FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AY/HMF/2025/0715**
Property	**:**	**285 Lyham Road London SW2 5NS**
Applicant	**:**	**(1) Mr Benajmin Johns** **(2) Ms Charlie Goodman** **(3) Ms Charlotte Minter**
Representative	**:**	**n/a**
Respondent	**:**	**Mr James Traxler**
Representative	**:**	**n/a**
Type of application	**:**	**Application for a rent repayment order by tenant** Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016
Tribunal	**:**	**Tribunal Judge O'Brien, Mr Andrew Morrison**
Date of Decision	**:**	**25 November 2025**

DECISION

DECISION OF THE TRIBUNAL

(1) The Tribunal makes a rent repayment order against the Respondent in the total sum of £3,400 as follows;

(i) £950 to be paid to the First Applicant
(ii) £1250 to be paid to the Second Applicant
(iii) £1,200 to be paid to the Third Applicant.

(2) The Respondent must refund the fees paid by the Applicants in the sum of £330.

(3) The above sums are to be paid within 28 days of receipt of this determination.

BACKGROUND

1. This application concerns the above premises, consisting of a three-bedroom flat which was let to the Applicants by the Respondent. The First Applicant resided in the premises from May 2021 until 23 May 2025, initially with two other persons who have played no part in these proceedings. The Second and Third Applicants, resided in the premises with the First Applicant from 25 May 2023 to 24 May 2025. The Applicants together occupied the premises pursuant to an assured shorthold tenancy which commenced on 25 May 2023, and which was renewed on 25 May 2025 for a further period of 12 months.

2. It is common ground that at all material times, the premises were occupied by 3 or more persons forming two or more households. It is common ground that the premises were located in a ward within the London Borough of Lambeth (LBL) which was subject to an additional licencing scheme which was introduced in December 2021. This required all Houses in Multiple Occupation (HMOs), which are not otherwise subject to mandatory licencing, to be licenced pursuant to Part 2 of the Housing Act 2004 (the 2004 Act). It is common ground that the premises were required to be licenced from December 2021 and that no application was made for a licence until 12 June 2024.

THE APPLICATION

3. On 25th February 2025 the tribunal received an application under s.41 of the Housing and Planning Act 2016 (the 2016 Act) from the Applicants for a rent repayment order (RRO) relying on s.72 of the Housing Act 2004 The Applicants assert that the Respondent committed an offence of having control of or managing an unlicenced property in multiple occupation that was required to be licensed pursuant to an additional licencing scheme but was not licenced.

4. The Tribunal issued directions on 28 May 2025 and subsequently the Tribunal listed this matter for a hearing on 24 October 2025.

THE HEARING

5. The First and Third Applicants attended the hearing. We were told that the Second Applicant could not attend in person for work related reasons. The Respondent attended in person.

6. We considered whether we should proceed in the absence of the Second Applicant. Pursuant to Rule 34 of the Tribunal Procedure (First Tier Tribunal)(Property Chamber) Rules 2013 (the 2013 Rules) this required us to firstly consider whether the Second Applicant was aware of the hearing. It

appeared that she was, and was content for the hearing to proceed in her absence. Mr Traxler did not object or require her attendance. In the circumstances we considered that it would be in the interests of justice to proceed to hear the application in her absence.

7. The Tribunal was provided with a 137-page bundle prepared by the Applicants for the hearing and a 289-page bundle prepared by the Respondent. Unfortunately both the First nor Third Applicant attended the hearing without a copy of either bundle. They considered that they would be able to fully follow proceedings and refer to relevant documents by accessing the bundles on their smartphones. We considered that, given the size of the bundles, this would impede the hearing and potentially prejudice the Respondent who wished to ask them both questions about the documents and in particular wished to challenge their evidence regarding his conduct as a landlord. The hearing was adjourned briefly to allow the Applicants time to get hard copies of the bundles, which they attempted to do. Unfortunately the did not print the correct versions of the bundles and were working from incomplete versions of both. We proceeded with the applicants referring to the documents they had managed to print.

Has an Offence been Committed?

