FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BK/HMF/2025/0819**
Property	**:**	**Flat 3, 20 Cockspur Street London, SW1Y 5BL**
Applicant	**:**	**(1) Ahana Verma** **(2) Ewelina Izabela Lakomska** **(3) Srishti**
Representative	**:**	**Mr. Phillips - Justice for Tenants**
Respondent	**:**	**(1) MS Property (MCL) Ltd** **(2) Melina Rita Serpes**
Representative	**:**	**Mr. Siri - Counsel**
Type of application	**:**	**Application for a Rent Repayment Order, pursuant to sections 40, 41, 43 & 44 Housing and Planning Act 2016**
Tribunal member(s)	**:**	**Judge S. McKeown** **Ms. F. Macleod MCIEH** **Judge S. Nihat**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**7 May 2026**

DECISION

Decision of the Tribunal

(1) The name of the First Respondent is amended to MS Property (MCL) Ltd

(2) The Tribunal is satisfied beyond reasonable doubt that the First Respondent committed an offence under Section 72(1) of the Housing Act 2004.

(3) The Tribunal has determined that it is appropriate to make a Rent Repayment Order.

(4) The Tribunal makes a rent repayment order in favour of the Applicants against the First Respondent, in the sum of £15,942.66 (to be apportioned as set out below), to be paid within 28 days of the date of this decision:

(i) The First Applicant - £5,149.33;
(ii) The Second Applicant - £5,552.43;
(iii) The Third Applicant - £5,240.90.

(5) The Tribunal determines that the First Respondent shall pay the Applicants an additional £341 as reimbursement of Tribunal fees to be paid within 28 days of the date of this decision.

Introduction

1. This is a decision on an application for a rent repayment order under section 41 of the Housing and Planning Act 2016 ("the 2016 Act").

Application and Background

2. By an application dated 29 May 2025 (A50) the Applicants apply for a rent repayment order. The application is brought on the ground that the Respondents committed an offence of having control or management of an unlicensed House in Multiple Occupation ("HMO") for failing to have an additional HMO licence ("licence") for **Flat 3, 20 Cockspur Street London, SW1Y 5BL** ("the Property"), an offence under section 72(1) of the Housing Act 2004 ("the 2004 Act").

3. The Property is a three-bedroom flat with a shared kitchen and bathroom.

4. The Applicants were the tenants of the Property. During the period 14 September 2023-3 June 2024, the Property was occupied by at least three people living in two or more separate households and occupying the Property as their main residence:

(a) Ahana Verma – 5 September 2023-19 August 2024;
(b) Ewelina Lakomska – 7 September 2023-18 August 2024;
(c) Srishti – 14 September 2023-14 June 2024.

5. It is said that an application for an additional licence was made on 4 June 2024 (A95).

6. It is said that the First Respondent is listed as the immediate landlord and is the person "having control" of the premises as they received or would receive the rack rent if the Property was let. They are said to have been managing the Property as defined by s.263(2) Housing Act 2004.

7. The Second Respondent is the beneficial owner and is the person "having control" for the same reason. She is also believed to have been "managing" the Property as she is a director of the First Respondent and was said to be the only person with significant control. The address for the First Respondent on the tenancy agreement and Companies House is the same address as registered for the Second Respondent as a correspondence address for another company.

8. The rent was paid to the First Respondent.

9. There are also allegations of poor property management, failure to address repairs, maintenance issue and inadequate fire safety handling/measures.

10. The Applicants seek an RRO. The total amount sought is £21,256.88 for the rent paid between 14/09/23-03/06/24 and split as follows:

(a) Ahana Verma – £6,865.78 – 14/09/23-03/06/24;
(b) Ewelina Lakomska – £7,403.24 – 14/09/23-03/06/24;
(c) Srishti – £6,987.86- 14/09/23-03/06/24.

11. It is said that the Property met the criteria to be licensed under the Additional Licensing scheme and it was situated in an additional licensing area as designated by the City of Westminster. The licensing scheme came into force on 30 August 2020.

12. On 19 September 2025 (A43) the Tribunal issued directions for the determination of the application, providing for the parties to provide details of their cases and the preparation of a hearing bundle.

Documentation

13. The Applicants have provided a bundle of documents referred to comprising a total of 141 pages (references to which will be prefixed by "A__"). This includes a witness statement from Ms. Lakomska (A17), a witness statement from Ms. Verma (A30), a witness statement from Shristi (A39).

14. There is a further document headed "Applicant's Reply to Issues Raised in the Respondent's (Joint) Statement of Case"

15. There is a Reply bundle from the Applicant comprising a total of 53 pages (references to which will be prefixed by "AR__"). which contains a further witness statement from Ms. Verma (AR1) and a further witness statement of Shrishti (AR24).

