



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

Case Reference : **LON/00AN/HMF/2025/0615**

Property : **A flat in Shepard's Bush**

Applicants : **(1) M
(2) B
(3) N**

Representative : **Mr Phillips for Justice for Tenants**

Respondent : **X**

Representative : **In person**

Type of Application : **Application for a rent repayment
order by a tenant**

Tribunal Members : **Tribunal Judge R Percival
Mr J Stead BSc (Hons), MSc**

**Date and venue of
Hearing** : **13 October 2025
10 Alfred Place**

Date of Decision : **31 December 2025
25 February 2026 (review)**

DECISION

Orders

- (1) The Tribunal orders under Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, rule 17 that this decision will not disclose the identity of the property in respect of which the application is made nor the names of the Respondent and the Applicants.
- (2) The Tribunal orders under Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, rules 6 and 17 that
 - (a) no transcript or copy of the recording of the ex parte proceedings at the commencement of the hearing will be provided to anyone; and
 - (b) no transcript of the inter partes hearing will be provided to anyone unless the names of the property and the parties have been redacted, and no copy of the recording will be provided to anyone;unless, in either case, the Tribunal, the Upper Tribunal or a court orders otherwise.
- (3) The Tribunal makes a rent repayment order against the Respondent in favour of the Applicants together in the sum of £400, to be paid within 28 days.
- (4) The Tribunal orders under Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, rule 13(2) that the Respondent reimburse the Applicants together the application and hearing fees in respect of this application in the sum of £337.

The application

1. On 3 September 2024, the Tribunal received an application under section 41 of the Housing and Planning Act 2016 (“the 2016 Act”) for Rent Repayment Orders (“RROs”) under Part 2, Chapter 4 of the Housing and Planning Act 2016. Directions were given on 12 February 2025.

The hearing

Introductory

2. The Respondent represented herself. For reasons which will appear, we refer to her as X. She was accompanied by a friend, Ms Rao, for support, and Mr Williams, a witness employed by the London Borough of Hammersmith and Fulham. Another witness attended with the Respondent, but did not in the event give evidence (see below). Mr

Phillips of Justice for Tenants represented the Applicants, two of whom, M and B, attended. Again, the reasons for their anonymity appear below.

3. The property is a flat or maisonette on the third and fourth floors of an older building which has been converted into eight flats in Shepard's Bush.

Preliminary issues

4. On the morning of the hearing, the Tribunal received two Order 1 forms. One applied for an anonymity order and/or orders providing for a confidential schedule, reporting restrictions, and preventing non-parties from obtaining copies of this decision. The other was for an order barring Justice for Tenants from taking further part in the proceedings.
5. We considered that we should treat the first as an application under Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules"), rule 17.
6. We determined that we should in the first instance hear the Respondent ex parte (that is, without the other party present) in an application for us to hear the substantive Order 1 application ex parte.
7. During this ex parte hearing, the Respondent provided us with details that she considered relevant to the application. For reasons we explain below, we do not set out those details here. We have, however, done so in a confidential addendum to this decision which will not be released, but which is available to the Upper Tribunal if our determination of this application is appealed. In that addendum, we also briefly explain our relevant conclusions.
8. We concluded that we should not reveal the details referred to above to the Applicants, nor require the Respondent to do so. However, with that caveat, we would hear the substantive application for anonymity etc inter partes (that is, with both parties taking part). We had canvassed this option with the Respondent during the ex parte proceedings, and she agreed that it would be acceptable to her.
9. Having invited the Applicants to join the hearing, we accordingly told Mr Phillips that we had heard evidence from the Respondent about her mental health and associated matters which raised a prima facie case that the publication of a non-anonymised version of this decision may cause the Respondent harm or the risk of harm.
10. The Respondent clarified that her application was for the decision to be anonymised as to her name and as to her address, which is also the address of the subject property.

