



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

Case reference : **LON/00AY/HMF/2025/0685**

Property : **Upper Floor Flat, 1 Burnley Road,
London SW9 0SH**

Applicant : **Kim Vanopstal, Karine Alves Ferreira,
Gemma Wallis**

Representative : **Mr J Cairns, Justice for Tenants**

Respondent : **Ms Wendy Miller**

Representative : **Mr S Willmer, Counsel**

Type of application : **Application for a rent repayment order
pursuant to ss.40 to 44 of the Housing
and Planning Act 2016.**

Tribunal members : **Judge J Moate; Ms R Kershaw**

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

Date of decision : **16 February 2026**

DECISION

The Tribunal determines that it shall exercise its discretion to make a rent repayment order in terms that the Respondent shall pay to the Applicants the sum of £9,722.51 within 35 days of the date of this decision.

Introduction

1. The Tribunal is asked to make a rent repayment order pursuant to section 41 of the Housing and Planning Act 2016 (“HPA 2016”).

Relevant law

2. The relevant statutory provisions are set out in Appendix 1 to this decision.

The Application

3. The application is dated 27th January 2025. It alleges an offence under s.72(1) of the Housing Act 2004 (“HA 2004”) on the part of the Respondent, i.e. she was a person in control of or managing a HMO which was not licensed and was required to be.
4. The Applicants contend that they were the tenants of the property as follows:

Ms Kim Vanopstal:	01 April 2022 – 30 January 2024
Ms Karine Ferreira:	01 September 2021 – 31 August 2024
Ms Gemma Wallis:	01 May 2023 – 30 September 2024

5. They claim an order in the total sum of £19,445.01 on the following basis:

Ms Vanopstal

- a) Rent paid for the period 01 January 2023 – 31 March 2023 in the sum of £2,117.91
- b) Rent paid for the period 01 April 2023 – 31 December 2023, in the sum of £6,353.55

Ms Ferreira

- a) Rent paid for the period 01 April 2023 – 31 December 2023 in the sum of £6,353.55
- b) Rent paid for the period 01 June 2024 to 31 July 2024 in the sum of £2,310

Ms Wallis

- a) Rent paid for the period 01 June 2024 to 31 July 2024, in the sum of £2,310

6. There was no written agreement but the identity of the tenants, the amount of rent paid and periods of occupation are not disputed by the Respondent.
7. The property consists of a self-contained 3-bedroom flat on the top floor of converted 4 storey, end of terrace property. The Applicants claim the property met the conditions to be licensed under the designation and the property was a HMO of a prescribed description under s.254 of the Housing Act 2004.

The Issues

8. On 13 June 2025 directions were given in this matter by Judge Hamilton-Farey, amended by Tribunal Judge Walker on 19 December 2025.
9. The issues for the Tribunal are as follows:
 - (1) Whether the Tribunal is satisfied beyond reasonable doubt that the landlord has committed the alleged offence.
 - (2) Whether, on the balance of probabilities, the landlord has a 'reasonable excuse' for having committed the relevant housing offence on which the financial penalty is based, such that they have a defence to it.
 - (3) Did the offence relate to housing that, at the time of the offence, was let to the tenant?
 - (4) Was an offence committed by the landlord in the period of 12 months ending with the date the application was made?
 - (5) What is the maximum amount that can be ordered under section 44(3) of the Act?
 - (6) Whether any conduct relied upon in the defence, even if not enough to establish a reasonable excuse, nevertheless justifies a reduction in the amount of the penalty to be imposed. What account must be taken of:
 - (a) The conduct of the landlord?
 - (b) The financial circumstances of the landlord?
 - (c) Whether the landlord has at any time been convicted of an offence shown above?
 - (d) The conduct of the tenant?
 - (e) Any other factors?

The hearing

10. The hearing was held remotely. In attendance were the following people:

- Applicants: Kim Vanopstal, Karine Ferreira, Gemma Wallis
- Applicants' representative: Mr J Cairns, Justice for Tenants
- Respondent: Ms Miller, accompanied by her husband, Mr Miller
- Respondent's representative: Mr S Willmer, Counsel

11. The Tribunal had received an Applicants' and a Respondent's paginated bundle of which all parties had copies. In addition, the Applicants had filed and served an Applicant's reply and skeleton argument. Mr Willmer had sent a skeleton argument along with several authorities, which had not reached the tribunal. It was submitted late because of the tight amended timetable; no party took issue with this late submission. The hearing was adjourned for a short period to enable the tribunal's case officer to email the necessary documents to the tribunal. The hearing resumed around 30 minutes later once the Tribunal had received and read the Respondent's skeleton argument.