16. There is a bundle of 53 pages from the Respondents (reference to which will be prefixed by "R__"). This contains a Statement of Case (R1), a witness statement from the Second Respondent (R15), a witness statement from Mr. Uddin (R19) a maintenance contractor engaged by the First Respondent, a witness statement of Ms. Gilbert (R22), the Company Secretary of the First Respondent.

17. On the morning of the hearing, the Tribunal received an application dated 11 March 2026 on behalf of the Applicants, to rely on a further document. This was a search as to enforcement action, which showed that a civil penalty had been made against the First Respondent in respect of the Property.

18. The Tribunal was also provided with a Skeleton Argument from the Respondent's Counsel.

19. The Tribunal has had regard primarily to the documents to which it was referred during the hearing.

<u>Respondent's position</u>

20. The Respondents' Statement of Case (R1) states, in summary:

(a) The First Respondent was the immediate landlord and sole recipient of rent;

(b) No RRO can be made against the Second Respondent (*Kaszowska v White* [2022] UKUT 11 (LC) and *Rakusen v Jepsen* [2023] UKSC 9;

(c) The failure to have a licence was as a result of an automated fee payment receipt issue. An application was made on 25 August 2022 and the Part A fee paid, the Property was inspected, but the local authority later issued a refusal notice (taking effect on 19 September 2023 but the Respondents were not aware of this until 2024) and the reason for this was non-receipt of the Part B fee. When the Respondents became aware of the issue, they submitted a fresh application which was granted on 3 September 2024;

(d) The Respondents believed that the licence would be granted;

(e) The Applicants abused the situation;

(f) The allegations as to conduct are false and/or exaggerated. The Property was in (more than) good condition.

Applicants' Reply

21. In summary, the Applicants' response to the Respondents' position is as follows:

22. There is no defence pursuant to s.72(4) as the application for a licence was not "duly made" as it was incomplete and/or the application ceased to be effective on 10 October 2023. Section 63 of the Housing Act 2004 states that an application must be made in accordance with any requirements specified by the authority, which may include a fee to accompany the application. The "Notice of Intention of Refusal" states that a fee was needed to complete the licensing process. The authority's policy states that the Part B fee is payable following a Notice of Intention to Grant a Licence but also states that the authority will not approve and issue the licence until the full fee has been received and the property will be treated as unlicensed until full payment is received. Alternatively, the authority confirmed that the application was refused on 19 September 2023. An application is effective until 28 days have elapsed from the date the application is refused or an appeal is determined or withdrawn (s.72(8)(b) and s.72(9)). The application therefore ceased to be effective on 17 October 2023.

23. It is said issues re service are not relevant to ss.72(8) and 72(8).

24. Section 72(8) provides that:

(8) For the purposes of subsection (4) a notification or application is "effective" at a particular time if at that time it has not been withdrawn, and either—

(a)the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b)if they have decided not to do so, one of the conditions set out in subsection (9) is met.

25. Section 72(9) (in so far as relevant) provides:

(9) The conditions are—

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence [..] has not expired

26. Paragraph 8 of Schedule 5 prescribes the procedure to be followed on refusal of a licence:

(2) The local housing authority must serve on the applicant for the licence and each relevant person a notice setting out—

(a) the authority's decision not to grant the licence,

(b) the reasons for the decision and the date on which it was made,

(c) the right of appeal against the decision under Part 3 of this Schedule, and

(d) the period within which an appeal may be made (see paragraph 33(1)).

(3) The notices required to be served under sub-paragraph (2) must be served within the period of seven days beginning with the day on which the decision is made.

27. An appeal must be made, pursuant to paragraph 33(1) of Schedule 5 of the 2004 Act within the period of 28 days beginning with the date specified in the notice under paragraph 7 or 8 as the date on which the decision was made.

The Hearing

28. The Applicants attended the hearing, represented by Mr. Phillips for Justice for Tenants. Ms. Clere Gilbert attended on behalf of the First

Respondent and the Second Respondent attended in person. Both Respondents were represented by Mr. Siri.

29. The Tribunal identified the documents it had received. It explained that it had not viewed the videos provided by the Applicants, and that it they wished the Tribunal to see them, they would have to be played.

30. The Tribunal referred to the Respondent's Skeleton Argument and noted that some of it referred to a challenge to the civil penalty. Mr. Siri said that there was no civil penalty but that there was a settlement agreement. He said that this had not been disclosed because of a non-disclosure agreement.

31. It was confirmed that there was no opposition to the Applicants' application dated 11 March 2026.

32. Mr. Siri said that the Respondents wished to rely on new evidence, which was the settlement agreement, but he said that the agreement did state that it must not be disclosed. He then also said that the Respondents wished to rely on a further document, which confirmed payment of £270 the previous evening (at about 10:30pm) to the local authority.

