



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

Case Reference : **LON/00AU/HMF/2024/0148**

Property : **18 Clerkenwell Close, London, EC1R
0AA**

Applicants : **Sophie Rechtberger
Thomas Parnall Rensoli**

Representative : **Brian Leacock, Justice for Tenants**

Respondents : **Property Guardian Protection Ltd
Atlas Property & Lettings Services Ltd**

Representative : **Andre Baron of Property
Guardian Protection Ltd**

Type of Application : **Application by Tenant for rent
repayment order. Sections 40,41, 43
& 44 of the Housing and Planning Act
2016**

Tribunal : **Judge Bernadette MacQueen
Mrs Crane, MCIEH**

Date of Hearing : **2 May 2025**

Date of Decision : **2 June 2025**

DECISION

DECISION

1. The Tribunal finds that the Respondents committed the offence of failing to license a House in Multiple Occupation (HMO) under the provisions of section 72(1) of the Housing Act 2004, and that accordingly, Rent Repayment Orders in favour of the Applicants can be made.
2. The Tribunal makes a Rent Repayment Order of £2,041.19 in favour of Thomas Parnall Rensoli and £2,939.19 in favour of Sophie Rechtberger. This must be paid by the Respondents within 28 days of the date of this decision.
3. The Tribunal also orders the reimbursement of the Tribunal fees (application and hearing fee) and this amount of £320 must be paid by the Respondents to the Applicants within 28 days of the date of this decision.

The Application

4. On 15 April 2024 the Applicants made an application for Rent Repayment Orders (RROs) under section 41 of the Housing and Planning Act 2016 in relation to 18 Clerkenwell Close, London, EC1R 0AA (the Property).
5. The Property was described as a five-storey commercial office which was going to be converted so that it was combined with the adjacent office premises (16-17 Clerkenwell Close). At page 106 of the Applicants' bundle was a photograph of the exterior of the Property.
6. The relevant period for which the Applicants were seeking RROs for was from 18 December 2022 until 12 May 2023; however, the Tribunal determined that, for reasons set out below, the relevant period was 18 December 2022 to 2 May 2023 (the Relevant Period).

7. Section 41(2)(b) Housing and Planning Act 2016 provides that an application for a RRO can only be made if the offence was committed in the period of 12 months ending with the day on which the application is made. The Tribunal was satisfied that the application had been made within this statutory time limit as the application to the Tribunal was made on 15 April 2024, and the last date of the offence for which the Applicants claimed an RRO was 2 May 2023. The application had therefore been brought within 12 months.

The Documents Provided to the Tribunal

8. The Tribunal had made Directions dated 25 October 2024 that required each party to provide a bundle of relevant documents for use in the determination of the application. The Applicants had provided a bundle of documents that consisted of 142 pages as well as a response to the Respondents' Submissions consisting of 30 pages. Additionally, the representative for the Applicants had provided a skeleton argument.
9. The Respondent, Property Guardian Protection Limited had provided a bundle of documents that consisted of 55 pages (the "Respondent bundle"). The Tribunal did not receive any documents from Atlas Property & Letting Services or any correspondence from them.

The Hearing

10. The Hearing took place on 2 May 2025. The Applicants attended and gave oral evidence to the Tribunal. They were represented by Brian Leacock of Justice for Tenants. Thomas Parnall Rensoli confirmed that he was also known as Thomas William.
11. Andre Baron, Property Manager, attended on behalf of the Respondent, Property Guardian Protection Limited. Scott Franklin, Director of Property Guardian Protection Limited, submitted a statement of case which he had signed with a statement of truth (pages 1 to 4 of the Respondent bundle). However, Andre Baron told the Tribunal that Scott Franklin was unable to attend the hearing because he had to attend a

funeral. No application for an adjournment was made and Andre Baron confirmed that he was able to proceed with the case.

12. Andre Baron also told the Tribunal that he was not expecting Atlas Property & Letting Services Limited to attend the hearing.
13. The Tribunal was satisfied that the application had been served on Atlas Property and Letting Services Ltd and that they were aware of the hearing. The Tribunal found that it was in the interests of justice to proceed in their absence. They had not provided any evidence to the Tribunal in accordance with the Directions, and the other parties had attended the hearing and were ready to proceed.

The Law

14. Section 41(1) Housing and Planning Act 2016 states:

“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”.

12. Section 43(1) Housing and Planning Act 2016 states:

“The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord had been convicted)”.

13. Section 40(3) Housing and Planning Act 2016 defines “an offence to which this Chapter applies” by reference to a table. The offence under section 72(1) Housing Act 2004 (control or management of unlicensed HMO) is within that table.

Control or Management of Unlicensed HMO:

14. Section 72(1) Housing Act 2004 provides:

“A person commits an offence if he is a person having control of or managing an HMO which is required to be licenced under this Part but is not so licensed.”

An HMO required to be licensed, is defined in Section 55(2)(a) Housing Act 2004 as:

“any HMO in the [local housing] authority’s district which falls within any prescribed description of HMO”.

