FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BH/HMF/2025/0736**
Property	:	**(x3) 35 Rodney Place, London, E17 5NN**
Applicants	:	**(1) Louis Milner** **(2) Frances Lobo** **(3) Oscar Price**
Representative	:	**Mr. Acharya of Justice for Tenants**
Respondents	:	**(1) Helen Driver** **(2) Paul Fitness** **(3) Estates 17 Ltd**
Representative	:	**The First and Second Respondents not represented.** **Mr. H. Burroughs of counsel, instructed by the Smith Partnership Solicitors, for the Third Respondent**
Type of application	:	**Application for a rent repayment order by tenant** Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016
Tribunal	:	**Judge S.J. Walker** **Tribunal Member Mr. O. Miller**
Date and place of Hearing	:	**10 Alfred Place, London WC1E 7LR** **27 February 2026**
Date of Decision	:	**22 April 2026**

DECISION

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(1) The Tribunal makes a Rent Repayment Order under section 43 of the Housing and Planning Act 2016 requiring the

Respondent to pay to the Applicants jointly the sum of £10,763.62

(2) The application for an order under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the re-imbursement by the Respondent of the fees of £557 paid by the Applicants in bringing this application is granted. Payment is to be made within 28 days.

Reasons

The Application

1. The Applicants seek a rent repayment order pursuant to sections 43 and 44 of the Housing and Planning Act 2016 ("the Act"). They seek an order in respect of rent paid during the period from 23 April 2024 to 26 February 2025 in the sum of £24,033.89 (see para 22 at page A5).

2. The application was received by the Tribunal on 20 March 2025 and is in time. It alleges that the Respondents have each committed an offence contrary to section 72(1) of the Housing Act 2004 ("the 2004 Act") - having control or management of an unlicensed House in Multiple Occupation ("HMO").

Procedural Background

3. Directions were issued by the Tribunal on 23 September 2025.

4. On 27 October 2025 the Third Respondent, Estates 17 Ltd., applied to the Tribunal for the case against them to be struck out on the grounds that the Tribunal had no jurisdiction to make an order against them. The basis of their application was that they were not the Applicants' immediate landlord and so no order could be made against them. The application was supported by a witness statement from Mr. John William Ellis together with an 89 page bundle of exhibits.

5. The First and Second Respondents objected to the application, as did the Applicants. The strike-out application was decided by Judge Jack on 8 January 2026. The application was refused on the grounds that there was no certainty as to the contractual arrangement between the Respondents.

The Hearing

6. The hearing was conducted face-to-face. All the Applicants attended and were represented by Mr. Acharya from Justice for Tenants. The First and Second Respondents attended and were not represented. The Third Respondent was represented by Mr. Burroughs of counsel. Oral evidence was given by all three Applicants and the First and Second Respondents. Oral evidence on behalf of the Third Respondent was given by Ms. Jade Bratton. In each case the witness adopted their witness statement and they were then questioned by the other parties and/or the Tribunal.

Documents

7. The Tribunal had before it the following. From the Applicants it had a bundle comprising 287 numbered pages. It also had a 10-page document described as the Applicants' Reply, a supplementary un-numbered bundle comprising 46 pages, a skeleton argument, and a bundle of authorities. From the First and Second Respondents it had a bundle comprising 296 numbered pages together with a spreadsheet dealing with rent and Universal Credit calculations and a skeleton argument. From the Third Respondent it had a bundle of 398 un-numbered documents together with a skeleton argument. The Tribunal also had the Third Respondents' bundle produced in support of its strike-out application. In the course of the hearing the Tribunal was also provided with a copy of the Third Respondent's agreement with the First and Second Respondents including their terms of business, and a statement of account from the Third Respondent addressed to the First Respondent. References to pages in the Applicant's bundle are to the numbers printed on the pages in that bundle and have the prefix A. References to pages in the Respondents' bundles have the prefix R1 or R3 and are to the printed number or the electronic number respectively. Where necessary, in what follows other documents will be specifically identified.

The Legal Background

8. The Tribunal may make a rent repayment order when a landlord has committed one or more of a number of offences listed in section 40(3) of the Act. This list includes an offence contrary to section 72(1) of the 2004 Act. Such an offence is committed if a person has control of or manages an HMO which is required to be licensed but is not. By section 61(1) of the 2004 Act every HMO to which Part 2 of that Act applies must be licensed save in prescribed circumstances which do not apply in this case.

