FIRST-TIER TRIBUNAL

PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AZ/HMF/2025/0710.**
Property	:	**1D Kneller Road, Brockley, London SE4 2AR.**
Applicant	:	**(1) Ruby Hann** **(2) Georgia Wade** **(3) Fiona Graham**
Representative	:	**Mr Cairns of Justice for Tenants**
Respondent	:	**Holbrook Investments Limited.**
Representative	:	**Mr Sebastian Reid**
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 N O'Brien** **Ms S Coughlin MCIEH**
Date of Hearing	:	**6 October 2025**
Date of Determination	:	**3 November 2025** **26 February 2026**

AMENDED DETERMINATION

"We exercise our powers under Rule 50 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 correct the clerical mistake in our Decision dated 3 November 2025 Our amendments are made in bold red type. We have corrected our original Decision because an error in calculating the fees paid by the Applicants.

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(1) The Tribunal makes a rent repayment order in favour of the First Applicant in the sum of £2602.45.

(2) The Tribunal makes a rent repayment order in favour of the Second Applicant in the sum of £4374.70.

(3) The tribunal makes a Rent Repayment Order in favour of the Third Applicant in the sum of £5072.62.

(4) The Respondent must reimburse the Applicants in respect of the fees that have paid in the sum of ~~£330.~~ £447

(5) The above sums must be paid within 28 days of this determination.

(6) The amended fee, or any balance, to be paid within 28 days of this amended determination

THE PROCEEDINGS

1. On the 12 February 2025 the Tribunal received an application under section 41 of the Housing and Planning Act 2016 (the 2016 Act) from the applicant tenants for a rent repayment order (RRO). They asserted that the Respondent, their former landlord, committed an offence of having control of or, managing a house in multiple occupation that was required to be licensed but was not and thus had committed an offence pursuant to s72(1) of the Housing Act 2004. The Applicants sought RROs for the period 14 February 2023 to 13 February 2024 in the sum of £20,084.02.

2. Directions were issued on 23 May 2025 and the matter was set down for a hearing on 6th October 2025. Pursuant to the directions the Applicants and the Respondent have both filed bundles for use at the hearing.

3. All three applicants attended the hearing and were represented by Mr Cairns of Justice for Tenants. The Respondent landlord was represented by Mr Reid of counsel. We heard evidence from the three Applicants and a Miss Henko who is an employee of the Respondent's managing agent; Urban Spectrum Property Management Ltd. Miss Henko had not formally supplied a witness statement for the proceedings, but she told us that she assisted in the preparation of the Respondent's statement of case, and was in a position confirm from her own knowledge that the contents of that statement of case were true. Mr Cairns consented to her giving evidence on behalf of the Respondent.

Factual Background

4. The following matters were not in dispute. The subject property is a three-bedroom three storey terraced house located in the London Borough of Lewisham (LBL). It is located in an area which is subject to an additional licencing scheme introduced by LBL in April 2022. This requires all houses in multiple occupation (HMOs) which are not subject to mandatory licencing to be licenced by the local authority. Consequently the property required a HMO licence if at any time it was occupied by three or more

persons consisting of two or more households. At all material times the property was occupied by three unrelated persons and Mr Reid accepted on behalf of the landlord at the hearing that at all times material to this application, the property required a HMO licence pursuant to LBL's additional licencing scheme. The Respondent's agent did not apply to LBL for a licence until 14 February 2024.

5. Ms Graham and Ms Wade moved into the property in 2021. Miss Hann moved in on 13 October 2023. Both Ms Wade and Ms Hann moved out on 12 December 2024. Ms Graham moved out in April 2024 and was replaced by a Mr Daniel Cullen who has played no part in the application.

6. Ms Graham seeks a rent repayment order in respect of the rent she paid from 14 February 2023 to 13 February 2024 in the sum of £8454.38. Ms Wade seeks a RRO in respect of the rent she paid between the same dates of £7291.18 being the rent paid during that period less the housing element of universal credit she received in the same period of £1033.04. Ms Hann seeks a RRO in respect of the rent she paid between 13 October 2023 to 13 February 2024 in the sum of £4337.42. Those figures are agreed by the Applicants and the Respondent as representing the maximum RRO which the tribunal could make in respect of each applicant.

7. In its statement of case the Respondent asserted that the property was not a HMO as defined by the Housing Act 2004 , however the Respondent now accepts that the property was a HMO which should have been licenced pursuant to LBL's additional licencing scheme and that it was not licenced. However the Respondent's position is that it had a reasonable excuse for not having a licence, and consequently is not guilty of any offence. In short the Respondent submits that the failure to apply for a licence was due to an oversight on the part of its managing agent. Alternatively it submits that the quantum of any RRO should be substantially reduced to take into consideration the low level of culpability and its good conduct as a landlord.

8. The issues that we have to decide therefore are;

   (i) Whether the Respondent had a reasonable excuse for being in control of or managing a HMO without a licence
   (ii) If not, whether we should make an RRO; and if so
   (iii) In what amount.

The Relevant Law

9. The power of local authorities to designate particular areas as being subject to an additional licencing regime is contained in sections 56 to 60 of the 2004 Act. By virtue of s.72(1) of the 2004 Act a person commits an offence if they are in control of or manage a HMO which is required to be licenced by virtue of Part 2 of the Act but is not so licenced. In proceedings against a person for an offence under s72(1) of the 2004 Act it is a defence that he had a reasonable excuse for having control of or managing the house without the required licence; s72(5)(a) of the 2004 Act.

