the 2006 Regulations as the Property was not clean, it was not in a good condition, and the tenants had to resolve the issues themselves. The starting point should be 75%. In terms of conduct, the tenants paid in time, there were no arrears, they tried to communicate their concerns with the Property. The Applicants never attempted to mislead the Respondents. There was poor conduct on the part of the Respondents as baseless claims had been made against the Applicants. They had not complied with the Tribunal's directions and had withheld the deposit. In terms of the Respondents' financial circumstances, he said that they have the means to pay a RRO.

Statutory regime

72. The statutory regime is set out in Chapter 4 of Part 2 of the 2016 Act.

73. Rent repayment orders are one of a number of measures introduced with the aim of discouraging rouge landlords and agents and to assist with achieving and maintaining acceptable standards in the rented property market. The relevant provisions relating to rent repayment orders are set out in sections 40-46 Housing and Planning Act 2016 ("the 2016") Act, not all of which relate to the circumstances of this case.

74. Part 2 of the Housing Act 2004 ("the 2004 Act") introduced licensing for certain HMO's. The Local Authority may designate an area to be subject to additional licencing where other categories of HMO's occupied by three or more persons forming two or more households are required to be licenced.

75. Section 40 of the 2016 Act gives the Tribunal power to make a RRO where a landlord has committed a relevant offence. Section 40(2) explains that a RRO

is an order requiring the landlord under a tenancy of housing in England to repay an amount of rent paid by a tenant (or where relevant to pay a sum to a local authority). A relevant offence is an offence, of a description specified in a table in the section and that is committed by a landlord in relation to housing in England let by that landlord. The table includes s.72(1) Housing Act 2004.

41 Application for a 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
...

76. Section 41 permits a tenant to apply to the First-tier Tribunal for a rent repayment order against a person who has committed a specified offence, if the offence relates to housing rented by the tenant(s) and the offence was committed in the period of 12 months ending with the day on which the application is made.

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

77. Under section 43, the Tribunal may only make a rent repayment order if satisfied, beyond reasonable doubt in relation to matters of fact, that the landlord has committed a specified offence (whether or not the landlord has been convicted). Where reference is made below to the Tribunal being satisfied of a given matter in relation to the commission of an offence, the Tribunal is satisfied beyond reasonable doubt, whether stated specifically or not.

78. It has been confirmed by case authorities that a lack of reasonable doubt, which may be expressed as the Tribunal being sure, does not mean proof beyond any doubt whatsoever. Neither does it preclude the Tribunal drawing appropriate inferences from evidence received and accepted. The standard of proof relates to matters of fact. The Tribunal will separately determine the relevant law in the usual manner.

79. Where the application is made by a tenant, and the landlord has not been convicted of a relevant offence, s.44 applies in relation to the amount of a rent repayment order, setting out the maximum amount that may be ordered and matters to be considered. If the offence relates to HMO licensing, the amount must relate to rent paid by the Applicants in a period, not exceeding 12 months, during which the Respondents were committing the offence. This aspect is discussed rather more fully below.

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 the table.

If the order is made on the ground that the landlord has committed	The amount must relate to rent repaid by the tenant in respect of
...	
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 repaid 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, and
(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

Determination of the Tribunal

80. The Tribunal has considered the application in four stages-

(i) whether the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence under section 72(1) of the 2004 Act in that at the relevant time the Respondent was a person who controlled or managed an HMO that was required to be licensed under Part 2 of the 2004 Act but was not so licensed.
(ii) whether the Applicant was entitled to apply to the Tribunal for a rent repayment order.
(iii) Whether the Tribunal should exercise its discretion to make a rent repayment order.

(iv) Determination of the amount of any order.

Was the Respondent the Applicant's landlord at the time of the alleged offence?

81. Tribunal finds as a fact, that the Respondent was the landlord of the Applicants from 18 August 2022-24 August 2024. The Respondents are listed as the landlord on the tenancy agreement (A30) and they are listed as having title absolute of the Property (A254). The First Respondent showed the Applicants around the Property (A16, A28, A130). The Respondents have not contended that they were not the Applicants' landlords.

Was a relevant HMO licensing offence committed during the period 18 August 2022-17 August 2023 and by whom?