12. The Tribunal reminded the parties that the standard and burden of proof lay on the Applicant to establish an offence beyond reasonable doubt, but any defence of reasonable excuse raised by the Respondent need only be proved on balance of probability.

13. The Tribunal took the opportunity to remind the Respondent that while she could not be prosecuted for any offences for which a financial penalty had been imposed, she could be prosecuted for other matters admitted by her or in respect of which the Tribunal made findings of fact; that she did not have to answer any question or make any statement which might tend to incriminate her, although the Tribunal might draw an adverse inference from her failure to answer.

Preliminary issue

14. The Tribunal queried the date of the application because the application form was dated 27 January 2025 whereas in the directions, the date of the application was marked 27 March 2025. Mr Cairns submitted that the application was filed on 28 January 2025 at 14:30 as evidenced by an email of that date to the RAP London email address. He contended that the application fee was paid later, which was possibly why a later date was marked in the directions. He asserted that the date of the application (and not the payment

date) was the relevant one for the purposes of s 41 (2) of the HPA 2016 and relied on case of *Jevan v Athansiadi* [2024] UKUT 358 (LC) in support.

15. Mr Willmer contended that *Jevan* could be distinguished because that case was only concerned with a single default – the late payment of the Tribunal fee – whereas the Applicants’ statement of case had other defects, including its failure to set out properly the dates of occupation and the fact that large parts of the rent claimed were not claimable.

The tribunal’s decision on the preliminary issue

16. **The Tribunal finds that the application date is 28 January 2025.**

17. The Tribunal is bound by the decision in *Jevan*, in which the Upper Tribunal held that Tribunal proceedings are started by sending or delivering a notice of application, whether or not the requisite fee is paid at the same time. The Tribunal does not consider that the other alleged flaws in the application are sufficient to render the application defective. The application is sufficiently clear to enable the Tribunal and the Respondent to understand what order is sought; further details are provided in the parties’ witness statements and supporting documents. It is for the Tribunal to determine which periods of rent payment and/or occupation are applicable.

(1) Whether the Tribunal is satisfied beyond reasonable doubt that the landlord has committed the alleged offence?

18. Mr Willmer confirmed that the Respondent accepted the facts as alleged. She admitted that the property was being let as a HMO, that it ought to have been licensed because it was in an area of additional HMO licensing, but it wasn’t. The Respondent further admitted the tenants’ identities and dates of occupation and the rent paid.
19. Mr Cairns invited the Applicants Kim Vanopstal, Karine Ferreira and Gemma Wallis to confirm, and they did confirm, their witness statements dated 14 February 2025, 27 February 2025 and 27 February 2025 respectively. Mr Willmer did not cross-examine the Applicants and their evidence stood unchallenged.
20. Mr Willmer invited Ms Miller to confirm, and she did confirm, her witness statement dated 08 January 2026.
21. The Tribunal is satisfied beyond reasonable doubt that the property between 01 April 2022 and September 2024 satisfied the definition of a house in multiple occupation (HMO) on the standard test, that it was in an area of additional HMO licensing, but was not licensed.

22. The Tribunal is also satisfied that the Respondent was at all material times a person having control of the premises, being in receipt of the rack rents for the Applicants' occupation of the property.
23. **Given the Respondent's admissions and the parties' evidence, the Tribunal is satisfied beyond reasonable doubt that the Respondent has committed the alleged offence.**

(2) Whether, on the balance of probabilities, the landlord has a 'reasonable excuse' for having committed the relevant housing offence on which the financial penalty is based, such that they have a defence to it.