9. Section 55 of the 2004 Act explains which HMOs are subject to the terms of Part 2 of that Act. An HMO falls within the scope of Part 2 if it is of a prescribed description (a mandatory licence) or if it is in an area for the time being designated by a local housing authority under section 56 of the 2004 Act as subject to additional licensing, and it falls within any description of HMO specified in that designation (an additional licence).

10. To be an HMO of any description the property must meet one of the tests set out in section 254(1) of the 2004 Act. In this case the relevant test is that in section 254(2) the standard test. A building meets the standard test if it;

> "*(a) consists of one or more units of living accommodation not consisting of a self contained flat;*
> *(b) the living accommodation is occupied by persons who do not form a single household …;*
> *(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;*
> *(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 the 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.*"

11. By virtue of section 258 of the 2004 Act persons are to be regarded as not forming a single household unless they are all members of the same family. To be members of the same family they must be related, a couple, or related to the other member of a couple.

12. An offence under section 72(1) can only be committed by a person who has control of or manages the property in question. The meanings of these terms is set out in section 263 of the 2004 Act as follows;

"(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 two-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.

13. It is a defence to a charge of an offence under section 72(1) of the 2004 Act that a person had a reasonable excuse for having control of or managing an HMO which did not have a licence (section 72(5)). Any such defence must be established by the defendant on the balance of probabilities.

14. By virtue of the decision of the Supreme Court in the case of Rakusen -v- Jepsen and others [2023] UKSC 9 an order may only be made against the immediate landlord of a tenant.

15. An order may only be made under section 43 of the Act if the Tribunal is satisfied beyond reasonable doubt that an offence has been committed.

16. By section 44(2) of the Act the amount ordered to be paid under a rent repayment order must relate to rent paid in a period during which the landlord was committing the offence, subject to a maximum of 12 months. By section 44(3) the amount that a landlord may be required to repay must not exceed the total rent paid in respect of that period.

17. Section 44(4) of the Act requires the Tribunal to have regard to the conduct of the landlord and tenant, the financial circumstances of the landlord and whether or not the landlord has been convicted of a relevant offence when determining the amount to be paid under a rent repayment order.

Matters Not In Dispute

18. At the beginning of the hearing the Tribunal ascertained from the parties that the following matters were not disputed;
    (a) it was agreed that during the relevant period the property required an HMO licence;
    (b) it was agreed that during the relevant period no licence had been granted and that none had been applied for;
    (c) it was agreed that all three Applicants were in occupation throughout the period in question;
    (d) it was agreed that the property was the Applicants' only or main residence and that the property was only used for the purpose of their occupation; and
    (e) in their skeleton argument (at para 3) the Third Respondent accepted that they were a person managing the property for the purposes of section 72 of the 2004 Act.

Findings of Fact

19. On the basis of the documentary evidence, including witness statements, and the oral evidence given by the parties, the Tribunal was satisfied of the following.

20. The property is a two-storey end of terrace house with three bedrooms and shared facilities. It is owned jointly by the First and Second Respondents (page A221).

21. The first of the Applicants to move into the property was Ms. Lobo, the Second Applicant. This was on 27 February 2020. She moved in together with two friends. All three entered into an agreement dated 12 February 2020 (pages A61 to 75). This was described as an assured shorthold tenancy agreement between, on the one hand, the First and Second Respondents (described as "the landlord") and, on the other, Ms. Lobo and her two friends. The agreement appears to have been produced by the

Third Respondent. In the agreement the term landlord is defined as including anyone owning an interest in the property (page A63). The term of the tenancy is said to be 12 months from 29 February 2019 (page A62). This is clearly an error and, given the date the agreement was entered into and the fact that 2019 was not a leap year but 2020 was, this must mean 29 February 2020 for 12 months. The agreement also refers to an agent, and the term "agent" is defined as being Estates 17, the Third Respondent. The rent was £1,800 per calendar month. This was to be paid to the agent. Under the terms of the agreement the tenants were required to pay for all utilities (Clause 1.4 at page A64). The agreement was signed by both the First and Second Respondents under the heading "signed by or on behalf of the landlord" (page A75). It was not signed by or on behalf of the Third Respondent.