82. The Tribunal applies, as it must, the criminal standard of proof (s.43(1)).

83. It is not in dispute that, during the relevant period(s), the Property was a "HMO" (s.254-259) and the Property required a licence in order to be occupiable by three or more persons living in two or more separate households. It is also not disputed that the Property was, at the material times, occupied by at least people living in more than two separate households.

84. An issue arose as to whether the Applicants were two couples and/or whether the First Applicant and Mr. Lucas were related (although it was conceded that even in that event, the Property did require a licence).

85. Overall, the Tribunal preferred the evidence of the Applicants. They, and in particular the First Applicant, made concessions where necessary, and the Tribunal found that the evidence they gave was honest and straight-forward. This contrasted with the Respondent, who did not concede that the Property needed a licence until directly asked in submissions and such concession was given through his representative. Where their evidence conflicts with the evidence of the First Respondent, the Tribunal prefers the evidence of the Applicants.

86. The Tribunal finds that whilst the First and Second Applicants were in a relationship, Mr. Lucas and Ms. Sawyer were not. The Tribunal also finds that the First Applicant and Mr. Lucas were not related. Even if this were not the case, however, s.258 Housing Act 2004 states as follows:

(1) This section sets out when persons are to be regarded as not forming a single household for the purposes of section 254.

(2) Persons are to be regarded as not forming a single household unless

(a) they are all members of the same family, or

(b) their circumstances are circumstances of a description specified for the purposes of this section in regulations made by the appropriate national authority.

(3) For the purposes of subsection (2)(a) a person is a member of the same family as another person if—

(a) those persons are married to or civil partners of, each other or live together as if they were a married couple or civil partners;

(b) one of them is a relative of the other; or

(c) one of them is, or is a relative of, one member of a couple and the other is a relative of the other member of the couple.

(4)For those purposes—

(a)a "couple" means two persons who fall within subsection (3)(a);

(b)"relative" means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin;

(c)a relationship of the half-blood shall be treated as a relationship of the whole blood; and

(d)the stepchild of a person shall be treated as his child.

(5)Regulations under subsection (2)(b) may, in particular, secure that a group of persons are to be regarded as forming a single household only where (as the regulations may require) each member of the group has a prescribed relationship, or at least one of a number of prescribed relationships, to any one or more of the others.

(6)In subsection (5) "prescribed relationship" means any relationship of a description specified in the regulations.

87. Even if the Applicants were two couples and even if the First Applicant and Mr. Lucas were related (within the meaning of s.258(3)(b)-(d)) all four of them would not be members of the same family as the Second and Third Applicants would not be members of the same family as defined above.

88. Section 72(1) of the 2004 Act is one of those listed in section 40 of the 2016 Act in respect of which the First-tier Tribunal may make a rent repayment order. The section provides that:

"A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed… but is not so licensed".

89. Section 61(1) states:

"Every HMO to which this Part applies must be licensed under this Part unless-
(a) a temporary exemption notice is in force in relation to it under section 62, or
(b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4".

90. Section 55 states:

"(1) This Part for HMOs to be licensed by local housing authorities where -
(a) HMOs to which this Part applies (see subsection (2)), and
(b) they are required to be licensed under this Part (see section 61(1)).
(2) This Part applies to the following HMOs in the case of each local housing authority-
(a) any HMO in the authority's district which falls within any prescribed description of HMO, and
(b) if an area is for the time being designated by the authority under section 56 as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in the designation".

91. The Respondents do not dispute the fact that there was no licence during the material period. The Tribunal had no difficulty in finding that there was no licence, but in any event, on the evidence, the Tribunal would have found (applying the criminal standard) that there was no licence in place during the material time.

92. Where the Respondent would otherwise have committed an offence under section 72(1) of the 2004 Act, there is a defence if the Tribunal finds that there was a reasonable excuse pursuant to section 72(5). The standard of proof in relation to that is the balance of probabilities. Where the Tribunal makes findings of fact in relation to such an aspect of the case, it does so on the basis of which of the two matters it finds more likely. It does not need to be sure in the manner that it does with facts upon which the asserted commission of an offence is based.