24. Mr Cairns cross-examined Ms Miller about her occupation, her experience as a landlord, her health conditions, the condition of the property, delays in carrying out repairs and the return of the deposit. Mrs Miller said she still occasionally worked, although she later said that she had stopped work in 2020. She said the property was the only property she owned and that she used to live there. She said the agent on Kennington Road which used to assist with the letting had gone out of business and she had taken on the management of the property herself. She had not instructed a management agent during the relevant period and she remained the point of contact for any issues arising.
25. In respect of her medical issues, Ms Miller said that she was an "eternal optimist" and that she did not believe she had Multiple Sclerosis (despite her diagnosis) which was why she had not taken up the referral for further treatment. She recognized that she was not an expert and that she did have an appointment coming up for further checks. She said her last job had been in 2020 and that 10 years prior she had had her children, who were not very well and needed a lot of help.
26. As to her communications with the tenants, Ms Miller said that she was able to communicate by WhatsApp and that she did not engage a managing agent because it kept the cost low. She said the tenants encouraged a "hands off" approach and did not want her turning up at the property on a day-to-day basis. She said that dealt with issues such as the heating, or anything that was broken, when they arose.
27. When questioned about the smoke alarm and the allegation that there was no fire blanket, Ms Miller said the fire brigade had fitted a fire alarm and fire blanket, who carried out checks periodically. As to the leak in the bathroom she had to pay a lot of money to fix that because the tenants had left it to get really bad before reporting it. She said she was always very happy to fix things. As to the allegation of fungus in the kitchen due to water being trapped, she said she had seen that in the bundle but she had not known about that at all; she was sorry about that. As to the alleged hole on the balcony door she said

that she was not informed about that until later; that no note or picture had been sent but that a replacement door had been ordered before Christmas 2025. When challenged that she was informed about the door on 22/04/24 and in any event she visited the property once a year so she should have been aware of the hole, she responded that she did not notice a hole during her visit and that no-one had complained or told her about it. She said she did care and would happily repair anything which was not good.

28. As to the alleged heating not working, Ms Miller said that it was resolved on 16 October 2023. Ms Miller was unable to answer questions about the deposit and said that her husband had dealt with that. She said it had been resolved now. Ms Miller did not have a full copy of the bundle in front of her and struggled somewhat with accessing the relevant documents.
29. Ms Miller said she did not usually inform the council what was going on; because they had not asked her anything she had not told them anything. The council knew the property was rented.
30. Mr Willmer advanced on behalf of Ms Miller the defence of reasonable excuse. He argued that a) there was no suggestion of malice, it was clear she was ignorant of her obligation to obtain a licence and b) her health conditions of multiple sclerosis and meningioma materially affected her “cognitive function” and impaired her ability to organise, prioritise, and keep up to speed with regulatory obligations. He contended that her lack of attention was compounded by her husband suffering a heart attack. Mr Willmer asked the Tribunal to take into account Ms Miller’s difficulties demonstrated during the hearing to marshal the documents in the proceedings and respond to certain questions. He submitted that there was an evolving regulatory landscape and invited the Tribunal to conclude, notwithstanding the lack of expert medical evidence, that Ms Miller was not on top of things, organized or able to deal with things in 2023 and 2024.
31. He referred the Tribunal to the case of *Marigold v Wells* [2023] UKUT 33 (LC) at paragraphs 47-49 as to the factors relevant to the question of reasonable excuse.
32. Mr Cairns submitted that the medical evidence did not support the Respondent’s argument that she was medically unwell such that she was unable to keep pace with the regulatory landscape. He relied in his skeleton argument on the following medical evidence:
 - a) Professor Malaspina’s 12 April 2023 letter notes “from a symptomatic viewpoint, I do not think you need any treatment” and that despite physical difficulties, the Respondent was still “expected to work”.

- b) Dr Moen's 28 March 2025 letter recounts that the Respondent did not take up the further investigations offered in 2023 and that the Respondent described her symptoms as getting "slightly worse".
 - c) Dr Turner's 15 April 2025 letter notes that "[the Respondent has] MS, but it is relatively mild, [she has] managed to ignore it for many years".
 - d) Mr Kelly's 3 July 2025 letter describes the Respondent's health as "otherwise reasonable" and the result of her general examination was "normal".
33. Mr Cairns relied on the guidance in *Marigold* and submitted that the health and organization factors relied upon by the Respondent were not made out.
34. **The Tribunal does not consider that the matters advanced by the Respondent orally or in writing amount to a defence of reasonable excuse for the purposes of section 72(5) of the 2004 Act.**
35. The Tribunal finds on the balance of probabilities that:
- a) Mrs Miller did not know about the licensing requirement and did not act out of malice;
 - b) Although Mrs Miller had a diagnosis of multiple sclerosis and meningioma during the relevant period, her symptoms were mild and did not materially affect her cognitive function;
 - c) Mrs Miller was able to understand and respond to the questions put to her by Mr Cairns during the hearing and would have been capable of making basic enquiries into her obligations as a landlord during the period of the offence.
36. Applying the guidance in *Marigold*, the Tribunal finds that, viewed objectively, given that the licensing scheme was introduced in 2021, the Respondent had no reasonable excuse for not keeping pace with her regulatory duties.