Additional Licensing Scheme

The London Borough of Islington exercised its powers under section 56 of the Housing Act 2004 and designated the entire area of the London Borough of Islington as an additional licensing area (page 107 of the Applicants’ bundle).

The scheme came into force on 1 February 2021 and unless revoked beforehand or extended would cease to have effect on 1 February 2026. The scheme was therefore in force throughout the Relevant Period. The designation applied to all Houses in Multiple Occupation (HMOs) as defined by section 254 of the Housing Act 2004 that are occupied by three or more persons comprising of two or more households.

Section 254 Housing Act 2004 states that a building or part of a building is an HMO if it meets either the standard test, self-contained flat test or the converted building test:

15. The Tribunal identified the standard test as the relevant test and this is defined by section 254(2) Housing Act 2004 as follows:

(2) A building or a part of a building meets the standard test if–

- (a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
- (b) the living accommodation is occupied by persons who do not form a single household;
- (c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it;
- (d) their occupation of the living accommodation constitutes the only use of that accommodation;
- (e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and
- (f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

Subsection (8) defines basic amenities as a toilet, personal washing facilities or cooking facilities”.

Person having Control of or Managing

- 16. The Section 72(1) offence is committed by the person having control/managing the Property. Section 263(1) Housing Act 2004 defines “person having control” in relation to the premises as “the person who received the rack-rent of the premises (whether on his own account or as agent or trustee of another person) or would so receive it if the premises were let on a rack-rent”.
- 17. Section 263(3) defines “person managing” as:

“ the person who, being an owner or lessee of the premises
(a) receives (whether directly or through an agent or trustee) rents
or other payments from (i) in the case of a house in multiple
occupation, persons who are in occupation as tenants or licensees
of parts of the premises”.

18. It is now well established that an RRO may only be made against the immediate landlord.

The Section 72(1) Housing Act Offence

19. The Applicants submitted that the Property was a house in multiple occupation (HMO) that was required to be licensed in accordance with the London Borough of Islington’s Additional Licensing Scheme but was not so licensed. The Applicants therefore alleged that the Respondents were committing an offence under section 72(1) Housing Act 2004, namely of having control or management of a house in multiple occupation which was required to be licensed but was not so licensed.
20. It was the position of Property Guardian Protection Limited that the Property did not need to be licensed as it was not an HMO.

Was the Property An HMO that was required to be Licensed?

21. There was no dispute that the Property was going to be converted so as to be combined with the adjacent office premises (16-17 Clerkenwell Close). At page 2 of the Respondent bundle, Scott Franklin stated that the management company, Atlas Property & Lettings Services Limited, were concerned that squatters may enter the Property whilst it was awaiting conversion and therefore, Property Guardian Protection Limited had been instructed to place guardians in the Property on a short-term basis in order to keep the Property protected over the winter period.

The Applicants’ Evidence

22. The Applicants told the Tribunal that they lived on the top floor of the Property and shared a kitchen and washing facilities with other tenants. The Applicants' evidence to the Tribunal was that the Property was occupied by at least three people who were living in two or more separate households, paying rent to the Respondents, sharing cooking, toilet and washing facilities and occupying the Property as their main residence. Further, the Applicants confirmed that this occupation of the Property constituted the Property's only use.
23. In terms of the periods of occupancy, the Applicants confirmed that they had moved into the Property on 13 December 2022 as two people living as one household. On 18 December 2022, Jade had moved into the Property as a separate household and had remained living at the Property until 2 May 2023. Jade had occupied a room on the floor below the Applicants. Thomas Parnall Rensoli confirmed in his written statement that he had viewed the Property with Jade, who had been a previous housemate.
24. The Applicants stated that other tenants, namely Tom, Jasper and Sara, had moved into the Property during January 2023, but the Applicants were not able to provide evidence about the basis or detail of their occupation of the Property. Therefore, the Applicants confirmed that their case was brought on the basis that the Property was required to be licensed under the Additional Licensing Scheme, with the Applicants and Jade being three people from two separate households.
25. The Applicants stated in their written witness statements and confirmed in their oral evidence to the Tribunal that the Applicants and Jade had lived at the Property as their main residence and that they did not live anywhere else.

26. The Applicants also confirmed in evidence that they and Jade had shared cooking, personal washing and toilet facilities. Specifically, two showers, WCs and a shared kitchen.
27. The Applicants confirmed that they paid £1,680 per calendar month in rent and that this rent was paid to Property Guardian Protection Limited. The Applicants produced bank statements at pages 81 to 90 of their bundle showing these monthly payments.
28. At page 142 of the Applicants' bundle they included an email which was dated 19 January 2023 and sent by Lucy Smith of Property Guardian Protection Limited. In this email, Lucy Smith told the tenants that the Property was untidy. Further, the email stated that the Property was their "temporary home" and therefore the tenants "should treat it like one by cleaning up and sweeping up after yourself". The Applicants stated that this confirmed that the Applicants were living at the Property and that the Respondents were aware of this.
29. In reply, Andre Baron submitted that it was his view that Lucy Smith had used the expression "temporary home" as a turn of phrase.
30. Further, at page 4 of the Applicants' response to the Respondent's bundle, the Applicants produced a letter dated 14 March 2023 written by Lucy Smith of Property Guardian Protection limited which stated that "Thomas Parnall Rensoli is currently living at 18 Clerkewell Close [the Property]". The Applicants stated that this corroborated the fact that the Applicants were living at the Property, and further demonstrated that the Respondents knew this.
31. In reply, Andre Baron submitted that the Applicants had put Lucy Smith under pressure to produce the letter and she had therefore used the wrong template. Further, even if Thomas Parnall Rensoli was living at the Property, Andre Baron submitted that Sophie Rechtberger was not living at the Property and so there was no requirement for an HMO licence.