33. Both documents were shown to Mr. Phillips and he was given some time to consider them, as well as the Respondents' Skeleton Argument. The Tribunal then asked for his position. He said that the Applicants were happy, in the interests of justice for the settlement agreement to go into evidence. He said that it was a direct response to the evidence the Applicant had applied to rely upon. He said that the agreement provided that it could be enforced through the courts, but that it was confidential. The Tribunal raised with the parties whether it could look at the agreement, given that it stated that it was confidential. Mr. Siri said that the local authority had breached its own document and it was relied on to counter the assertion that the First Respondent had paid a civil penalty. The Tribunal said that it would take a copy of the document but would have to consider whether it could take it into account.

34. Mr. Phillips said that he was happy for the Tribunal to look at the payment document. He said it was a receipt for a payment of £270 on 11 March 2026 which purported to be for a licence, with a number ending 19338.

35. It was agreed that the First Respondent's name was MS Property (MCL) Ltd, not "M&S Property (MCL) Ltd".

36. Mr. Phillips said that he was happy for the Respondents' Skeleton Argument to be considered, subject to the Tribunal's views on the new documents.

37. The Tribunal the identified some of the issues it would want addressed.

38. The first was whether an order was sought against one or both of the Respondents, and why it was said an order could be made in respect of either or both of them. Mr. Phillips said that the Applicants' primary case was that an order should be made against the Second Respondent and its secondary case was that an order should be made against the First Respondent.

39. The second issue was the relationship between the Respondents and the relationship the Respondents (and each of them) had with the previous agent (who was said to have submitted the original licence application).

40. The third issue was whether the Respondents were contending that the application to the Tribunal had been made out of time. Mr. Siri accepted that the application had been made in time.

41. The fourth issue was the reference to a Rent to Rent agreement, which the Tribunal had not seen. Mr. Siri said that it had not been produced as the Respondents did not think it was relevant. A copy was produced and Mr. Phillips was given some time to consider it. Mr. Siri then sought permission to rely on it. Mr. Phillips says that this was the first time the Applicants were aware that it was said that the First Respondent had an interest in the Property. He said that it was suspicious that it had appeared now. He said that the Respondents should not be given permission to rely on it as it had been produced too late. He said that it was "too convenient", that it completely changed the Applicants' case and that it should have been in the Respondents' bundle. He said that it the Respondents had complied with the directions, it would have been included as it was highly relevant.

42. Mr. Siri said that it was a very serious accusation to say that the document had been fabricated. The Tribunal asked why it not been produced earlier. He said that it had not been contended that there was no Rent to Rent agreement. The Tribunal pointed out that the Applicants could not raise an issue about a document they did not know existed. Mr. Siri said that the onus was on the Applicant. The Tribunal asked him why the Respondents should be allowed to rely on it. He said that it would be in the interests of justice. He said that he had not had conduct of the case earlier and the Respondents did not know the practicalities. He said that it would be unfair to reject a crucial document. He said that issues about its authenticity could be resolved by the Respondents' witnesses giving evidence. He said that Mr. Phillips had said it went to the art of the matter and was a crucial document. Mr. Siri acknowledged that it had been produced late but to not admit it would mean proceeding without an important document. He said that it did change things.

43. Mr. Phillips said that it was not just the case that the document had not been provided, but that there was no reference to it anywhere in the witness evidence from the Respondents. It had never been said that there was an agreement between the Respondents and there was no reference to the relationship between them. He said that the Respondents' joint case seemed to be leaning towards the First Respondent being liable and away from liability on the part of the Second Respondent. He said that there was an active proposal to strike off the First Respondent at Companies House which may explain this.

44. The Tribunal informed the parties that it would consider the Rent to Rent document. It did go to the issue of which of the Respondents an order could or should be made against. In terms of the Applicants' case, it would only change which of the Respondents any order could or should be made against and it was the Applicants' secondary case that an order could and should be made against the First Respondent. What weight the Respondent should attach to the document and where it took the Tribunal in terms of the matters it had to decide could be dealt with in submissions.

45. The Tribunal then identified some further issues it would want addressing: the period for which an order was sought and evidence of the rent paid in that period. Further, the issue of reasonable excuse and the financial circumstances of the Respondents.

46. The Tribunal raised with Mr. Phillips that the RRO was sought from 14 September 2023, but that the Applicants' Reply states that the application for a licence only ceased to be effective on 17 October 2023. He said that the claim was from 14 September 2023 as the application for a licence was never validly made – for it to be valid, all the requirements had to be met. He said that, alternatively, the claim was from 20 September 2023, as the licence was refused on 19 September 2023 (A95) and that was when the offence was first committed. He said that the rent paid in the relevant period was identified Exh D (A80) and over pages A80-87.

47. Mr. Phillips said that the Applicants wanted to see evidence of payments made in pursuance of the Rent to Rent agreement. Mr. Siri said that the payments did exist, but the Respondents were not in position to deliver them up now as the transactions went back some time. Further, the payments made were not exclusive to this property. The Tribunal said that it would deal with any application for that further evidence at the conclusion of the hearing.