93. The offence is strict liability (unless the Respondent had a reasonable excuse) as held in *Mohamed v London Borough of Waltham Forest* [2020] EWHC 1083. The intention or otherwise of the Respondent to commit the offence is

not the question at this stage, albeit there is potential relevance to the amount of any award. The case authority of *Sutton v Norwich City Council* [2020] UKUT 90 (LC) in relation to reasonable excuse held that the failure of the company, as it was in that case, to inform itself of its responsibilities did not amount to reasonable excuse. The point applies just the same to individuals.

94. The Upper Tribunal gave guidance on what amounts to reasonable excuse defence was given in *Marigold & Ors v Wells* [2023] UKUT 33 (LC), *D'Costa v D'Andrea & Ors* [2021] UKUT 144 (LC) and in *Aytan v Moore* [2022] UKUT 027 (LC):

(a) the Tribunal should consider whether the facts raised could give rise to a reasonable excuse defence, even if the defence has not been specifically raised by the Respondent;
(b) when considering reasonable excuse defences, the offence is managing or being in control of an HMO without a licence;
(c) it is for the Respondent to make out the defence of reasonable excuse to the civil standard of proof;
(d) a landlord's reliance upon an agent will rarely give rise to a defence of reasonable excuse. At the very least, the landlord would need to show that there was a contractual obligation on the part of the agent to keep the landlord informed of licensing requirements; there would need to be evidence that the landlord had good reason to rely on the competence and experience of the agent; and in addition, there would generally be a need to show that there was a reason why the landlord could not inform him/herself of the licensing requirements without relying upon an agent (e.g. because the landlord lived abroad).

95. The Tribunal has considered if there is a reasonable excuse defence. Taking account of all the evidence before it, no reasonable defence excuse arises as, the Tribunal finds that the Applicants did not do or say anything to cause the Respondents to believe that: (a) the Third Applicant and Mr. Lucas were in a relationship; and/or (b) the First Applicant and Mr. Lucas were related, let alone related in a way that would satisfy the requirements of s.258(3)(b)-(d)). It was the First Respondent's evidence that he assumed the nature of their relationship (that they were brothers or step-brothers or "cousin-brothers").

96. Further, even if the Respondents truly believed that the Applicants were two couples and that Mr. Lucas and the First Applicant were related (within the meaning of s.258(3)(b)-(d)), as this would not be a defence even if it were true, the Tribunal does not find that this amounts to a reasonable excuse defence – the lack of licence was due to the First Respondent's misunderstanding of the law. In addition to this, the Property was advertised as a three-bedroom property (A25, A62, A78, R57), and the Tribunal finds that it was made clear by the Applicants that they would need three bedrooms. Finally, even if (for whatever reason) the Respondents were under the impression that Mr. Lucas and the Third Applicants were in a relationship, this view was corrected in December 2022 (R58), but no application for a licence was then made.

97. The Tribunal finds that the offence was committed for the 18 August 2022-17 August 2023.

98. The next question is by whom the offence was committed. The Tribunal determined that the offence was committed by the Respondents, being people within the meaning of s.71(1) Housing Act 2004, who had control or was managing the Property during the material time.

Should the Tribunal make a RRO?

99. Given that the Tribunal is satisfied, beyond reasonable doubt, that the Respondent committed an offence under section 72(1) of the 2004 Act, a ground for making a rent repayment order has been made out.

100. Pursuant to the 2016, a rent repayment order "may" be made if the Tribunal finds that a relevant offence was committed. Whilst the Tribunal could determine that a ground for a rent repayment order is made out but not make such an order, Judge McGrath, President of this Tribunal, said whilst sitting in the Upper Tribunal in the *London Borough of Newham v John Francis Harris* [2017] UKUT 264 (LC) as follows:

"I should add that it will be a rare case where a Tribunal does exercise its discretion not to make an order. If a person has committed a criminal offence and the consequences of doing so are prescribed by legislation to include an obligation to repay rent housing benefit then the Tribunal should be reluctant to refuse an application for rent repayment order".

101. The very clear purpose of the 2016 Act is that the imposition of a rent repayment order is penal, to discourage landlords from breaking the law, and not to compensate a tenant, who may or may not have other rights to compensation. That must, the Tribunal considers, weigh especially heavily in favour of an order being made if a ground for one is made out.