22. As time went on Ms. Lobo's friends moved out and other people moved in. As a result, in September 2022 a new tenancy agreement was entered into (pages A76 to A97). This agreement was for a tenancy of 12 months from 28 August 2022 at a monthly rent of £1,900. In it the tenants are described as Ms. Lobo and two others, and the landlord is described as "Helen Driver, c/o Estates 17 Ltd." (page A77). At page A77 the agreement states that all rental payments should be made to "*the Landlord's Agent's bank as follows*" and the Third Respondent's details are given. The agreement contains the same definitions of "landlord" and "agent" as in the previous agreement. Again, utilities are to be paid for by the tenants.

23. In due course the two tenants living with Ms. Lobo decided to move out. On 25 September 2023 the Third Respondent contacted Ms. Lobo and informed her that the landlord was looking to renew the contract for a further 12 months, that the rent would be increased to £2,300 per month, and that the landlord was happy to deal with the new tenants within the renewal process (page R3-126). A number of e-mails were exchanged between the two, see pages R3-116 to 125. In these it is clear that Ms. Bratton from the Third Respondents is in communication with the First Respondent with regard to the level of rent to be charged, for example at page R3-119 she says;

> "*I will speak to the landlord and see if the rent can remain the same for the first 6 months and increase after ….* "

Also, at page R3-117 the landlord's offer is quoted to Ms. Lobo.

24. Eventually an agreement was reached and on 29 September 2023 Ms. Lobo e-mailed the Third Respondent saying that she had decided to stay on and giving the details of her two new housemates, Mr. Milner and Mr. Price, the First and Third Applicants. In fact, Mr. Price, had already moved into the property on 27 September 2023 and Mr. Milner then moved in on 29 October 2023. However, no further written tenancy agreements were created.

25. There is no dispute that during the period in question rent was paid to the Third Respondent. Equally, there is no dispute that this rent, less management fees and expenses, was paid on by them to the First

Respondent – as is shown in the statement for the 2024/2025 financial year sent by the Third Respondent to Ms. Driver which shows gross rent receipts of £29,400 and a net property income of £26,762.20.

26. The licensing history of the property is set out in a letter from the local authority to the Third Respondent in response to their making representations as to why they should not pay a financial penalty of £19,500 for failure to have an HMO licence - see page R3-19. It is as follows.

27. On 27 April 2016 a selective licence was granted for the property. The licence holder was the First Respondent, and the licence was valid until 31 March 2020.

28. On 20 March 2020 an additional licence application for the property was submitted by the Second Respondent. This stated that the freeholders were the first two Respondents, that the managing agents were the Third Respondent and the proposed licence holder was the Second Respondent. The Third Respondent's case is that they were not involved in making this application. Their position is that on 19 March 2020 the Second Respondent e-mailed them stating that he was sorting out the rental licences for the property, and he asked for a copy of the fire safety certificate for the purposes of that application (see page R3-188). This is consistent with the local authority stating that the application was made by the Second Respondent.

29. On 2 October 2020 draft licence letters were sent to all three Respondents. These advised that the authority were proposing to grant an HMO licence. However, as the property did not have the necessary planning permission, the intention was to grant a licence for a period of 1 year only. Comments and representations were invited but none were received.

30. On 28 October 2020 the final licence, which was indeed granted for only a year, was sent to all three Respondents.

31. On 2 April 2024 the Third Respondent conducted an audit of their managed properties and could not find a record of this property being licensed. They therefore wrote to the First Respondent raising this (page R3-193). She replied stating that she would look into it to see if she could find it, and asking for the cost of the licence (page R3-195). On 3 April 2024 the First Respondent sent an e-mail in which she said;

> "*I'm pretty sure I got a longer licence in 2020 or 2021. Can you see if you can find it before we renew?*" (page R3-193).

She later sent a further e-mail stating;

> "*we renewed. I have emails to show we were doing the application with Natalie [our former property manager] as we needed a fire safety certificate.".*

32. It became clear to the Respondents, therefore, that there was a strong possibility that an offence had been committed from 2021 onwards as the

property was being occupied as an HMO without a licence. They therefore sought ways to rectify the situation. This is addressed in the witness statement of Jade Bratton (from para 44 at page R3-109).

33. Any application for an additional HMO licence was unlikely to succeed as the property required planning permission. The proposed alternative was to reduce the occupancy of the property to 2 people, meaning that the property would only need a selective licence. Correspondence began between the Third Respondent and the Applicants in which agreement was sought to do this. In fact, on 8 April 2024 the Third Applicant, Mr. Price, said he was looking to move out in the near future in any event (see page R3-164).