11. Mr Phillips requested a short adjournment to consider the matter, which we allowed, after which he resisted the substantive application. He made the following submissions.
12. The RRO jurisdiction was a punitive one.
13. Anonymity would prejudice any future offence, in that it would not be possible to find the details of this offence, if made out.
14. The Applicants were being asked to make submissions without access to the material provided by the Respondent, so was not able to consider that information. As a result, the Applicants could not make a case as to whether the conditions required by rule 17 had been made out. In particular, that applied to the requirement in rule 17(2)(a) for disclosure to cause the Respondent serious harm before an order could be made; and or that the interest of justice criterion in rule 17(2)(b) was satisfied. X had conducted herself in a way that showed her capable of dealing with the application and to make appropriate submissions. Without understanding the withheld material, it was impossible for the Applicants to mount an argument as to whether those criteria were satisfied.
15. We asked Mr Phillips about the proper construction of rule 17. He argued that paragraph (1) was the base order-making power, and paragraph (2) made provision for its exercise. Thus the criteria set out in paragraph (2)(a) and (b) applied to any order under rule 17 (as would paragraph (3)).
16. However, that notwithstanding, there would not be serious harm. Landlords in general would like very much like to remain anonymous for obvious reasons, but that did not serve the purpose of the legislation.
17. Decisions were published to act as a deterrent to other landlords. Granting anonymity would encourage other landlords to seek the same.
18. Mr Phillips also argued that the last-minute nature of the application had had a disruptive effect on the proceedings, and had amounted to an ambush of the Applicants.
19. The Respondent, in reply, explained that the application was late because it was only recently that the dangers to her mental health had really born in on her, as the Tribunal hearing approached. She had also been alerted to the fact that modern AI made finding Tribunal decisions easier than it had been in the past, which had caused her distress and concern, including for her child.

20. After adjourning for consideration, we said that we would make orders anonymising the Respondent and the address, and limiting the availability of a transcript or copy of the recording of the ex parte proceedings. We explained that we would give our detailed reasons for the decision in our written decision, which we do here.
21. Before doing so, we set out the scope of the order applied for, as it appeared after we had heard the parties' submissions, including the Respondent's ex parte submissions.
22. We were being asked to make an order to render the Respondent and the address of the property anonymous in our published decision. We are not being asked to make a general anonymity order, such that anyone who reveals that information in any other way is bound by it, and such that it may be enforced by contempt proceedings in an appropriate forum. Further, we are not being asked to give a direction for a hearing in private under rule 33, and nor are we being asked to make an order imposing a reporting restriction (and we have not considered whether we have the power to do so).
23. Hereunder, we consider the argument relating to the lateness of the application, the nature of the Tribunal's powers under rule 17, and the substantive decision on the Respondent's application.
24. First, we accept Mr Phillips' argument that the application was made late, and that that put the Applicants in a difficult position.
25. However, we decided that the appropriate course was to proceed to determine the application substantively. The alternative would have been to have adjourned the application, possibly to make directions for the exchange of submissions in relation to it, and reconvene to consider the matter at a later date.
26. That, we concluded, would have been a disproportionate approach, such as not to be in the interests of justice, as set out in the overriding principle in rule 3 of the 2013 Rules. The parties were here, and we could properly come to substantive decisions as to whether an RRO should be made, and in what amount, whether we made the order requested or not. We considered that it would be more appropriate to consider making the order. If we concluded that we should make an order, then the Applicants would have the opportunity to apply for permission to appeal. Upon doing so, we would be obliged (rule 53), in the light of any arguments put (and, if we considered it necessary, having given the Respondent the opportunity to make further submissions), to review our decision under rule 55 and amend it if we thought it right to do so, and/or give permission to appeal.
27. Secondly, we reject Mr Phillips' construction of rule 17.