8. In order to make a rent repayment order against a person under s.40 of the 2016 Act the Tribunal has to be satisfied to the criminal standard (beyond all reasonable doubt) that the person has committed a relevant offence (s.43 of the 2016 Act). The Respondent accepts that the premises were occupied by more than three persons forming more than one household who resided there as their main residence. He accepts that it was located in an area which was subject to an additional licencing scheme. He accepts consequently it required a licence by virtue of the additional licencing scheme operated by the LBL from December 2021, and was not licenced. The Respondent accepts that he was the person having control of the unlicenced HMO at all material times and that he did not apply for a licence until 12 June 2024, which was granted subject to conditions on 14 August 2024.

9. Consequently we are satisfied beyond reasonable doubt that the Respondent was a person in control of an unlicenced HMO throughout the relevant period.

Reasonable Excuse

10. It is a defence to proceedings under s.72(1) if the person had a reasonable excuse for being in control of or managing an unlicenced HMO (s.72(5) of the 2004 Act). The Respondent asserts that he had a reasonable excuse. He explained that in or about 2015 he and his family moved to New Zealand where they lived until November 2023. Throughout this period the property was let through Black Katz, a London based letting agency. He says that he relied on his agent to ensure compliance with his legal responsibilities as a landlord. He notes that LBL sent out written notification to over 4,000 landlords prior to the introduction of the additional licencing scheme but says that no such notice was sent to him by his agent or the local authority. He was first made aware of the need for a licence

when his agent notified him by letter dated 5 June 2024. He applied for a licence on 12 June 2024 which was granted on 14 August 2024, subject to conditions.

11. The offence of having control of or managing an unlicensed HMO contrary to section 72(1) of the 2004 Act is a continuing offence which is committed by the person having control or managing the HMO on each day the relevant HMO remains unlicensed. To avoid liability for the offence the person concerned must therefore establish the defence of reasonable excuse for the whole of the period during which it is alleged to have been committed.

12. In *Marigold v Wells [2023] UKUT 33 (LC)* , the Upper Tribunal considered that the guidance on the defence of reasonable excuse provided by the Tax and Chancery Tribunal in the case of Perrin v HMRC was relevant to the issue of reasonable defence in the context of licencing offences:

> "*48. The Tribunal in* Perrin *concluded its decision with some helpful guidance to the FTT, much of which is equally applicable in the sphere of property management and licensing. At paragraph 81 it said this*:
>
> > "81. When considering a "reasonable excuse" defence, therefore, in our view the FTT can usefully approach matters in the following way Third, decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so, it should take into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times. It might assist the FTT, in this context, to ask itself the question "was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?"
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> *49. The Tribunal then dealt with a particular point which is regularly encountered in HMO licensing cases and which therefore merits attention:*
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> > "82. One situation that can sometimes cause difficulties is when the taxpayer's asserted reasonable excuse is purely that he/she did not know of the particular requirement that has been shown to have been breached. It is a much-cited aphorism that "ignorance of the law is no excuse", and on occasion this has been given as a reason why the defence of reasonable excuse cannot be available in such circumstances. We see no basis for this argument. Some requirements of the law are well-known, simple and straightforward but others are much less so. It will be a matter of judgment for the FTT in each case whether it was objectively reasonable for the particular taxpayer, in the circumstances of the case, to have been ignorant of the requirement in question, and for

how long."

> *51. … When considering for how long any reasonable excuse persisted, it may find the systematic approach described in Perrin provides a helpful framework".*

13. In *Aytan v Moore [2022] UKUT 27 (LC),* the Upper Tribunal provided the following guidance on the scope of the "reasonable excuse" defence where the Respondent asserts he or she was misled by their agent (at para 40);

> *… a landlord's reliance upon an agent will rarely give rise to a defence of reasonable excuse. At the very least the landlord would need to show that there was a contractual obligation on the part of the agent to keep the landlord informed of licensing requirements; there would need to be evidence that the landlord had good reason to rely on the competence and experience of the agent; and in addition there would generally be a need to show that there was a reason why the landlord could not inform themself of the licensing requirements without relying upon an agent, for example because the landlord lived abroad.*

