



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

Case reference : LON/OOBJ/HMF/2024/0640 (1)
LON/OOBJ/HMF/2024/0641 (2)

Property : 154 Trevelyan Road, Tooting, London
SW17 9LW

Applicants : Victoria Raida (1)
Owen Thompson, Kalpesh Patel,
Edward Spencer, Callum Conroy (2)

Representative : N/A (1)
Justice for Tenants (2)

Respondent : ASM Capital Ltd

Representative : None

Type of application : Application for a rent repayment order
by tenant Sections 40, 41, 43, & 44 of the
Housing and Planning Act 2016

Tribunal members : Judge H Carr
Ms A Flynn MA MRICS

**Date and venue of
hearing** : 17th June 2025

Date of decision : 27th June 2025

DECISION

Decisions of the tribunal

- (1) The tribunal determines to make Rent Repayment Orders as follows:
 - a. Victoria Raida – £5456.25
 - b. Callum Conroy - £5124,00
 - c. Edward Spencer - £5124,00
 - d. Kalpesh Patel – £5544.00
 - e. Owen Thompson –£5964.00
- (2) The Rent Repayment Order must be paid within 28 days of the issue of this decision.
- (3) The tribunal determines that the respondent reimburse the applicants for their application and hearing fees, totalling £440.
- (4) The tribunal makes the determinations as set out under the various headings in this decision.

The application

1. The applicant tenants, Victoria Raida (the first applicant) Owen Thompson, Kalpesh Patel, Edward Spencer, Callum Conroy (the second four applicants) have applied for a determination pursuant to section 41 of the Housing and Planning Act 2016 (the Act) for a rent repayment order (RRO) in relation to 154 Trevelyan Road, Tooting, London SW17 9LW.
2. The applicants allege that the respondent landlord has committed the offence of control or management of an unlicensed HMO under s.72(1) of the Housing Act 2004.
3. The respondent is ASM Capital Ltd which is listed as landlord on the ASTs produced by the applicants.

4. The applicants are seeking to recover the following sums
- (i) Victoria Raida - £8274.65 for the period 29th September 2022 – 9th September 2023 (11 months 9 days)
 - (ii) Callum Conroy - £7,800.00 for the period of 17th October 2022 – 16th October 2023
 - (iii) Edward Spencer - £7,800.00 for the period 17th October 2022 – 16th October 2022
 - (iv) Kalpesh Patel - £8,400.00 for the period 17th October 2022 – 16th October 2023
 - (v) Owen Thompson - £9000.00 for the period 17th October 2022 – 16th October 2023
5. Application (1) was made by Victoria Raida and received on 26th August 2024. Application (2) was made by the other applicants on 2nd October 2024.
6. Directions were issued on both applications on 12th December 2024 when the two applications were joined.

The hearing

7. Ms Raida, the first applicant attended and gave evidence, representing herself.
8. Mr Jamie McGowan of Justice for Tenants appeared at the hearing and represented the second four applicants. The second four applicants attended and gave evidence.
9. The respondent did not attend the hearing.

The background and chronology

10. The property is a 6 bedroom three storey mid terraced house with a shared kitchen, four en-suites and one shared bathroom situated in the London Borough of Wandsworth.
11. The Respondent company has as a person of significant control Mr Ashkin Mittal who is the registered owner of the freehold property.
12. The property was occupied as follows

- (i) Victoria Raida lived at the Property from April 2021 until 09/09/2023.
- (ii) Callum Conroy lived at the Property from 19/02/2022 until 16/10/2023.
- (iii) Owen Thompson lived at the Property from 16/03/2022 until 02/11/2023.
- (iv) Edward Spencer lived at the Property from 10/07/2021 until 07/02/2024.
- (v) Kalpesh Patel lived at the Property from 04/01/2022 until 04/02/2024.
- (vi) Elezon Evora lived at the Property from 13/06/2021 until 20/01/2024.

The issues

2. The issues that the tribunal must determine are;

- (i) Is the tribunal satisfied beyond reasonable doubt that the landlord has committed the alleged offence?
- (ii) Does the respondent have a 'reasonable excuse' defence?
- (iii) What amount of RRO, if any, should the tribunal order?
 - (a) What is the maximum amount that can be ordered under s.44(3) of the Act?
 - (b) What account must be taken of
 - (1) The conduct of the landlord
 - (2) The financial circumstances of the landlord:
 - (3) The conduct of the tenant?
- (iv) Should the tribunal refund the applicant's application and hearing fees?

The determination

Is the tribunal satisfied beyond reasonable doubt that the respondent has committed the alleged offence?