28. No authority was cited to us, for the very good reason that the lateness of the application meant that it had not been possible for Mr Phillips or the Tribunal on its own initiative to have undertaken any legal research to allow for citation. In what follows, we distinguish between the matters that we took into account in coming to our decision on the day of the hearing, and further matters that we have subsequently considered, having had the time to do so in preparing this decision. We do so on the strict basis that the decision itself was, of course, only made on the basis of the former.
29. Nonetheless, we concluded on the wording of the rule alone that paragraphs (1) and (2) constituted distinct and independent powers. Paragraph (1) concerns the making of an “order”, whereas paragraph (2) deals with a “direction”. We do not believe that the committee drafting the rules could possibly have used distinct terms to describe the same act by a Tribunal in contiguous paragraphs. This conclusion is reinforced by the way in which paragraph (8) is drafted. It lists the possible acts by the Tribunal countenanced by the rule, to which it applies the duty not to undermine those acts. The list has separate entries for “an order made under paragraph (1)” and “a direction given under paragraph (2).”
30. In addition, the primary objects of the two paragraphs appear to be different. Although very broadly drafted, the main objective of paragraph (1) is “disclosure or publication”, and sub-paragraphs (a) and (b) operate disjunctively. Sub-paragraph (b) expressly refers to the prevention of identification of a person to members of the public. Paragraph (2) is specifically about prohibiting disclosure to a person, and the criterion in the (conjunctive) sub-paragraph (a) refers to the causing of serious harm to, first, that person, and secondly to other people. While the paragraph does apply to disclosure and harm to anyone, it appears that the primary objective is not disclosing matters to the person to whom it would cause serious harm, and it may well be that the drafting committee had primarily in mind the situation where the potentially harmed person was a party or a witness. So the information is in the hands of one person, and may cause harm to another. That is not the situation provided for in paragraph (1), and not that which applies in this case.
31. We add that, at least in the current context, the criteria in rule 17(2) are in any event necessarily engaged in the balance exercise that we consider is required by our decision under rule 17(1).
32. Following the decision, the Tribunal has considered other rules about disclosure in First-tier Tribunal rules. Again, these considerations did not inform our decision on the day. However, we record them here.
33. Similar, if not quite identical, rules obtain in other First-tier Tribunal chambers (rule 14, Tribunal Procedure: First-tier Tribunal) (Health,

Education and Social Care Chamber) Rules 2008; rule 13 Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014; rule 14, Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009). Rule 14, Tribunal Procedure (First-tier Tribunal)(Tax Chamber) 2009.

34. However, the equivalent in rule 14, Tribunal Procedure (First-tier Tribunal)(Tax Chamber) 2009, is a simpler version, identical to paragraph (1) of our rules (and those of the chambers mentioned above), but with no more. This reinforces (after the event) our conclusion above, that paragraph (1) of our rule 17 is a free-standing order-making power.
35. The rule in Employment Tribunal Procedure Rules 2024, rule 49, is distinct, both in its drafting and its extent. It refers explicitly to the principle of open justice and to Convention rights.
36. We turn to the reasons for our decision on the substantive application for anonymity for the published decision. We deal first with how we approached the decision as a matter of general law, and secondly with our conclusions on the representations made by Mr Phillips.
37. As to the first, we considered that we were obliged to conduct a balancing exercise between the general principle of open justice and the specific reasons advanced by the Respondent in favour of an anonymity order limited as set out above. In undertaking the balance act, we considered that we should have regard to the overriding principle set out in rule 3 of the 2013 Rules, and to the rights of the parties under the European Convention on Human Rights.
38. As to the open justice principle, while again, for the reasons given above, we did not have the advantage of the citation of specific authorities, we were well aware of the importance of the principle.
39. As to Convention rights, the right to free expression under article 10 was engaged in such a decision. We were aware that press reporting of what was a routine RRO application was highly unlikely, (and of course there were no journalists present), but that did not mean that article 10 was not relevant at all. However, where what was being considered was purely anonymity on the face of our decision, and not reporting restrictions, we considered that it had less force than it otherwise would. We noted that the order being requested was equivalent to that described by the Court of Appeal, Criminal Division in *R v Baniulyte* [2025] EWCA Crim 1205 as a “withholding order”, unsupported by a reporting restriction. The Tribunal had that case in mind, as Judge Percival had recently read it (for other purposes).