14. In this case the contract between the Respondent and his agent stated that responsibility for compliance with HMO licencing rested with the landlord. Furthermore the Upper Tribunal in *Aytan* held that reliance on an agent will only give rise to a defence of reasonable excuse in rare cases where it was reasonable for the Respondent to rely exclusively on the advice of the agent *and* there were real practical barriers preventing the Respondent from taking steps to independently acquaint himself or herself with the licencing requirements for the premises which he or she intended to let. We consider that there was such a practical barrier in this case. The Respondent had lived in New Zealand since 2015 and thus it was unlikely that and of LBL's efforts to alert landlords in the borough to the change in the licencing requirements would have come to his attention unless they contacted him directly. However the contract between the Respondent and his agent clearly stated that HMO licencing was the former's responsibility and Black Katz would not make any necessary HMO application on his behalf. Consequently it was not objectively reasonable for him to rely entirely on the agent to keep him abreast of his responsibilities as landlord.

15. Consequently we are not satisfied that Mr Traxler had a reasonable excuse for not having a licence. The matters he relies on however are still relevant for the purpose of quantification of any RRO.

<u>Quantifying the RRO</u>

16. The leading authority on the correct approach to quantifying a RRO is ***Acheampong v Roman* [2022]**. The Upper Tribunal established a four-stage approach which this Tribunal must adopt when assessing the amount of any order (at paragraph 20):

    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 is expected to make an informed estimate where appropriate.
    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) an 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 percentage of the total amount applied for is then the starting point (in the sense 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)."

17. Section 44(4) of the 2016 Act provides;

    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.

18. In ***Newell v Abbot* [2024] UKUT 181 (LC)** considered an appeal which has a number of similarities to the instant case. In that case the Upper Tribunal, having reviewed a number of recent authorities on the correct approach to quantification, observed at para 57;

    "This brief review of recent decisions of this Tribunal in appeals involving licencing 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 whether the tenants have been exposed to poor or dangerous conditions which have been prolonged by the failure to licence. Factors which tend to justify lower penalties include inadvertence on the part of the smaller landlord,

property in good condition such that a licence would have been granted without one 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"

19. In that case the Upper Tribunal noted that the landlord was not a professional landlord and that he had had committed the offence of controlling an unlicenced HMO through inadvertence rather than deliberately. The property was in reasonably good condition during the tenants' occupation. It made a RRO equating to 60% of the net rent paid.

20. Turing to the facts of this case; the Applicants initially sought a RRO in the sum of £26,400 for the period 25 May 2024 to 24 May 2025. However in their schedule of rent paid they seek an RRO in respect of the rent paid in the period 25 July 2023 to 24 July 2024 and we have proceeded on the basis that their case is that this is the 'relevant period' the purposes of section 41 of the 2016 Act. The First, Second and Third Applicants were not in receipt of Universal Credit or other relevant benefit and no part of the rent paid was in respect of utilities. They have claimed an RRO as a single lump sum between them, notwithstanding the fact that they did not all pay the same rent. The have claimed an order based on the rent they paid from 25th July 2023 to 24 July 2024. However the offence ceased to be committed then the Respondent applied for a licence on 12 June 2024 (s.72(4) of the 2004 Act), and so a RRO can only be made in respect of rent paid in relation to the period which ended on that date. Thus the total rent reclaimable is 10 months at £2140 per month plus 17 days at £2200 per month, totalling a maximum order of £22,629.

21. The tribunal invited the parties submissions as regards the seriousness of the offence. We outlined the kind of offences for which a rent repayment order could be made under the 2004 Act. These include unlawful eviction, violence for securing entry, failure to comply with an improvement notice or prohibition order or breach of an order of the tribunal prohibiting a person from letting out residential premises or acting as an agent. Mr Johns submitted that this was a very serious offence which merited the highest possible award. He drew our attention to the fact that the conditions of the licence were not fully complied in that the thumb turn locks were not fitted. He further considered that there had been additional breaches in that fire resistant doors were not fitted throughout the property however this was not a condition of the licence. Mr Traxler was content to abide by the decision of the tribunal but pointed out that he made the application for the licence within a week of being informed of the need for it.