32. The Applicants' confirmed that they both lived at the Property and as Jade was also living at the Property, it was required to be licensed under the London Borough of Islington's Additional Licensing Scheme as it was an HMO meeting the standard test with 3 people living in two separate households.

The Respondents' Evidence

33. Property Guardian Protection Limited submitted that the Property was not an HMO. It was their position that the Applicants' occupation of the Property was as licensees with non-exclusive use of an office. The Property was therefore not the Applicants' residence and could not be an HMO.
34. At pages 5 to 28 of the Respondent bundle was a copy of what was described as the "licence to occupy agreement" dated 13 December 2022. This agreement was made between Atlas Property and Letting Service Limited, Property Guardian Protection Limited and Thomas Parnall Rensoli (pages 5 to 16) and an identical agreement with Sophie Rechtberger (pages 17 to 28).
35. It was Property Guardian Protection Limited's position that the Applicants (called Guardians in the agreement) could only use the Property as a workspace. Specifically, they highlighted the following provisions from the agreement:
- "Recitals
 - (1)...
 - (6) By entering into this agreement, the Guardian agrees and acknowledges that:
 - a) this Licence is not a tenancy
 - b) the Guardian is a licensee, not a tenant

- c) this Licence does not confer on the Guardian any right to exclusive possession of the Building the Property or any part of it; and
- d) on termination of this Licence, the Guardian shall have no right to remain in the Property and the Guardian shall immediately vacate.”

The Interpretation clause states:

“1.1 Definitions:

...

Permitted Use as a workspace”

Clause 2.2.1 states that the Guardian acknowledges that:

“the Guardian shall occupy the Property as a bare licensee and that no relationship of landlord and tenant is created between the Licensor and/or the Guardian Company and the Guardian by this licence;”

Clause 3 states:

“3 Guardian’s Obligations

The Guardian agrees and undertakes with the Licensor and separately the Guardian Company:

...

3.1.3 not to use the Property other than for the Permitted Use.”

36. It was therefore Property Guardian Protection Limited’s position that the agreement did not allow the Applicants to live at the Property and that the only permitted use was as a workspace. Property Guardian Protection Limited described the agreement as a “rolling monthly licence agreement that commenced on 13 December 2022 and terminated on 16 May 2023”. Further, they stated that the Applicants were licensees with non-exclusive use of an office on the top floor that had its own kitchen

(page 2 Respondent bundle). On this basis they submitted that the Property was not an HMO.

37. Property Guardian Protection Limited further stated that their position was supported by the fact that the Property was listed as an office on the Valuation Office non-domestic rating list until August 2023. Further, they produced a photograph of the Property at page 39 of the Respondent bundle which they submitted showed that the Applicants were using the Property as a workspace.
38. Further, Property Guardian Protection Limited stated that Thomas Parnall Rensoli had made an application to Companies House, which was received on 16 February 2023, to register a company that he was a director of and that he had given the proposed registered office address for the company as that of the Property (pages 29 to 38 of the Respondent bundle). Property Guardian Protection Limited therefore submitted that this demonstrated that the Property was being used as a workspace.
39. Additionally, the Respondents produced references that the Applicants had provided to the Respondents prior to them signing the agreement for the Property on 13 December 2022. Property Guardian Protection Limited stated that these documents demonstrated that the Applicants had alternative addresses and were not living at the Property during the Relevant Period.
40. Specifically, at pages 41 to 42 of the Respondent bundle was a letter and permit from the Canal and River Trust. This had been sent to the Respondents as part of their initial vetting checks by the Applicants prior to them entering into the agreement for the Property. The letter dated 31 October 2022 thanked Sophie Rechtberger for purchasing “a long term boat licence”, and a copy of a Canal and River Trust licence was at page 32 of the Respondent bundle. Andre Baron submitted to the Tribunal that the licence was dated “04/23” and this was the date that

the licence was valid until. It was therefore Property Guardian Protection Limited's position that during the Relevant Period, Sophie Rechtberger was living on a boat as her only or main residence.