10. Section 40 of the HPA 2016 provides;

(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, or…

(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.

11. Section 41 of the HPA 2016 provides

(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.

12. Section 43 of the HPA 2016 provides;

(*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 section 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);

<u>Reasonable Excuse</u>

13. 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?"

> *49. The Tribunal then dealt with a particular point which is regularly encountered in HMO licensing cases and which therefore merits attention:*

> "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".*

14. The tribunal must consider whether the Respondent has a reasonable excuse whether or not he raises it as a defence. If it is raised by the Respondent the burden is on him or her to prove it to the civil standard (i.e. on the balance of probabilities) and not the criminal standard (beyond all reasonable doubt); see *Thurrock Council v Palm View Estates [2020] UKUT (LC) 355*.

15. 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.

Quantifying the RRO

16. 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.

17. 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)."

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.

Did the Respondent have a Reasonable Excuse?

20. The Respondent's case essentially is that the failure to apply for a licence was due to pure oversight on behalf of its agent Urban Spectrum Property Limited. Ms Henko told us that the agency manages about 600 properties. She estimated that they managed approximately 80-100 tenancies on behalf of the respondent landlord and that approximately 63 of those were licenced pursuant to mandatory licencing or additional or selective licencing schemes in place in the boroughs in which the properties are situated. On 15 January 2024 the agency emailed LBL to enquire about the licencing status of 8 properties it managed in Lewisham because it had no record of any licence being issued in respect of them. Four of the properties were properties owned by the Respondent in Kneller Road. No response was received from LBL and on 14 February 2024 the agency applied for an additional licence in respect of 1d Kneller Road. Ms Henko explained to us that the fact that the application was accepted by LBL's online portal indicated that there was no pre-existing licence or application for a licence in place for that property. She explained that her agency was well aware of the licencing requirements in Lewisham but that due to an oversight no application had been made in respect of 1D Kneller Road. This was not a case of ignorance of the relevant licencing requirements.

21. The licence was granted by LBL subject to the provision of a fire blanket in the kitchen and a self-closing mechanism on the door between the kitchen and the hallway. No other specific conditions regarding remedial works were attached to the grant of the licence.

22. Mr Cairns did not accept that an administrative oversight on the part of the Respondent's agent amounted to a reasonable excuse. He pointed out that the Respondent had not disclosed the agreement between it and Urban Spectrum Properties Limited and so the tribunal could not be satisfied that the agent had any contractual obligation to keep the landlord abreast of licencing requirements or to make any requisite applications on its behalf.

23. We accept the evidence of Ms Henko, but we do not consider that the Respondent has demonstrated that it had a reasonable excuse for being in control of or managing an unlicenced HMO. While it seems that, whatever the terms of the agreement between the parties, it was the understanding of the Respondent and its agent that the agent would manage the licencing issues relevant to the Respondent's portfolio, we have no information to indicate that the Respondent or its officers took any steps to ensure that it complied with its licencing obligations other than entrust a third party to make any necessary applications. We do not know what steps the Respondent took to satisfy itself of the competence of its agent. The Respondent owns a large portfolio of rental properties and in our view it is not sufficient for such a landlord to simply delegate its licencing responsibilities to an agent. Agents can make mistakes, as appears to have happened in this case.

24. Consequently we find that the offence has been committed, the Respondent does not have a reasonable excuse and that there is no reason not to make an RRO in this case.

Amount of RRO

25. The only factual issue between the parties is whether there was any relevant conduct on the part of the landlord which would merit a higher award. The Applicants consider that the Respondent's agent was very slow to respond to complaints of disrepair. In particular we were told that there was a persistent serious leak affecting Ms Graham's bedroom which started in 2021 and was not resolved until March or April 2022. In addition the doorbell did not work. They were also critical of the lack of any emergency contact numbers and point to the fact that there was no fire blanket or self-closing mechanism on the kitchen door.

26. On behalf of the Respondent Mr Reid submitted that the Respondent had been on the whole a good landlord. He submits that the property was in very good condition and that the Respondent had complied with all other regulatory requirements such as the provision of gas safety certificates. He points to exhibit H to the Respondent's statement of case which is a record of the repair and maintenance works carried out on the property during the Applicants' occupancy.

27. We have no information as regards the financial position of the Respondent but note that it owns a large portfolio of properties. It has no previous convictions for a licencing offence of which we are aware.

28. Mr Cains submitted than an award of 85% would be appropriate. Mr Reid reminded us that the Respondent was not a 'rogue landlord' and that it was

the investigations carried out by its agent which revealed the error and led to the application being made; this is not a case where the landlord had to be pursued by the local authority to make the necessary application. He submitted that any award should be rather less than 50%.

29. We do not consider that this is a particularly serious offence bearing in mind the wide range of offences for which an RRO can be made. We bear in mind that this is not a case of a landlord who is ignorant of its responsibilities but a case of oversight on the part of the landlord's agent who was fully aware of them. This would point to a lesser RRO. However we also bear in mind the fact that the property was operating as an unlicenced HMO for nearly two years and the fact that the Respondent owns a substantial portfolio of properties. We accept that the Respondent's agent was not as responsive as it might have been as regards repairs, but we do not consider that the conduct of the Respondent was sufficiently poor in that respect to merit a higher RRO.

30. Taking all of the above into account we make an award of 60% of the maximum in respect of each applicant.

31. The applicants have applied for an order for the reimbursement of fees. As they have substantially succeeded in this application, we will make that order.

Name: Judge O'Brien Date 3 November 2025
26 Feb 2026

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.