



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

Case reference : **LON/OOAN/HMF/2024/0011**

Property : **4 Biscay Road, London W6 8JN**

Applicants : **Carl Griffiths
Joshua Squires
Matthew Farrell
Ross Kerslake
William Churchill.**

Representative : **Justice for Tenants**

Respondents : **Stevan Gorgievski**

Tribunal member : **Judge Vance**

Venue : **10 Alfred Place, London, WC1E 7LR**

Date of hearing : **15 August 2025**

Date of decision : **4 November 2025**

DECISION

NB: Pages in square brackets and in bold below refer to pages in the hearing bundle provided by the Applicant (575 pages). References in square brackets and in bold, prefixed by the letter “R”, refer to pages in the hearing bundle provided by the Respondent (371 pages).

Decision

1. I make Rent Repayment Orders, requiring Mr Gorgievski to repay the following sums to the Applicants:

Matthew Farrell **£4,984.80**

Ross Kerslake **£3,924.00**

William Churchill **£4,302.00**

Josh Squires **£3,924.00**

Carl Griffiths **£4,636.88**

2. I also order that Mr Gorgievski reimburse the Tribunal fees paid by the Applicants in a sum limited to £350.

Background to Redetermination

3. On 3 September 2024, this Tribunal (“the FTT”) made a rent repayment order (“RRO”) against the respondent, Mr Gorgievski, under section 44 Housing and Planning Act 2016, requiring him to repay the Applicants a total of £33,668. It also ordered him to reimburse the application and hearing fees paid by the Applicants totalling £700. The RRO was made in respect of rent paid by the Applicants for the letting of 4 Biscay Road, London W6 8JN (“the Property”), a four-storey house owned by Mr Gorgievski and his wife, Kamelia Gorgievski since December 1993 [403]. The FTT made the RRO because it was satisfied that that Mr Gorgievski had committed the offence of being in control of or managing an unlicensed House in Multiple Occupation (“HMO”) contrary to section 72 of the Housing Act 2004.
4. Mr Gorgievski appealed the FTT’s decision to the Upper Tribunal. By decision dated 4 June 2025, the Upper Tribunal allowed the appeal, set aside the FTT’s decision in full, and remitted it to the FTT for redetermination by a differently constituted FTT panel. I issued directions on the remitted application on 9 June 2025 [571] and the application was listed for a final hearing on 15 August 2025. Three of the Applicants attended the hearing: Mr Griffiths; Mr Farrell; and Mr Squires. Mr Leacock of Justice for Tenants (“JFT”) was present as representative for the Applicants. Also present was Mr Gorgievski and his counsel, Mr Lederman. Neither of the two remaining Applicants attended the hearing. Mr Griffith’s evidence was that Mr Churchill is in the Royal Navy and Mr Leacock said that he may be under deployment. No explanation was offered for Mr Kerslake’s absence.
5. The issue of this decision has been delayed for several reasons. Firstly, at end of the hearing on 15 August 2025, I directed that the parties provide me with written submissions regarding whether this application for a RRO was made within time, having regard to the decision in *Jamroz v Mohammad Ali* [2025] UKUT 265 (LC). Both Justice for Tenants and Mr Lederman provided these on 19 August 2025. Mr Lederman then provided supplementary submissions on 26 August 2025, making additional points on jurisdiction. I made no provision for such supplementary submissions to be provided and the submissions received went further than addressing the *Jamroz* point. In them, Mr Lederman sought to advance a new argument, namely that the Tribunal cannot be satisfied beyond reasonable doubt that Ross Kerslake and William Churchill occupied the premises as their only or main residence in the 12 months ending on the day

when the application for the RRO was made to the Tribunal because: (a) they failed to attend the hearing to give evidence; and (b) none of the other Applicants witness statements addressed the issue of whether Ross Kerslake or William Churchill occupied the premises as their only or main residence during the relevant period. Mr Lederman framed this as a jurisdictional challenge and I decided that procedural fairness required the Applicants to have the opportunity to respond.

6. The Applicants responded on 26 September 2025 and included short undated witness statements from Mr Kerslake and Mr Churchill confirming that they occupied the Property as their main home. Mr Lederman then filed and served some further additional submissions on 2 October 2025 in response, objecting this new evidence. I was then on leave and involved in a two-week hearing in October. All these factors have contributed to the delayed decision.
7. I refuse permission for the Applicants' to rely upon the two witness statements provided on 26 September 2025. This decision has to be reached on the evidence before the Tribunal at the hearing on 15 August 2025. I allowed short legal submissions to be provided post-hearing, and this was not an opportunity to adduce fresh evidence.