40. On the other side, we considered that the protection of the Respondent from serious harm was in itself a countervailing consideration that we should properly take into account. We did not think that the ordinary discomfiture or distress that would be occasioned to any landlord against whom an RRO application was made and/or an order made, could possibly have weight in the balance.
41. But we found as a fact (for the reasons contained in the confidential annex) that the Respondent genuinely suffered from mental health problems and that a failure to anonymise would cause her severe mental distress. We regard this finding as putting this Respondent into a quite different category.
42. So put, we considered that the Respondent's article 8 rights were engaged. We did not consider at the time (and do not consider now) that we needed to determine as a strict matter of ECHR jurisprudence whether her article 8 rights would be *infringed* by a failure to make the order. Rather, article 8 amounts to another way of expressing the countervailing considerations to be put against the general interest in open justice.
43. On the one side, therefore, the interference with the principle of public justice was at the lowest end of the spectrum (a "withholding order"). Against that, we concluded as a fact that real harm would be caused to the Respondent's mental health were we to refuse the order. Our conclusion was that the harm we considered would be visited on the Respondent outweighed the principle of public justice, to the degree necessary to justify the limited order sought.
44. A secondary consideration (which was not, as a matter of fact, determinate in our decision on the day) was that we thought it likely that the Respondent would not be able to take part in the substantive proceedings if we did not make the order. Had that been the case, we would have had to consider whether the criterion in rule 34(b) (the interests of justice test) was satisfied, so that the hearing could continue.
45. We also considered Mr Phillips' arguments which went beyond the general balancing act, and determined that they did not affect our conclusion.
46. We agree that a purpose of RROs is punitive. But the primary punishment meted out to a landlord by an RRO is the pecuniary one, and only at most secondarily any obloquy associated with public identification. We did not think that punishment required publicity in this case.

47. We accept that it would be harder for parties to determine whether or not the Respondent had committed the relevant offence (were we to find that she had) if we granted anonymity. However, the weight to be given to this consideration was limited. Given the facts of this case, we thought it unlikely that the Respondent would let out a property again in the foreseeable future; and very unlikely indeed that, if she did, she would not secure a licence.
48. As to Mr Phillips' argument about his inability to make focussed submissions, that is, and always would be, inherent in any procedure in which a tribunal was making a decision without both parties having the same facts available to them. We considered we were right to proceed as we did in terms of the evidence in relation to mental health.
49. For the reasons we give above, we reject Mr Phillips' construction of rule 17.
50. Insofar as Mr Phillips characterised the Respondent's desire for anonymity as the same as any landlord would feel, we reject it. As stated above, we found a real likelihood of serious harm to the Respondent's mental health.
51. Mr Phillips' argument in paragraph 17 had two parts. First, we did not consider that the *general* deterrent effect of making an RRO (if we were to make one) would be negated by anonymity. Secondly, it was inherent in a decision to grant anonymity that it might conceivably inspire another landlord to make the same application. But if one did, it would be determined on its merits, and if the only harm found was the ordinary discomfiture of wrong-doing being revealed, no order would be made. In any event, we think it highly unlikely that us making the order in this case would release a flood gate of applications from other landlords.
52. When we announced our decision to allow the anonymity order in favour of the Respondent, Mr Phillips said he had been instructed to make a similar application in respect of the Applicants. Essentially, his argument was that equality of arms would be served by making such an order. The Respondent did not object to the making of an order.
53. We made the order. We must acknowledge that in doing so, we did not undertake the balancing exercise between the interests of public justice and those of the Applicants. Rather, we relied on the Applicants' equality of arms argument and the fact that the Respondent did not object. We made the order orally at the time, and do not consider that we can properly go back on that decision in this written decision in the absence of any objection.

54. The Respondent's second application was to bar Justice for Tenants. We dealt with the application summarily by explaining that the jurisdiction to bar under rule 9(2), (3) and (7) related to the barring of a party, not to the barring of a representative of a party. We accordingly refused the application.

The alleged criminal offence

55. The Applicants allege that the Respondent was guilty of having control of, or managing, an unlicensed house in multiple occupation contrary to Housing Act 2004 ("the 2004 Act"), section 72(1). The offence is set out in Housing and Planning Act 2016, section 40(3), as one of the offences which, if committed, allows the Tribunal to make a rent repayment order under Part 2, chapter 4 of the 2016 Act.
56. The Applicants case is that the property is situated within an additional licensing area as designated by the London Borough of Hammersmith and Fulham ("the council"). The additional licensing scheme came into force on 5 June 2022, and will cease to have effect on 4 June 2027. The extent of the scheme is the whole area of the Council.
57. The period in respect of which the RRO is claimed is 7 February 2024 to 26 May 2024. In particular, the first and second Applicants lived (as a single household) in the flat from 15 December 2021 to 26 May 2024. The third Applicant, who was not a member of the same household, lived there from 15 November 2023 to 26 May 2024.
58. It was not contested that the property was the only home of the Applicants.
59. The Respondent's HMO licence had expired on 6 February 2024.
60. The Respondent argued that she had a reasonable excuse for not being licensed after 6 February 2024.
61. We pause to summarise what was happening with her at this time in terms of her residence decision. The Respondent had let the flat and went to another country, where she was born and brought up (of which she is a national), in 2021, having let it out briefly in 2018, and again as an AirBnB in late 2019. She had initially intended to move to explore moving permanently to that country, but the move did not work out as intended. In the result, she thereafter spent time in both there and in the UK, her decision-making being affected by the requirements of residence in the UK as a consequence of her application for British nationality. Insofar as she could date it, it was during a visit which started in November 2023 that she formed the definite intention of not residing long-term in the other country. She returned from that trip in December 2023, but then went back to the other country, returning to the UK having decided to live here in about April 2024.

