FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BH/HMG/2025/0616**
Property	**:**	**15 Dyson Road, London E11 4NA**
Applicants	**:**	**Cristina D'Amico, Laura D'Amico, Letizia D'Amico and Mustapha Bouraoui**
Representative	**:**	**Edward Phillips of Justice for Tenants**
Respondent	**:**	**DNA-RDA Limited**
Representative	**:**	**James Freeman of Counsel**
Type of Application	**:**	**Application for Rent Repayment Order under the Housing and Planning Act 2016**
Tribunal Members	**:**	**Judge P Korn** **Ms R Kershaw**
Date of Hearing	**:**	**29 September 2025**
Date of Decision	**:**	**4 November 2025**

DECISION

Description of hearing

This was a face-to-face hearing.

Decisions of the tribunal

(1) The tribunal orders the Respondent to repay to the Applicants the sum of £7,185.90 by way of rent repayment.

(2) The tribunal also orders the Respondent to reimburse to the Applicants jointly their application fee and hearing fee in the aggregate sum of £330.00.

(3) The above sums must be paid within 28 days after the date of this determination.

Introduction

1. The Applicants have applied for rent repayment orders against the Respondent under sections 40-44 of the Housing and Planning Act 2016 ("**the 2016 Act**").

2. The original basis for the application was that the Respondent committed an offence of having control of and/or managing a house which was required to be licensed but was not licensed, contrary to section 95(1) of the Housing Act 2004 ("**the 2004 Act**").

3. The Applicants seek a rent repayment order in the sum of £23,953.00 representing rent paid for the period from 18 February 2023 to 17 February 2024.

4. Cristina D'Amico, Laura D'Amico and Letizia D'Amico attended the hearing and were represented by Edward Phillips of Justice for Tenants. Albert Williamson-Taylor, a director of the Respondent company, also attended the hearing.

5. At the end of July 2025 the Applicants applied to amend the grounds for their claim as a result of late instruction as to the relationship status between Cristina D'Amico and Mustapha Bouraoui. Cristina D'Amico, Laura D'Amico and Letizia D'Amico are sisters, and when the tenancy began Cristina D'Amico and Mustapha Bouraoui were in a relationship. That relationship later ended but Mustapha Bouraoui continued to live at the Property. By virtue of the ending of the relationship between Cristina D'Amico and Mustapha Bouraoui the Applicants therefore ceased to form a single household and this had an impact on the type of licence required for the Property. The application for amendment was essentially an application to be permitted to rely on the failure on the part of the Respondent to obtain a licence (if proven), whether that licence was required under section 95(1) or under section 72(1) of the 2004 Act.

6. The application referred to in paragraph 5 above was, for administrative reasons, not dealt with by the tribunal until the hearing,

and this was through no fault of the Applicants. At the hearing the tribunal heard oral submissions on behalf of both parties on this issue. The tribunal's decision was to allow the Applicants to amend the grounds for their application in the manner sought. Whilst the Applicants should have explained the factual position to their legal advisers properly before the original application was made, the application to amend was made well before the hearing, giving the Respondent ample time to consider it. In our view the exact type of licence needed is a technical detail in this context, and the key issue is whether the Respondent had control of and/or managed the Property without a licence in circumstances where a licence was required. The amendment to the Applicants' grounds was therefore allowed.

Applicants' case

7. In written submissions the Applicants state that the Property was situated within a selective licensing area as designated by the London Borough of Waltham Forest. The selective licensing scheme came into force on 1 May 2020 and ceased to have effect on 30 April 2025. The selective licensing scheme covered a number of wards, including the ward within which the Property was situated. The Property met the criteria to be licensed under the scheme and was not subject to any exemption.

8. The Applicants were tenants of the Property. The appropriate licence was not held during the period of claim, with the Respondent's application for a licence not being made until 18 February 2024.

9. The Applicants state that the Respondent is believed to be an appropriate Respondent for this application because it is listed as the immediate landlord in the tenancy agreements and was the beneficial owner of the Property as shown by the land registry title deed. It was also a "person having control" of the Property within the meaning of section 263(1) of the 2004 Act as it was the person who received the rack-rent. It was also a "person managing" the Property as defined by section 263(3) of the 2004 Act as it was the owner of the Property who received rent from tenants in the Property.