The Applicants' evidence

3. The applicants gave evidence of the attempts that were made to engage with the respondent. The applicants used the respondent's email address, valeriedbss@hotmail.co.uk, which is the address the respondent provided for the applicants in their tenancy agreements. The respondent also used that address to correspond with the applicants and other occupants during the currency of their tenancy. That address was included on the Form RRO1 sent to the tribunal on 8th October 2024 and was used to send a copy of the application to the respondent.
4. The applicants told the tribunal that they have included the respondent in all correspondence concerning the proceedings using the above email address. None of the emails have been returned or otherwise undeliverable.
5. The applicants argued that the respondent was a "person having control" of the Property pursuant to section 263(1) HA 2004 because it received the rack rent directly from the Applicants in accordance with the requirements of their tenancy agreements. See all rental payments made direct to "ASM Capital Ltd"
6. The Property is situated within England and during the relevant period was occupied by five persons from more than two separate households who occupied the property as their main residence. The occupiers paid rent and their occupation of the property constituted the only use of the accommodation.
7. For the period from 10th September 2022 until 9th September 2023 (the period of the first applicant's claim) the tribunal can rely on the evidence of the five applicants as they were all in occupation during that time. They gave evidence that they were all in occupation in that period, that they were from separate households, that they occupied the property as their main residence, that they paid rent and that their occupation of the property constituted the only use of the accommodation.
8. There is a substantial overlap between the period of claim of the first applicant and the period of claim of the second four applicants. However for the period of the claim from 9th September 2023 until 16th October 2023 the second four applicants gave evidence that they all continued to be in occupation in that period, that they continued to be from separate households, that they continued to occupy the property as their main

residence, that they continued to pay rent and that their occupation of the property continued to constitute the only use of the accommodation.

9. In addition they rely on the occupancy of a sixth occupant, Elezon Evora to demonstrate the continuation of the offence from 9th September 2023 to 16th October 2023. The applicants gave evidence that Mr Evora had not wanted to pursue an application for an RRO or to assist the applicants because he had a very busy job and had been rehoused by his employer, a hospital. However the applicants each gave evidence that Mr Evora was in occupation during the period of both claims, they referred to emails in Ms Raida's bundle that included his email, and they argued that the tribunal should accept that the property required mandatory licensing because the local authority issued a financial penalty of for failure to licence. The property met all the criteria to be licensed under the mandatory scheme as an HMO under section 254 of the Housing Act 2004 and not being subject to any statutory exemption.
10. The appropriate HMO licence was not held during the relevant period and no licence application was made at any point during the Applicants' tenancies. Confirmation of this was provided by Wandsworth Council in an email dated 30th April 2024 from Michael Akinde MCIEH an Environmental Health Practitioner with the London Boroughs of Merton, Richmond upon Thames and Wandsworth.
11. The applicants produced copies of assured shorthold tenancies in each of their names.
12. The applicants were unrelated to any of the other occupiers and were not in a relationship with any of the other occupiers. Nor was Mr Evora in a relationship with any of the applicants, nor was he related to any of the applicants.
13. The applicants made submissions on the relationship between reliance on the evidence of the second four applicants and the commission of the offence as follows.
14. The applicants argue that the Tribunal can be satisfied to the 'criminal standard' that the relevant offence was committed for the entirety of the Relevant Period, notwithstanding the lack of direct witness evidence from Elezon Evora. The Applicants refer to the following passage from the Upper Tribunal's decision in *Mortimer & Ors v Calcagano* [2020] UKUT 0122 (LC), at §.35 (emphasis added): As I said in a recent appeal, *Opara v Olasemo* [2020] UKUT 0096 (LC), for a matter to be proved to the criminal standard it must be proved "beyond reasonable doubt"; it does not have to be proved "beyond any doubt at all". In that case there was no dispute about the number of occupiers; the issue was whether they had been in occupation as their only or main residence, and the tribunal had to consider the evidential difficulties that arise when the applicant gives evidence but the other occupiers do not. The Tribunal

pointed out that it is legitimate to draw inferences from proven circumstances, under the criminal standard of proof as under the civil standard.

The Respondent's evidence

15. The respondent provided no evidence.

The decision of the tribunal

16. The tribunal determines that the respondent has committed the alleged offence

The reasons for the decision of the tribunal

17. The tribunal is satisfied that the respondent has been notified of these proceedings.
18. The tribunal relies on the evidence from the applicants and the information provided by the local authority. It accepts the applicants' evidence that Mr Eboru was in occupation throughout the period of both claims. It also notes that the local authority issued a financial penalty against the respondent for failing to licence an HMO which it accepted. The tribunal therefore finds beyond reasonable doubt that an offence has been committed.

Does the Respondent have a 'reasonable excuse' defence?