48. Mr. Siri raised an issue about the Third Applicant's name. It was confirmed that she only used one name and the Tribunal confirmed that it had seen a copy of her passport (A189) which confirmed this.

49. The First Applicant then gave evidence. She confirmed her witness statements (A30, AR1), that she had signed then and that they were true. Mr. Phillips sought to ask some additional questions. In view of the constraints of time (it was, at this time, about 11:30am), he was given five minutes to ask any additional questions.

50. He asked the First Applicant about the Second Respondent. She said that she would see the Second Respondent almost every other day and would have an interaction with her at least twice a week. She said that this was sometimes about maintenance, but towards the end the Second Respondent would ask for personal details, would ask why the Applicants were not responding to emails or she would bring up matters which had been raised in emails, mostly about the Property. The First Applicant said that the Second Respondent was interacting with neighbours and other tenants in the building. She was asked what emails were brought up, and who had sent them. She said that they were emails sent by management, she did not remember exactly which emails, but they were in the company name. They were all emails regarding the Property. She was asked who she believed had sent the "company" emails. She said that she believed it was the Second Respondent as she knew content very well and would ask about them, so she had access to them at the very least. She confirmed that the email address to which she was referring was the one at A42. She said that she believed those emails were written by the Second Respondent. The First Applicant was asked what she believed the Second Respondent's role to be. She said that she thought she was the landlord. She said that their (the Applicants) first interaction was with Foxtons and they had signed an agreement that stated she was the landlord, so from the start it was obvious that was the case. The Second Respondent would enquire about matters concerning the building and she would oversee maintenance.

51. She was referred to AR19 and was asked what her understanding was. She said that she understood the Second Respondent was the landlord and that she would be the main point of contact and that throughout the tenancy, she was the main point of contact.

52. Mr. Siri then asked the First Applicant questions.

53. The First Applicant confirmed that she understood that the concept that a person could be an individual and a company. She confirmed she had the Second Respondent's telephone number and she said that it had been given in the email at AR19. It was put to her that she had never spoken to the Second Respondent on the telephone. The First Applicant disagreed and said that she had, the Second Respondent would call her a lot and the call would come through as "no caller ID". The First Applicant had spoken to her in real life and recognised her voice. The First Applicant had also emailed her, asking her to stop calling with "no caller ID". She confirmed that some of calls she had received were about the Applicants' conduct in the Property and complaints. She was asked

if any of the emails were signed by the Second Respondent. The First Applicant said that she did not believe so. It was put to her that in her (the First Applicant's) emails, she had addressed them as "hi management" (e.g. A42) and the First Applicant confirmed this. She was asked if it was only the Second Respondent who had contacted her and she said, "most of time, yes". It was put to her that there were others, she said they were a "minority". The First Applicant confirmed that she recognised Ms. Gilbert and that she had had dealings with her as well. It was put to her that it was not correct when she had said the Second Respondent was the main contact and the First Applicant confirmed that she was the main contact. She said that Ms. Gilbert's main involvement had been giving the Applicants the keys and doing an inspection when they checked out. Other than that, there were limited interactions. The First Applicant confirmed that the Second Respondent would interact with other tenants, she did have other tenancies and that she had confirmed she was the owner of the building.

54. The First Applicant was asked if, when they left the Property, there were unpaid bills. She said that there were utilities bills which were disputed. She said that there was no mention of them after they left the Property but she confirmed that they did leave with some unpaid bills.

55. The First Applicant confirmed that the lift for the building was quite small and that it was an old building. It was put to her that sometimes she or her visitors had brought bicycles up in the lift. She said that her friend had had a bicycle but it had been left on the ground floor. It was put to her that there were occasions when they had parties with 20-30 people. She disagreed and said that there was only one party which had more than 5-6 people. It was put to her that people urinated in the common areas. She denied that this happened in the common areas of the building. She acknowledged that there was a complaint, but the issue was not in the communal areas of the building or the Property. She said that she had not changed a light bulb before. It was put to her that she had not made a claim for disrepair. She said that she did not understand what counted as a claim.

56. The First Applicant was asked if there were any issues with the property. She said that there were complaints about hot water. She said that this was serious. She said it happened a lot and it would last for about a day. She confirmed that there was hot water for the common parts, not just the Property.

57. The First Applicant admitted she had been late with the rent. She confirmed that they had paid rent in advance. She did not recall the amount but said that it was for the first six months. She said that the windows in the Property were old. She said that there was mould, but that the Second Applicant would know about it. She said that it was on the ceiling, not near the window, in the kitchen area. When asked how persistent, she said that Mr. Siri would have to ask the other Applicants.

She confirmed that there was a leak from above the Property which did not last for months and months. She agreed that at one point, they had been asked to place bucket under the leak and that this was a reasonable request. She confirmed that she had chosen to live at the Property and she had a wide choice.