10. The Applicants state that they conducted themselves well, whereas the Respondent broke the law and failed properly to deal with various problems at the Property.

11. The roof had a leak issue, and buckets were needed to catch the water. The condition of the roof was poor, with loose and broken tiles and unsecured ridge tiles. Cracked firewalls also allowed water to enter. In the shared bathroom, water leaked from the spotlight during heavy rain. This problem started on 1 March 2023 and was reported to the Respondent several times, but no action was taken. The Council identified the roof leakage issue during its inspection on 8 December

2023 after the Applicants had reported it and the Council asked the Respondent to carry out repairs.

12. In addition, there was some pest infestation at the Property which was reported to the Respondent but the issue was never resolved. Also, the deposit was not secured until 19 June 2024, two years after the start of the tenancy, and then the protected amount was inaccurately recorded as £2,300 instead of £2,769.

13. The Applicants have provided a calculation together with copy bank statements as evidence of the rental amounts paid. The Applicants did not receive any housing element of Universal Credit or Housing Benefit. The hearing bundle contains various relevant items in support of their application.

Respondent's case

14. In written submissions the Respondent states that a licence application was submitted to the Council on or about 2 January 2020 in connection with a prior tenancy agreement, shortly before to the selective licensing scheme came into force on 1 May 2020. The licensing process was frustrated by various delays, in part due to the Respondent, and in part due to the Coronavirus pandemic that affected the process from around late March 2020.

15. The Respondent was dealing with enquiries relating to the licensing process raised by the Council, including a claim that the Property was a House of Multiple Occupation ("HMO"). The Respondent adds that once the Applicants entered into an assured tenancy agreement, on 18 June 2022 ("the 2022 AST"), the licensing process was further frustrated by false representations made by the Applicants to the Council indicating that the Property was occupied by them as an HMO, which would have required additional licensing authorisation. The Property was occupied under a single tenancy agreement, this being the 2022 AST.

16. During the licensing process, the Applicants refused access to the Respondent, its agents and British Gas engineers, thereby preventing gas safety certification, which was a prerequisite for granting the licence application. At the commencement of the 2022 AST, the Respondent did have a valid landlord gas safety certificate dated 1 October 2021, a copy having been provided to the Council.

17. The Respondent submits that a valid licence application was made within the material period but was not approved in part due to the Applicants' obstruction and misrepresentations. No Temporary Exemption Notice was sought because the Respondent was actively seeking to obtain a licence, and the absence of a licence during the

relevant period was involuntary and non-culpable. The Council initially rejected the Respondent's licence application solely due to missing gas safety certification. A copy of the 1 October 2021 gas safety certificate was provided to the Council but the Applicants' non-cooperation made it extremely difficult for the Respondent to carry out and obtain further certification after 18 June 2022.

18. The Respondent states that it maintained a service contract with British Gas, which included annual gas safety certification for the Property. The Respondent also engaged a general contractor to deal with all maintenance issues for the Property amongst other properties in its portfolio.

19. The Respondent believes that the roof was damaged by the Applicants' own actions or by the contractor they engaged. The Applicants sent the Respondent a video which showed a number of tiles having been removed and not replaced. As for the alleged pest infestation, the Applicants occupied the Property for over four months before raising any complaints. The Respondent understood from the Applicants that windows and doors had been left open and food was left out, thereby causing the infestation.

20. During the term of the 2022 tenancy, the Respondent's maintenance contractor, Bogumil Aniol, dealt with issues at the Property in a timely and efficient manner. The Applicants refused to discuss a rent increase that was proposed by the Respondent from January 2024 and further refused to agree terms of a new tenancy agreement. Instead, from 18 June 2023, after the expiry of the original term of the 2022 tenancy, the Applicants remained in the Property and refused to vacate, despite the various problems that they have alleged.

21. Contrary to the Applicants' claims, despite their being in rent arrears for the period in which they occupied the Property the Respondent returned the full deposit to the Applicants when they vacated the Property on or about 18 April 2025.

Applicants' response

22. The Applicants state that except for a passing reference by Sian Smith of the Council to an application having been "created", there is no confirmation that an application was duly made which met the Council's requirements nor that payment for a licence application was made within the relevant period. The 2020 licence was refused on the express basis that a gas safety certificate was not provided in time, and the Respondent took no action to appeal this refusal or to make a fresh application for a licence until 2024. The Respondent also did not apply for a Temporary Exemption Notice after the 2020 application failed. The 2024 licence was paid for on 18 February 2024, after the expiry of the period for which the Applicants are claiming rent repayment.