34. On 15 April 2024 an application was made for a temporary exemption notice for the property by the Third Respondent. The basis for this was that it was said that one of the tenants would be leaving and the other 2 would remain. On 23 April 2024 that application was refused on the grounds that a selective licence was required for the property (see page R3-21).

35. On 26 July 2024 the local authority sent warning letters to all three Respondents informing them that the property appeared to be privately rented without the required licence.

36. On 24 February 2025 a licence application was submitted for the property by the Third Respondent. They were named as the managing agent and the First Respondent was named as the proposed licence holder (page R3-22). A selective licence was granted to the First Respondent on 22 July 2025 (page A39).

37. Meanwhile, Mr. Price, the Third Applicant, did not move out as planned. Ms. Lobo's oral evidence was that the Applicants were advised by the local authority that nobody needed to move out as there was no valid licence and so a valid notice to quit could not be served. She said that the local authority put them in touch with their representatives. In addition, both she and Mr. Price said that, in any event, he could not find anywhere else to go, which the Tribunal accepted.

38. Mr. Price finally left the property on 26 February 2025, after which date any offence ceased to be committed.

The Position of the Third Respondent

39. In order to simplify this decision, it is helpful to consider the position of the Third Applicant first. This was made clear in the skeleton argument produced on their behalf. It, in effect, repeats the substance of their previous application to strike out the case against them. Whilst they accept that they were a person managing the property, they argue that they were not the Applicants' immediate landlord and so the Tribunal has no jurisdiction to make an order against them.

40. The Tribunal accepted that argument and so it was not necessary to consider whether they had committed an offence or not.

41. The reasons for that conclusion are that it is obvious from the documentation that the Third Respondent was nothing more than an agent acting at arms-length from the owners of the property.

42. The Applicants' case was that the Third Respondent was in fact a landlord. In their skeleton argument (para 14) they argue that this is because they have not provided proof to show such an agency agreement, that they granted the tenancy, and they were the main port of call for the tenants.

43. Similar arguments were put forward by the First and Second Respondents, though these were directed more squarely at the question of whether they themselves had a reasonable excuse based on their reliance on the Third Respondent rather than the more technical question of who was in fact the landlord.

44. The fact that a company receives rent and deals with day-to-day management of a property is not inconsistent with their being a mere agent. Indeed, those are the activities for which landlords frequently employ agents.

45. The Tribunal had the benefit of seeing the agreement between, on the one hand, the First and Second Respondents, and, on the other, the Third Respondent. This is dated 2 April 2020. It shows an agreement to provide the full management service. The terms show that this service includes marketing the property and finding tenants. By clause 1.13 the Third Respondent agrees to collect the rent, with this being then paid on to the landlord. By clause 1.21 they are authorised to instruct repair works to be undertaken and by clause 3.3 they are authorised to sign tenancy agreements and legal notices on behalf of the landlord.

46. This clearly evidences a normal arms-length commercial agency agreement between a landlord and a managing agent. This is also entirely consistent with the wording of the tenancy agreements themselves and with the evidence referred to above where Ms. Bratton is liaising with Ms. Driver in respect of rent increases.

47. In their response to the Third Respondent's application to strike out the case against them the Applicants' representatives stated as follows (page R3-370)

> "*We appreciate that ordinarily, the 'landlord' is understood to be the entity listed as such on the relevant tenancy agreement. However, the Tribunal is familiar with several precedents where the legal reality of a letting arrangement significantly differs from that presented in written documentation*".

That is quite true. However, this is undoubtedly not such a case. There is no basis for concluding that the ordinary situation described by the Applicants is not the situation in this case.

48. The Tribunal therefore decided that it had no jurisdiction to make an order against the Third Respondent on the basis that they were not the Applicants' immediate landlord and so the decision of the Supreme Court in Rakusen applies.

The Position of the Second Respondent

49. The unchallenged oral evidence of Mr. Fitness, the Second Respondent, was that he and Ms. Driver, the First Respondent, separated in 2022 and that, thereafter, he was not party to any agreements relating to the property. He also never received any rent from the property after 2022.

50. This is consistent with the documentary evidence which shows that, whilst he was involved in applying for the licence in 2020, and he was named as the landlord in, and was a signatory to, the tenancy agreement from that year (see page A75), he is not named as the landlord in the September 2022 tenancy agreement.

51. Also, he is named as a party to the agreement with the Third Respondent in 2020, but the statement of account from November 2025 is addressed solely to Ms. Driver.