Mr Gorgievski's evidence

8. In his witness statement **[R13]** Mr Gorgievski said that he previously lived in the Property with his wife and children until June 2000, when he moved to Greece. That same year he decided to let the Property to tenants and entered into an agreement with Shepherds Bush Housing Association who let rooms to residential occupiers. After that agreement came to an end in April 2011, he used different letting agencies to let the Property and, on 9 August 2018, entered into a management agreement with Kingsman Property Ltd ("Kingsman") **[106]** whereby it would let the Property for him and would guarantee him a monthly rent of £3,750 for a term of five years. Mr Gorgievski's case was that it was an express term of that agreement that Kingsman would apply for any required HMO licence and that he entrusted them to do so.
9. By mid-2019, Kingsman owed him over £15,000. The company entered into liquidation in August 2019, and its Director, Mr Samuel Eustace, was disqualified from being a company director for 11 years. Mr Gorgievski read in the press that Mr Eustace had improperly taken £6.7 million from investors as part of what was effectively a Ponzi scheme **[R118]**. In June 2019, following Kingsman's collapse, Mr Gorgievski started to manage the Property himself, using a friend, Leslie Nurse, to assist him. Leslie would attend the Property once a week to ensure things were running smoothly and would seek to resolve any problems experienced by tenants.
10. On various dates from June 2021 onwards, rooms in the Property were let to the Applicants. At the hearing, Mr Lederman confirmed that Mr Gorgievski did not dispute the dates of occupation asserted by the Applicants and nor was there any dispute over the rent that they say they paid to him on a monthly basis, directly into his bank account. The lettings were entered into during the Covid-19 pandemic when Mr Gorgievski was living in Macedonia and had been advised not to travel to the UK for medical reasons.

11. Relations with the Applicants were initially good but soon deteriorated. In September 2022, Mr Farrell purchased a freezer without first asking his permission and installed it in the basement. Its installation led to a circuit breaker tripping, and when he asked Mr Farrell to remove it, it led to a serious deterioration in their relationship. At about the same time Mr Gorgievski became aware that the Applicants were not taking care of the Property. The toilet was regularly left blocked or in a dirty condition; on one occasion somebody had vomited on the walls of the bathroom; a door had been broken; and in October 2022, he believes that Mr Kerslake caused damage in the kitchen and removed a carbon monoxide filter that was attached to the kitchen wall. Mr Gorgievski said that the Applicants left the Property in such a poor condition that a cleaning contractor refused to continue to clean it. In addition, on three occasions British Gas Homecare had to attend because “pipes” were blocked. Mr Gorgievski said that he visited the Property in February 2023 and has provided voice recordings that he says evidence the Applicants un-tenant like behaviour.
12. In November 2022, Mr Gorgievski gave the Applicants 30-day notices to leave the Property, which he says he believed, mistakenly, that he was entitled to do under the terms of their tenancy agreements. He then served a notice under s.21 Housing Act 1988 on 7 March 2023, and by May 2023 all the Applicants had left the Property.
13. It is also Mr Gorgievski’s evidence that he believed Kingsman had applied for an HMO licence because “There were signs in the Property which suggested an HMO license [was] in place, including a framed document on the wall next to the entrance which looked like an HMO license.” In addition, he says that he checked London Borough of Hammersmith and Fulham’s website and was able to confirm that an HMO license application had been made for the Property. He says that he only became aware that the Property was unlicensed on 29 November 2022, following an email exchange with Mr Williams, an officer of the Council, who told him that “the application has been closed due to the length of time since initially started’. On being told this Mr Gorgievski completed a licence application the same day and was subsequently granted a five-year HMO license on 5 July 2023 **[R121]**.
14. Mr Gorgievski disputed the Applicants’ contentions that the Property was in a state of disrepair and maintained that any repair issues notified to him were dealt with quickly. Also disputed were allegations that: he allowed the Property to become infested with mice; that fire escape routes were not kept clear; and that gas safety and other safety certificates were not obtained and copies provided to the Applicants (where required).

Ms Nurse’s evidence

15. Ms Nurse provided a short, 16-paragraph witness statement **[R322]** but did not attend the hearing for cross-examination. In summary, she confirms that she helped Mr Gorgievski manage the Property from June 2019 onwards, including with cleaning. Both she and Mr Gorgievski, as well as all of the Applicants were members of a house WhatsApp messaging group, and this was used by the Applicants to raise any issues regarding the Property, including any repair issues. She confirms that relations with the Applicants deteriorated after Mr

Farrell bought the freezer and that the Applicants had refused Mr Gorgievski access to inspect the communal areas.

The Applicants' evidence

16. Witness statements were provided by Mr Griffiths [25], Mr Squires [49], Mr Farrell [105] and Mr Churchill [163]. Mr Farrell and Mr Squires also provided supplemental witness statements in response to Mr Gorgievski's statement of case. These are at [554] (Mr Farrell) and [560] (Mr Squires). Mr Kerslake did not provide a witness statement but he provided email comments to Mr Gorgievski's statement of case [556]. Mr Griffiths, Mr Farrell, and Mr Squires were cross-examined on their evidence at the hearing.
17. Each of the witness that provided a witness statement started it by stating that the Property was their main residence. Amongst other matters they describe are where in the Property their letting room was located, their dates of occupation, areas of concern with the Property, who else was living in the Property whilst they were in occupation, why they vacated, and their interaction with the Council I address their evidence, where relevant below.

The Applicants' Case

18. The Applicant contend that Mr Gorgievski, committed the offence of having control of or managing an unlicensed HMO, in breach of section 72(1) of the HA 2004, from the 1 November 2021 until the 28 November 2022 ("the Relevant Period"). The Property was required to be licenced because it is situated within an area of additional licensing as designated by the Council. They dispute that Mr Gorgievski has a reasonable excuse defence to the offence and seek RROs that adopt a starting point of 75% of the rent paid.