58. The First Applicant was asked when she first knew the Property did not have a licence. She said that the first time she was aware of it was when she was in contact with a university lawyer at around the end of September 2023. It was put to her that this must have been a concern. She said that she did not fully understand what it meant or the implications, and they were not explained in detail. She was asked if she thought she should ask about it. She said that their main concern was disputing the utilities, but they did "circle back" to the licence issue later. She was asked if she thought to tell the landlord there was no licence. She said that she felt threatened by the landlord, and the university lawyer said that they might want to wait and decide. The First Applicant told her that they were concerned about being evicted as there had been threats. She then confirmed that she was not sure if she had told the lawyer or the local authority. It was put to her that there was a need to communicate important things about the Property to the landlord. She said that at time they did not understand the implications of the lack of licence. It was put to her that they needed to tell the landlord important things about the Property, e.g. if the police came. She said that she would tell the landlord this it is was an ongoing matter.

59. The First Applicant confirmed that she had signed the tenancy agreement. She was referred to cl. 17.1-17.2 (A72). She said that there was no notice or order. It was put to her that she knew about the issue of the lack of licence and did not pass that on, and she agreed with this. She was asked how many times an officer from the local authority had visited the Property. She said, she was sure of at least one visit and maybe there were two. That was around the start of 2024, but she did not remember the date. She said that she did recall Mr. Withams and that he had visited in March 2024. He had discussed the lack of HMO regulation and she agreed this was an important matter.

60. The First Applicant was asked if the Second Respondent had introduced herself, giving her name, and she said that she had not.

61. There was some re-examination. She was asked why she had approached a lawyer. She said that they felt threatened, by the tone of emails and conduct, it was uncomfortable. The second matter was utility bills and that they were confused about why they were so high. She confirmed that the HMO licence was not one of the reasons they spoke to a lawyer. She said that she had wanted to leave the Property at around the beginning of the tenancy. She said that she did not do the viewing in person and if she had seen the condition of the Property, she would not have chosen it. She confirmed she had contacted the local authority

because of the threats and the issue about the utility bills. She was not sure if she had the licence issue in mind.

62. She was asked what she understood Ms. Gilbert's role to be. She said that she did not think about it, possible a manager and she would see her in the building or the corner shop. She was asked how often they had interacted and she said that it was when they were collecting the keys, when checking out and about once or twice a month. She said that she believed the Second Respondent was the main contact. When asked why she did not address emails to the Second Respondent, she said that a previous neighbour had done this and got a very defensive response. She said that on one occasion the Second Applicant had sent her an email and the reply was impolite. She confirmed that there were no written notices sent to the Property. She confirmed that the reason the rent had been late was that it had slipped her mind and it had been paid as soon as there was a reminder. She said that she did not know the amount of the unpaid utility bills. She said that there was an issue with the hot water throughout the tenancy, at least twenty times.

63. The Third Applicant gave evidence, confirmed her witness statements (A39 and AR24) and confirmed that they were true. There was no cross-examination.

64. The Second Applicant gave evidence. She confirmed her witness statement (A17) and that it was true. When asked about the utility bills, she said that they were paying a flat amount per day. They had asked to have transferred to their names but were told that it was not possible as they could not access the meters. They were paying about £15 between us. They did manage to transfer the water bill. They asked for proof that they were not being charged more than they were using but it was not provided. They paid part of the bills and would be happy to pay the difference once proof was provided. The utility charges were not part of the rent. The Respondent's utility bills were at R41-45.

65. It was confirmed that none of the Applicants had been in receipt of Universal Credit or Housing Benefit.

66. The Tribunal asks about the leak and was told that it was in the kitchen next to where light was. They were told to put bucket under it, and she did not know how long it was going on for. In terms of the mould, she said that one time it was in her bedroom, on the wall. She reported it and was told to wipe it off, but it stayed until the end of the tenancy.

67. Mr. Siri asked her how many times people from the local authority had visited. She said that she was not in London at the time, so she did not know, but as far as she was concerned, it was one time. It was put to her that, as far as they were aware, the local authority never told her that there was disrepair in the building. She said that she was not the one talking to the local authority and she did not know what they said.

68. There was no re-examination.

69. Mr. Uddin did not attend but, as set out above, the Tribunal does have a witness statement from him.

70. Mr. Gilbert gave evidence, confirmed her witness statement (R22) and that it was true (save that the reference in para. 11 should be to 20 August 2023). She said that it was the First Respondent's responsibility to make sure that the application for a licence was submitted, but it was actually submitted by another company, Commercial Estate Management, but there was no cross-over of people between that company and the First Respondent.

71. She was asked what the duties of the First Respondent were. She said that it paid rent for its properties, under Rent to Rent agreements, it made sure the properties were in repair, it hired out management agents to carry out duties. The management agents were paid.