41. Further, Andre Baron submitted that this letter from the Canal and River Trust was sent to an address at Kyverdale Road, which he submitted was another address used by Sophie Rechtberger and again demonstrated that the Property was not her main or only residence.
42. In reply, Sophie Rechtberger told the Tribunal in oral evidence that prior to moving into the Property she had lived on a boat. She had therefore sent this confirmation to the Respondents as they had requested proof of her previous address as part of their vetting process. Sophie Rechtberger further stated that the letter enclosing the boat licence was sent to the Kyverdale Road address because she was not able to receive post on the boat and therefore used this address as her correspondence address. She reiterated that this was the position prior to moving into the Property, however once she had moved to the Property on 13 December 2022, the Property was her main residence.
43. At pages 43 to 47 of the Respondent bundle was produced documentation that Thomas Parnall Rensoli had sent to the Respondents prior to signing the agreement for the Property. At page 44 of the Respondent bundle was produced an initial inquiry form that Thomas Parnall Rensoli had completed. On this form he gave an address at Pandian Way as his address. Andre Baron submitted to the Tribunal that this was the address where Thomas Parnall Rensoli lived during the Relevant Period. Further at page 46 of the Respondent bundle was produced a Companies House record which stated that Thomas Rensoli's correspondence address was the Pandian Way address. However, the Tribunal noted that the date of appointment on this Companies House record for Thomas Parnall Rensoli was 9 December 2024, which was after the Relevant Period.

44. Thomas Parnall Rensoli told the Tribunal in evidence that he used the Pandian Way address as a correspondence address. He confirmed that during the Relevant Period he lived at the Property as his only or main residence.

Did the Property Fall Under the London Borough of Islington's Additional Licensing Scheme?

45. Brian Leacock, on behalf of the Applicants, stated that the Property was situated within the additional licensing area as designated by the London Borough of Islington. He also stated that none of the exemptions were applicable to the Property, namely it was not a house which was required to be licensed as a mandatory HMO; it was not a house subject to an interim or final management order; it did not have a temporary exemption or an exemption under Housing Act 2004; and the Property did not fall within certain stipulations regarding section 257 converted buildings.
46. At pages 94 and 95 of the Applicants' bundle, was produced an email that had been sent by Justice for Tenants to the licensing team at the London Borough of Islington to ask if the Property was licensed or an application for a licence had been made. At pages 95 and 98 of the Applicants' bundle were the emails received in reply and these confirmed that the Property did not have a licence.
47. The Respondents submitted that the Property was not an HMO and therefore did not fall within the additional licensing scheme.

Tribunal Decision – Was the Property an HMO that was required to be licensed under the additional licensing scheme?

48. The Tribunal accepts the evidence of the Applicants and finds that the Property was required to be licensed under this additional licensing scheme.

49. The Tribunal finds that the Applicants were credible witnesses who gave consistent evidence about their occupation of the Property. They confirmed that they lived at the Property as two people living as one household and that Jade lived at the Property as a separate household. The Applicants confirmed that this was their main residence during the Relevant Period, that they paid rent and that they shared a kitchen, toilet and washing facilities and that the use of the Property as living accommodation constituted the only use of that accommodation.
50. Specifically, the Applicants gave clear evidence to the Tribunal about their time living at the Property. They confirmed that they shared the kitchen and bathroom facilities and gave detailed evidence about the difficulties they had when only one shower was operating at the Property.
51. Further, at pages 8 and 9 of the Applicants' response to the Respondent's bundle, Sophie Rechtberger produced two photographs that showed the Applicants' room at the Property having a double bed and sofa. The Tribunal accepted Sophie Rechtberger's evidence that the photographs had been taken after the Applicants had purchased a carpet for their room and that Sophie Rechtberger wanted to take the photographs to show how nice their room looked.
52. At page 28 of the Applicants' Response to the Respondent's bundle was a photograph taken on 20 May 2023 which the Applicants told the Tribunal in evidence showed the Applicants belongings packed into bags prior to them moving out of the Property. The Tribunal accepts the Applicants' evidence that this shows that the Applicants had personal belongings at the Property which were in line with their explanation that they lived at the Property.

53. Further, the Tribunal accepts the evidence of the Applicants that the email sent by Lucy Smith of Property Guardian Protection Limited (page 142 of the Applicant's bundle) corroborated the Applicants' position that the Applicants were living at the Property. The Tribunal accepts the Applicants' evidence that the email was sent to all of the tenants at the Property (including the Applicants) given that it was addressed to "Dear All". In this email Lucy Smith told the tenants about a complaint from a selling agent who had visited the Property and described the Property as being in an untidy state. The email was titled "18 Clerkenwell Green – Condition of Spaces". Further and significantly the email stated:

"Today Scott [Property Guardian Protection Director] visited Clerkenwell Green today and entered every room (except Sara's) and he concurred with the agent. We are disgusted with how you have kept the building and carried out unauthorised works. The common parts are filthy as well. This is your temporary home so you should treat it like one by cleaning up and sweeping up after yourselves".

54. The Tribunal does not accept the explanation given by Andre Baron that Lucy Smith was not using the phrase "temporary home" to actually mean a home and that she was using this as a "turn of phrase". In any event Andre Baron was not able to assist the Tribunal with what Lucy Smith might have meant. Further the Tribunal finds that the reference to "common parts" in the email further corroborated the Applicants' position that the Property was being used as shared living accommodation.
55. Further, the Applicants produced at page 4 of the Response to the Respondent's bundle a letter which was provided by Property Guardian Protection for Thomas Parnall Rensoli. The letter was dated 14 March 2023 and signed by Lucy Smith of Property Guardian Protection and stated:

“I am writing to confirm that Thomas Parnall Rensoli is currently living at 18 Clerkenwell Close, London, EC1R 0QN, United Kingdom.