Mr Gorgievski's Case

19. Mr Gorgievski does not dispute that he was the Applicants' landlord and, as such, is an appropriate Respondent to this application. Nor does he dispute that the Property was, at all relevant times, an HMO and that he was a person in control or managing the Property. He also agrees that the Property was unlicensed during the Relevant Period and that it needed to be licensed. There is no dispute as to the periods the Applicants occupied the Property, nor as to the rent paid by them to Mr Gorgievski.
20. Before me, Mr Lederman raised the same jurisdictional issue that was raised before the Deputy President in the Upper Tribunal, namely that the RRO application was received by the Tribunal on 28th November 2023, by which date the 12-month period for seeking in section 41(2)(b) of the 2016 Act had expired. He argued that, as such, the application was received a day late and the Tribunal has no jurisdiction to entertain it.
21. He also submitted that Mr Gorgievski had a reasonable excuse to the offence because he reasonably believed that Kingsman had applied to the Council for an HMO licence for the Property and that this defence persisted until he was notified otherwise by the Council on 29 November 2022, the same date that he applied for a licence.

22. If the Tribunal were to decide to make a RRO, he submitted that damage caused by the Applicants and unhygienic behaviour by some of them should be taken into account when assessing quantum, as well as other matters of conduct, including refusing access to the communal areas.
23. In his supplemental submissions of 26 August 2025, received after the hearing, Mr Lederman introduced a new argument, namely that Mr Kerslake's and Mr Churchill's non-attendance at the hearing to give evidence undermined the jurisdiction of the Tribunal to make an RRO in their favour because, on the available evidence, the Tribunal could not be satisfied beyond reasonable doubt that they both occupied the premises as their only or main residence during the relevant period the offence was said to have been committed.

Legal Background

24. Section 43 of the 2016 Act provides that this Tribunal may make a RRO if it is satisfied beyond reasonable doubt that the offence has been committed, and that where the application is made by a tenant the amount is to be determined in accordance with section 44 which, in respect of the s.72(1) offence limits the amount of the award to the rent paid during a period "not exceeding 12 months, during which the landlord was committing the offence."
25. Section 44(4) says as follows:
 - "(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."
26. Guidance on how this Tribunal should approach quantification of the amount of a RRO has been provided by the Upper Tribunal in *Williams v Parmar* [2021] UKUT 244 (LC) and *Acheampong v Roman* [2022] UKUT 239.
27. In *Williams v Parmar* the Chamber President said [50] that when quantifying the amount of a RRO:
 - " A tribunal should address specifically what proportion of the maximum amount of rent paid in the relevant period, or reduction from that amount, or a combination of both, is appropriate in all the circumstances, bearing in mind the purpose of the legislative provisions. A tribunal must have particular regard to the conduct of both parties (which includes the seriousness of the offence committed), the financial circumstances of the landlord and whether the landlord has at any time been convicted of a relevant offence. The tribunal should also take into account any other factors that appear to be relevant."
28. In *Acheampong* Judge Cooke said at [20] that the following approach would ensure consistency with previous legal authorities:

- “ 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. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate.
- 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 the light of the other factors set out in section 44(4).”

29. In *Newell v Abbot* [2024] UKUT 181, the Deputy President, at paras. 47 – 57, carried out a review of previous Upper Tribunal decisions in which consideration was given to the level of rent repayment for similar licensing offences. The RRO’s awarded in those cases ranged from an upper figure of 90% to 10% at the lowest. At para. 57 he said as follows:

“ This brief review of recent decisions of this Tribunal in appeals involving licensing offences illustrates that the level of rent repayment orders varies widely depending on the circumstances of the case. Awards of up to 85% or 90% of the rent paid (net of services) are not unknown but are not the norm. Factors which have tended to result in higher penalties include that the offence was committed deliberately, or by a commercial landlord or an individual with a larger property portfolio, or where tenants have been exposed to poor or dangerous conditions which have been prolonged by the failure to licence. Factors tending to justify lower penalties include inadvertence on the part of a smaller landlord, property in good condition such that a licence would have been granted without additional work being required, and mitigating factors which go some way to explaining the offence, without excusing it, such as the failure of a letting agent to warn of the need for a licence, or personal incapacity due to poor health.”

30. In *Newell*, the Deputy President redetermined the amount of the RRO in question. He made no adjustments for s.44(4) factors and concluded, in para.

62 that that bearing in mind that the offence had been committed by the landlord of a single property and was the result of inadvertence, or lack of attention, rather than being deliberate, and that the accommodation provided was generally of a good standard which attracted long term residents and which the respondents were disappointed to leave, the appropriate order was for the repayment of 60% of the rent received. He said that had the offence been committed for a much shorter period than the almost six years in that case, the penalty he would have imposed would have been equal to 50% of the rent but also emphasised that the effective operation of selective licensing schemes depends on landlords keeping themselves properly informed and a prolonged failure to obtain a licence therefore merited a higher penalty.