22. We bear in mind that, as in *Newell v Hallett* this is a licencing offence. It was committed over a period of 2.5 years. The licence was applied for on 12 June 2024 very shortly after the Respondent was informed by LBL, via his agent, that it was required. We do not consider that this is a serious offence and our starting point is a rent repayment order of 50% of the maximum.

23. The next matter that we have to consider is the conduct of both the landlord and the tenants. Mr Traxler makes no criticism of the conduct of the Applicants. The Applicants were highly critical of the Respondent and in particular pointed to delays in replacing kitchen fittings and in carrying out repairs. While we accept, as did Mr Traxler, that there were some delays in carrying out repairs and replacing kitchen fittings and white goods, we do not consider that they were sufficiently serious to merit an increased award.

24. Mr John also pointed out that the Respondent did not comply in full with the conditions that were attached to the grant of a licence. The Respondent's licence was granted subject to the following specific conditions, in addition to the usual conditions attached to such licences

(i) Provision of a mains powered interlinked fire alarm in the place of the existing fire alarms
(ii) Provision of a fire blanket in the kitchen
(iii) Install a 30-minute fire resistant door between the kitchen and hallway
(iv) Installation of a fire-resistant door between the kitchen and hallway
(v) The front to be fitted with a thumb-turn unlocking mechanism.

25. The above conditions were to be complied within 6 months of the grant of the licence i.e. by February 2025. The respondent complied with (i) and (ii) within the given timeframe however (iii) and (iv) were not fully complied with until after the Applicants had vacated the property in May 2025. The Respondent in his statement says this was due to a misunderstanding on his part as to which doors required new locks and which doors were already compliant. He has exhibited correspondence passing between himself, his agent and the technical licencing officer of London Borough of Lambeth. In particular he has exhibited an email from LBL dated 13 June 2024 which advised him only that he needed to fit a thumb turn lock on the rear door but does not mention any other alterations to the doors. In our view Mr Traxler attempted to comply with the requirements of the licence as he understood them to be.

26. We consider that there is significant mitigation in this case. As set out above the Respondent was not living in the UK when the additional licencing requirement was introduced for this property. He had engaged Black Katz on a full management basis. They arranged for any reported repairs to be undertaken, deducting the cost from the monthly rent received. They arranged for gas safety inspections and the energy performance certificate to be provided. We accept that Mr Traxler genuinely believed that his agent would ensure his full compliance with all relevant legislative requirements in respect of this letting.

27. Furthermore Mr Traxler's return to the UK in December 2023 proved difficult for his teenage child, who has experienced a number of very serious mental health crises since the family's return to the United Kingdom. He submits that supporting his child has been his primary concern since he has returned to the United Kingdom. He exhibited redacted documentation which show that his

child has experienced episodes of severe emotional distress, which required CAHMS intervention and support from social services. We accept that it from the date of his return to the UK in December 2023 until May 2025, his primary concern was the well-being of his child which meant he was not as attentive to matters such as licencing compliance and repairs as he otherwise might have been.

28. Additionally we have to consider the financial circumstances of Mr Traxler. He told us that his financial circumstances have been very difficult since he returned to the UK. He is no longer living in the family home, which is rented out, and has moved to the South Coast where he and his family are living in rented accommodation. In addition he told us that his wife has very recently been told that she has been made redundant. He has exhibited copies of his bank statements which show that he is overdrawn. The Applicants did not challenge this evidence.

29. We consider that a rent repayment order in the region of 15% of the maximum fairly reflects the seriousness of the offence, the mitigating circumstances and also takes into consideration the Respondent's difficult current financial situation. The Applicants have not provided any breakdown of the rent they paid over the relevant period. We were told in the course of the hearing that in 2023/2024 the First Applicant paid £640 per month, the Second Applicant paid £775 per month and the Third Applicant paid £725 per month, make a rent repayment orders in favour of the First Applicant in the sum of £950, £1250 in favour of the Second Applicant and £1200 in favour of the Third Applicant. The sums are broadly based on the rent they each paid in 2023/2024.

30. The Applicants have also requested an order that the Respondents do reimburse the hearing and application fees under rule 13(2) of the Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013. As they have succeeded in their application we are satisfied that such an order is justified.

Name Judge N O'Brien Date 25 November 2025

RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.