

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

**Case reference** : **CAM/00MG/HMK/2024/0604**

**Property** : **62 Gurnards Avenue, Fisherman,  
Milton Keynes MK6 2BL**

**Applicant** : **Maria Vieru**

**Representative** : **Adrian Schwab, CILEX**

**Respondent** : **Andrew Smith**

**Representative** : **Unrepresented**

**Type of application** : **Application for Rent Repayment  
Order under section 41 Housing  
and Planning Act 2016**

**Tribunal members** : **Judge K. Seward  
Mr A. Kapur**

**Date of hearing** : **5 August 2025**

**Date of decision** : **11 August 2025**

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**DECISION AND REASONS**

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## **Decisions of the Tribunal**

- (1) The Tribunal is satisfied beyond reasonable doubt that the Respondent landlord committed an offence under section 72(1) of the Housing Act 2004 (“the 2004 Act”).
- (2) The Tribunal has determined that it is appropriate to make a rent repayment order (“RRO”).
- (3) The Tribunal makes a RRO against the Respondent in favour of the Applicant in the sum of £719.00 to be paid within 28 days of this Decision.
- (4) The Tribunal makes an order under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that the Respondent shall pay to the Applicant £330 within 28 days of this Decision, in reimbursement of the Tribunal fees paid by the Applicant.

## **REASONS**

### **The application**

1. By an application dated 9 December 2024, the Applicant applied for a RRO under section 41 of the Housing and Planning Act 2016 (“the 2016 Act”). The Applicant is a former tenant of the Respondent who rented a room in the property at 62 Gurnards Avenue, Fisherman (“the Property”). It is claimed that the Property was an unlicensed house in multiple occupation (“HMO”). It was established at the hearing that the allegation concerns the period from 24 July 2023 to 23 March 2024.

### **The hearing**

2. The hearing took place remotely using the CVP platform. There was a short delay of around 15 minutes in the hearing commencing due to an administrative issue.
3. The Applicant was legally represented by Mr Schwab. The Applicant was assisted throughout by a bilingual interpreter, Irina Schwab, a Solicitor, and authorised translator for the Romanian Embassy. Mrs Schwab confirmed that she has had no prior involvement in the case and undertook to translate faithfully.
4. The Tribunal heard live evidence from Mrs Vieru (the Applicant) and Mr Smith (the Respondent) who called Sam Sinatra as a witness. Some evidence was heard out of the usual sequence. After clarifying the points in dispute, and with the agreement of Mr Schwab, the Tribunal

accommodated Mr Sinatra's request to give evidence first to enable him to return to work. All witnesses were cross-examined and answered questions from the Tribunal.

5. As Mr Smith was unrepresented, the Tribunal took the approach of posing him a series of questions to enable him to put his case whilst also allowing his submissions. The Tribunal was also proactive in questioning the Applicant.

### **Preliminary matters**

6. Case management directions were issued by the Tribunal on 2 May 2025. Amongst other matters, they required the Applicant to provide a bundle of documents including: (i) an expanded statement of reasons for the application clarifying the precise periods and precise amounts sought (ii) full details of the alleged offence with supporting documents for the local housing authority, if available (iii) a schedule of occupancy during the relevant periods (iv) a calculation of the amount of rent paid in the applicable period, excluding any universal credit/housing benefit, and (v) the tenancy agreement or other evidence of the terms.
7. Whilst the Applicant provided copies of bank statements showing payments made to 'Smith Properties' and 'A Smith', and a printout from GOV.uk identifying Andrew Smith as the registered owner, no other details/documents were supplied as directed. Mr Schwab explained that the Applicant was not given any written tenancy agreement, but he did not explain why other information was missing.
8. Non-compliance with the Tribunal's Directions can result in an Applicant's case being struck out in whole or part. However, the Respondent plainly understood the case being made against him given the points taken in response. Care was taken by the Tribunal to obtain all necessary clarification on the missing information. Appropriate opportunity was also given to the Respondent to respond. The Tribunal was satisfied that the Respondent was not disadvantaged in any way.