62. At the time that the licence expired, the Respondent said that she intended to move back into the property. She informed the Council that that was so from October 2023 onwards. In October 2023, she was told on the telephone that in those circumstances she did not need to apply for a new licence. It was subsequently understood that this was because she would be eligible for a temporary exemption notice (TEN).
63. A local authority may issue a TEN where a property is required to be licensed, where the person having control or managing the property notifies the authority that he or she intends to take particular steps with a view to securing that the property no longer requires to be licenced (Housing Act 2004, section 62).
64. The Respondent's evidence was that, at the time that she intended to move back into the property (which she subsequently did), there was, she said, no application form for a TEN, or other process to go about obtaining one, evident on the Council's website. She said that she relied on the verbal guidance she had been given in October 2023 that she did not need to pay for another licence at that time.
65. In December 2023 and January 2023, she suffered exceptional circumstances which impacted on her mental health and diverted her attention from the licensing issue. She had undergone urgent cancer investigations in December 2023, and then in January 2024 faced custody issues in relation to her young child, who, in addition, was unwell with Covid-19.
66. Mr Oliver Williams provided a witness statement for the Respondent, and gave evidence. Mr Williams is a private sector housing licensing officer employed by the Council. He states in his witness statement that the Respondent contacted the Council on 25 October 2023 to ask if the HMO licence needed to be renewed. On 16 March 2024, the Council contacted the Respondent with a licence renewal reminder. She replied, asking the start date of the expired license, and when a property needed a licence. On 18 March 2024, the Council replied with the details of the expired licence, and a link to the property licensing website.
67. Mr Williams' witness statement went on to say that he emailed the Respondent to the effect that the licence had elapsed on 6 February 2024, asking of the property was still occupied, and asked her to re-apply for license.
68. On 12 November 2024, Mr Williams said, the Respondent contacted the Council for information on a TEN, and said that the property was then owner-occupied. She said she had not received a reply to her email of October 2023, and believed she should have been advised to apply for a TEN. Mr Williams was unable to say whether the Council had responded to the Respondent in October 2023, as he had no record of a reply.

69. Nonetheless, Mr Williams’ witness statement asserted that in general terms, that if a request for a TEN was received by the Council on the basis that an owner or licence holder intended to achieve vacant possession and move into the property within six months of the end of a licence, the Council would normally grant a TEN, “giving up to six months grace from licensing.” There was no specific application form. The Council just needed to be informed, and a TEN would follow “if there is evidence and it is genuine”.
70. Mr William’s oral evidence did not add anything of significance to his witness statement.
71. We do not consider that these facts disclose a reasonable excuse.
72. The proper approach to a plea of reasonable excuse is set out in *Marigold v Wells* [2023] UKUT 33 (LC), [2023] HLR 27. In that case, the Deputy President adopted dicta in *Perrin v HMRC* (2018) UKUT 156 (TCC) (hence the references to “taxpayer”). Where the facts are established, the Tribunal should
- “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?’”.
73. In this case, even taking into account the personal circumstances of the Respondent, we do not think waiting for over a year before further pursuing the option of a TEN, mentioned in the phone conversation in October 2023, can be considered objectively reasonable. This is in the context that, on the Respondent’s own account, she had been told she should apply for a TEN, not that she did not need to do anything, in October 2023.
74. We accordingly find that beyond a reasonable doubt the Respondent was committing the criminal offence alleged during the relevant period.
75. We do not consider that the circumstances are such as to require that we exercise our residual discretion not to make an RRO.