Reasons for Decision

Mr Lederman's jurisdictional' challenges

31. I start with Mr Lederman's first jurisdictional challenges, namely whether the RRO application was made in time. In my determination, I am bound by the decision of the Deputy President who decided this issue at paragraphs 25 to 31 of his decision. When I raised this point with Mr Lederman, he said that because this was a redetermination of the RRO application, I was not bound by the Deputy President's decision and I needed to decide the question myself, making the required findings of fact.
32. I do not accept that submission. The Deputy President decided that the application was received in time and it would be quite extraordinary if I, as a judge of the FTT were to re-open and re-decide a question of fact and law decided by a judge of the Upper Tribunal. That the Deputy President's decision binds this Tribunal was made clear by Judge Cooke in *Jamroz*, para. 9, where she expressly stated this to be the case.
33. If I am wrong in reaching that conclusion, I nevertheless respectfully agree with the Deputy President's decision and reasoning. It is accepted by both parties that the application was sent by JFT to the Tribunal, by email, on 27 November at 23.37 [552]. In *Moh v Rimal Properties* [2024] UKUT 324 (LC) Judge Cooke construed the meaning of the reference in Section 41(2)(b) to "in the period of 12 months ending with the day on which the application is made". She decided that "a period of 12 months ending on a particular date is not the same - as a matter of ordinary language - as the period of 12 months before that date. The language implies that the start and end date are each within the period." In *Jevan v Athansiadi*, the Deputy President decided that an application to the Tribunal is "made" for the purpose of section 41(2)(b) when it is sent electronically and not when it arrives or is opened or processed by the Tribunal, even though the fee is paid later.
34. I find, applying the decisions in *Moh v Rimal* and *Jevan v Athansiadi* to the facts of this case, that the period of 12 months in section 41(2)(b) ended on 27 November 2023, that the RRO application was made to the Tribunal on that date, and that the application was therefore received in time. I also respectfully agree with the Deputy President that the first day of the 12 month period was 28 November 2022, and that because Mr Gorgievski made an application for an HMO licence on 29 November 2022, he was not committing an offence on that

day, but (subject to his defence of reasonable excuse) he had been committing an offence on the previous day, 28 November 2022.

35. I do not consider Mr Lederman's second challenge can properly be characterised as a jurisdictional challenge. The fact that neither Mr Kerslake nor Mr Churchill attended the hearing does not deprive the Tribunal of jurisdiction to decide whether to make a RRO in their favour. However, I accept that their non-attendance is relevant to whether I can be satisfied, on the evidence before me, and to the criminal standard of proof, that both of them occupied the Property as their only or main residence during the Relevant Period.
36. In *O'Halloran v Cornwall Council* [2024] UKUT 403 (LC) Judge Cooke, referred to her decision in *Opara v Olasemo* [2020] UKUT 96 (LC) and that of the Deputy President in *Camfield v Uyiekpen* [2022] UKUT 2324 (LC). She said at para. 13 that when the FTT comes to consider the question of whether a tenant occupied a property as their main residence (for the purpose of appeals from financial penalties imposed under Section 249A of the 2004 Act and in applications for RROs), it is not unusual for it to have evidence from some but not all occupants. She said that direct evidence is not essential and inferences can be drawn from other evidence, as was the case in *Opara*. However, there must be some evidence from which an inference can be drawn (para. 14), which was not the case in *Camfield* where the Deputy President said this about whether one of the occupants of an alleged HMO occupied the property as their only or main residence:

“The difficulty for the appellants in this case is that there was not a single piece of evidence directly addressing the quality of Ms Tseng's occupation of the property or the facts relevant to it. Nothing was known about her other than that she had paid a rent for a room for a period of three months and had moved belongings into the property. Nothing was known about her personal circumstances, her age, her nationality, whether she had a family, whether she was employed, whether she had an income or received benefits, including housing benefit, how long she spent at the property during her period of residence, whether she went away at the weekends or for other periods, whether she spent the Christmas and New Year holiday period at the property, where she went when she left, and why she left. Evidence on some or all of those matters would have allowed the FTT to consider whether it was satisfied beyond reasonable doubt that she occupied the property as her only or main residence, that it was her home, in other words, and not simply a convenient temporary place to live while she spent time in London. The facts known to the FTT were not inconsistent with a number of different possible life stories. Ms Tseng might have been a student from abroad who had come to this country for a short period of study, or a person working in London but living somewhere else in the country who returned to her permanent home at the weekends or at other times when she was not working. She may have had a home elsewhere which an informed observer could have concluded was her main residence. The FTT might have felt able to exclude those possibilities if it had been told anything at all about her, but it was not.”