Thomas Parnall Rensoli has been living at the address since 13/12/2022.

Paying £1,680 PCM all bills included and payment is due 1st of every month”.

56. The Tribunal does not accept the explanation given by Andre Baron in oral submissions to the Tribunal that there was a mistake in the template letter used by Lucy Smith and the mistake had been made because the Applicants were putting her under pressure to reply. As already stated, it is not possible for Andre Baron to give evidence as to what Lucy Smith may or may not have intended by this letter.
57. Further, the Tribunal does not accept Andre Baron’s submission that the letter was provided simply to speed up the Applicants’ leaving the Property. Instead, the Tribunal accepts the Applicants’ explanation that the letter demonstrated that Thomas Parnall Rensoli was living at the Property and had been doing so since 13 December 2022.
58. The Tribunal does not accept the submissions made by Property Guardian Protection Limited that Thomas Parnall Rensoli was not living at the Property but instead was just using it for work. The Tribunal accepts Thomas Parnall Rensoli’s evidence that the addresses quoted by Property Guardian Protection Limited were correspondence addresses. Further, the Tribunal accepts his evidence that he had used the Property address as a business address, but he was also living at the Property.
59. The Tribunal accepts the evidence of the Applicants that the addresses they provided prior to moving into the Property were provided as part of the vetting checks required by the Respondents and therefore are not confirmation of addresses that the Applicants were living at during the Relevant Period.

60. The Tribunal also does not accept Andre Baron's position that even if Thomas Parnall Rensoli was living at the Property, an HMO licence was not required as Sophie Rechtberger was not living at the Property. Andre Baron submitted that Sophie Rechtberger had a boat licence and therefore was not living at the Property. However, the Tribunal preferred the evidence of Sophie Rechtberger who confirmed that she was living at the Property and described the living arrangements at the Property. Further, Sophie Rechtberger produced at page 14 of the Applicants' response to the Respondents' evidence a work record entitled "Daily Hire Crew Memo" and this gave the Property as Sophie Rechtberger's address.
61. The Tribunal therefore accepts the evidence of the Applicants and finds that the Applicants and Jade were living at the Property during the Relevant Period. The Tribunal therefore finds that the Applicants and Jade were living at the Property as three people in two separate households, and living at the Property as their only or main residence and that this was the only use of the Property. Further, the Tribunal finds that the Applicants and Jade were sharing a kitchen and washing facilities (including a shower) and were paying rent. The Tribunal therefore finds that the Property was an HMO and finds that, given the Property fell within the designation of the London Borough of Islington's additional licensing scheme and was not subject to any exemption, the Property was required to be licensed but was not so licensed.
62. The Tribunal does not accept the Respondent's position that the terms of the licence agreement meant that the Property could not be an HMO. The Tribunal finds that, although the licence purported to limit occupation to occupation space, the email and letter written by Lucy Smith (page 4 of the Applicants' response to Respondent bundle, and page 142 of the Applicants' bundle) demonstrated that the Respondents were aware that the Property was being used as living accommodation. The Tribunal does not accept that the fact that Thomas Parnall Rensoli

registered a business at the Property meant that he was using it only as a place of work. On the basis of the evidence given to the Tribunal by the Applicants and the email and letter written by Lucy Smith, the Tribunal finds that the licence agreement was not reflective of the true nature of the position and the reality was that the Applicants were tenants of the Respondents and that the licence agreement was a sham.

Person Having Control/Managing

63. The agreement that the Applicants made with the Respondents was dated 13 December 2022. Atlas Property and Letting Services Ltd were described as the “Licensor”. At Recital (2) the agreement stated that “the Licensor is the beneficial owner of the Freehold Title of the Building”. The agreement further stated that the Licensor agreed to grant a licence of the Property to the Guardian [the Applicants]. At page 2 of the Respondent bundle, Scott Franklin described Atlas Property and Letting Services Ltd as the management company.
64. Property Guardian Protection Limited were described in the agreement made between the Applicants and the Respondents dated 13 December 2022 as the “Guardian Company”. The agreement stated that the Guardian Company had agreed to join this licence and undertake various obligations as set out in the “licence”. Further, the Applicants produced bank statements (pages 81 to 90 of the Applicants’ bundle) that showed that rent was paid on a monthly basis to Property Guardian Protection Limited.
65. The Applicants therefore submitted that Atlas Property and Letting Services Ltd were the appropriate Respondent because they were listed as the immediate landlord. Further, given that the rent was paid to Property Guardian Protection Limited, they were also the appropriate Respondent. Property Guardian Protection Limited did not submit to the Tribunal that they should not be a Respondent.