(3) The defence related to housing that, at the time of the offence, was let to the tenant

37. For the reasons already given under the first and second issues, the Tribunal finds this matter satisfied beyond reasonable doubt.

(4) Was an offence committed by the landlord in the period of 12 months ending with the date the application was made?

38. For all the reasons given under the previous three issues, the Tribunal finds that the Respondent committed an offence under section 72(1) of the Housing Act 2004 between 01 April 2022 – 30 January 2024 in respect of the First Applicant, between 01 September 2021 – 31 August 2024 in respect of the Second Applicant and between 01 May 2023 – 30 September 2024 in respect of the Third Applicant. This is within the period of 12 months preceding the application made on 28 January 2025 in respect of each Applicant.

(5) What is the maximum amount that can be ordered under section 44(3) of the 2016 Act?

39. By section 44(2) of the 2016 Act, the amount must relate to rent paid by the Applicant in respect of a period not exceeding 12 months during which the landlord was committing the offence.

40. The parties agreed the sums paid as set out in paragraph 5 above.

41. It was agreed by both parties that there was no receipt of universal credit or bill payment by the landlord to deduct from any rental payment.

42. Mr Cairns argued that the full amount of 19,445.01 was the maximum amount which could be ordered.

43. Mr Willmer argued that £4,620.00 was the maximum amount which could be ordered, made up two sums of £2,310 in relation to the period of 1 June 2024-31 July 2024 for the Second and Third Respondents. He contended that the other sums were not claimable because they related to periods which ended more than 12 months before the date of the application. Mr Willmer did not identify any legal authority in support of this proposition but relied solely on the wording of the statute. He submitted that although the relevant part of the table in section 44 of HPA 2016 referred to “a period, not exceeding 12 months, during which the landlord was committing the offence” as opposed to “the period of 12 months ending with the date of the offence”, if an applicant could claim any period of 12 months during the offence that would effectively mean there was no limitation period. He submitted that was not what parliament intended.

44. In response, Mr Cairns submitted that section 44 HPA differentiated between eviction offences and HA 2004 offences for a reason. He said whereas an eviction was an event on a particular date which had a backstop of 12 months from the date of claim, a licensing breach was an ongoing offence. He said parliament had meant to allow claims for up to 12 months during any period of the offence, so long as the offence was committed by the landlord in the period of 12 months ending with the date the application was made.

45. The Tribunal finds that the maximum amount which could be ordered is £19,445.01. Section 44 HPA 2016 clearly differentiates between offences under the Protection from Eviction Act 1977 or the Criminal Law Act 1977 and offences under HA 2004. For offences under HA 2004 such as this one, so long as the application is brought within 12 months of the offence, the period of claim can be any 12 months during the offence. Quite simply it is: “a period, not exceeding 12 months, during which the landlord was committing the offence”.

What account must be taken of the matters in s.44(4) or any other factors?