37. I find, and am satisfied beyond reasonable doubt, that Mr Kerslake occupied Room 1 in the Property as his only or main residence from 10 October 2021 until 10 May 2023 and that Mr Churchill occupied Room 4, as his only or main residence, between 12 March 2022 until 9 May 2023.
38. In Mr Churchill's case, he asserted in his witness statement, and in the Applicants' statement of case that accompanied their application for a RRO [7, 14-19] (both of which he signed with a statement of truth) that he occupied the Property as his main residence. I accept that this evidence, as with that of Mr Kerslake, carries limited weight because Mr Lederman was unable to cross-examine them, as they did not attend the final hearing. However, there is sufficient additional evidence before me to corroborate Mr Churchill's evidence that the Property was his main residence. Firstly, it is not disputed that he paid his rent in full for the entire period of his occupancy (12 March 2022 - 9 May 2023). Secondly, there is documentary evidence that Mr Churchill contacted the Council on multiple occasions regarding his occupancy of the Property. He has attached copies of that correspondence to his statement. These communications occurred in November 2022 and March 2023 [195 -220] and evidence Mr Churchill's efforts to obtain advice as to whether notices received from Mr Gorgievski requiring the Applicants to leave the Property were legitimate. They also evidence Mr Churchill's concerns over Mr Gorgievski potentially entering the Property and changing the locks or removing the Applicants' possessions [209]. In my assessment, Mr Churchill would not have made such strenuous efforts to ascertain and protect his rights of occupancy if this were not his main home. The communications with the Council were roughly eight months into his tenancy, and two months before he left and support his evidence that it was his main home throughout. Finally, there are WhatsApp messages confirming that Mr Churchill was added to the house chat group on 12 March 2022 [70] and a further message dated 18 April 2023, confirming that he was moving out of the Property on 9 May 2023 [180]. Mr Gorgievski also included him in his email to all the Applicants dated 21 November 2022, in which he purported to give them 30-days' notice to leave the Property [95].
39. Unlike Mr Churchill, Mr Kerslake did not provide a witness statement, only a written response to Mr Gorgievski's case [556]. He did, however, sign a statement of truth confirming that the contents of the statement of case accompanying the Applicants' application form were true, including the statement at para. 11 that all Applicants occupied the Property as their main residence. There is no reason why that statement of case should carry less evidential weight than a witness statement served in accordance with the Tribunal's directions. Mr Kerslake's rent was also paid in full, albeit by Wendy Kerslake [397] who I understand to be his mother. In addition, Mr Churchill's evidence [163] was that for the entire duration of his tenancy, Mr Kerslake inhabited one of the rooms in the Property. Mr Kerslake was also included as a recipient to Mr Gorgievski's email to the Applicants of 21 November 2022 giving the tenants 30-days' notice to leave the Property [199] and also in his subsequent email to council of 30 November [195]. He was also a named recipient of email from Mr Gorgievski to the tenants dated 28 November 2022 [197] regarding access to the Property to allow for cleaning. Mr Gorgievski states at para. 21 of his witness statement [R18] that whilst he accepts that he did not properly protect the Applicants rent deposits in a deposit protection scheme, he had returned all of the Applicants' deposits in full

40. Importantly, there is nothing to suggest that Mr Churchill and Mr Kerslake had any other residence, and the suggestion that they may not have occupied the Property as their main home was only raised by Mr Lederman, for the first time, in his further supplemental submissions, received after the 15 August 2025 hearing. Nor had the point been taken at either the previous FTT hearing, or at the appeal before the Upper Tribunal, at which Mr Gorgievski was represented by Mr Lederman. Mr Squires, Mr Griffiths and Mr Farrell were all present all at hearing on 15 August 2025 and were all cross-examined at length by Mr Lederman. As Mr Leacock pointed out in his reply to Mr Lederman's further submissions, Mr Lederman could have cross-examined those tenants who gave evidence at the hearing as to whether they believed that Mr Churchill or Mr Ross had any other residence, but no such line of cross-examination was pursued.
41. The evidence that this was Mr Churchill's main home is compelling, and I find that this the case was for the whole period of his tenancy. Although there are fewer documents in the bundle corroborating Mr Kerslake's occupation of the Property as his main home, I am satisfied that there are enough. This is not akin to the scenario in *Camfield* where there was not a single piece of evidence directly addressing Ms Tseng's occupation of the property. Both tenants confirmed, in documents verified by a statement of truth that the Property was their main home, and there is sufficient corroborating evidence to substantiate, beyond all reasonable doubt, that this was correct. Nor was there any realistic prospect of their evidence on this question being undermined in cross-examination if they had been present at the final hearing, because, quite simply, the point only occurred to Mr Lederman after the hearing. None of the tenants who attended the hearing were challenged by Mr Lederman as to whether their statement that they occupied the Property as their main home was true and there is no reason to think that Mr Churchill or Mr Kerslake would have been so challenged if they too had been present.

Mr Gorgievski's reasonable excuse defence

42. In *Marigold v Wells* [2023] UKUT 33 (LC), at para. 48, the Deputy President suggested that the FTT, when considering a defence of reasonable excuse might usefully ask itself three questions: (a) what are the facts relied upon as amounting to a reasonable excuse; (b) which of those facts were proven; and (c) whether, viewed objectively, those proven facts provided an objectively reasonable excuse for the conduct in question, taking into account the experience and other relevant characteristics of the individual seeking to establish the defence.
43. In this case, the facts relied upon by Mr Gorgievski are that he reasonably believed the Property was licensed for two reasons set out at para. 33 of his witness statement [21]. Firstly, because when he took back management of the Property from Kingsman in June 2019, he saw a document attached to a wall that he thought was an HMO licence. Secondly, because on some unspecified date he had checked the Council's website for HMO license applications and it showed that an application had been made for the Property.
44. I do not consider the first of those reasons provides Mr Gorgievski with a reasonable excuse defence. If, on some date in 2019, he saw a document on a wall that he believed to be an HMO licence, then he must have been aware of the

need for the Property to be licenced before he let rooms in the Property to the Applicants in 2021. It was his responsibility, as the person with both management and control of the Property, to ensure that it was properly licenced before entering into those lettings. If he thought the document on the wall was a licence, he should have ensured that it definitely was a licence and identified who the licence had been granted to, and when it expired. Moreover, the document that he says he saw on the wall clearly could not have been an HMO licence, because there is no evidence to suggest that Kingsman obtained such a licence. The fact that clause 2.2.1.3 of the agreement he entered into with Kingsman states that it was Kingsman's responsibility to apply for an HMO licence, if one was needed, cannot provide Mr Gorgievski with a reasonable excuse defence because he took over management from Kingsman in June 2019, roughly two years before the first of the lettings to the Applicants. In cross-examination he was asked whether he contacted the Council to see if a licence was in place when he took over management in 2019. His answer was that he did not do so as he was taking care of the running of the Property and "did not think much about HMO licencing and assumed that there was one". I find that on his own evidence, he was aware of the need for the Property to have an HMO licence before the first of those lettings and throughout the duration of the Applicants' tenancies. I also find that despite being so aware, he failed to take reasonable steps to ensure that a licence was in place before those lettings commenced.