102. The Tribunal is given a wide discretion and considers that it is entitled to look at all of the circumstances in order to decide whether or not its discretion should be exercised in favour of making a rent repayment order. The Tribunal determines that it is entitled to therefore consider the nature and circumstances of the offence and any relevant conduct found of the parties, together with any other matters that the Tribunal finds to properly be relevant in answering the question of how its discretion ought to be exercised.

103. Taking account of all factors, the evidence and submissions of the parties, including the purpose of the 2004 Act, the Tribunal exercises its discretion to make a rent repayment order in favour of the Applicants.

The amount of rent to be repaid

104. Having exercised its discretion to make a rent repayment order, the next decision was how much should the Tribunal order?

105. In *Acheampong v Roman* [2022] UKUT 239 (LC) at [20] the Upper Tribunal established a four-stage approach for the Tribunal to adopt when assessing the amount of any order:

> (a) ascertain the whole of the rent for the relevant period;
> (b) subtract any element that represents payment for utilities;
> (c) consider the seriousness of the offence, both compared to other types of offences 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 is a fair reflection of the seriousness of this offence? That percentage of the total amount applies for is the starting point; it is the default penalty in the absence of other factors, but it may be higher or lower in light of the final step;
> (d) consider whether any deductions from, or addition to, that figure should be made in light of the other factors set out in section 44(4)".

106. In the absence of a conviction, the relevant provision is section 44(3) of the 2016 Act. Therefore, the amount ordered to be repaid must "relate to" rent paid in the period identified as relevant in section 44(2), the subsection which deals with the period identified as relevant in section 44(2), the subsection which deals with the period of rent repayments relevant. The period is different for two different sets of offences. The first is for offences which may be committed on a one-off occasion, albeit they may also be committed repeatedly. The second is for offences committed over a period of time, such as a licensing offence.

107. At [31] of *Williams v Parmar* [2021] UKUT 244 (LC) it was said:

> "... [the Tribunal] is not required to be satisfied to the criminal standard on the identity of the period specified in s.44(2). Identifying that period is an aspect of quantifying the amount of the RRO, even though the period is defined in relation to certain offences as being the period during which the landlord was committing the offence".

108. The Tribunal is mindful of the various decisions of the Upper Tribunal in relation to rent repayment order cases. Section 44 of the 2016 Act does not when referring to the amount include the word "reasonable" in the way that the previous provisions in the 2004 Act did. Judge Cooke stated clearly in her judgement in *Vadamalayan v Stewart and others* (2020) UKUT 0183 (LC) that there is no longer a requirement of reasonableness. Judge Cooke noted (paragraph 19) that the rent repayment regime was intended to be harsh on

landlords and to operate as a fierce deterrent. The judgment held in clear terms, and perhaps most significantly, that the Tribunal must consider the actual rent paid and not simply any profit element which the landlord derives from the property, to which no reference is made in the 2016 Act. The Upper Tribunal additionally made it clear that the benefit obtained by the tenant in having had the accommodation is not a material consideration in relation to the amount of the repayment to order. However, the Tribunal could take account of the rent including the utilities where it did so. In those instances, the rent should be adjusted for that reason.

109. In *Vadamalayan*, there were also comments about how much rent should be awarded and some confusion later arose. Given the apparent misunderstanding of the judgment in that case, on 6th October 2021, the judgment of The President of the Lands Chamber, Fancourt J, in *Williams v Parmar* [2021] UKUT 0244 (LC) was handed down. *Williams* has been applied in more recent decisions of the Upper Tribunal, as well as repeatedly by this Tribunal. The judgment explains at paragraph 50 that: "A tribunal should address specifically what proportion of the maximum amount of rent paid in the relevant period, or reduction from that amount, or a combination of both, is appropriate in all the circumstances, bearing in mind the purpose of the legislative provisions."

110. The judgment goes on to state that the award should be that which the Tribunal considers appropriate applying the provisions of section 44(4). There are matters which the Tribunal "must, in particular take into account". The Tribunal is compelled to consider those and to refer to them. The phrase "in particular" suggests those factors should be given greater weight than other factors. In *Williams*, they are described as "the main factors that may be expected to be relevant in the majority of cases" - and such other ones as it has determined to be relevant, giving them the weight that it considers each should receive. Fancourt J in *Williams* says this: "A tribunal must have particular regard to the conduct of both parties includes the seriousness of the offences committed), the financial circumstances of the landlord and whether the landlord has been convicted of a relevant offence, The Tribunal should also take into account any other factors that appear to be relevant."