The amount of the RRO

76. In considering the amount of an RRO, the Tribunal will take the approach set out in *Acheampong v Roman and Others* [2022] UKUT 239 (LC) at paragraph 20:

“The following approach will ensure consistency with the 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. ...

(c) Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made ... and compared to other examples of the same type of offence. 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).”

77. We add that at stage (d), it is also appropriate to consider any other of the circumstances of the case that the Tribunal considers relevant.
78. In respect of the relationship between stages (c) and (d), in *Acheampong* Judge Cooke went on to say at paragraph [21]
- “I would add that step (c) above is part of what is required under section 44(4)(a) [conduct of the parties]. It is an assessment of the conduct of the landlord specifically in the context of the offence itself; how badly has this landlord behaved in committing the offence? I have set it out as a separate step because it is the matter that has most frequently been overlooked.”
79. As to stage (a), by sections 44(2) and (3) of the 2016 Act, the maximum possible RRO is the rent paid during a period of 12 months, minus any universal credit (or Housing Benefit – section 51) paid during that period.
80. The parties agreed that the global sum of rent paid by the Applicants during the relevant period was £7,011.
81. The tenancy agreement provided for the tenants to pay for utilities. The Respondent’s case was that they did not pay for the internet connection. The Respondent claimed that the unpaid internet bills amounted to £60. This was not, however, accepted by the Applicants. Since the sum in issue was so small, we did not consider it necessary to come to a conclusion. Simply for arithmetical purposes, we split the difference.

82. In the result, the maximum RRO at this stage is £6,981.
83. In assessing the seriousness starting point under stage (c), there are two axes of seriousness. The first is the seriousness of the offence, compared to the other offences specified in section 41 of the 2004 Act. The offence under section 72(1) is significantly less serious than those in rows 1, 2 and 7 in the table in section 40 of the 2016 Act, and we take that into account (see *Ficcara v James* [2021] UKUT 38 (LC), paragraphs [32] and [50]; *Hallet v Parker* [2022] UKUT 239 (LC), paragraph [30]; *Daff v Gyalui* [2023] UKUT 134 (LC), paragraphs [48] to [49] and the discussion in *Newell v Abbott and Okrojeck* [2024] UKUT 181 (LC), paragraphs [34] to [39]).
84. We turn to the seriousness of the offence committed by the Respondents compared to other offences against section 72(1). For the reasons given by Judge Cooke in *Acheampong*, it is more appropriate for us to consider the conduct of the landlord, properly part of stage (d), when considering the seriousness of this offence. It is, in this case, artificial to try to distinguish between the seriousness of the offence and the conduct of the landlord.
85. We do so mindful of what the Deputy President said in *Newell* at paragraph [61]:
- “The Tribunal has said in the past that it is not possible to be prescriptive about the sort of conduct which might potentially be relevant under section 44(4), 2016 Act (see *Kowalek*, at paragraph [38]). But that should not be taken as an invitation to landlords and tenants to identify every possible example of less than perfect behaviour to add to the tribunal scales in the hope of increasing or reducing the penalty. When Parliament enacted Part 2 of the 2016 Act it cannot have intended tribunals to conduct an audit of the occasional defaults and inconsequential lapses which are typical of most landlord and tenant relationships. The purpose of rent repayment orders is to punish and deter criminal behaviour. They are a blunt instrument, not susceptible to fine tuning to take account of relatively trivial matters. Yet, increasingly, the evidence in rent repayment cases (especially those prepared with professional or semi-professional assistance) has come to focus disproportionately on allegations of misconduct. Tribunals should not feel that they are required to treat every such allegation with equal seriousness, or to make findings of fact on them all. The focus should be on conduct with serious or potentially serious consequences, in keeping with the objectives of the legislation. Conduct which, even if proven, would not be sufficiently serious to move the dial one way or the other, can be dealt with summarily and disposed of in a sentence or two.”