45. In cross-examination, Mr Gorgievski said that he had believed that Kingsman had completed an application for a HMO licence, and that it was in November 2022 that he checked the Council's website and saw that an application was in progress. Exhibited to his witness statement are copies of his email exchange with officers at the Council's Private Sector Housing Service him on 29 November 2022 **[R315]**. These show that on that date Mr Gorgievski emailed the Council asking about the status of a licence application. The subject heading for that chain of emails is "RE: Incomplete Applications". The initial email that led to that exchange of responsive emails is omitted. During the course of this email exchange Mr Gorgievski asked about the statues of a license application. An email from the Council timed at 14.06 **[315]** reads as follows:

"Dear Applicant

Below is a list of currently incomplete applications.

yb1-pFhk-sLG 29/06/2018 14:00:34-Licence Resume Application"

46. Mr Gorgievski then asked for further information about the application, referring to him being a victim the of fraud at the hands of Kingsman, and being impacted by the Covid-19 pandemic and a "rogue tenant" **[314]**. He is told by Mr Oliver Williams, a housing licensing officer, that his application had been closed due to the length of time since it was initially started. Mr Williams provided a link for Mr Gorgievski to start a new application. In a subsequent email that same day, 29 November 2022, at 17.28, **[313]**, Mr Williams wrote as follows:

“ As discussed, when a licence application form is started, all data entered is saved and securely stored as applicants proceed through each section of the application form. Upon review, I can confirm the only information provided on the above licence application form was an email address and all other sections were unanswered as per attached copy of all details provided to us.

Please be advised, for a licence application to be a valid submission it is required to be paid in full. Upon payment being made an automatic confirmation email is sent to the applicants email address provided, confirming the successful submission.

The image you have provided of our website is not an indication that a property licence has been paid or issued. ...]”

47. Mr Gorgievski has not provided the Tribunal with a copy of the attachment to Mr William’s email. On the available evidence, I find that in 2018, somebody, most likely someone at Kingsman, started the process of making a licence application on the Council’s website but got no further than inputting an email address. As such no valid application was made. There is no evidence, either in his witness statement, or elsewhere in the documents in the hearing bundles, that Mr Gorgievski made any enquires of the Council’s licencing department before the date of his email exchange with the Council on 29 November 2022. I find that this was the first time that he made any such enquiries since resuming management in 2019.
48. In my determination, the information Mr Gorgievski saw on the Council’s website does not give him a reasonable excuse defence. It is clear that what he saw was a record of an incomplete application. That cannot reasonably have led him to conclude that an HMO licence was in place during the Relevant Period. In any event, he made his check of the Council’s website on 29 November 2022, *after* the end of the Relevant Period. He then completed a licence application the following day.
49. Nor can it be objectively reasonable for Mr Gorgievski to have assumed that Kingsman had licensed the Property given that it is his case that they had fraudulently stolen over £15,000 from him. On his own evidence Kingsman were dishonest and unreliable.
50. Although not advanced as a reasonable excuse defence, I have also considered whether Mr Gorgievski’s absence in Macedonia because of the Covid-19 pandemic can provide him with a reasonable excuse defence. In my determination, it does not. He knew the Property needed a licence and he could have applied for one online at the Council’s website and ensured one was in place before letting the Property to the Applicants. He could have secured Ms Nurse’s assistance with this if necessary.
51. For these reasons, I determine that Mr Gorgievski does not have a reasonable excuse being in control of, or managing, the Property when it needed an HMO licence, but did not have one. As there is no dispute that the Property, at all relevant times, needed to be licensed as an HMO and that Mr Gorgievski was a

person in control or managing the Property, it follows that the s.72(1) offence is established for the Relevant Period.

Should the tribunal make a RRO?

52. Section 43(1) of the 2016 Act provides that the Tribunal may make a RRO if satisfied, beyond reasonable doubt, that a landlord has committed a prescribed offence, including the s.72(1) offence, whether or not the landlord has been convicted of that offence. Given that no attempt was made by Mr Gorgievski to comply with the important obligation to ensure that the Property was licensed I am satisfied in the circumstances, that an RRO should be made.

The amount of the RROs

53. As per the *Acheampong* guidance, I first ascertain the whole of the rent for the Relevant Period. This breaks down as follows:

Matthew Farrell £10,468.17 for the period 29 November 2021 to 28 November 2022.

Ross Kerslake £8,700.00 for the period 24 November 2021 to 23 November 2022.

William Churchill £8,119.29 for the period 12 March 2022 to 28 November 2022.

Josh Squires £8,700.00 for the period 27 November 2021 to 26 November 2022.

Carl Griffiths £9,888.13 for the period between 29 November 2021 to 28 November 2022.