Witness evidence

Cristina D'Amico

23. Cristina D'Amico states that the roof leaked significantly during heavy rainfall. This necessitated the placement of buckets beneath the points of water ingress to manage the situation. The overall condition of the roof was poor, posing a danger due to numerous loose and broken tiles, as well as unsecured ridge tiles. Additionally, the firewalls were cracked, allowing water to enter the Property. In the shared bathroom, water leaked from the lighting fixtures, particularly the spotlight, during heavy deluges, which presented an electrical hazard.

24. The Respondent was notified several times about the leak but ignored the Applicants' calls/messages several times during the tenancy. There was also a lack of fire doors in the Property, specifically in critical areas such as the kitchen and basement. Gaps in the flooring from the corridor leading to the kitchen presented a fire hazard.

25. There was pest infestation since January 2023. Messages and pictures were sent to the Respondent, but no answers were given. Also, the Applicants' deposit was not protected until 19 June 2024, two years after the tenancy began, and the amount protected was incorrect.

26. On 28 November 28, 2023, the Applicants contacted the property licensing department of the Council to report the above issues. On 8 December 2023, Sian Smith from the Private Sector Housing and Licensing Team conducted a thorough inspection of the Property, documenting the areas of concern with photographs. Following this inspection, she communicated the findings to the Respondent and initiated legal proceedings.

27. At the hearing Ms D'Amico said that water had leaked into her room, but in cross-examination it was put to her that there was a room above hers and therefore that the leak could not have come from the roof. In response she said that she was not sure of the exact layout.

28. It was also put to her in cross-examination that if the Applicants were so unhappy with the state of the Property they could have moved out from June 2023, but she said that it was difficult to find suitable alternative property. As regards rental payments, she was asked about the fact that the Applicants withheld some rent, and she said that they did this just to get the Respondent's attention.

Other Applicants

29. The concerns expressed by the other Applicants mirror those of Cristina D'Amico.

Albert Williamson-Taylor (director of Respondent company)

30. Mr Williamson-Taylor has not provided a witness statement as such, but he has given a formal statement of reasons which is summarised above in the summary of the Respondent's case. At the hearing he said that he has known the Respondent's plumber and maintenance person for many years and is very satisfied with him.

31. In cross-examination he said that his maintenance person was not a professional roofer but that he could nevertheless repair roofs. He accepted that there had been leaks in the roof but said that his maintenance person had attended to them. He accepted that his maintenance person had rearranged some appointments that the Applicants had made with him.

32. Regarding the mice infestation problem, it was put to him that he had no evidence that the Applicants had left the doors open. Mr Phillips for the Applicants also put it to him that he had not responded to a complaint about a wasps' nest and he accepted that he had not replied to the original complaint. He did not remember how the problem had been resolved, but he said that the problem had not reoccurred.

33. There was a discussion about the Applicants having changed the locks on the front door. Mr Williamson-Taylor accepted that he had not opposed the changing of the locks but he had expected to be provided with a copy of the new key. He also said that he was denied access several times after the locks were changed. He characterised the Applicants as having been very difficult and aggressive tenants.

34. It was put to Mr Williamson-Taylor that Sian Smith's inspection on 8 December 2023 revealed that the Property was still leaking, but he said that the original leaks had been fixed and therefore that these must have been new leaks.

35. Regarding the 2020 licensing application, Mr Williamson-Taylor said that the Council should have granted it. On the question of whether he wrote to the Council to chase the matter up he said that he did not write but he did telephone the Council. Similarly, when the licence application was refused he did not mount any formal challenge but said that he telephoned the Council to query the refusal. He started to make a fresh application but did not finish it. He did not apply for a Temporary Exemption Notice because he did not know that there was such a thing.

Discussion at hearing

36. At the hearing, Mr Phillips for the Applicants said that the Respondent had failed to obtain a licence for a period of 4 years, blamed the

Applicants and the Council rather than itself and had not applied for a temporary exemption notice. Mr Williamson-Taylor had no real evidence that he had been denied access to the Property and he had not dealt well with ongoing repair and other issues.