46. The Tribunal finds that Mrs Miller acted out of ignorance and not out of malice. She is not a landlord with a property portfolio; this is her only rental property. She gave a straightforward and honest account of her “hands off” approach which was intended to give the tenants freedom whilst being available in the background should any problems arise. The Tribunal finds that in general Mrs Miller fixed problems (such as heating and repairs) when they were reported to her and that she communicated with tenants by WhatsApp when needed. The Tribunal notes that the tenants allege that the fire blanket was missing, that they reported damage to the balcony door in 2024 which was not repaired and that there was a delay in returning the deposit which Mrs Miller was unable to explain adequately. The tenants did not bring a claim for disrepair. The Tribunal does not consider there is sufficient evidence to show non-compliance with fire regulations or other serious conduct issue which should be given weight or impact on the amount ordered.
47. The Tribunal accepts Mrs Miller’s account of her own general health, based on the supporting medical documents, and finds that she was struggling with her health conditions (MS and meningioma) at the relevant time. As reported to Professor Malaspina in April 2023, she felt unstable, stressed and unable to go out without support. The Tribunal also accepts Mrs Miller’s account of the difficulties she faced with her husband’s ill health and her children’s problems and that these factors all contributed to her reduced ability to manage her affairs as efficiently as she did in the past.
48. The Tribunal finds that Mrs Miller’s financial circumstances do not have any impact on the amount ordered. Although Mrs Miller said in her response to the application that she would face potentially severe financial consequences, she did not provide any financial evidence in support of that contention.
49. The Tribunal notes that the landlord has not been convicted of an offence under Chapter 4 of the Housing and Planning Act 2016.
50. The Tribunal finds that there are no tenant conduct issues which have any impact on the amount ordered.

51. **The Tribunal finds that the appropriate penalty in this case is 50% of the maximum amount**, bearing in mind that Mrs Miller is the landlord of a single property, the offence was not deliberate, the property was in reasonable condition generally and Mrs Miller had several health and family problems which contributed to her inadvertence, or lack of attention to the licensing regulations.

Conclusions

52. The Tribunal determines that it shall exercise its discretion to make a rent repayment in terms that the Respondent shall pay to the Applicants the total of £9,722.51, made up of the following sums, within 35 days of this decision:

- a) **To Kim Vanopstal the sum of £4,235.73**
- b) **To Karine Alves Ferreira the sum of £4,331.78**
- c) **To Gemma Wallis the sum of £1,155.00**

Judge: J Moate

Date: 16 February 2026

ANNEX – 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 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 to 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.

Appendix 1

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 of management of an unlicensed house
7) This Act	Section 21	Breach of a 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

Offences in relation to licensing of HMOs

- (1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.
- (2) ...
- (3) ...
- (4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—
 - (a) a notification had been duly given in respect of the house under section 62(1), or
 - (b) an application for a licence had been duly made in respect of the house under section 63, and that notification or application was still effective (see subsection (8)).
- (5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—

- (a) for having control of or managing the house in the circumstances mentioned in subsection (1), or
- (b) for permitting the person to occupy the house, or
- (c) for failing to comply with the condition, as the case may be.

254 Meaning of “house in multiple occupation”

(1) For the purposes of this Act a building or a part of a building is a “house in multiple occupation” if– (a) it meets the conditions in subsection (2) (“the standard test”); (b) it meets the conditions in subsection (3) (“the self-contained flat test”); (c) it meets the conditions in subsection (4) (“the converted building test”); (d) an HMO declaration is in force in respect of it under section 255; or (e) it is a converted block of flats to which section 257 applies.

(2) A building or a part of a building meets the standard test if–

- (a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
- (b) the living accommodation is occupied by persons who do not form a single household (see section 258);
- (c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
- (d) their occupation of the living accommodation constitutes the only use of that accommodation;
- (e) rents are payable or other consideration is to be provided in respect of at least one of those persons’ occupation of the living accommodation; and (f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

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

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

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

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

(8) In this section—

“basic amenities” means— (a) a toilet, (b) personal washing facilities, or (c) cooking facilities;

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

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

“self-contained flat” means a separate set of premises (whether or not on the same floor)— (a) which forms part of a building; (b) either the whole or a material part of which lies above or below some other part of the building; and (c) in which all three basic amenities are available for the exclusive use of its occupants.

S.263 Meaning of “person having control” and “person managing” etc.

- (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 2-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 (whether directly or through an agent or trustee) rents or other payments from—
 - (i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and
 - (ii) in the case of a house to which Part 3 applies (see section 79(2)), 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 (whether in pursuance of a court order or otherwise) 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;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.

- (4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).
- (5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018

“4. An HMO is of a prescribed description for the purpose of section 55(2)(a) of the [Housing] Act [2004] if it—

- (a) is occupied by five or more persons;
- (b) is occupied by persons living in two or more separate households; and
- (c) meets—
 - (i) the standard test under section 254(2) of the Act;
 - (ii) the self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or
 - (iii) the converted building test under section 254(4) of the Act.