### **The Property and its occupation**

9. The Property is described by the Respondent as a late 1970's build house. It was purchased by the Respondent as a 4-bedroomed house in 2014. He refurbished the house before the 4 rooms were let.
10. The accommodation comprises two first-floor bedrooms and two second-floor bedrooms with a shared WC and kitchen. In his statement of case the Respondent says that he "recently converted the garage space into a habitable room, bringing the total number of bedrooms to 5". This was done with a view to "ultimately gaining HMO licensing".

11. Whilst the level of occupancy is disputed, it is undisputed that the 4 rooms were let at a rent to people not forming a single household.

### **The law**

12. Extracts from relevant legislation are appended to this Decision.
13. The definition of HMO is set out in section 254 of the Housing Act 2004 (“the 2004 Act”). In particular, section 254(1) provides that a building is an HMO if it meets the conditions in subsection (2) (“the standard test”). Those conditions are:
  - (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, that is a toilet, personal washing facilities and cooking facilities.
14. The Tribunal is satisfied on all the evidence that the Property met the conditions for an HMO in section 254(2) to fulfil the “standard test”.
15. By section 61(1) of the 2004 Act, every HMO to which Part 2 of the Act applies must be licensed unless it is covered by one of the exceptions in that section (none of which apply here). By section 55(2), Part 2 applies to (a) any HMO which falls within any “prescribed description” of an HMO and also to (b) any HMO which falls within an area designated as subject to additional licensing. There is no suggestion that the Property is located in area subject to additional licensing.
16. Under the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018/221, an HMO is of a prescribed description for the purpose of section 55(2)(a) of the 2004 Act if it—(a) is occupied by five or more persons; (b) is occupied by persons living in two or more separate households; and (c) meets— (i) the standard test under section 254(2) of the Act; (ii) the self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or (iii) the converted building test under section 254(4) of the Act.

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

17. The Tribunal has considered the application in four stages –
  - (i) Whether the Tribunal is satisfied beyond reasonable doubt that the Respondent had committed an offence under section 72(1) of the 2004 Act.
  - (ii) Whether the qualifying criteria is met.
  - (iii) Whether the Tribunal should exercise its discretion to make a RRO.
  - (iv) Subject to the above, determination of the amount of any RRO.

### **Control or management of unlicensed HMO**

18. At all material times Mr Smith has been the landlord and person with management or control of the Property. He has not been convicted of an offence under section 72(1) of the 2004 Act. The point in contention is whether an HMO licence was required. In this case, that depends on the occupancy levels of the Property. There is a direct conflict in the factual evidence over the number of occupants. The Tribunal spent some considerable time checking the dates and occupants with both parties. It was not assisted in this task by the absence of a schedule of occupancy that the Appellant had been directed to produce.
19. It was the evidence of Mrs Vieru that throughout the entirety of her occupation from January 2023, there had been 5 or 6 persons in occupation rising to 7 for a period before September 2023 when someone lived in the garage conversion. Mrs Vieru insisted that the number had never fallen below 5 occupants. However, Mr Schwab confirmed the application was deliberately limited to the 8-month period between 24 July 2023 to 23 March 2024 on the basis that it was the period in which the application could be proven. The Tribunal has concentrated on this period having explored the earlier period with Mrs Vieru at the hearing and noting her difficulty in recollecting all names of occupants or (approximate) dates of occupation.
20. It was Mr Smith's position that he was mindful at all times of not exceeding the 5-person limit for an HMO licence to be required. The exception to this, he maintained, was a short period ending on 31 August 2023. As a charitable gesture he allowed someone in need of accommodation who had served time in prison to stay in the garage conversion rent free. It was "probably" May or June 2023 that they moved in, but he was unsure of the precise start date. Mr Smith was adamant that the garage conversion had definitely not been occupied during the remainder of Mrs Vieru's tenancy.