72. The card which was put forward for payment of the licence fees was the First Respondent's.

73. She said that the Property was not the only property the First Respondent was dealing with. It had 2-3 other properties in the same building as the Property. At the material time, including the Property, the First Respondent was dealing with 5-6 properties. It would pay is contractors and also had agreements with outside organisations and the company could make agreements on its own behalf.

74. She was then asked some questions by Mr. Phillips.

75. She was asked about her role at the First Respondent. She said that she was, at the current time, named as director, but at the material time, she was the secretary.

76. Ms. Gilbert was taken to A135 and it was put to her that, as at 13 May 2025, she was the secretary of the First Respondent, having been appointed on 6 July 2020 and that the Second Respondent was still a director as at 13 May 2025, having been appointed on 17 December 2019. Ms. Gilbert disagreed with this, stating that the Second Respondent had stepped down in September 2023. She said that the record had not been updated as the Second Respondent had been registered as a director but was not acting as a director – that was Commercial Property London (which was a director). She said that she did not know if the updated position had been submitted before or after May 2025.

77. She was asked about her role during the Applicants' tenancy. She said that she would attend the Property regularly, instruct management agents (private contractors if needed). She was asked about instructing

a Commercial Property London as a property manager and what it was appointed to do. She said that it would manage the Property and contact tenants. It had its own staff who were qualified, but it would also contract out works for the First Respondent. She said that Residential Property London is an arm of Commercial Property London.

78. She was asked if she was involved with those companies. She said that she believed she was involved at the time – she was the secretary for Commercial Property London, but she was not really involved in Residential Property London. Residential Property London was part of Commercial Property London.

79. She confirmed that CLGMS Trust Properties LLP was a director of Commercial Property London. There are two companies - CLGMS Trust Property and CLGMS Properties LLP. She was appointed director of Commercial Property London in 2025 and the other director was CLGMS Trust Properties LLP. She was asked who was behind the LLP. She said that there were two directors – one was the Second Respondent and she (the First Respondent) was the other one, who resigned on 1 August 2023.

80. It was put to her that the manager she appointed was Commercial Property London (which encapsulated Residential Property London), that CLGMS Property was also a director of Commercial Property London until resignation in November 2024 and that the directors were CLGMS Property LLP and her. She said that she would have to look to see.

81. It was put to her that the Second Respondent was a director of the First Respondent. Ms. Gilbert said that she believed she had dissolved one of the companies.

82. It was put to her that every company had Ms. Gilbert and the Second Respondent as directors, with no other directors, save companies of which the two of them were directors. Ms. Gilbert said that it was mainly her and the Second Respondent only helped her if she needed assistance as she (Ms. Gilbert) was inexperienced. She confirmed that the Second Respondent would help her setting up a company or when communicating and dealing with things.

83. She was asked if the First Respondent employed anyone. She said that it had people working, e.g. administrators, plumbers. She was asked about employees. She said that there were administrators, desk staff, people who would write emails, deal with paperwork, accountants, a few trainees and an in-house maintenance man.

84. She was asked why the First Respondent appointed Commercial Property London as manager. She said that they wanted a workforce to

manage other properties, commercial properties or other buildings they were in.

85. It was put to her that she and the Second Respondent as directors controlled the First Respondent and Commercial Property London. Ms. Gilbert said that it was mainly her and the Second Respondent would only assist. She was asked why she would assist when she owned the Property and was the landlord. Ms. Gilbert said that she trusted her. She was asked why the Second Respondent would appointment someone to manage the Property and then assist herself. Ms Gilbert said that she trusted the Second Respondent and the Second Respondent trusted her, and she (Ms. Gilbert) would learn from her experience.

86. Ms. Gilbert was asked if she was related to the Second Respondent. She said that she had known her for many years. She was asked again and had to be pushed by the Tribunal to answer the question. She did eventually state that the Second Respondent was her mother.

87. Ms. Gilbert was asked about the original application for a licence in 2022. She confirmed that the application was made by Commercial Estate Management. She stated that the person behind that company was a man whose name was Hungarian, but the English version of it was Greg. She said that he was appointed to assist her. He was self-employed and Commercial Estate Management was his trading name. She was asked how they had met. She said that he had been interviewed. They had posted asking for a managing agent and she believed she met him for an online interview or that he was recommended by another managing agent or tenant at the time (a tenant of a neighbouring property). She was asked about his role. She said that it was short term management, short-term lettings, with some long term management. He had worked for them for about a year (full time) and then he went back to Hungary – that was after the application was submitted (at about the end of 2022). She said that she knew the licence had been applied for. "Greg" had used the email address: commercialestatemanagement@gmail.com

88. She confirmed that he had been asked to make the application in August 2022. When asked why he needed to do it, she said that she needed him to assist her in getting things done. She had asked him to do it, and he said was able and was capable. He used a company card for it. She confirmed they did not have a copy of the initial application but said that they had confirmation of payment on 25 August 2022.

89. She was taken to R36 and it was put to her that it was sent to the First Respondent at its registered address, which would have been the correct address. She said that that was what the local authority had said it had done, but they did not receive anything.