37. Mr Freeman for the Respondent said that it was accepted by the Respondent that a licence had been needed but there had been no deliberate non-compliance. Initially, the granting of a licence following the 2020 application was held up by the Respondent's difficulties in obtaining a gas certificate. However, the Respondent did then obtain a gas certificate and sent evidence to the Council but the Council failed to notice that the Respondent had provided evidence of having obtained a gas certificate and refused to grant a licence on that erroneous basis.

38. Mr Freeman also said that the issue relating to the Council thinking that the Property was an HMO had complicated the Respondent's licence application. He also made the point that Mr Williamson-Taylor had been seriously ill at various points. The Applicants themselves had the benefit of being able to live in a large property and cannot have been that unhappy with the living conditions as they had chosen to live there for a long time.

39. It was common ground between the parties that if there was to be a rent repayment order there should be no deduction for utilities as the Applicants had paid these. It was also noted by Mr Phillips that there was no evidence before the tribunal of the Respondent's financial circumstances.

Relevant statutory provisions

40. 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.

	Act	***section***	***general description of offence***
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.

If the order is made on the ground that the landlord has committed	***the amount must relate to rent paid by the tenant in respect of***
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) … .

Section 95

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

(4) 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) … .

Section 263

(1) In this Act "person having control", in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act "person managing" means, in relation to premises, the person who, being an owner or lessee of the premises – (a) receives … rents or other payments from … persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or (b) would so receive those rents or other payments but for having entered into an arrangement … with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments …

Tribunal's analysis

41. The Applicants' uncontested evidence is that the Property was an HMO which was required to be licensed (by virtue of the local housing authority's additional licensing scheme) but was not licensed at any point during the period of the claim. Having considered that uncontested evidence we are satisfied beyond reasonable doubt that for the whole period of claim the Property required a licence and it was not licensed.

42. We are also satisfied that the Respondent was a "landlord" for the purposes of sections 40 and 43 of the 2016 Act. It was named as landlord in the tenancy agreements and is shown as the registered proprietor in the Land Registry title document, and there is also clear evidence that it received rent from the Applicants. The Respondent does not contest these points.

43. We are also satisfied that the Respondent was a "person having control of or managing" the Property within the meaning of section 263 of the 2004 Act. The evidence shows that it received the rack-rent of the Property and received rents or other payments from the occupiers. Again, the Respondent does not contest this point.

The offence

44. Section 40 of the 2016 Act confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence listed in the table in sub-section 40(3), subject to certain conditions being satisfied. An offence under section 72(1) of the 2004 Act is one of the offences listed in that table. Section 72(1) states that *"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"*. An offence under section 95(1) of the 2004 Act is also one of the offences listed in that table. Section 95(1) states that *"A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part … but is not so licensed"*.

45. For the reasons given above we are satisfied beyond reasonable doubt (a) that the Respondent was a "landlord", (b) that it was a "person having control" of and a "person managing" the Property for the purposes of section 263 of the 2004 Act and (c) that the Property was not licensed at any point during the period of claim.

46. As to whether the Property was required to be licensed, it is common ground between the parties, and we are satisfied that the written evidence before us shows, that the Property was required to be licensed throughout the period of claim. It would seem from the factual

information before us that at some point the relationship between Cristina D'Amico and Mustapha Bouraoui ceased and that from that point the Property would have needed an HMO licence (rather than just a selective licence). However, based on the evidence before us the key point is that we are satisfied that the Property needed either an HMO licence or a selective licence throughout the period of claim.

The defence of reasonable excuse

47. Under section 72(5) of the 2004 Act, it is a defence that a person who would otherwise be guilty of the offence of controlling or managing an HMO which is licensable under Part 2 of the 2004 Act had a reasonable excuse for the failure to obtain a licence. Under section 95(4) of the 2004 Act, it is a defence that a person who would otherwise be guilty of the offence of controlling or managing a house which is licensable under Part 3 of the 2004 Act had a reasonable excuse for the failure to obtain a licence. In each case, the burden of proof is on the person relying on the defence.

48. If the Respondent did not know about the change of relationship between Cristina D'Amico and Mustapha Bouraoui this may have enabled it to claim a reasonable excuse defence for the failure specifically to obtain an HMO licence, but there remains the question of whether it had a reasonable excuse for failing to obtain **any** form of licence, whether an HMO licence or a selective licence.