21. In opposing the application, Mr Smith describes the high quality of the “generously sized” accommodation. Such reasons may be relevant at stages (iii)/(iv) but they do not assist in identifying whether the Property was an unlicensed HMO.
22. Mr Smith confirmed that a tenant called David (referred to as Daniel by Mrs Vieru) has lived at the Property since 2017 and Sam since 2021. There was consensus that as of July 2023 David and Mrs Vieru’s son Sebastian occupied separate second floor rooms, Sam lived on the first floor as did Mrs Vieru. A fifth person was in the garage conversion (up until end August 2023).
23. When asked about Mr Vieru, Mr Smith accepted that he had rented the room to Mr and Mrs Vieru but Mr Vieru “was not there a lot”. The issue is whether the Property continued to be Mr Vieru’s only or main residence or if he should be treated as so occupying it. The Tribunal finds no reason to doubt the evidence of Mrs Vieru that her husband lived with her at the Property until January 2024. She was in the best position to know. On this point her evidence was clear and insistent. In contrast Mr Smith could only speculate on whether or not Mr Vieru had already moved out. Mr Smith accepted that he had originally let the room to both husband and wife. Mr Smith did not reside in the Property himself to see who was present.
24. Mrs Vieru did not give a date in January 2024 when her husband left. The Tribunal cannot guess. It must be satisfied beyond reasonable doubt that an offence occurred. That being so, and given the uncertainty over the precise date, the Tribunal takes 1 January 2024 as the last date upon which the standard of proof is met of 5 occupants at the Property. Reference was made to Sebastian’s girlfriend moving in, but this was over an unspecified period and the Tribunal accepts that it was without the landlord’s consent. He had not ‘knowingly permitted’ her occupancy. The Tribunal cannot be satisfied beyond reasonable doubt that there were 5 or more occupants after Mr Vieru’s departure requiring the Property to be licensed as an HMO.
25. Based on the evidence that the Tribunal has seen and heard, it is satisfied that:
  - (i) The Property was from 24 July 2023 to 1 January 2024 occupied by 5 persons, as tenants, living in 2 or more separate households.
  - (ii) The Property met the “standard test”, as set out above.
  - (iii) Rent was paid by the Applicant throughout that period.

- (iv) The Property was therefore required by section 61(1) of the 2004 Act to be licensed as an HMO, for that 5-month period;
  - (v) The Property was unlicensed as an HMO for that period;
  - (vi) The Respondent was the Applicant's landlord, being the person having control of or management of an HMO which was required to be licensed under Part 2 of the 2004 Act, but which was not so licensed, within the meaning of section 72(1) of the 2004 Act.
26. Applying the criminal burden of proof, the Tribunal is accordingly satisfied beyond reasonable doubt that the Respondent committed the offence of being a person having control of and/or managing an HMO which was required to be licensed but was not so licensed, for the period from 24 July 2023 to 1 January 2024, contrary to section 72(1) of the 2004 Act.

### **Qualifying criteria**

27. The offence relates to housing that, at the time of the offence, was let to the Applicant. The offence was committed in the 12-month period prior to the application being made on 9 December 2024. Accordingly, the qualifying criteria within section 41 of the 2016 Act are met.

### **Statutory defence/reasonable excuse**

28. No statutory defence is argued under section 72(4) of the 2004 Act. Whilst Mr Smith was in communication with the local housing authority with a view to licensing the Property as an HMO in future, no application had been made.
29. The Tribunal has considered whether the Respondent had a reasonable excuse defence under section 72(5) of the 2004 Act. It is no defence that the landlord endeavoured to run a peaceful and well-maintained house or that he had intended to keep numbers below the threshold required for licensing purposes.

### **Exercise of the Tribunal's discretion**

30. The Respondent submitted that it would be contrary to the intentions and spirit of the legislation to penalise him with a RRO as they are intended for the most severe housing offences. It is correct that the jurisdiction has a punitive purpose. RROs were one of several measures introduced with the aim of discouraging rogue landlords and agents, but also to assist with achieving and maintaining acceptable standards in the rented property market. A failure to licence under section 72 of

the 2004 Act is a type of offence of sufficient gravity to be captured by the legislation despite the Respondent's protestations.

31. The Tribunal bears in mind the importance of the aim of enforcing the licensing regime. After careful consideration, we find that this is a case in which it should exercise its discretion under section 43 of the 2016 Act to make an RRO in favour of the Applicant, there being no proper basis on which it could refuse to do so.

