



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

Case Reference	:	CHI/00MS/HMF/2024/0011
Property	:	10 Bellevue Road, Southampton, SO15 2AY
Applicants	:	Atharva More, Ojas Mahajan, Richard Alekseu
Respondents	:	Mr. Mohammed Poswall, Mr. Shakeel Poswall
Representative	:	Lawdit Solicitors LLP
Type of Application	:	Application for a Rent Repayment Order Section 41 Housing and Planning Act 2016
Tribunal Members	:	Judge H Lumby Mr J Wilson MRICS FCI Arb Mr E Shaylor MCIEH
Venue	:	Havant Justice Centre, Elmleigh Road, Havant, Hampshire PO9 2AL
Date of Hearing	:	22 May 2025
Date of Decision	:	3 June 2025

DECISION

Decisions of the Tribunal

(1) The tribunal dismisses the application for a rent repayment order against the Respondents.

(2) No orders are made in respect of costs.

Introduction

1. The Applicants have applied for a rent repayment order against the Respondents under sections 40-44 of the Housing and Planning Act 2016 (**“the 2016 Act”**).
2. The basis for the application is that the Respondents were controlling and/or managing an HMO which was required to be licensed under Part 2 of the Housing Act 2004 (**“the 2004 Act”**) at a time when it was let to the Applicants but was not so licensed and that they were therefore committing an offence under section 72(1) of the 2004 Act.
3. It was not in dispute that the Property had an HMO licence from 13th June 2016 until 16th April 2021. A new licence application was made on 12th July 2021. The Property was subsequently issued its HMO licence on 5th December 2023. There is a dispute as to whether a further application made on 25th August 2023 did (or did not) have the effect of nullifying the application made in July 2021. The Property did not therefore have an HMO licence from 17th April 2021 until 12th July 2021 and possibly until 25th August 2023, the final licence only in fact being granted on 5th December 2023.
4. Ojas Mahajan is claiming repayment of rent paid during the period from 1 July 2022 to 1 July 2023, amounting to £5,400 together with reimbursement of tribunal fees amounting to £185. Atharva More is claiming repayment of rent paid during the period from 1 July 2023 to 13 October 2023, amounting to £1,625 together with reimbursement of tribunal fees amounting to £185. Richard Alekseu is claiming repayment of rent paid during the period from 18 August 2023 to 13 October 2023, amounting to £1,001 together with reimbursement of tribunal fees amounting to £150.
5. The tribunal was provided with a bundle running to 97 pages as well as a separate witness statement on behalf of Atharva More and Ojas Mahajan and a skeleton argument on behalf of the Respondents.
6. The hearing was conducted in person. None of the Applicants were able to attend. Mr Mohammed Poswall was also unable to attend. The Respondents were represented by Mr Lateef O. Yusuff of counsel. Mr Richard Boulton attended as a witness for the Respondents. Mr Mohammed Poswall and Mr

Shakeel Poswall (both of whom are sons of Mr Mohammed Poswall) also attended as observers.

7. The Respondents argued in their skeleton argument that the application was misconceived on two grounds, first that the Respondents had applied for an HMO licence on 12 July 2021 and secondly the Property was let by the Respondents to Smart Rooms Letting Limited and so was not the correct landlord for the purposes of an RRO application. The Applicants denied this, saying that the 2021 HMO licence application was not valid and that a valid application had not been made until 25 August 2023.
8. Having considered all of the documents provided and heard the submissions of the parties, the Tribunal has made determinations on the issue as follows.

The Law

9. The relevant statutory provisions are set out in the Schedule to this decision. The Applicants argue that the Respondents committed one of the offences listed in the Schedule. The offence in question is under section 72(1) of the 2004 Act by reason of the Respondents controlling and/or managing an HMO which was required to be licenced under Part 2 of the 2004 Act.
10. For the Tribunal to be able to make a Rent Repayment Order, it must be satisfied beyond reasonable doubt that one of the specified statutory offences has been committed by the Respondents and, if so, it must also be satisfied, on the balance of probabilities, that the Respondents do not have a defence or reasonable excuse for the offence.

Preliminary issue

11. It is accepted as a matter of law in section 72(4) Housing Act 2004 that a landlord has a defence to an offence of not having an HMO licence if it has made a valid application for an HMO licence, even if a decision whether to grant the licence has not yet been made. The Respondents say that such an application was made on 12 July 2021, the Applicants say it was not made until 25 August 2023.
12. If the Respondents are correct, they would have not have committed a relevant offence at a relevant time for the purposes of this case and so the Applicants' application would therefore fail. As this would therefore dispose of the case in its entirety, the Tribunal decided to consider this as a preliminary issue.
13. In doing so, it considered the Applicants' case, as set out in the bundle and the separate witness statement, and the Respondents' case, as explained in a witness statement from the Respondents in the bundle, in their skeleton argument and in answers to questions at the hearing.