86. So in the first instance, one of the Respondent's two witnesses only spoke to an incident sufficiently minor that, regardless of what we decided, would not move the dial, and both parties agreed that she need not give evidence.
87. Mr Phillips submitted that the matters relied on by the Applicants were, first, that the Respondent did not have a proper system for ensuring that she was aware of her legal obligations. She knew that she needed a licence, but did not secure one. Relatedly, the section 21 notices she served were not valid (that is, because she should have had but did not have an HMO licence).
88. Secondly, she failed to update what Mr Phillips described as compliance documents – the gas safety certificate, the electrical installation condition report and energy performance certificate – an issue in respect of which there as a factual dispute.
89. Thirdly, Mr Phillips referred to the difficulty that the Applicants had in communicating with the Respondent. Our impression of the evidence of the Applicants themselves was that what they saw as poor communication was the complaint that they stressed the most.
90. As to disrepair, there was a complaint of localised damp in a particular area of the kitchen. One of the Applicants, M, had painted over plaster affected by the damp on at least two occasions, but it recurred. We were shown photographs of the area, which did show signs of historic damp.
91. The Respondent argued that the property was in good repair generally, and that she had been reasonably responsive to complaints or requests from the Applicants.
92. We agree with Mr Phillips' point that the Respondent did not have a system, or at any rate, an adequate one, for ensuring that she met regulatory requirements. We do not think that the fact that, because she did not have a licence, her section 21 notices were invalid adds very much. Mr Phillips did not submit that the notices would have been invalid for a reason other than the lack of a licence.
93. As to the compliance documents, it was the Respondent's case that she had secured them, and she claimed that she had provided them when the tenancy commenced. The Applicant was not in a position to dispute that the Respondent had secured the documents. The evidence that she had not disclosed them, at least initially, was contained in the Applicants' witness statements, in which they said, fairly, that they could not recall having been provided with the documents. Our understanding was that it was not denied by the Respondent that they were not provided to the extent that they became due during the

currency of the tenancy – a consideration which we think was limited to the gas safety certificate.

94. Providing copies of the documents is a regulatory requirement, and failure to do so a breach of the Management of Houses in Multiple Occupation (England) Regulations 2006. However, it was not contested that she had secured the documents, which serves a more important regulatory object than their disclosure. Insofar as there were failures, they move the dial somewhat, but not to any great extent.
95. We accept that there were some difficulties in communicating with the Respondent, but the evidence did not take that beyond “occasional defaults and inconsequential lapses which are typical of most landlord and tenant relationships”. For the most part, communication, sometimes with delays, was accomplished.
96. We are prepared to accept that the damp in the kitchen did recur. The Respondent’s case was that it was as a result of issues for which the freeholder was responsible. We reject that as a complete defence, in that it is the responsibility of a leaseholder Respondent to ensure that a freeholder adheres to its obligations, where those affect the well-being of the tenants. However, the evidence did not suggest that the dampness was of a serious or substantial extent, so as to cause health and safety concerns or to seriously impact on the Applicants’ use of the kitchen. It moves the dial, but only moderately.
97. The nature of a landlord has been held to be relevant to the seriousness of the offence. In some cases, it has been argued that there is a distinction to be drawn between “professional” and “non-professional” landlords, seriousness being aggravated in the case of the former. The proper approach is as set out by the Deputy President in *Daff v Gyalui* [2023] UKUT 134 (LC), at paragraph 52:

“The circumstances in which a landlord lets property and the scale on which they do so, are relevant considerations when determining the amount of a rent repayment order but the temptation to classify or caricature a landlord as “professional” or “amateur” should be resisted, particularly if that classification is taken to be a threshold to an entirely different level of penalty. ... The penalty appropriate to a particular offence must take account of all of the relevant circumstances.”
98. In this case, the Respondent let a single property which had been her home, and which was again now her home. She did so for profit. But it certainly cannot be said that she was a landlord in any considerable way, or that she was operating a business model which relied on a failure to meet regulatory standards.