54. The next step is to subtract payment for utilities that only benefited the tenants. I reject the Applicants suggestion, advanced in the Applicants' statement of case, but not in Mr Leacock's skeleton argument, that it would be inappropriate for me to do so on grounds that the legislation refers to "the rent" paid and not "the net rent". This approach is contrary to that in *Acheampong* guidance and would amount to an unjustifiable windfall for the Applicants.

55. Although clause B6 of the Applicants' tenancy agreements (e.g. [49]) provided that they were each responsible for paying the electricity, telephone, gas, water charges and council tax due in respect of their lettings, it was not in dispute that these costs were, in fact, paid by Mr Gorgievski. At para. 47 of his witness statement [25] he estimates that during the period for which the Applicants claim an RRO he incurred the following utility costs

Council Tax	£2,027.99
Electricity and gas	£3,325.55
Water	£467.28
Internet	£354.00

56. He has provided a calculation, which appears at [R126] Copy electricity and gas bills have been provided [R127-R191] as have copy water bills [R192 – R204] which amount to £456.10 for 2021/22 and £472.93 for 2022/23. A letter from Virgin Media [R205] shows the monthly internet bill increasing from £34.25 per month to £53.25 per month on 27 September 2022. A Council Tax summary [R217] shows monthly payments of £199 per month, increasing to £205 per month in April 2022.
57. The Respondents' calculation was not challenged by the Applicants. Having regard to that calculation, I make the following deductions:

<u>Utility</u>	<u>Approx. monthly cost</u>	<u>Deduction per tenant pm</u>
Council Tax	£200	£40
Electricity and gas	£100	£20
Water	£40	£8
Internet	£200	£40
Totals	£540	£108

58. There is no justification for deducting cleaning costs paid by Mr Gorgievski, nor the costs of home insurance. These were costs incurred for his own benefit, in maintaining the Property in order to get a rental income from it.
59. The next stage is to consider how serious this offence was, both compared to other types of offence in respect of which a RRO may be made and compared to other examples of the same type of offence. I consider these to be the relevant factors:
- the s.72(1) offence is one of the less serious examples of one of the less serious offences in respect of which a RRO can be made;
 - the Property was unlicensed for roughly a year from the date the first of the Applicants moved in, with the s.72(1) offence ceasing when Mr Gorgievski applied for a licence on 29 November 2022;
 - I do not accept Mr Leacock's characterisation of Mr Gorgievski as a "professional landlord" to be accurate or helpful. Whilst Mr Gorgievski's evidence was that he had been a landlord for about 25 years, his evidence that he was not a landlord of any other properties was unchallenged. He clearly derives an income from the Property, which he used to occupy as his family home, but that does not make him a "professional landlord";
 - I am satisfied that his failure to licence the Property was as a result of his inadvertence, or lack of attention, rather than being deliberate and that his self-isolation in Macedonia during the Covid-19 pandemic is very likely to have contributed to this;
 - the accommodation provided was generally of a good standard. The Applicants' complaints about the condition of the Property are in my assessment, not sufficiently serious matters to impact on the amount of the

RRO to be made. Holes in the skirting board; uneven flooring; differences in floor type; flaking paintwork; a warped kitchen door; and a loose banister; faux grass lawn that was not secured to the ground, even if all true, are not evidence of significant disrepair. The only time the condition of the Property appears to have been raised by the Applicants with Mr Gorgievski in the house WhatsApp group was in November 2022 when a rent increase on renewal of Mr Farrell's tenancy was being proposed [94]. Mr Farrell mentioned flaking paint, a poorly working oven extractor fan and a cracked shower head. The evidence simply does not suggest that this was a property in significant disrepair. Nor is there evidence of a major mouse infestation or significant mould problem. In addition, my assessment of the evidence, including the WhatsApp exchanges, is that Ms Nurse and Mr Gorgievski responded reasonably quickly to any issues identified regarding the condition of the Property or the appliances present.

60. I also bear in mind that proper enforcement of licensing requirements is necessary to ensure the general effectiveness of the licensing system and to deter evasion, but also that the power to make RROs should be exercised with the objective of deterring those who exploit their tenants by renting out substandard, overcrowded or dangerous accommodation. Awards of RROs should not be harsher than is necessary to achieve the statutory objectives. Further where a landlord has provided accommodation of a decent standard, despite failing to obtain a necessary licence, the punishment appropriate to the offence ought to be moderated. Having regard to all the circumstances of this case, and the factors identified above, my view is that the seriousness of the offence merits a RRO of 60% of the rent paid by the Applicants for the relevant period. Deducting £108 per tenant per month for utilities results in the following breakdown:

Matthew Farrell £6,280.80 - (£108 x 12) = £6,280.80 - £1,296 = £4,984.80

Ross Kerslake £5,220.00 - (£108 x 12) = £5,220.00 - £1,296 = £ 3,924.00

William Churchill £5,220.00 - (£108 x 8.5) = £5,220.00 - £918 = £4,302.00

Josh Squires £5,220.00 - (£108 x 12) = £5,220.00 - £1,296 = £3,924.00

Carl Griffiths £5,932.88 - (£108 x 12) = £5,932.88 - £1,296 = £4,636.88

61. Turning to the s.44 factors and the conduct of the Applicants and Mr Gorgievski, I consider these to be the relevant factors in respect of landlord conduct:

- (a) Mr Gorgievski accepted that he had not protected the Applicant's deposits in line with his obligations under section 213 Housing Act 2004;
- (b) although Mr Gorgievski has provided copies of gas safety certificates dated May 2020 [R244], May 2022 [R247]; and May 2023 [R249], there is no documentary evidence to suggest he obtained one in May 2021. I find that he did not do so and accept that this was a breach of the Gas Safety (Installation and Use) Regulations 1998, albeit that he remedied . He has provided a copy of a satisfactory electrical safety report dated 9 April 2021

[R257] and re-testing was only required five years after that date. It was Mr Gorgievski's evidence that either he or Ms Nurse usually informed each tenant that they could find the electrical safety certificate and gas safety certificates in a drawer in kitchen when they entered into their tenancy agreements. In cross-examination Mr Squires agreed he had found a gas safety certificate and was not sure about the electrical certificate. I find that it more likely than not that Mr Gorgievski did not inform tenants that certificates were to be found in the kitchen drawer when the lettings were entered into. I also find it more likely than not that he did not provide then with an energy performance certificate in breach of section 6 of The Energy Performance of Buildings (England and Wales) Regulations 2012, as they submit;

- (c) as to the allegation that he did not provide each tenant with a copy of the How to Rent Guide, I find that he did so by WhatsApp to all the Applicants on 20 February 2023, but not before **[181]**. If he had provided it to any of them prior to that date, he would no doubt have said so at the time;
- (d) I reject the submission that Mr Gorgievski breached the Applicants' right to peaceful occupation of the Property. The Applicants' evidence is that he would attend the Property without giving the Applicants 24-hours' notice, instead providing notice by text message in the morning of such a visit, when he would occupy, he front room. I appreciate that this would have been inconvenient for the Applicants and must have seemed strange behaviour. However, the extent of the Property demised to each of them was their letting room, with shared use of the kitchen, bathrooms, and garden. None of the Applicants were granted express rights to use the lounge. The tenancy agreements made it clear that the only parts of the Property which the landlord was required to give notice before entering were the individual letting rooms.

62. I consider these to be the relevant factors in respect of tenant conduct:

- (a) I find that the submission that, on occasion, some of the Applicants behaved in an inappropriate and sometimes unhygienic manner is true. The videos provided and photographs in the bundle do not make for pleasant viewing. They show what looks like vomit up the walls of the bathroom, and toilet bowl covered in faeces **[R86-R88,98-99]**. The fact that in January 2023, cleaning contractors refused to return to the Property because of the state the toilet had been left is compelling evidence of that at least one of the tenants was behaving in a highly unhygienic and unsociable manner **[R103-105]**. There is no evidence that this has resulted in any damage to the Property but I accept that it has caused distress to Ms Nurse and inconvenience to Mr Gorgievski, who would have had to find an alternative cleaner.
- (b) I find that a door was broken by one of the Applicants or their guests, as alleged by Mr Gorgievski at para. 26 of his witness statement and as shown in the photograph at **[R89]**;

- (c) I also find that Mr Kerslake, in October 2022, removed the carbon monoxide filter from the wall in the kitchen and smashed Tupperware containers. This is evident from the WhatsApp complaint and photographs sent by one of the other tenants to Ms Nurse **[R92-93]**;
- (d) I also find, as evidenced by the WhatsApp exchange between Mr Churchill and Ms Nurse at **[R101]** on 22 April 2023 that Mr Griffiths blocked the WC and vomited on the floor, then left to go to work without cleaning it up completely **[R101]**.
63. Weighing up the matters of landlord and tenant conduct identified above, there is significant fault on both parts. In my determination, the fault on each side balances each other out. I would otherwise have made a 7.5% adjustment for both landlord conduct and the same adjustment for tenant conduct.
64. No previous convictions were brought to my attention. As to Mr Gorgievski's financial circumstances, the only matter raised was that he depends on the rental income from the Property to support his wife and two daughters. aged 20 and 29. I do not consider this warrants adjusting the amount of the RRO in this case.
65. Finally, I turn to the Applicants' request for reimbursement of the Tribunal fees paid by them. Before the Upper Tribunal. Mr Gorgievski sought to argue that in ordering reimbursement of fees the original FTT took no account of the fact that he had offered to engage in mediation (at the suggestion of the FTT) but the Applicants had not reciprocated. The Deputy President said in his decision that resolution of appropriate disputes by mediation should be encouraged, and a genuine offer of mediation which is not accepted is a matter which can properly be taken into account when the FTT determines an application for reimbursement of fees.
66. Before me, Mr Lederman submitted that the failure of the Applicants to agree to mediation should result in a refusal of their application for reimbursement of fees. Mr Leacock did not dispute that an offer of mediation had made and not accepted. His position was that a party cannot be compelled to mediate. That is correct, but as the Deputy President said, such refusal can be taken into account when this Tribunal determines an application for reimbursement of fees. I agree with the Deputy President that resolution through mediation is encouraged, and if Mr Gorgievski's offer had been accepted it is possible that it may have avoided the costs of the two hearings before this Tribunal, and the hearing before the Upper Tribunal. That said, neither Mr Gorgievski, nor the Applicants took up the Deputy President's suggestion at para. 41 of his decision that they should consider whether the Tribunal's mediation service might allow them to reach an earlier and more proportionate resolution of the application. This is despite my directions of 9 June 2025 expressly inviting them to do so. Weighing up all these matters, my determination is that Mr Gorgievski should pay half of the fees incurred, namely £350.

Amran Vance
4 November 2025

Appendix - 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).