52. On this basis, the Tribunal concluded that it was unlikely that the Second Respondent had committed any offence as he had not received any rent during the relevant period, and so was neither a person in control of the property nor managing it.

53. In any event, the Tribunal was satisfied that even if an offence had been committed by the Second Respondent, he too was not the Applicants' immediate landlord. There was no evidence of him having any involvement with the property from 2022 onwards and he is not named as the landlord in the agreement of that year. So, just as with the Third Respondent, the Tribunal concluded that it had no jurisdiction to make an order against him.

The Position of the First Respondent

54. Putting aside for the moment the question of reasonable excuse, it was clear to the Tribunal that the First Respondent was guilty of an offence. She was the owner of the property and received rents from its occupiers through her agent, so she was a person managing the property. The property was required to have a licence but did not.

55. The issue in this case was whether or not the First Respondent had a reasonable excuse for that offence being committed. This requires considering why it was that she was a person managing the property without a licence.

56. The obvious answer to that question is that there was no licence in place because the First Respondent failed to apply for a new one when the licence which was issued in 2020 expired.

57. There is no doubt that the First Respondent was aware of the need for rented properties to have some kind of licence. This is made clear by the fact that the First Respondent was previously the holder of a selective licence for the property (see the letter from the local authority at page R3-20). It is also shown by the fact that she and the Second Respondent also applied for a licence for another property in Fairview Close in 2020 (see para 7 at page R1-8).

58. The Tribunal was also satisfied that the First Respondent was aware of the fact that an application had been made for an additional licence in 2020. In her own statement of case she states that she paid for that application (See page R1-3). Later, in correspondence with Ms. Bratton she stated "I'm pretty sure I got a longer licence in 2020" (see above).

59. There is also no doubt that the First Respondent was aware that in 2020 the property was let to 3 people as she was a signatory to the tenancy agreement which provided for three tenants.

60. The First Respondent argued that she had a reasonable excuse for not renewing the licence because "*as far as Helen Driver was aware, the licence was still valid until 2025*" (page R4).

61. The letter from the local authority to the Third Respondent setting out the licensing history states that copies of the draft licence letter and the issued licence were sent to the First Respondent at her address in Manor Road (page R3-20). Despite this, her evidence was that she never received either.

62. If it were the case that the First Respondent was completely unaware of the outcome of the licence application the Tribunal would have expected there to be evidence of her seeking to find that out, yet there is none. It is likely, therefore, that she was aware that the application had been granted.

63. However, even if she was not, or even if she was not aware of the conditions of the licence, that is not enough on its own to amount to a reasonable excuse. Having been the holder of a selective licence in the past she must have been aware that licences come with conditions which are set out in the licence. Although one of the conditions would relate to the length of the licence, there would be many others which would need to be complied with. Yet there is no evidence that the First Respondent ever made any enquiries to find out whether the licence had even been granted, how long it was issued for, or what other conditions applied to it. The fact that she received a 5-year licence in respect of the Fairview Close property may suggest that she assumed that she had a 5-year licence for this property. However, that is not a reasonable assumption to make, not least as she would need to know what other conditions applied and, had she found that out, she would have known it was only a 1 year licence.

64. In the view of the Tribunal such a failure is inconsistent with the conduct of a reasonable landlord. It is not enough for a landlord simply to obtain

a licence. They should make themselves aware of the requirements of that licence and inform themselves of what they are required to do.

65. In her statement of case the First Respondent seeks to establish a reasonable excuse on the basis that the Third Respondent was responsible for ensuring that the property was licensed (see page R1-2). She states that they had "*sole responsibility for ..... licence applications*" and that "*The First Respondents reasonably relied on the Managing Agent to discharge all statutory and operational duties*".

66. That is simply not consistent with the evidence. The Third Respondent's case is that they were not responsible for making licensing applications unless expressly asked to do so. This is consistent with the terms of business which do not place any responsibility on the Third Respondent for advising on or ensuring compliance with Housing Act licensing requirements (whereas they do in fact take on such a responsibility in respect of the Gas Safety (Installation and Use) Regulations 1998– see clause 1.22). The First Respondent has not provided any evidence to show that the Third Respondent had any responsibility for ensuring the property was licensed prior to the discovery that there was no licence in place. Indeed, the evidence shows that the First and Second Respondents had decided to deal with the licensing themselves.

67. It is correct that the Third Respondent did start to deal with licensing matters once the absence of a licence was discovered, but that does not affect the key question of why there was no licence in the first place.