19. The respondent has produced no evidence and therefore there is no evidence to support a reasonable excuse defence.
20. The applicants argued that respondents bear both the evidential and persuasive burden of proof in respect of such defences: *Fashade v Albustin and others* [2023] UKUT 40 (LC), §.17. The respondent has opted not to participate in these proceedings and so cannot discharge the burden of proof in respect of any defence.
21. For completeness, the applicants say that nothing of which they are aware or which has been disclosed to them in correspondence with the respondent during the currency of their tenancy amounts to an objectively reasonable excuse in accordance with the three-stage test set out in *Marigold & Orvs v Wells* [2023] UKUT 33 (LC),

Decision of the tribunal

22. The tribunal determines that the respondent's reasonable excuse defence does not succeed on the basis that no evidence or argument relating to a reasonable excuse defence was received.
23. It accepts the submissions of the applicants.

Should the tribunal make an award of a RRO? If so, for what amount?

The exercise of the tribunal's discretion

24. The applicants asked the tribunal to exercise its discretion and make an RRO.

The decision of the tribunal

25. The tribunal determines to exercise its discretion to make a rent repayment order.

The reasons for the decision of the tribunal

26. The tribunal considered the evidence and determined that it was appropriate for it to exercise its discretion and make a rent repayment order because there had been a clear breach of the law.

The maximum amount of the RRO which can be ordered

27. The period for which the RRO is sought is
 - (i) For the first applicant – 10th September 2022 – 9th September 2023
 - (ii) For the second four applicants - 17 October 2022 to 16 October 2023
28. The applicants provided evidence that they had paid rent as follows:
 - (i) The first applicant £750 pcm for a period of 11 months and 9 days at daily rent of £24.65
 - (ii) The second four applicants

- (a) Callum Conroy - £650 pcm for the period of the claim at a daily rent of £21.37
 - (b) Edmund Spencer - £650 pcm for the period of the claim at a daily rent of £21.37
 - (c) Kalpesh Patel - £700 pcm for the period of the claim at a daily rent of £23.00
 - (d) Owen Thompson - £750 pcm for the period of the claim at a daily rent of £24.65
- 29. The applicants gave evidence that they were not in receipt of Housing Benefit or the housing element of Universal Credit in the relevant period.
- 30. Ms Raida gave evidence that she had been reimbursed some rent after leaving the property and had therefore reduced her claim accordingly.
- 31. The tribunal found that the maximum RRO it could award was as follows:
 - (i) Victoria Raida – 11 months plus 9 days rent = £8274.65
 - (ii) Callum Conroy - 12 months rent at £650 pcm = £7800
 - (iii) Edward Spencer - 12 months rent at £650 pcm = £7800
 - (iv) Kalpesh Patel – 12 months rent at £700 pcm = £8400
 - (v) Owen Thompson – 12 months at £750 pcm = £9000.00

Other arguments concerning the amount of the RRO to be awarded.

- 32. The applicants informed the tribunal that despite the terms of their tenancy agreements the rent included the following utilities
 - (i) Water
 - (ii) Gas

(iii) Electricity

(iv) Council tax

33. The applicants accepted that there should be a deduction for water, gas and electricity, but argued that there should be no deduction from the maximum amount that could be awarded for any council tax paid by the respondent because council tax, unlike water, gas and electricity, was not something that directly benefited the applicants.
34. The respondent has provided no evidence of the cost of provision of utilities. However the applicants referred the tribunal to a text message from the agent to Mr Spencer concerning alternative accommodation at page 34 of the second four applicants' bundle which indicated utilities at approximately £40 per month.
35. The applicants argue that their conduct has been good. They paid rent on time, were careful about reporting repairs and cooperated with the landlord as required.
36. The applicants argue that the offence is a serious example of a failure to licence.
- (i) The landlord appears to be a professional landlord. The company search done against the landlord indicated that it owns multiple properties
 - (ii) Enforcement action has been taken against the landlord by the local authority. In addition to the financial penalty for failure to licence, the local authority also issued a prohibition order against the self contained accommodation in the rear garden of the property.
 - (iii) Poor standard of property maintenance indicating a failure to take the responsibilities of a landlord seriously
37. The applicants argue that the condition of the property was poor
- (i) Inadequate water supply in the upper bathrooms. The issue was reported several times but the Respondent's handyman would only run the shower briefly and claimed there was no problems. The issue was never resolved.