The Applicants' Case

14. The Applicants argue that there is not conclusive evidence that the application made in July 2021 was valid and complete. They rely on two emails from Catherine Jones (said to be a service support officer in the HMO team at Southampton City Council) and Angus Young (who is said to work in the HMO Directorate at that council), who say a valid and complete application was only received on 25th August 2023. Mr Young explains that a valid and complete application must include valid gas and electricity safety certificates and payment of a fee. The Applicants argue that there is no evidence these were provided with the July 2021 application.

The Respondents' Case

15. The Respondents argue that the 2021 application was valid, relying on an email from Steve Hayes-Arter, the council's Service Manager and HMO Licensing Authorised Officer. This confirms that an application was received in July 2021; the council were experiencing a post Covid pandemic backlog at that time and so allowed properties with pending HMO applications to continue legal operation without enforcement action. Mr Mohammed Poswall in his witness statement says that the application made in 2021 was complete and valid and says that no new application was made in 2023; instead the gas and electricity certificates were now out of date so new ones were submitted.
16. They acknowledge the conflicting evidence provided by the Applicants but contend in this situation the Tribunal should not find the burden of proof as to whether an offence has been committed is proved beyond reasonable doubt. They also contend that the evidence of Mr Hayes-Arter should be preferred as he had first hand knowledge of the case, having signed the actual licence when granted.

Consideration

17. The Tribunal considered both parties' arguments with care. The key issue is whether the making of the July 2021 application gives the Respondents a defence to having operated the Property at the relevant time without an HMO licence, and if it does not provide such a defence, whether there is a reasonable excuse.
18. The Tribunal first considered whether a valid application was made in July 2021. Conclusive evidence has not been provided by either side and officers within Southampton City Council appear to contradict each other. However, the explanation made by Mr Mohammed Poswall does fit the facts the best – he says that a valid application was made in 2021 but, by the time the application was considered in 2023, the electricity and gas certificates had expired and so new ones were required. The Tribunal therefore considers that, on the evidence before it and on the balance of probabilities, a valid application was made for a new HMO licence by the Respondents in July 2021. This therefore provides the Respondents with a defence to the alleged offence.
19. If the Tribunal is incorrect on this, it considered whether the council's policy at the time provided a reasonable excuse to the Respondents under section 72(5)

of the Housing Act 2004. The Tribunal considered the email dated 5 November 2024 from Mr Hayes-Arter contained in the bundle at page 86. This includes the following comments:

“The property held a Mandatory HMO licence from 13th June 2016 until 16th April 2021. A new licence application was then received from the landlord Mr. Mohammed Poswall dated 12th July 2021. The new application should have been made before the expiry to ensure that the property remained licensed but in this case the application was late. At this time Southampton City Council had a significant backlog of HMO licence applications to process and properties to inspect, this was largely due to the Covid pandemic impacting heavily on property visits and inspections. As such the licence application was not processed by Southampton City Council for a significant time period. The property was subsequently issued its HMO licence on 5th December 2023. During this period covering March 2020 through until December 2023 Southampton City Council worked to clear the HMO licence application backlog and advised landlords that as long as the application had been lodged with the City Council that the properties could operate as a HMO without facing enforcement action for operating as an unlicensed HMO. Further to this the HMO licensing Policy was amended to allow a period of grace of up to 6 months (increased from 3 months), following expiry of a HMO licence or the property becoming licensable to permit a timely and compliant application.

So yes SCC were accepting that if a HMO licence application had been recieved [sic] that we would permit the legal operation of the HMO whilst we were waiting to process the application & this period was significant due to the backlog of work brought about following the Covid pandemic. The only issue here is that the application was late and Mr Poswall was sent a letter to renew the licence on 12th March 2021 and a reminder letter on 22nd June 2021 before he sent in his application, so technically this period from 16th April until 12th July the property was unlicensed, without any reasonable excuse that I can see.”

20. This makes clear that, so long as an application had been received by the council, landlords could operate properties as HMOs at this time without facing enforcement action. The Respondents may have committed an offence between 17 April 2021 and 11 July 2021 but that is not relevant to this RRO application (the earliest date for those purposes is 1 July 2022). However, the Tribunal considers that the Respondents had a reasonable excuse from the making of the application on 12 July 2021 until the grant of a new licence on 5 December 2023. This covers the whole period covered by the Applicants’ application. This excuse is the statement by the council to landlords they could operate properties as HMOs without an HMO licence provided an application had been made for a licence.
21. The Tribunal therefore concludes that the Respondents have a reasonable excuse for the alleged offence in respect of the Property covering the whole of the relevant period (1 July 2022 until 13 October 2023). As a result, any application for an RRO on the basis of this offence cannot succeed. The Applicants’ application is therefore dismissed.