90. Ms. Gilbert was asked about Property in the UK Ltd (R37) who was the managing agent. She said that the local authority said that it needed a company to be specified as managing agent, so this was given and it was a company they had started recently. It was put to her that the sole director of that company was the Second Respondent. She agreed but said that it was done for the sake of the local authority as it wanted a company as managing agent, so this was the information "Greg" gave. It was put to her that it was set up for this purpose. She said that it was set up for difference purposes, but "Greg" had put the company down and he was working alongside it.

91. She was asked what arrangements they had for "Greg" updating them on applications, other work etc. She said that he did not respond to telephone calls, he must have changed number, and they had no response on email. She said that they later found out that his email address had been compromised and he had no access to it. It was put to her that he had their contact details. She said that he did not tell them, that there had already been an inspection by the local authority and she shown the officer around the Property, who said it was fine. She said that everything was moving forward with the licence, and she understood payment would be taken and licence granted. It was put to her that nothing was in place to ensure the second payment. She said that a card had been given, the local authority would take payment from that card, and it would have been done automatically. It was put to her that there are often issues concerning security checks. She agreed but said that they did not get anything like that.

92. She was asked if they got notices at the First Respondent's registered address or at the Property. She said that the post was checked but nothing was received – if it had been she would have taken action immediately and there was no reason to let things get to this point for a fee of £270.

93. Ms. Gilbert was taken to R38 and the reference to the Second Respondent not being aware of the failure in payment and asked why there is a reference to her being aware of it. She said that Ms. Rasul had a telephone number for the Second Respondent and that telephone number must have been put down in the application, which "Greg" should not have done, but he did. She said that Ms. Rasul must have had the Second Respondent's contact details. It was suggested to her that it was more likely that the Second Respondent had make the application, which is why Ms. Rasul had her telephone number and why there was this reference. Ms. Gilbert disagreed with this.

94. She was asked why, in all the evidence, there had been no reference to Commercial Estate Management or "Greg" until that morning. She said that she believed they may have told Mr. Withams that the person who made the application moved to Hungary. She was asked if there was a reason "Greg" had not been asked to give evidence. She said that he was

no longer in the country but that they had tried contacting him and got no response.

95. It was put to her that anything “Greg” had been responsible for had been left to chance. She said that they had met with the local authority, they were sure the licence would go through. The Second Respondent had another property and there were no issues with that. They expected that the same would happen in this instance, and as far as they knew, nothing was wrong and payment should have gone through. Had they known it had not they would have made the payment and it was purely an administrative issue. They had not intentionally let the Property out without a licence.

96. She confirmed the Property was inspection by the local authority in late 2022 (August-December). It was put to her that the licence was not refused until September 2023, that for 9 months there was no licence and they did not think to contact the local authority. She said that they did not think it had been refused. It was put to her that when a licence is granted, a copy is provided. She said that they did not get a get copy of the refusal.

97. She was taken to the licence (R30) and it was put to her that the licence holder was CLGMS Properties Trust LLP which was the same as the managing agent. It was clarified that CLGMS Properties Trust LLP did not exist, but that it appeared it was a typographical error, as CLGMS Trust Properties LLP did exist. She said that that company had been dissolved. It was put to her that the Property was unlicensed. She said that the company was in the process of being reinstated. It was put to her at, at the current time, it was unlicensed. She said that she did not know if that was the conclusion Mr. Phillips came to.

98. Ms. Gilbert said that Property in the UK Ltd was dissolved in December 2023. It was put to her that even if the first licence had been granted, it would not be valid. She said that the First Respondent would be the as it would have been substituted. She said that Property in the UK Ltd was dissolved after the refusal of the licence.

99. Ms. Gilbert said, in relation to the utilities, that the tenants were expected to contact the utility companies when they moved in and out. It was put to her that that was the role of the managing agent. She said that on occasion the managing agent did it, but the tenants were expected to do it. When asked if there was anything preventing tenants from moving utilities into their own names she said that there was nothing stopping them setting up a utility meter. She confirmed that the meters in the Property are to note usage. She said that they would have to contact British Gas. She said that there was a sub-meter in the flat they could see and access. It was put to her that they could only see the usage and it was not linked to an account. She said that there was a main meter

but she did not deal directly with this. She said the tenants were told that they would have to contact British Gas to have matters set up.