- (ii) The living room had issues with roof leaks and dampness. Mr Spencer of the second four applicants pointed this out during his initial property viewing. Despite an agreement to remedy the problems before moving in the issues were not resolved until a roof repair was carried out in October 2021 which failed and necessitate further repairs. The applicants reported the problem again and continued to see problems until July 12 2023. Ms Raida produced photographs to show the poor standard of work
- (iii) The kitchen skylights often leaked, leading to the plaster on one wall deteriorating. The wall was repainted but the skylights were not repaired meaning that the problem continued
- (iv) When the council carried out an informal inspection of the property the applicants were told that the doors were not fire doors
- (v) There was a leaking shower which did not get fixed
- (vi) The water leaking from the shower entered the electicial fire alarm system. The applicants reported this to the respondent but no action was taken which meant that the fire alarm system was battery only. To ensure their safety the applicants had to regularly change the batteries.
- (vii) Around every two months or so there was sewerage leaks into the garden. The smell was terrible.
- (viii) No gas safety certificate was issued
- (ix) No electrical safety certificate was issued
- (x) No EPC was provided
- (xi) No How to Rent guide was provided
- (xii) The respondent's agent Pruthvi Jagada of PJ Real Estate made numerous offers to leave which the tenants believe was motivated by the landlord seeking to avoid licensing.
- (xiii) Insecure property. The tenant occupying the external garden accommodation could enter the property. Ms

Raida gave evidence that this tenant threatened and intimidated her on numerous occasions which she reported to PJ estates and the landlord, although no action was taken.

The decision of the tribunal

38. The tribunal determines to award a RRO at 70%.

39. The reasons for the decision of the tribunal

40. There is extensive case law on how the tribunal should reach a decision on quantum of a rent repayment order. In reaching its decision in this case the tribunal has been guided by the very helpful review of the decisions in the Upper Tribunal decision *Newell v Abbott and Okrojek* [2024] UKUT 181 (LC).

41. *Acheampong v Roman* (2022) UKUT 239 (LC) established a four stage approach which the tribunal must adopt when assessing the amount of any order. The tribunal has already taken the first step that the authorities require by ascertaining the whole of the rent for the relevant period. The second step is to subtract any element of that sum that represents payment for utilities that only benefitted the tenant. In this case the tribunal has determined to deduct £40 per month from the rent for each of the applicants to cover the cost of utilities. This is based on an informal text between one of the applicants and the respondent's agent in the absence of alternative evidence.

42. This means that the maximum RRO minus utilities for each of the applicants is reduced by £480. Therefore the amount before taking further steps is as follows:

- (i) Victoria Raida – £7,794.65
- (ii) Callum Conroy - £7320
- (iii) Edward Spencer - £7320
- (iv) Kalpesh Patel – £7920
- (v) Owen Thompson –£8520

43. Next the tribunal is required to consider the seriousness of the offence in comparison with the other housing offences for which a rent repayment order may be made. The failure to licence a property is one of the less serious offences of the seven offences for which a rent repayment order may be made.
44. However, although generally the failure to licence is a less serious offence, the Upper Tribunal recognises that even within the category of a less serious offence, there may be more serious examples.
45. In this case the tribunal considered that the case is a moderately serious example of one of the less serious offences in which a rent repayment order may be made.
46. The reasons for this are as follows:
- (i) Disrepair caused by damp penetration and leaks to the property were not taken seriously with in general patch/cosmetic repairs being provided.
 - (ii) The tenants gave evidence that proper fire protections were not in place which puts occupiers at serious risk.
 - (iii) The regular leaks of sewerage onto the astro turf in the garden of the property represented a serious health hazard which needed to be responded to properly and permanently.
 - (iv) The lack of security for the tenants which given the evidence of the unpredictable conduct of the tenant in the garden annex and his fixation with Ms Raida had potentially serious consequences.
 - (v) There was a failure to comply with the information requirements about gas and electrical safety, EPC and the Right to Rent guide.
 - (vi) The property required mandatory licensing.
47. The tribunal decided not to reduce the amount payable because of the conduct of the applicants. There was no evidence to support any allegation that the applicants' conduct was anything but good.

48. The tribunal received no information about the financial circumstances of the respondent and therefore has not taken this into account.
49. At this stage the tribunal considers that a RRO of 70% of the maximum RRO minus utility costs is appropriate and does not consider that any further deductions should be made.
50. It therefore makes RROs as follows:
- (i) Victoria Raida – £5456.25
 - (ii) Callum Conroy - £5124.00
 - (iii) Edward Spencer - £5124.00
 - (iv) Kalpesh Patel – £5544.00
 - (v) Owen Thompson –£5964.00
51. In the light of the above determinations the tribunal also orders the respondent to reimburse the applicants' application fees and hearing fees. The tribunal understands that the applicants (ii) – (v) paid an application fee of £110 and Ms Raida paid an application fee of £110. The applicants together paid a hearing fee of £220. This means a total of £440 is to be repaid in addition to the RROs.

Name: Judge H Carr

Date: 27th June 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).