99. At this point – stage (c), plus the conduct of the landlord from stage (d) – we must make an initial assessment of the percentage of the maximum possible RRO that the considerations above suggest.
100. In doing so, we have taken account of the guidance provided by the Upper Tribunal, including particularly where the Upper Tribunal has substituted percentage reductions in making a redetermination. The key cases are set out in (with respect) a most helpful manner in the course of the re-determination in *Newell v Abbott and Okrojeck* [2024] UKUT 181 (LC) from paragraph [47] to [57]. We do not repeat all that material here, but have been guided by it.
101. Summing up that account, the Deputy President said this, at paragraph [57]:
- 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.
102. This case falls well into the lower end of this spectrum. It is not so exception as *Daff v Gyalui* [2023] UKUT 134 (LC) (under 10%), and we think it also a little more serious than *Hallett v Parker* [2022] UKUT 239 (LC) (25%). So we assess the appropriate percentage at this stage as 30%.
103. At stage (d), we must consider what effect the matters set out in section 44(4) have on our conclusions. Section 44(4) provides that in determining the amount of an RRO, within the maximum, the Tribunal should have particular regard to the conduct of both parties, and to the financial circumstances of the landlord. For the reasons stated above, we considered the conduct of the landlord at stage (c).
104. The Respondent did not make any complaint about the conduct of the Applicants that would impact upon our considerations, although she mentioned some issues around check-out.

105. However, we are obliged to consider the financial circumstances of the Respondent.
106. The directions stated that “[i]f reliance is placed on the landlord’s financial circumstances, appropriate documentary evidence should be provided”. The Respondent had provided a narrative relevant to her financial circumstances, and some documentary evidence. Nonetheless, in the circumstances, we considered that it was necessary and relevant for us to take oral evidence as to the Respondent’s financial circumstances.
107. The Respondent told us that her only income was from Universal Credit and Child Benefit.
108. She had previously worked in management in a public body at a comparatively senior level, a number of years ago. However, she had been signed off as only having a limited ability to work for a considerable period (the last being for six months, in February), and her employment prospects were poor. She was no longer up to date with the current situation in the that public body, which counted against her securing employment there. She had applied for much lower level jobs in the the same body, and had not even secured interviews. She had been a qualified accountant, but was not able to maintain her qualification because of the annual fees required. As to her ability to pay now, she said that she had difficulty paying for food, and used food banks.
109. On the other hand, she owned the property outright, having paid off the mortgage. In other circumstances, where a landlord has a substantial capital asset, the Tribunal might consider the possibility of a landlord raising a loan on the security of the asset, but given the Respondent’s income, we considered that that would not be practicable for her.
110. We do not consider that it would be appropriate for an RRO to require her to sell the property. It is her and her child’s current home. She might, however, be forced to sell the property in any event, in the light of contemplated major works to be funded through the service charge (the Respondent told us that there had recently been a consultation process under section 20 of the Landlord and Tenant Act 1985).
111. Mr Phillips helpfully explained that Justice for Tenants had a collections team that, in the majority – indeed, nearly all – cases, organised a payment plan with a landlord against whom an RRO had been made. Such plans could last months or years. However, we did not think it would be appropriate for the Tribunal to *rely* on this no-doubt sensible system, while making an order expressed as being due within 28 days (our normal practice).

112. We did float the possibility with the parties of taking a novel approach and making an order providing for a low monthly payment, but allowing the Tribunal to increase payment if, for instance, the property were sold. However, we concluded that this was not an initiative that the Tribunal could reasonably take without there being pre-existing provision for supervision of repayment by the Tribunal. It would involve a novel approach that could create administrative burdens which it would not be appropriate for us to consider on the basis of this case alone.
113. We therefore concluded that we should make an order in the normal terms, but in doing so, should take proper account of the Respondent's very limited current income.
114. A 30% award would amount to £2,094. That is not a sum that we think the Respondent could possibly afford. We think that the very most we can reasonably order, in the light of the Respondent's means, is £400, taking into account the reimbursement of fees.

Reimbursement of Tribunal fees

115. The Applicant applied for the reimbursement of the application and hearing fees paid by the Applicants under Rule 13(2) of the Rules. In the light of our findings, we allow that application.

Rights of appeal

116. 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 London regional office.
117. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
118. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

119. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Review of the decision

120. On 2 February 2026, the Respondent applied to the Tribunal to review this decision. As a result, small changes have been made to paragraphs 19, 61, 62, 65, 106, 108 and 110. It is not necessary to further detail the changes, which do not make any difference to the outcome.

Name: Tribunal Judge Richard Percival

Date: 31 December 2025
25 February 2026
(review)