111. The Tribunal must not order more to be repaid than was actually paid out by the Applicants to the Respondent during that period (ignoring for these purposes a provision about universal credit not of relevance here). That is entirely consistent with the order being one for repayment. The provision refers to the rent paid during the period rather than rent for the period.

112. It was said, in *Williams v Parmar*, by Sir Timothy Fancourt [43] that the *Rent Repayment Orders* under the Housing and Planning Act 2016: Guidance for Local Authorities identifies the factors that a local authority should take into account in deciding whether to seek a Rent Repayment Order as being the need to: punish offending landlords; deter the particular landlord from further offences; dissuade other landlords from breaching the law; and remove from landlords the financial benefit of offending. It was indicated [51] that the factors identified in the Guidance will generally justify an order for repayment

of at least a substantial part of the rent. It was also said that a full award of 100% of the rent should be reserved for the most serious of cases.

113. The Tribunal has carefully considered the amount of the rent for the relevant period of the licencing offence that should be awarded.

Ascertain the whole of the rent for the relevant period

114. The relevant rent to consider is that paid during "a period, not exceeding twelve months, during which the landlord was committing the offence".

115. The tenancy agreement states that the rent is £1,750pcm. There is a schedule of the rent said to have been paid and which is claimed (A193). There is evidence of payments as follows (these include Mr. Lucas's payments):

A195	15/08/23	£338.71
A195	01/08/23	£959.67
A197	01/07/23	£1,750
A199	01/06/23	£1,750
A201	01/05/23	£1,750
A203	01/04/23	£1,750
A204	01/03/23	£1,750
A207	01/02/23	£1,750
A208	01/01/23	£1,750
A209	01/12/22	£1,750
A211	31/10/22	£1,750
A213	01/10/22	£1,750
A214	18/08/22	£4,137.32

116. The First and Second Applicants paid £700 per month between them, the Third Applicant paid £550 per month.

117. The First Respondent's evidence was that there were no arrears of rent at the time the Applicants left the Property.

118. None of the Applicants were in receipt of Universal Credit.

119. The whole of the rent for the relevant period is therefore £15,000.

Deductions for utilities?

120. The Applicants were liable for all charges in respect of supply and use of utilities, and so no deductions are made in this regard.

Seriousness of the offence

121. In *Williams v Parmar* [2021] UKUT 244 (LC) it was said that "the circumstances and seriousness of the offending conduct of the landlord are comprised in the 'conduct of the landlord', so the First Tier Tribunal may, in an appropriate case, order a lower than maximum amount of rent repayment, if what a landlord did or failed to do in committing the offence is relatively low in the scale of seriousness of mitigating circumstances or otherwise".

122. As the Upper Tribunal has made clear, the conduct of the Respondent also embraces the culpability of the Respondent in relation to the offence that is the pre-condition for the making of the Rent Repayment Order. The offence of controlling or managing an unlicensed HMO is a serious offence, although it is clear from the scheme and detailed provisions of the 2016 Act that it is not regarded as the most serious of the offences listed in section 40(3).

123. In *Daff v Gyalui* [2023] UKUT 134 (LC) it was highlighted that there will be more and less serious examples within the category of offence: [49].

124. The Tribunal determines that the relatively less serious offence committed by the Respondent should be reflected in a deduction from the maximum amount in respect of which a RRO could be made.

125. In *Newell v Abbot* [2024] UKUT 181 (LC) was an appeal with a number of material similarities to the instant case. In *Newell,* the appropriate starting point was determined to be 60% of the rent paid. The tribunal took into account that

(a) The Respondent is an amateur as opposed to a professional landlord.

(b) The breach which occurred was inadvertent.

(c) The property was in good condition; and

(d) A licencing offence was committed (section 95(1), HA 2004).

126. The Tribunal does find that this is a more serious case than *Newell*: the Respondents rent out three properties, the breach was not inadvertent but arose from the Respondents not properly being aware of their obligations despite the fact that they manage the Property themselves.