66. The Tribunal was therefore satisfied that Property Guardian Protection Limited was the “person having control” for the purposes of the section 72(1) offence as they were receiving the rent. The Tribunal also finds that Atlas Property Letting Service Limited were the “person managing” as they were described as the licensor and the beneficial owners of the freehold title of the building (Recital (2), page 7 Respondent bundle).

Tribunal Determination – Section 72(1) Offence

67. In light of the evidence before it, the Tribunal finds, beyond reasonable doubt, that the Respondents committed the offence of being the person having control of or managing an HMO which was required to be licensed but was not so licensed.

Statutory Defence Section 72(4), and Reasonable Excuse Section 72(5) Housing Act 2004

68. The Tribunal has considered section 72(4) Housing Act 2004 which provides:

“In proceedings against a person for an offence under subsection (1) [offence of failing to obtain an HMO licence] 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”...

69. The position of Property Guardian Protection Limited was that had the permitted use of the Property allowed the Property to be used as a dwelling and an HMO licence or Temporary Exemption Notice was required, they would have made an application. However, as it was their

view that an HMO licence was not required, they had not made an application.

70. The Tribunal therefore finds that the Respondents do not have a defence under section 72(4), as an application for a licence had not been made.
71. The Tribunal has considered whether the Respondents had a reasonable excuse under section 72(5). Andre Baron reiterated that the Property did not require a licence as it was not an HMO. Further, he submitted that if the Applicants were living at the Property rather than using it as an office space, there was little the Respondents could do to prevent this.
72. The Tribunal does not find that the Respondents had a reasonable excuse. The Tribunal has found that the Property was required to be licensed and the reasons for this are set out above. Further, the Respondents did not provide the Tribunal with any evidence to support their assertion that there was nothing they could do to prevent the Applicants living at the Property. The Tribunal finds that the Applicants' evidence and the email and letter written by Lucy Smith on behalf of Property Guardian Protection Limited showed that the Respondents were aware that the Applicants were living at the Property. There was no evidence before the Tribunal that the Respondents had taken any action to stop the Applicants using the Property as living accommodation. The Tribunal finds, for the reasons set out above, that the Respondents entered into a tenancy agreement with the Applicants for them to live at the Property. The Tribunal therefore finds, on a balance of probabilities, that the Respondents do not have a reasonable excuse.
73. The Tribunal therefore finds beyond reasonable doubt that the Respondents committed the offence under section 72(1) of Housing Act namely of having control or management of a house in multiple occupation which was required to be licensed but was not so licensed.

Should the Tribunal Make an RRO?

74. Section 43 Housing and Planning Act 2016 provides that the Tribunal may make a RRO if it is satisfied beyond reasonable doubt that the offence has been committed. The decision to make a RRO award is therefore discretionary. However, because the offence was established the Tribunal finds no reason why it should not make an RRO in the circumstances of this application.

Ascertaining the Whole of the Rent for the Relevant Period

75. Thomas Parnall Rensoli stated that he paid the rent for both Applicants for the period 13 December 2022 to 12 February 2023, and he provided a breakdown of the rent he paid for the Relevant Period at page 79 of the Applicants' bundle. The whole rent for the relevant period that he claimed was £3,115.98.
76. Sophie Rechtberger stated that she paid the rent for both Applicants for the period 13 February 2023 to 2 May 2023 and she provided a breakdown of the rent she paid for the Relevant Period at page 80 of the Applicants' bundle. The whole rent for the relevant period that she claimed was £4,464.60.
77. The Applicants claimed that the whole rent for the relevant period 18 December 2022 to 2 May 2023 was therefore £7,580.58: £3115.98 paid by Thomas Parnall Rensoli and £4,464.60 paid by Sophie Rechtberger.
78. The Applicants calculated the rent as being payable on the 13th of each month (the date when the Applicants moved into the Property).
79. Property Guardian Protection Limited told the Tribunal that the licence fee was due on the 1st of each month. Clause 3.1.1 of the agreement stated:

“...the Licence fee payable without any deduction in advance on the first day of each month and proportionately for any period of less than a month the first such payment being for the period from and including the Licence Fee Commencement Date to the end of the month”

80. At page 3 of the Respondent bundle the licence fee payments paid by the Applicants were described by the Respondent as follows:

13/12/2022 - £3,405 (Deposit £1,680 and £45 one off internet connection fee and £1,680 January 2023 licence fee)

9/2/2023 £1,680 February Licence fee

13/3/2023 £1,680 Licence fee

3/4/2023 £1,680 Licence fee

1/5/2023 No payment received May 2023

81. On the Respondent's evidence this would mean that no payment of rent was made by the Applicants for December 2022 and no payment was made from 1 May 2025. The Respondents calculated (page 3 of their bundle) that the total licence fee received from the Applicants was £8,400, made up of £3,360 from Thomas and £5,040 from Sophie.