68. In her statement of case and skeleton argument the First Respondent also seeks to rely on alleged failures by the local authority. Part of that argument is clearly misconceived, as it is suggested that as the local authority are not a party to the proceedings it cannot be shown beyond reasonable doubt that an offence has been committed. As explained above, subject to the issue of a reasonable excuse defence, the offence has been made out.

69. As explained above, to the extent that there was any failure by the local authority to notify the First Respondent of the fact that the additional licence applied for in 2020 had only been granted for 1 rather than 5 years, that does not absolve the First Respondent from her duty as a landlord to inform herself of the terms of the licence that was granted.

70. It is also suggested in her statement of case that the Third Respondent introduced three unrelated tenants without first notifying her of the different licensing requirements (page R1-4).

71. Firstly, there is no doubt that the First Respondent was aware that the property was let to 3 people. Also, it is clear that as time went on she was aware that the identity of the tenants changed and she was consulted about this – see the correspondence at page R3-126. Whilst it is the case that she did not sign the 2022 tenancy agreement (see page R3-162) she had given

authority to her agent to sign future agreements and must have been aware that this may happen in the future. This is not a case where the landlord has increased the number of tenants unbeknown to the landlord.

72. Secondly, as explained above, the Third Respondent had not taken on any responsibility to provide licensing advice. Also, in any event, the 2020 application was for an additional licence, not a selective one as previously, so there must have been awareness of some change.

73. In summary, in 2020 the First Respondent had already held a selective licence so was aware that she may need to have a licence in order to let a property. She was aware that a licence application had been made but she did not know that the licence which was granted was for only 1 year rather than 5. She did not find out that the licence was only granted for 1 year until 2024. However, the Tribunal is not satisfied that the First Respondent has shown that she had a reasonable excuse for that failure to find out that her licence was only for 1 year and, therefore, for the subsequent absence of a licence and the commission of an offence from 2021 onwards.

74. Much of the First Respondent's case concerns the situation after the absence of a licence was discovered and what the Third Respondent and the local authority did thereafter.

75. There is no dispute that once the absence of a licence was discovered she sought the assistance of the Third Respondent to rectify the situation. However, she was, as a result of her failure to ensure that the proper licence remained in force, in a difficult position. She could not issue a section 21 notice to remove the Applicants. It was unlikely an application for an additional licence would be successful as the licence granted in 2020 was limited to 1 year because of the lack of planning permission. There is no suggestion that the First Respondent took any steps to deal with that. A selective licence could not be applied for as there were too many occupants.

76. The only practical way forward, which the First Respondent says she was advised of by both the local authority and the Third Respondent, was to reduce the number of occupants to 2 (see page R1-5). This could only be done voluntarily. The First Respondent complains that the Third Respondent did not inform her that Mr. Price, the Third Applicant, was in fact still in occupation until February 2025.

77. It should be borne in mind that Mr. Price had every right to remain in the property as he was a lawful tenant. His own evidence was that he did not move out until February 2025 because he could not find anywhere else to go. The Tribunal accepted that. However, even if that were not the case and he decided to remain, possibly acting on the advice that the Applicants had received that a section 21 notice served on them would not be valid, he cannot be criticised for that. The First Respondent has sought to rely on the failure of Mr. Price to leave until February 2025 as another basis for

her having a reasonable excuse. In view of the fact that he had a right to remain there, any such argument is rejected by the Tribunal.

78. The First Respondent also seeks to blame the Third Respondent for not removing Mr. Price from the property earlier and/or not informing her earlier that he was still in occupation, thereby preventing her from taking her own steps to deal with the situation. She has not, though, explained what she would have done which they themselves were not able to do. Given that Mr. Price was not able to leave earlier as he had nowhere else to go, it is in any event difficult to see what she could have done other than, perhaps, offer him alternative accommodation, of which there is no suggestion.

79. The First Respondent also makes similar complaints about alleged failures by the local authority to provide her with appropriate advice and/or information about her applications and options.

80. Whilst there may be some substance to some of these criticisms, in particular as regards the information provided by the Third Respondent about Mr. Price's continued occupation, they do not affect the underlying reality. Mr. Price remained in occupation because he had nowhere else to go and nobody was in a position to force him to leave lawfully. It follows, therefore, that the fact that the offence continued to be committed was not in fact because of any failure by either the Applicants, the Third Respondent or the local authority. The reason the offence was being committed was the First Respondent's initial failure to ensure that the property was properly licensed from 2021 onwards.