127. Further the London Borough of Hounslow has introduced Standards for licensable Houses in Multiple Occupation (A282) that outline the minimum standards the Local Authority requires in all licensed Houses in Multiple Occupation. They list a number of minimum standards including requirements as to Lighting and Ventilation, providing that all habitable rooms shall be ventilated directly to the external air by a window, the openable area of which shall be equivalent to at least 1/20 of the floor area of the room. Where a basement room is used as a habitable room there should be an unobstructed space immediately outside the window opening which extends the entire width of the window or more and has a depth of not less than 0.6m measured from the external wall or not less than 0.3m in the case of a bay window with side lights. All habitable rooms shall be provided with adequate natural lighting with an area of clear glazing situated in a window, opening to the external air, equivalent in total area to at least 1/10th of the floor area of the room. The Property was advertised and let as a three-bedroom property, despite the fact that, had it been licensed, it could not lawfully have been let as a three-bedroom property.

128. Finally, there were shortcomings in relation to fire safety (including the need for an alarm on every storey which is required in any rented property and has been a requirement for over 9 years) and had a licence been applied for, this is the type of thing that is checked and enforced.

129. The starting point for the Tribunal, taking account of this, is that a RRO should be made, reflecting 70% of the total rent paid for the relevant period.

Conduct

130. The Tribunal takes into account the conduct of the landlord and the tenant, the financial circumstances of the landlord and whether the landlord has at any time been convicted of an offence to which Chapter 4 of the 2016 Act applies when considering the amount of such order. Whilst those listed factors must therefore be taken into account, and the Tribunal should have particular regard to them, they are not the entirety of the matters to be considered: other matters are not excluded from consideration. Any other relevant circumstances should

also be considered, requiring the Tribunal to identify whether there are such circumstances and, if so, to give any appropriate weight to them.

131. The onus is not on the Applicants to licence the Property or to be aware of licensing requirements – that is for the Respondents. The Applicants had a tenancy which ran until 17 August 2023 and the extension was by agreement (A60). They were under no obligation to leave before 17 August 2023 and indeed were contractually obliged to stay until 17 August 2023 (R49). Whilst they did so, they were paying rent.

132. The Tribunal finds that the prescribed information was provided (A43), as was the EPC. The Applicants could not say for certain that no gas safety certificate was provided so the Tribunal finds that it was. The Tribunal notes that the tenancy agreement refers to all of these documents and the How to Rent guide being provided (47). A carbon monoxide alarm was provided. There was no fire blanket.

133. At the start of the tenancy:

(a) The kitchen and bathrooms were cleaned to a poor standard – A66, A81, A86, A102;
(b) The entrance, inner hallway, bedroom one, landing, bedroom two, bedroom three were cleaned to a good standard – A71, A76, A78, A90, A93, A97;
(c) The tenants had to provide details of the ajnnexe building – A113.

134. Taking account of the above, the Tribunal makes an adjustment of the amount of the RRO in the amount of 5%, i.e. deciding that a RRO should be made, reflecting 75% of the total rent paid for the relevant period.

Whether landlord convicted of an offence

135. Section 44(4)(c) of the 2016 Act requires the Tribunal to take into account whether the Respondents have at any time been convicted of any of the offences listed in section 40(3). The Respondents have no such convictions.

Financial circumstances of the Respondent

136. The Tribunal makes no deduction, taking account of the financial circumstances of the Respondent.

The amount of the repayment

137. The Tribunal determines that, in order to reflect the factors discussed above, the maximum repayment amount should be discounted by 25% (i.e. the fine is 75% of the rent paid in the material period). The Tribunal therefore orders under s.43(1) of the 2016 Act that the Respondent repay to the First Applicant the sum of £11,250, to be apportioned as follows:

(i) Kyle Hutchings - £3,150
(ii) Dominique Karis Amponsah - £3,150
(iii) Gabriel Sawyer (aka Esme Sawyer) - £4,950

138. The Tribunal has had regard to all the circumstances in setting a time for payment, including the amount of the RRO.

Application for refund of fees

139. The Applicant asked the Tribunal to award the fees paid in respect of the application should they be successful, namely reimbursement of the £100 issue fee and the £220 hearing fee. The Tribunal does order the Respondent to pay all of the fees paid by the Applicant and so the sum of £320.

Judge Sarah McKeown
13 May 2025

Rights of appeal

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

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

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

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

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

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