Costs

22. The Applicants have applied for an order for reimbursement of the Tribunal’s

application and hearing fees they paid in bringing this case. As their application has been unsuccessful, this additional application is refused.

23. The Respondents have also made a costs application, in respect of its legal fees in defending this application. They argue that the Applicants unreasonably persisted with the case, even after Mr Boulton provided the confirmation that an application had been made for a new HMO licence in 2021.
24. The basic power of the Tribunal to award costs is found in section 29 of the Tribunals, Courts and Enforcement Act 2007, which states that costs shall be in the discretion of the Tribunal but subject to, in the case of this Tribunal, the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the “Rules”). The Rules then proscribe the discretion substantially.
25. The Rules provide that costs may be awarded to a party if another party has acted unreasonably or an award of wasted costs is appropriate. More particularly, the relevant provision in the Rules reads as follows:

13 Orders for costs, reimbursement of fees and interest on costs

The Tribunal may make an order in respect of costs only –

- a) Under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
- b) if a person has acted unreasonably in bringing, defending or conducting proceedings.....

26. The leading authority in respect of part (b) the above rule is the Upper Tribunal decision in *Willow Court Management Company (1985) Ltd v Alexander* (and linked cases) [2016] UKUT 290 (LC). This lays down guidance of general application when considering such cases. The Upper Tribunal considered three sequential stages which should be worked through, summarised as follows:

Stage 1: Whether the party has acted unreasonably. If there is no reasonable explanation for the conduct complained of, the behaviour will properly be adjudged to be unreasonable, and the threshold for the making of an order will have been crossed.

Stage 2: Whether the tribunal ought (in its discretion) to make an order for costs or not. Relevant considerations include the nature, seriousness, and effect of the unreasonable conduct.

Stage 3: Discretion as to quantum. Again, relevant considerations include the nature seriousness and effect of the conduct.

The Upper Tribunal expanded on what constitutes “unreasonable conduct”. The Upper Tribunal said that an assessment of whether behaviour is unreasonable requires a value judgment and views may differ. However, the standard of behaviour should not be set at an unrealistic level. Tribunals must not be “over-zealous in detecting unreasonable conduct” and must use

their case management powers appropriately. The Upper Tribunal referred to tests and comments from other case authorities.

27. The burden is on the applicant for an order pursuant to Rule 13 and orders under r.13(1)(b) are to be reserved for the clearest cases.
28. Rule 13(1)(b) is quite specific that an order may only be made “if a person has acted unreasonably in ... defending or conducting proceedings”. Under the Rules, the word “proceedings” means acts undertaken in connection with the application itself and steps taken thereafter (Rule 26). Such an application does not therefore involve any primary examination of a party’s actions before a claim is brought (although pre-commencement behaviour might be relevant to an assessment of the reasonableness of later actions in “defending or conducting proceedings”).
29. The Respondents’ argument is that the Applicants acted unreasonably in persisting with the case, even when the issues were explained to them. The burden of proof in this case lies with the Respondents to prove that the Applicants acted unreasonably. The Respondents presented their application at the hearing so the Applicants have not had the opportunity to comment. However, the Tribunal considers it is able to consider the application without any such comments.
30. The Tribunal considers that the Applicants acted reasonably in pursuing the case. Evidence was sought from Southampton City Council and two confirmations were received that the valid application was not made until August 2023. Given that this conflicts with the Respondents’ position, the Applicants therefore did not act unreasonably in continuing to pursue the case, even if this was ultimately unsuccessful. By finding the Applicants did not act unreasonably, it follows that the application for costs on the basis of acting unreasonably falls at stage 1. The Tribunal therefore did not consider stages 2 and 3, there being no basis for doing so and so it makes no comment in relation to these.
31. The Tribunal therefore determines that the Respondents’ application for payment of its costs by the Applicants is refused.

Rights of appeal

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

SCHEDULE

Relevant statutory provisions

Housing and Planning Act 2016

Section 40

- (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.
- (2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to – (a) repay an amount of rent paid by a tenant ...
- (3) A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

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

6		section 95(1)	control or management of unlicensed house
7	This Act	section 21	breach of banning order

Section 41

- (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.

Section 43

- (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 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) ...

Section 44

- (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.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

- (3) The amount that the landlord may be required to repay in respect of a period must not exceed – (a) the rent paid 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.

Housing Act 2004

Section 72

- (1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part ... but is not so licensed.
- (5) In proceedings against a person for an offence under subsection (1) ... it is a defence that he had a reasonable excuse ... for having control of or managing the house in the circumstances mentioned in subsection (1)