49. In relation to the initial licence application, although the evidence was presented in a confusing manner at times there are grounds for concluding that initially the Respondent successfully applied for a licence.

50. On 21 February 2020 the Council acknowledged receipt of an application by the Respondent for a private rented property licence in respect of the Property. The only issue raised by the Council was the absence of a gas safety certificate. On 27 February 2020 Mr Williamson-Taylor wrote back to state that the Property had been vacant, that new tenants would shortly be moving in and that a gas safety certificate would be obtained and would be forwarded to the Council. The Council replied on 6 March 2020 stating that the application would be put on hold pending receipt of the gas safety certificate. Mr Williamson-Taylor then sent through a copy of the gas safety certificate on 2 April 2020 stating that it was being sent before the tenants move in. Then on 15 April 2020 the Council wrote to Mr Williamson-Taylor stating that the licence application was being refused on the ground that he had failed to provide a gas safety certificate.

51. On the basis of the documentation and evidence before us there is at the very least a reasonable doubt as to whether the Respondent had

committed a criminal offence at that stage. The evidence suggests that the licence was set to be granted pending receipt of a copy of the gas safety certificate, the copy certificate was duly provided but the Council seemingly did not notice that it had been provided. The evidence therefore suggests that at that stage a valid application had been made.

52. However, that application was refused, and the problem for the Respondent was what happened – or did not happen – next. Because despite its initial reasonable efforts to obtain a licence it still did not have one. It could have appealed the Council's refusal to grant a licence or applied for a temporary exemption notice or made a full application for a fresh licence, but it did none of these things. In our view it was at this secondary stage that it started to commit the criminal offence of having control of and/or managing an HMO or a house which was required to be licensed but was not so licensed. And at this secondary stage, the Respondent failed to take any of the steps that it should have taken to obtain a licence (or appeal the refusal or claim a basis for temporary exemption) and the factual circumstances of this failure do not reveal any defence that would amount to a reasonable excuse. Mr Williamson-Taylor blames the Applicants and claims confusion, but the bar for the defence of reasonable excuse is set quite high and we are not persuaded that the Respondent has met that test.

Relevant period

53. Under section 41(2), a tenant may apply for a rent repayment order only if the offence relates to housing that, at the time of the offence, was let to the tenant and the offence was committed in the period of 12 months ending with the day on which the application is made. On the basis of the Applicants' uncontested evidence on these points we are satisfied beyond reasonable doubt that the Property was let to the Applicants at the time of commission of the offence and that the offence (whether under section 72(1) or 95(1)) was committed in the period of 12 months ending with the day on which their application was made.

Process for ascertaining the amount of rent to be ordered to be repaid

54. Based on the above findings, we have the power to make a rent repayment order against the Respondent.

55. The amount of rent to be ordered to be repaid is governed by section 44 of the 2016 Act. Under sub-section 44(2), the amount must relate to rent paid by the tenant in respect of a period, not exceeding 12 months, during which the landlord was committing the offence. Under sub-section 44(3), the amount that the landlord may be required to repay in respect of a period must not exceed the rent paid in respect of that period less any relevant award of housing benefit or universal credit paid in respect of rent under the tenancy during that period.

56. The evidence before us also indicates that no part of the rent was covered by the payment of housing benefit, and the Respondent has not disputed that the rental amounts claimed were in fact paid by the Applicants.

57. We are satisfied on the basis of their uncontested evidence that the Applicants were in occupation for the whole of the period to which their respective rent repayment applications relate and that the Property required a licence for the whole of that period. Therefore, the maximum sum that can be awarded by way of rent repayment is the sum referred to in paragraph 3 above, this being the amount paid by the Applicants by way of rent in respect of the period of claim.

58. Under sub-section 44(4), in determining the amount of any rent repayment order 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 the relevant part of the 2016 Act applies.

59. The Upper Tribunal decision in *Vadamalayan v Stewart (2020) UKUT 0183 (LC)* is one of the authorities on how a tribunal should approach the question of the amount that it should order to be repaid under a rent repayment order if satisfied that an order should be made. Importantly, it was decided after the coming into force of the 2016 Act and takes into account the different approach envisaged by the 2016 Act.