81. Taking all this together the Tribunal concluded that there was insufficient evidence before it successfully to raise a defence of reasonable excuse. Whilst the First Respondent may well have acted neither deliberately nor with reckless disregard of the legislation, this in itself does not amount to a defence.

82. The Tribunal was, therefore, satisfied that the offence had been committed.

Jurisdiction to Make an Order

83. The next question, therefore, is whether the Tribunal has jurisdiction to make an order. In the case of the First Respondent, there is no doubt that she was the Applicants' immediate landlord as is made clear by the documentation and as is explained above in relation to the Tribunal's conclusions in respect of the Second and Third Respondents.

Amount of Order

84. The Tribunal therefore went on to consider the amount, if any, which it should order the Respondent to pay. In doing this it had regard to the approach recommended by UT Judge Cooke in the decision of Acheampong -v- Roman and others [2022] UKUT 239 (LC) @ para 20. The first step is to ascertain the whole of the rent for the relevant period.

Rent

85. Rent for the property was paid by the Second Applicant as a lead tenant. The amounts she paid are set out in the schedule at page A99. These figures and the payment dates are consistent with the bank statements which are at pages A104 to 119. The period claimed for is from 23 April 2024 to 28 February 2025. This is presumably because during the period from the submission of the TEN application on 15 April 2024 and the refusal of that application on 23 April 2024 no offence would be being committed because of the application of section 72(4)(a) of the 2004 Act.

86. The total paid by the Second Applicant was (£2,300 x 4) plus (£2,500 x 6) = £24,200 plus a pro rata sum for the 6 days from 23 to 28 April 2024 inclusive, which amounts to (£2,300 x 12 / 365) x 6 = £453.70.

87. Thus, the total rent paid in respect of which an order may be made was £24,200 + £433.70 = £24,653.70.

88. The Second Applicant was also in receipt of Universal Credit ("UC"). Section 44(3)(b) of the Act provides that the amount of any order made must not include sums awarded as UC. Therefore, any sums paid to her as the housing element of UC must be deducted.

89. The evidence shows that the Second Applicant received UC in respect of the periods from 28 April 2024 to 27 August 2024 (pages A150 to 178), from 28 September 2024 to 27 November 2024 (pages A185 to 198) and from 28 December 2024 to 27 January 2025 (pages A206 to 212). In each case her entitlement before deductions was £1,026.78 of which £633.33 was in respect of the housing element. In other words, her housing entitlement was 61.68% of her total entitlement. The calculations at page A102 correctly identify the amount of the housing element she received, a total of £734.01.

90. Thus the maximum total amount of rent which the Tribunal may order to be paid is £24,653.70 - £734.01 = £23,919.69.

Utilities

91. By clause 1.5 of the tenancy agreement the Applicants were required to pay for all utilities, therefore no deduction is required in respect of these.

Seriousness of Offence

92. As required by the approach recommended in the case of Acheampong the Tribunal then considered the seriousness of the offence both as compared to other types of offence and then as compared with other examples of offences of the same type. From that it determined what proportion of the rent was a fair reflection of the seriousness of the offence.

93. The offence in question is one contrary to section 72(1) of the 2004 Act. This is, when compared with offences such as unlawful eviction, a more minor offence. This alone would justify a reduction of 25%.

94. The Tribunal also concluded that this was not a serious offence of its kind. Firstly, it considered the impact on the tenants of the absence of a licence. This was not a case where the Applicants had shown that there were numerous serious and widespread safety risks at the property, though there was no fire blanket at the property as required.

95. The Tribunal also noted that the property had been granted an additional licence in 2020. The letter from the local authority makes it clear that the reason why the licence was not granted for a period which would have covered the period in question in this case was that the property did not have planning permission. There is nothing in this letter which suggests that the property was unsuitable as an HMO.

96. The Tribunal accepted that the First Respondent had in the past licensed another property as an HMO and so has more experience than some landlords. However, it also considered the matters put forward by her in respect of her defence. Whilst not accepting that these were sufficient to give rise to a reasonable excuse, the Tribunal considered that they were relevant to her culpability. In assessing the First Respondent's culpability the Tribunal also bore in mind the impact of the discovery that her property was not licensed when she believed it was on her health, as explained in her written submissions and her skeleton argument.