82. The Applicants calculated the rent from 13 December 2022 to 12 January 2023 as £1,436 and then 13 January 2023 to 12 February 2023 as £1,680 (paid by Thomas Parnall Rensoli). The Applicants submitted that payments were then made by Sophie Rechtberger as follows:

£1,680 – 9 February 2023 (for the period 13 February to 12 March 2023)

£1,680 - 9 March 2023 (for the period 13 March to 12 April 2023)

£1,104.60 – 1 April 2023 (for the period 13 April to 2 May 2023)

83. The Tribunal prefers the evidence of the Applicants. The Applicants have provided bank statements showing the payments that they actually made and the dates that the payments were made. The Tribunal does not accept the Respondent's evidence that no payment was made for December 2022 and that no payment was made from 1st May as the amounts actually paid by the Applicants do not support this. The Tribunal therefore finds that the Applicants paid rent on the 13th of each month and that they have correctly calculated the rent they paid during the Relevant Period to be £7,580.58, made up of £3,115.98 paid by Thomas Parnall Rensoli and £4,464.60 paid by Sophie Rechtberger.
84. The Applicants confirmed that they did not receive a housing element of Universal Credit during the Relevant Period.

Deductions for Utility Payments that Benefit the Tenant

85. When determining the amount of a RRO, the Tribunal has a discretion whether or not to make a deduction for utility payments. *Acheampong v Roman* [2022] UKUT 239 confirmed that it will usually be appropriate to deduct a sum representing utilities.
86. The Respondents confirmed that the Applicants had paid a one-off internet connection fee when they moved in, but that they did not pay utility bills.
87. Clause 3 of the agreement stated that the Applicants would pay for the utilities to and from the Property.
88. However, the Applicants' evidence was that Lucy Smith in her letter dated 14 March 2023 (page 4 of the Applicants' response to Respondents' evidence) stated on behalf of Property Guardian Property Limited that all utility bills were included in the licence fee.

89. The Respondents produced at page 48 of their bundle an electricity invoice. The payment due date was 20 February 2024. However, it was not possible to see how the amount in the invoice could be used to calculate the electricity used for the Relevant Period given that work to convert the building would have taken place once the Applicants left the Property.
90. The Tribunal accepts the evidence of the Applicants that all bills were included in the rent that they paid. The Tribunal was not provided with any detail as to the amount paid by the Respondent for utility bills during the Relevant Period and so the Tribunal used its expertise and determined that an amount of £50 per person per month would be payable for utilities for the Property.

Determining the Seriousness of the Offence to Ascertain the Starting Point

91. The Tribunal had to consider the seriousness of the offence compared to other types of offences for which a RRO could be made, and also as compared to other examples of the same offence.
92. In determining the seriousness of the offence, the Tribunal adopted Judge Cooke's analysis in *Acheampong v Roman* [2022] that the seriousness of the offence could be seen by comparing the maximum sentences upon conviction for each offence. Using this hierarchical analysis, the relevant offence of having control or managing an unlicensed house would generally be less serious. However, the Tribunal had to consider the circumstances of this particular case as compared to other examples of the same offence.

Seriousness of Offence and Conduct of Landlord and Tenant

Vacating the Property

93. The Applicants stated that the water at the Property was switched off before they left the Property. The Applicants included at page 133 an email sent to Property Guardian Protection Limited which asked that the water was switched on again whilst they packed. This email was dated 18 May 2023. At page 138 of the Applicants' bundle was a further email dated 23 August 2023 whereby Andre Baron told the Applicants that they could make an appointment to remove their items before the end of August 2023. At page 140 was a further email which was dated 2 September 2023 which stated that the Applicants' property was to be moved by 3 October 2023.
94. Property Guardian Protection Limited stated that the Applicants failed to vacate the Property on 12 May 2023 as required by the termination notice that was issued to them.
95. Further, Property Guardian Protection Limited stated that the Applicants wanted indefinite free storage and free removals. Property Guardian Protection told the Tribunal that they had provided free storage for the Applicants after they left the Property until the Applicants were able to find somewhere to move to permanently. Further Property Guardian Protection Limited told the Tribunal that they had arranged for a van to move the Applicants' items into storage. Property Guardian Protection Limited confirmed that they had agreed to do this to enable what they described as a smooth exit from the Property.
96. Property Guardian Protection Limited submitted that the agreement provided at 5.3 that
- “Upon termination of the agreement, the Guardian shall immediately cease to be entitled to use the Property whereupon it shall vacate in accordance with clause 3.1.21 above”

97. Clause 3.1.21 provided that the Property must be left in a clean and tidy condition with the Guardian's furniture, equipment, possessions and goods removed from the Property at the end of the licence period.
98. It was Property Guardian Protection Limited's position that the Applicants had not complied with either of these clauses.
99. The Tribunal has found, for the reasons set out above, that the licence was a sham agreement and in fact the Applicants were tenants, which the Tribunal finds to be an aggravating factor. In light of this, the Tribunal also finds the way that the Applicants had to leave the Property was not appropriate and also an aggravating factor as they were not provided with appropriate notice. Further, the Tribunal accepts the evidence of the Applicants that the water was turned off before they vacated the Property. The Tribunal also finds this to be an aggravating factor.
100. The Tribunal does accept that Property Guardian Protection Limited provided the Applicants with help to move and store their property. However, this must be seen in the context of the way that the Applicants had to vacate the Property.