60. In her analysis in *Vadamalayan*, Judge Cooke states that the rent (i.e. the maximum amount of rent recoverable) is the obvious starting point, and she effectively states that having established the starting point one should then work out what sums if any should be deducted. She departs from the approach of the Upper Tribunal in *Parker v Waller (2012) UKUT 301*, in part because of the different approach envisaged by the 2016 Act, *Parker v Waller* having been decided in the context of the 2004 Act. Judge Cooke notes that the 2016 Act contains no requirement that a payment in favour of a tenant should be reasonable. More specifically, she does not consider it appropriate to deduct everything that the landlord has spent on the property during the relevant period, not least because much of that expenditure will have repaired or enhanced the landlord's own property and/or been incurred in meeting the landlord's obligations under the tenancy agreement. There is a case for deducting utilities, but otherwise in her view the practice of deducting all of the landlord's costs in calculating the amount of the rent repayment should cease.

61. In Judge Cooke's judgment, the only basis for deduction is section 44 of the 2016 Act itself, and she goes on to state that there will be cases

where the landlord's good conduct or financial hardship will justify an order less than the maximum.

62. Since the decision in *Vadamalayan*, there have been other Upper Tribunal decisions in this area, notably those in *Ficcara and others v James* (2021) UKUT 0038 (LC) and *Awad v Hooley (2021) UKUT 0055 (LC)*. In *Ficcara v James*, in making his decision Martin Rodger QC stressed that whilst the maximum amount of rent was indeed the starting point the First-tier Tribunal (FTT) still had discretion to make deductions to reflect the various factors referred to in section 44(4) of the 2016 Act. In addition, he stated that neither party was represented in *Vadamalayan*, that the Upper Tribunal's focus in that case was on the relevance of the amount of the landlord's profit to the amount of rent repayment and that *Vadamalayan* should not be treated as the last word on the exercise of discretion required by section 44.

63. In *Awad v Hooley*, Judge Cooke agreed with the analysis in *Ficcara v James* and said that it will be unusual for there to be absolutely nothing for the FTT to take into account under section 44(4).

64. In *Williams v Parmar & Ors [2021] UKUT 244 (LC)*, Mr Justice Fancourt stated that the FTT had in that case taken too narrow a view of its powers under section 44 to fix the amount of the rent repayment order. There is no presumption in favour of the maximum amount of rent paid during the relevant period, and the factors that may be taken into account are not limited to those mentioned in section 44(4), although the factors in that subsection are the main factors that may be expected to be relevant in the majority of cases.

65. Mr Justice Fancourt went on to state in *Williams* that the FTT should not have concluded that only meritorious conduct of the landlord, if proved, could reduce the starting point of the (adjusted) maximum rent. The circumstances and seriousness of the offending conduct of the landlord are comprised in the "conduct of the landlord", and so the FTT may, in an appropriate case, order a lower than maximum amount of rent repayment if what a landlord did or failed to do in committing the offence was relatively low in the scale of seriousness, by reason of mitigating circumstances or otherwise.

66. In *Hallett v Parker and others [2022] UKUT 165 (LC)*, the Upper Tribunal did not accept a submission that the fact that the local authority has decided not to prosecute the landlord should be treated as a "credit factor" which should reduce the amount to be repaid.

67. In its decision in *Acheampong v Roman and others [2022] UKUT 239 (LC)*, the Upper Tribunal recommended a four-stage approach to determining the amount to be repaid, which is paraphrased below:-

(a) ascertain the whole of the rent for the relevant period;
(b) subtract any element of that sum that represents payment by the landlord for utilities that only benefited the tenant;
(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 compared to other examples of the same type of offence; and
(d) consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4).

68. Adopting the *Acheampong* approach, the whole of the rent means the whole of the rent paid by the Applicants out of their own resources, which is the whole of the rent in this case as no part of the rent was funded by housing benefit.

69. In relation to utilities, we are satisfied on the evidence before us that the Applicants paid for utilities themselves and therefore that no deduction from the maximum amount of rent repayable should be made on account of utilities.

70. As regards the seriousness of the type of offence, whilst it could be argued based on the maximum criminal penalty available that there are offences covered by section 40(3) of the 2016 Act which can give rise to a greater criminal sanction, a failure to license is still a serious offence. Failure to license leads – or can lead – to significant health and safety risks for often vulnerable tenants, and sanctions for failure to license have an important deterrent effect on future offending as well as encouraging law-abiding landlords to continue to take the licensing system seriously and inspiring general public confidence in the licensing system.