97. In terms of the First Respondent's personal mitigation the Tribunal also took account of the fact that once the absence of a licence was discovered the First Respondent acted promptly and sought urgent assistance from the Third Respondent to seek to resolve the problems.

98. Taking all these factors into account the Tribunal decided that to reflect the lower seriousness of this particular offence and the lower culpability of the First Respondent a further reduction to the total maximum payment of 30% should be made, meaning a reduction to 45% of the maximum.

Section 44(4)

99. The Tribunal then considered whether any decrease – or increase – was appropriate by virtue of the factors set out in section 44(4) of the Act.

100. Although the First Respondent seeks to categorise the delay in the Third Applicant, Mr. Price's leaving the property as poor conduct, the Tribunal did not accept that that was the case. As explained above, he had a right to remain and he cannot be criticised for doing so. In addition, the evidence does not show that he ever made a firm commitment to move out on any particular date.

101. In her statement of case the First Respondent also raises issues about damage to the property caused by the Applicants, and states that works to the property including repair to the decking, repainting, repairing broken door handles, and installing a new sink unit are required at a cost of over £10,000 (page R1 14). Whilst she adds that these issues were identified in a check-out report and confirmed by the managing agent, neither this

report nor any other evidence substantiating her allegations was provided. The Tribunal was, therefore, not satisfied that the Applicants had caused damage beyond reasonable wear and tear as alleged.

102. As far as allegations of poor conduct by the landlord are concerned, these are set out at paragraphs 24 to 35 of the Applicants' statement of case (pages A6-7). In addition to the lack of a fire blanket the allegations are relatively minor, including a failure to provide documentation and a half-hearted response to a mouse infestation.

103. Weighing the evidence and detailed submissions from both sides with regard to the conduct of the parties the Tribunal concluded that there was really very little substance in the allegations from either side which had not already been taken into account when determining the overall seriousness of the offence. Taking everything into account the Tribunal concluded that there was no basis for revising the amount of the order in either direction on the basis of conduct.

104. There was no suggestion that the First Respondent had committed any previous offences.

105. In the hearing the First Respondent raised the question of whether or not she was in a financial position to pay any sum ordered to be paid. This is also addressed in her statement of case at page R1 – 15. However, in those submissions she states that the rental income from the property is £869 per month, which amounts to £10,428 per year, whereas the statement from the Third Respondent shows that her net income for the 2024/2025 financial year was more than twice that, at £26,762.20. The evidence she provided also shows that her mortgage payments at the time were £1,346.38 per month (page R1 278), a total of £16,156.56 per year, meaning that there was an annual profit of some £10,000.

106. Whilst the First Respondent has provided details of her mortgage payments for her own home (page R1 277), her P60 for the financial year ending 5 April 2024 (page R1-281), and her tax figures for the 2023/2024 tax year (page R1-282), she has not provided any documentary evidence in respect of her current finances which would be relevant to the question of her ability to pay.

107. In her oral evidence the First Respondent accepted that she owns three properties. One is her own home, and she has two investment properties. One is the property in this case and the other is now occupied by the Second Respondent, who pays the mortgage on it.

108. No documentary evidence has been provided of the value of these properties, in particular in respect of those which are described as investments, and no satisfactory evidence has been provided of the amount of equity the First Respondent has in those properties.

109. Taking the evidence as a whole the Tribunal was not satisfied that the First Respondent had provided sufficient evidence to justify it in reaching a conclusion that she would not be able to pay any sum ordered by the Tribunal.

110. Taking all that is said above into account, it follows that the total sum payable by the First Respondent to the Applicants is £23,919.16 x 45% = £10,763.62.

111. As the rent was all paid by the Second Applicant the Tribunal makes an order in favour of the three Applicants jointly. Whilst it is a matter for them how the total should be split between them, the evidence suggests that they agreed to split the rent equally between them. That being so, the First and Third Applicants would be entitled to one third of the total rent paid less 65%, which equals £3,698.06 each, leaving the balance of £3,367.50 payable to the Second Applicant. The difference is accountable to the fact that some of her rent was paid by Universal Credit.

112. The Applicants also sought an order under rule 13(2) of the Rules for the re-imbursement of the fees paid for bringing the Application. The Tribunal concluded that, given that the Applicants had succeeded in their application, it was just and equitable to make such an order.

Name: Judge S.J. Walker **Date:** 22 April 2026

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.

- If a party wishes to appeal against this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

- The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

- If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

- The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.