### **The amount of the Order**

32. Section 44 of the 2016 Act provides that where the Tribunal decides to make an RRO against a landlord in favour of a tenant, the amount is to be determined in accordance with that section. Section 44(2) provides that in a case concerning an offence under section 72(1) of the 2004 Act, the amount must relate to rent paid during a period, not exceeding 12 months, during which the landlord was committing the offence.
33. Section 44(4) provides that in determining the amount of the RRO, 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 Chapter of the 2016 Act applied.

### **Relevant caselaw**

34. The Upper Tribunal in ***Williams v. Parmar*** [2021] UKUT 0244 (LC), gave guidance as to the approach which the Tribunal should take to assessing the amount of an RRO awarded under section 44 (not being a case of an order following conviction under section 46).
35. In summary, the guidance in that case was as follows (with reference to paragraph numbers of that decision):
  - (i) The terms of section 46 show that in cases where that section does not apply, there is no presumption that the amount ordered is to be the maximum that the Tribunal could order under section 44 [23];
  - (ii) Section 44(3) specifies that the total amount of rent paid is the maximum amount of an RRO, and section 44(4) requires the Tribunal in determining the amount of the RRO to have particular regard to the three factors specified in that sub-section. However, the words of that sub-section leave open the possibility of there being other factors that, in a particular case, may be taken into account and affect the amount of the order [24];

- (iii) The RRO must always “relate” to the amount of the rent paid in the period in question. It cannot be based on extraneous considerations or tariffs. It may be a proportion of the rent paid, or the rent paid less certain sums, or a combination of both. But the amount of the rent paid is not a starting point in the sense that there is any presumption that that sum is to be the amount of the order in any given case nor even the amount of the order subject only to the factors specified in section 44(4) [25].
36. Among the legal authorities on RRO’s, the Upper Tribunal in ***Acheampong v Roman; Choudhary v Razak*** [2022] UKUT 239 (LC) (as confirmed in ***Dowd v Martins & Ors*** [2022] UKUT 249 (LC)) set out that when considering an award for an RRO, the Tribunal must take the following steps:
- a. Ascertain the whole of the rent for the relevant period;
  - b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access.
  - c. Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors, but it may be higher or lower in light of the final step:
  - d. Consider whether any deduction from, or addition to, that figure should be made in light of the other factors set out in section 44(4).

### *The relevant period*

37. The relevant period is subject to a limit of 12 months during which the offence was committed, and rent was paid (section 44(2)). For this type of offence, the relevant 12-month period does not need to be the period ending with the date of the offence. The Applicant can apply for *any* period of up to 12-months during which the offence was committed and rent was paid under the tenancy. In this case, the Applicant limited her application to seeking a RRO for a sum equating to the last 8 months of rent paid for her room over the period between 24 July 2023 to 23 March 2024.

38. As it is, the Tribunal has found the commission of an offence over the shorter period of 24 July 2023 to 1 January 2024. The Respondent acknowledged that rent was paid throughout that period (and up to 23 March 2024), but he disagreed with the sum being claimed partly due to rent arrears. The unpaid rent is not relevant at this stage of the exercise because it arose after the relevant period. That is a matter capable of falling for consideration at the later stage in making any adjustment for the conduct of the tenant.
39. Bank statements were produced by the Applicant showing monthly payments (said to be rent) from January 2023 until February 2024. It was established at the hearing that rent was paid monthly in advance on the 24<sup>th</sup> day of each month. The last rental payment made by the Appellant was on 26 February 2024. This last payment covered the period up until 23 March 2024.
40. Over the period claimed, the bank statements show payments of £925 per calendar month. The parties agree that the £925 represented the rent for both Mrs Vieru's room and the room occupied by her son. They disagree on the apportionment. Mr Smith said he thought the rent for Mrs Vieru was £500 per month, she said it was £550. Mrs Vieru was certain of the amount whereas Mr Smith's recollections were rather vague. On this point, the Tribunal preferred the evidence of Mrs Vieru.
41. The whole rent paid over the relevant period of 24 July 2023 to 1 January 2024 totalled £2,912.74 (i.e. 5 months at £550, plus 9 days calculated at £18.08 per day).
42. Accordingly, the maximum RRO which could be ordered in favour of the Applicant is £2,912.74. No universal credit (or housing benefit) was paid to the Applicant which needs to be deducted pursuant to section 44(3)(b). Having control of or managing an unlicensed HMO is not an offence described in section 46(3) to require a RRO to be the maximum amount that the Tribunal has power to order.
43. The Tribunal has reached the conclusions below on the other specific matters it is to take into account under section 44(4), and as to any other matters it considers relevant.