71. In addition, there has been much publicity about licensing of privately rented property, and there is an argument that good landlords who apply for and obtain a licence promptly may feel that those who fail to obtain a licence gain an unfair benefit thereby and therefore need to be heavily incentivised not to let out licensable properties without first obtaining a licence. Furthermore, even if it could be argued that the Applicants did not suffer direct loss through the Respondent's failure to obtain a licence, it is clear that a large part of the purpose of the rent repayment legislation is deterrence. If landlords can successfully argue that the commission by them of a criminal offence to which section 43 of the 2016 Act applies should only have consequences if tenants can show that they have suffered actual loss, this will significantly undermine the deterrence value of the legislation.

72. As for the seriousness of the offence in this particular case compared to others of the same type, this is an unusual case which is very fact-specific. Initially, in our view, the facts seem to show that the Respondent made a proper licence application. Its application was

acknowledged, it was told what was missing and it duly supplied the missing item. The Respondent later did not deal competently with the Council's failure to appreciate that the missing item had been supplied and therefore that – seemingly – a full application had been made and a licence should have been granted.

73. Seen in that context, the Respondent's subsequent failings are in our view considerably more minor than cases where no application has been made. Therefore, whilst in our view the Respondent did commit a criminal offence at the secondary stage it was considerably less serious than a failure to apply for a licence in the first place. And, taking all of the circumstances into account, we consider that the seriousness of the offence warrants a rent repayment of 20% of the amount claimed.

74. As regards the specific matters listed in section 44, the tribunal is particularly required to take into account (a) the conduct of the parties, (b) the financial circumstances of the landlord, and (c) whether the landlord has at any time been convicted of a relevant offence. We will take these in turn.

Conduct of the parties

75. There is no evidence before us that the Applicants' conduct has been anything other than satisfactory. The Respondent's own conduct has, though, been problematic. There are various contested points and some of the Applicants' concerns may have been overstated, but overall the evidence indicates that the Respondent was slow to respond to problems and that various issues persisted for long periods of the tenancy. There were problems with leaks and mice infestation in particular, and we were not convinced that the Respondent took these matters seriously enough. In addition, at certain points the evidence indicates that Mr Williamson-Taylor simply did not respond at times. Against hat it can be said in mitigation that Mr Williamson-Taylor had health issues at times, but that does not fully explain his lack of engagement.

76. Taking the parties' conduct overall, we consider that it is appropriate to increase the rent repayment award from 20% to 30%.

Financial circumstances of the landlord

77. The tribunal is required to take the Respondent's financial circumstances into account when making its decision where it is possible to do so. The Respondent has not provided any information on its financial circumstances, and the Applicants have not made any submissions on financial circumstances. On the basis of the information before the tribunal, there is no proper basis for either

increasing or reducing the award on the basis of the Respondent's financial circumstances.

Whether the landlord has at any time been convicted of a relevant offence

78. The Respondent has not been convicted of a relevant offence, but it is clear from the Upper Tribunal decision in *Hallett v Parker* that this by itself should not be treated as a credit factor.

Other factors

79. It is apparent from the wording of sub-section 44(4) itself that the specific matters listed in sub-section 44(4) are not intended to be exhaustive, as sub-section 44(4) states that the tribunal "must, in particular, take into account" the specified factors. However, in this case we are not aware of any other specific factors which should be taken into account in determining the amount of rent to be ordered to be repaid.

Amount to be repaid

80. The four-stage approach recommended in *Acheampong* has already been set out above. The amounts arrived at by going through each of those stages is to reduce them to 30% of the maximum amount payable to the Applicants.

81. Therefore, taking all of the factors together, the rent repayment order should be for 30% of the maximum amount payable to the Applicants, namely for £7,185.90.

Cost applications

82. The Applicants have applied under paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for an order that the Respondent reimburse their application fee and the hearing fee in the aggregate amount of £330.00.

83. As the Applicants' claims have been successful, albeit that there has been a deduction from the maximum payable, we are satisfied that it is appropriate in the circumstances to order the Respondent to reimburse these fees.

Name: Judge P Korn **Date:** 4 November 2025

RIGHTS OF APPEAL

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

B. 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.

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

D. 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.