Deposit Paid

101. The Applicants stated that the Respondents did not return their deposit. However, the Tribunal did not have before it evidence that a deposit was paid by the Applicants. The bank statements provided by the Applicants were at pages 81 to 90 of the Applicants' bundle. On 13 December 2022, £3,400 was paid to Property Guardian Limited by Thomas Parnall Rensoli. No evidence was provided by the Applicants of a payment being made for January 2023. At page 79 of the Applicants' bundle they stated that Thomas covered the first two months rent on behalf of the Applicants. The Tribunal therefore finds that the payment of £3,400 made on 13 December 2023 was made up of £1,680 rent for December 2022 and £1,680 rent for January 2023 and £45 one off payment for

internet (total £3,400). In light of this, the Tribunal does not have before it any evidence that a deposit was paid by the Applicants.

Shower Facility

102. The Applicants told the Tribunal that one of the showers at the Property had been broken for several weeks after they had moved into the Property.
103. Property Guardian Protection Limited stated that the showers, WCs and basement kitchen had been refurbished and white goods replaced. They submitted that any maintenance requests made were dealt with quickly.
104. The Applicants did not provide the Tribunal with any detail to show that they had reported the fault to the shower to the Respondents nor had they provided the Tribunal with any timeframe in which they said that the Respondents failed to take action. The Tribunal finds that the Respondents did address the issue of the shower, and therefore the Tribunal does not find this to be an aggravating factor.

Late Payment of Rent

105. Property Guardian Protection Limited submitted that the Applicants had paid their “licence fee” late in February 2023 and March 2023 and did not make a payment in May 2023. Further, Property Guardian Protection Limited stated that payments should have been made on the first of every month.
106. For the reasons set out above when the Tribunal ascertained the rent paid for the whole of the period, the Tribunal has found that rent was paid on the 13th of each month. On this basis, the Tribunal does not find that the Applicants made any late payments.

Loud Parties

107. Property Guardian Protection Limited stated that the Applicants held loud parties and on one occasion this had resulted in complaints from neighbours. The Respondent submitted this was in breach of the Applicants' licence agreement which stated at 3.1.15 that the Guardians were not to hold parties or other similar gatherings in the building.
108. The Applicants told the Tribunal that they only hosted occasional dinner guests and maintained reasonable noise levels.
109. The Respondents did not provide the Tribunal with sufficient detail of loud parties being held. The Tribunal therefore does not make any adjustment to the award on this basis.

Items Left in Communal Areas

110. Property Guardian Protection Limited stated that the Applicants did not keep the Property and all fire routes clean, tidy and clear of rubbish and free from obstructions.
111. The Applicants stated that other tenants at the Property had left large items in the hallway and that the Applicants had complained to Property Guardian Protection Limited.
112. The Tribunal was not presented with evidence to substantiate the claim that the Applicants had not kept the Property clear. The Tribunal therefore preferred the evidence of the Applicants that it was the Applicants who complained to the Respondents about other tenants within the Property.

Financial Circumstances of Respondents

113. The Respondents did not provide the Tribunal with any financial information. The Tribunal was therefore not presented with any evidence that the Respondents would not be able to meet any financial award the Tribunal made.

Whether Respondent Landlord has been convicted of offence

114. Property Guardian Protection Limited confirmed to the Tribunal that they had not been convicted of any offence within the table at section 40(3) Housing and Planning Act 2016. The Tribunal was not presented with any evidence that Atlas Property & Letting Services Limited had been convicted of any relevant offence.

Respondents as a Professional Landlord

115. The Respondents were professional landlords and the Tribunal finds that they should have had in place systems to ensure that appropriate checks were made to determine whether a licence was required. This is therefore an aggravating factor.

Quantum Decision

116. Taking all of the factors outlined above into account, the Tribunal concludes that a RRO of 70% should be made in favour of the Applicants.
117. The Tribunal therefore makes RROs as follows:

Thomas Parnall

Total Claim - £3,115.98

Less utilities - £200 (2 months payment 13 December to 12 February 2023 at £50 per person)

70% of which gives a **total amount of £ 2,041.19**

Sophie Rechtberger

Total Claim - £4,464.60

Less utilities - £265.76 (2 months payment at £50 per person per month - 13 February to 12 April 2023 (£200) 13 April 2023 to 2 May 2023 20 days at £50 per person per month -£65.76)

70% of which gives a **total amount of £2,939.19**

118. The Tribunal orders that payment be made in full within 28 days.

Application Fees

119. The Applicants asked the Tribunal to make an order requiring the Respondents to refund the fees that the Applicants had paid to the Tribunal.
120. Andre Baron submitted that this order should not be made as a licence was not required.
121. Given that the Tribunal has made a RRO, the Tribunal exercises its discretion and orders that the Respondents must reimburse the Applicants with the amount that the Applicants paid in fees to the Tribunal, namely the application fee and the hearing fee total £320. This amount shall be paid within 28 days.

Judge Bernadette MacQueen

Date: 2 June 2025

Annex – Rights of Appeal

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.