#### *Deductions for utilities*

44. The rent included the cost of utilities for water charges, gas, electricity, and broadband. It is also included Council Tax and insurance. Account must be taken of the benefit derived to the tenant for the inclusion of these facilities within the rent. The Respondent provided a list of the annual costs for the whole Property said to be incurred over the relevant period. According to the Respondent the total amount was

divided four ways between the four rooms. This resulted in a sum of £1,712.44 per annum (£142.70 per month) for each room.

45. No documentation was provided of sums actually incurred but the figures were not contested by the Applicant and the Tribunal has no other information on the amounts. The sums do not appear excessive, noting that the period coincided with extremely high energy prices. In the circumstances, the Tribunal has accepted the figures as plausible.
46. In consequence, the sum of £755.72 over the period for the RRO is to be deducted from the maximum amount of £2912.74. That leaves a figure of £2,157.02.

### Seriousness of the offence

47. Consideration turns to the seriousness of the offence. Notably, for an offence of this type, the maximum amount stipulation in section 46 of the 2016 Act does not apply. That gives a clear indication that the offence of control or management of an unlicensed HMO under section 72(1) of the 2004 Act is capable of being less serious than other offences to which RROs can relate.
48. Besides this Property, the Respondent owns one other house which he has converted into flats. He does not consider himself a professional landlord. He was broadly aware of when an HMO licence was required with repeated references to the 5-person limit but seemed to disregard the fact that both Mr and Mrs Vieru rented one room in the Property.
49. The Respondent described the rooms as generously sized particularly in comparison to other HMOs where rooms are often half the size. When Mrs Vieru had complained of cold, Mr Smith had replaced the single-glazed window with a new double-glazed window unit.
50. The Applicant did not complain of any deficiencies in the standard of the accommodation within her witness statement. At the hearing, the Applicant described a period of around 18-months when there was a leak in the ceiling of her bedroom causing her bedding to be damp. Mr Smith accepted there had been an ongoing problem with the shower tray leaking in the room above which was unresolved after several attempts. The leak was eventually fixed by replacing the shower tray and re-tiling. He conceded that this probably took around a year to fix. During the hearing Mr Smith offered an apology to Mrs Vieru for the distress this had caused. Whilst Mr Smith appeared to have been proactive in attempting to address the issue, it had gone on for an excessive period before resolution.
51. Other new issues mentioned by Mrs Vieru during the hearing were of kitchen cupboard doors coming off when opened and heat not being

able to circulate due to severed pipes. She also mentioned dust and noise during the garage conversion works. As these had not been particularised previously, Mr Smith was not in a position to answer fully. In the circumstances, little weight is attached to these factors.

52. Mr Smith explained how he had been in regular contact with the local housing authority in his endeavour to achieve the same standards required of licensed HMOs. Once the garage conversion has been signed off by Building Control, he hopes to get the Property licensed. He produced an undated HMO specification of works from the local housing authority. It identifies numerous measures required at the Property before it can be licensed. These factors do not mitigate the offence found over the relevant period in question.
53. The Tribunal accepts that the severity of the offence is within the lower end of the scale. The Tribunal is satisfied that this was not a case of flagrant breach or disregard of the law. The offence appeared to arise through a lack of full understanding of when an HMO licence was required. The Respondent's administration was very poor. Whilst Mr Smith said he had issued assured shorthold tenancy agreements he appeared uncertain in his reply. As the hearing went on, Mr Smith changed his response to say that he "thought" he supplied a written tenancy agreement to Mrs Vieru. She was adamant that he had not, and the Tribunal accepts her answer. We are reinforced in that view by the absence of any copy tenancy agreements provided by the Respondent. It is a weak response that Mr Smith did not realise the Tribunal would want to see documents that were plainly relevant to the case.
54. In the Tribunal's judgement, a two-thirds reduction (after the deduction for utilities above) is a fair reflection of the seriousness of the offence. This proportion could be adjusted up or down depending on the other specific matters it is to take into account under section 44(4) of the 2016 Act, and other matters it considers relevant.

#### Conduct of the landlord and tenant

55. Sam Sinatra has been a tenant in the Property since March 2021. He provided a witness statement and attended the hearing to provide live evidence. He described Mr Smith as a very decent person who he trusted to manage a good home. He referred to the good fire safety system, the house being well maintained throughout, and maintenance issues being dealt with quickly.
56. The Respondent argued that the harmony of the house had been disrupted when Mrs Vieru's son rented another room within the Property. He complains of the son contravening the 'No Smoking' policy on several occasions despite repeated reminders. The son further caused a disturbance whilst drunk and allowed his girlfriend to take up residence without consent. None of this assists the Respondent. By his

own evidence, the son rented a separate room from the Applicant for which a separate rental sum was payable. The Applicant's son was a tenant of a room within the Property (and would be treated as part of the same household), but he is not an applicant in these proceedings. It would be wrong to make a deduction for the conduct of another person even though they are part of the same family.

57. Mr Smith described Mrs Vieru as a very good tenant who kept the accommodation clean. His high regard of Mrs Vieru seemingly changed after her son moved in and unsettled other residents. Indeed, the majority of Mr Sinatra's evidence complained of the son. He described fearing for his life after an incident involving the son when the Police were called. The next day, Mr Sinatra complained of Mrs Vieru shouting and screaming at him in her native language, which he could not understand. The shouting he said went on for hours over a couple of days. Screenshots of his text messages to the landlord about this conduct were produced. From the accounts given, the complaints against Mrs Vieru were limited to this short window in time.
58. Following the incident, Mr Smith said he decided that Mrs Vieru and her son must leave. He acknowledged giving Mrs Vieru verbal notice only to terminate her tenancy. He was unsure how much notice he gave. It was possibly two months, but he admitted to suggesting she should leave as soon as possible because relationships in the house had broken down. Even if there had been text messages, this does not salvage the failure to follow correct procedures to terminate the tenancy albeit Mrs Vieru claimed at the hearing to be the one who decided to leave not her landlord. From the accounts, the Tribunal finds it more likely that the Respondent terminated Mrs Vieru's tenancy and that this was principally attributable to her son's conduct rather than her own.
59. Mrs Vieru said that she left the Property in March 2024. However, the evidence of Mr Smith (which was not contested) was that her possessions remained until collected by her daughter on 2 May 2024. Mrs Vieru would be treated as an occupant up until that time.
60. Mr Smith suggested that he suffered a 4-month loss in rent that should be taken into account. On his own evidence, the tenancy terminated at his instigation on 2 May 2024. Rent was due monthly in advance, payable on the 24<sup>th</sup> day of each month. As the last payment was made 26 February 2024, it covered the rent due up until 23 March 2024. Mrs Vieru admitted she did not make the payment due on 24 March 2024. The maximum that could be outstanding was 6 weeks' rent. Mr Smith confirmed that he has taken no steps to recover these monies.
61. The Upper Tribunal in *Kowalek v Hossanein Ltd* [2021] UKUT 143(LC) held that rent arrears accrued by the tenant outside the period relevant to the RRO was a matter of the tenant's conduct and relevant to the calculation. The decision was upheld by the Court of Appeal

[2022] EWCA Civ 1041). The Upper Tribunal considered the matter further, in *Yi v Hobbs and Alaike* [2024] UKUT 155 (LC). It confirmed at [18] that whilst rent arrears from outside the period covered by the RRO was a matter of tenant's conduct pursuant to section 44(4)(a), the Tribunal has discretion as to how to respond to it. It is not a given that those arrears must be deducted in whole or part from what the landlord has to pay.

62. Essentially, there was conduct on both sides that could merit an adjustment. There was 6 weeks unpaid rent by the Applicant, but the Respondent had behaved poorly through the lack of a written tenancy agreement and the manner of termination of the tenancy. After careful consideration, the Tribunal finds equally poor conduct by both parties such that no further adjustment is appropriate on conduct grounds.

Other relevant factors and the appropriate award

63. Mr Smith invited the Tribunal to consider his financial circumstances in terms of (i) the cost of living (ii) his son being at university (iii) that he is largely living off the income from his two rental properties, and (iv) the costs incurred in doing up the Property. None of these factors give the Tribunal cause to believe that the Respondent would have difficulty paying the RRO.
64. Having considered the factors in section 44(4) and weighing everything up, the Tribunal makes no further adjustments to the amount of the RRO. The Tribunal finds it appropriate to make a two-thirds reduction from the maximum amount that could be awarded after deduction of utility charges as discussed above. This results in a figure of £719.00.

Conclusion

65. The Tribunal awards the Applicant a RRO in the sum of **£719.00**.
66. In view of its findings, and the fact that the Applicant could not actually have obtained relief without pursuing this application, the Tribunal further makes an order under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that the Respondent shall within 28 days reimburse the application fee of £110 and the hearing fee of £220 paid by the Applicant.

**Name:** Judge K. Saward

**Date:** 11 August 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).

## **Appendix of relevant legislation**

### **Housing Act 2004**

#### **55 Licensing of HMOs to which this Part applies**

(1) This Part provides for HMOs to be licensed by local housing authorities where—

(a) they are HMOs to which this Part applies (see subsection (2)), and

(b) they are required to be licensed under this Part (see section 61(1)).

(2) This Part applies to the following HMOs in the case of each local housing authority—

(a) any HMO in the authority's district which falls within any prescribed description of HMO, and

(b) if an area is for the time being designated by the authority under section 56 as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in the designation.

(3) The appropriate national authority may by order prescribe descriptions of HMOs for the purposes of subsection (2)(a).

(4) The power conferred by subsection (3) may be exercised in such a way that this Part applies to all HMOs in the district of a local housing authority....

#### **61 Requirement for HMOs to be licensed**

(1) Every HMO to which this Part applies must be licensed under this Part unless—

(a) a temporary exemption notice is in force in relation to it under section 62, or

(b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.

(2) A licence under this Part is a licence authorising occupation of the house concerned by not more than a maximum number of households or persons specified in the licence.

(3) Sections 63 to 67 deal with applications for licences, the granting or refusal of licences and the imposition of licence conditions.

(4) The local housing authority must take all reasonable steps to secure that applications for licences are made to them in respect of HMOs in their area which are required to be licensed under this Part but are not.

(5) The appropriate national authority may by regulations provide for—

- (a) any provision of this Part, or
- (b) section 263 (in its operation for the purposes of any such provision), to have effect in relation to a section 257 HMO with such modifications as are prescribed by the regulations. A “section 257 HMO” is an HMO which is a converted block of flats to which section 257 applies.

(6) In this Part (unless the context otherwise requires)–

- (a) references to a licence are to a licence under this Part,
- (b) references to a licence holder are to be read accordingly, and
- (c) references to an HMO being (or not being) licensed under this Part are to its being (or not being) an HMO in respect of which a licence is in force under this Part.

## **72 Offences in relation to licensing of HMOs**

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

(2) A person commits an offence if–

- (a) he is a person having control of or managing an HMO which is licensed under this Part,
- (b) he knowingly permits another person to occupy the house, and
- (c) the other person’s occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) A person commits an offence if–

- (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and
- (b) he fails to comply with any condition of the licence.

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

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

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

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

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

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

(c) for failing to comply with the condition, as the case may be.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.

(7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(8) For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either—

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(9) The conditions are—

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or

(b) that an appeal has been brought against the authority’s decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(10) In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority’s decision (with or without variation).

## **254 Meaning of “house in multiple occupation”**

(1) For the purposes of this Act a building or a part of a building is a “house in multiple occupation” if—

(a) it meets the conditions in subsection (2) (“the standard test”);

- (b) it meets the conditions in subsection (3) (“the self-contained flat test”);
- (c) it meets the conditions in subsection (4) (“the converted building test”);
- (d) an HMO declaration is in force in respect of it under section 255; or (e) it is a converted block of flats to which section 257 applies.

(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 (see section 258);
- (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 (see section 259);
- (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.

(3) A part of a building meets the self-contained flat test if–

- (a) it consists of a self-contained flat; and
- (b) paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).

(4) A building or a part of a building meets the converted building test if–

- (a) it is a converted building;
- (b) it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);
- (c) the living accommodation is occupied by persons who do not form a single household (see section 258);
- (d) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
- (e) their occupation of the living accommodation constitutes the only use of that accommodation; and

(f) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.

(5) But for any purposes of this Act (other than those of Part 1) a building or part of a building within subsection (1) is not a house in multiple occupation if it is listed in Schedule 14.

(6) The appropriate national authority may by regulations—

(a) make such amendments of this section and sections 255 to 259 as the authority considers appropriate with a view to securing that any building or part of a building of a description specified in the regulations is or is not to be a house in multiple occupation for any specified purposes of this Act;

(b) provide for such amendments to have effect also for the purposes of definitions in other enactments that operate by reference to this Act;

(c) make such consequential amendments of any provision of this Act, or any other enactment, as the authority considers appropriate.

(7) Regulations under subsection (6) may frame any description by reference to any matters or circumstances whatever.

(8) In this section—

“basic amenities” means—

(a) a toilet,

(b) personal washing facilities, or

(c) cooking facilities;

“converted building” means a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed;

“enactment” includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30));

“self-contained flat” means a separate set of premises (whether or not on the same floor)—

(a) which forms part of a building;

(b) either the whole or a material part of which lies above or below some other part of the building; and

(c) in which all three basic amenities are available for the exclusive use of its occupants.

## **258 HMOs: persons not forming a single household**

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

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

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

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

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

(a) those persons are married to [, or civil partners of, each other or live together as if they were a married couple or civil partners]<sup>1</sup>;

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

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

(4) For those purposes–

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

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

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

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

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

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

## **Housing and Planning Act 2016, Chapter 4**

### **41 Application for rent repayment order**

(1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.

(2) A tenant may apply for a rent repayment order only if –

(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and

(b) the offence was committed in the period of 12 months ending with the day on which the application is made.

....

#### **44 Amount of order: tenants**

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

(2) The amount must relate to the rent paid during the period mentioned in the table.

<b><i>If the order is made on the ground that the landlord has committed</i></b>	<b>the amount must relate to rent paid by the tenant in respect of</b>
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.

#### **46 Amount of order following conviction**

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 and both of the following conditions are met, the amount is to be the maximum that the tribunal has power to order in accordance with section 44 or 45 (but disregarding subsection (4) of those sections).

(2) Condition 1 is that the order—

(a) is made against a landlord who has been convicted of the offence, or

(b) is made against a landlord who has received a financial penalty in respect of the offence and is made at a time when there is no prospect of appeal against that penalty.

(3) Condition 2 is that the order is made—

(a) in favour of a tenant on the ground that the landlord has committed an offence mentioned in row 1, 2, 3, 4 or 7 of the table in section 40(3), or

(b) in favour of a local housing authority.

(4) For the purposes of subsection (2)(b) there is “no prospect of appeal” , in relation to a penalty, when the period for appealing the penalty has expired and any appeal has been finally determined or withdrawn.

(5) Nothing in this section requires the payment of any amount that, by reason of exceptional circumstances, the tribunal considers it would be unreasonable to require the landlord to pay.

### **Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018/221**

#### 4. Description of HMOs prescribed by the Secretary of State

An HMO is of a prescribed description for the purpose of section 55(2)(a) of the Act if it—

(a) is occupied by five or more persons;

(b) is occupied by persons living in two or more separate households; and

(c) meets—

(i) the standard test under section 254(2) of the Act;

(ii) the self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or

(iii) the converted building test under section 254(4) of the Act.