100. Ms. Gilbert was taken to the tenancy agreement (cl. 9.14 – A71) and it was put that this does not say that there is a sub-meter and that the tenants are responsible for paying the landlord. She said that it did say that the letting agent may pass on the tenants' details (cl. 9.1-9.2). She was referred to cl. 9.3 and it was put that it just says that it is suggested that the account is transferred, not that there would be a new meter. She said that when an account is set up, the tenants can ask for a meter. The landlord was paying the bills for that property, so the tenants have to reimburse or set up an account and have it transferred. It was said to her that this would involve new meters. She said that the tenants can ask British Gas or inform it of what the reading was at the start and British Gas could issue an estimate. Mr. Phillips said that water was estimated based on the size of a property, but gas and electricity were based on us. He referred to cl.9.3 and she was asked how they had come to those figures. She said that whatever they were billed for the residential side of the building was divided and the First Respondent was billed by the superior landlord. It was put to that that was not the case and there was a charge at a fixed rate. She said that it was split amongst the properties the First Respondent had, based on how large they were. She was asked, if there were sub-meters, why they did not take an opening reading and readings each month, work out units and invoiced on that basis. She said that it was simpler to do a daily rate. She was asked if it was checked to be accurate. She said that tenants were offered an alternative, to take readings based on what the First Respondent was being charged, but that it was charged "quite a bit". It was put to her that if the daily amounts were higher than the usage, this would breach the Tenant Fees Act 2019. She said that the charges were based on use in past and how much the First Respondent was billed. It was put to her that this must relate to a time before the Applicants move in. She said that that was the daily rate. It was put to her that the charges were not based on the Applicants' use. She said it was based on past usage and the bill they expected to receive from British Gas. She was referred to R41-45 and it was put to her that they take the rates and added VAT. She said that the VAT on utilities was 5%. It was put to her that they had added it to the rate specified in the tenancy agreement. She said that she did not know. She was referred to R41 and she agreed.

101. She was taken to the tenancy agreement (cl. 11) and she confirmed that she had done the inventory and check out. She did not recall if it included meter readings.

102. Ms. Gilbert confirmed that there were no arrears of rent when the Applicants moved out, but that 15 days of interest was owing.

103. The Tribunal asked her if there was anything she wanted it to know about the First Respondent's finances. She said she had nothing to say save

that it had been late with filing, but that was not a huge issue. She said that the company did not own property.

104. There was some re-examination. It was noted that she had been reluctant to say what her relationship was with the Second Respondent and she was asked the reason. She said that the Second Respondent would not have been involved in this tenancy had she not been so intimidated by the Applicants. She was reluctant to disclose the relationship as she wanted to do things on her own and would not want to be associated with needing assistance. She was asked if anything had happened between her and the Applicants in terms of relationship or attitude. She said that from the date they moved in, the Applicants were rude and had a horrible attitude. She said that at the check in, the First Applicant had sour attitude and the behaviour of the rest of the tenants followed. She said that she tried to stay professional but she felt intimidated by the Applicants. There was an event on 9 September which is why they contacted the university – Ms. Gilbert had gone to the Property because of a complaint about noise and saw young men urinating on the front door of the house next door. She went upstairs and there was loud chatting and banging. She asked them to keep the noise down, which they did, but the Third Applicant had a vape, which was not allowed. Ms. Gilbert heard one of their friends call her a swear word. The door was shut and she expected the noise to stop, but it started 10 second later. After that conversation, the Third Applicant was rude and shut the door, but the noise did calm down.

105. The Second Respondent then gave evidence. She confirmed her witness statement (R15) and that it was true at the time she signed it. She was then asked questions by Mr. Phillips.

106. She was asked if she was the legal owner of the Property. She asked what he meant by “legal owner”. She was asked if she was the freeholder and she confirmed that she was. She said that there were 7 or 8 flats in the building. She said that some were on long term leases. It was put to her that they were not registered at the Land Registry. She said that they did not have to be if they were under 7 years. It was put to her that no leases were registered at the Land Registry. She said that they were, but the tenants moved on because of Covid. There are commercial and residential tenants. The residential properties have Rent to Rent agreements, which she had done for a number of years, sometimes for short periods and sometimes for longer, although usually under 7 years. It was put to her that there were two freehold properties at the building (one ground floor and one lower ground) which were commercial. She denied this. It was put to her that there were two freehold titles at the Land Registry. She said that she knew what she used and did not use and perhaps Mr. Phillips information was wrong. She said that she believed that the 8 flats were all residential. It was put to her that excluding the commercial properties, there were no leases on the residential register at the Land Registry. She said that she had not checked if they were registered or not, but she was not aware of it.

107. She was asked how many tenants she managed in the building. She said that she did not manage tenants. She was asked if she had in the past and she said that she had, but that was about 20 years ago.

108. It was put to her that the evidence of Ms. Gilbert was that she (the Second Respondent) managed other tenancies in the building and that was why she had been seen there. She said that she did visit her property and building, she did check on how things were going. She was involved in the construction element, and if people need to seek consent, they would go back to her to approve it. If there were issues, she could help out with, she would, and that would be her involvement. She was asked if she oversaw the maintenance and she said she did not, day to day, but if there was a leak or electrical issue, she was involved in construction and she dealt with construction, development and planning. It was put to her that she was regularly at the Property. She said she was there occasionally and that she managed her own business. When asked which business this was, she said that she should not have to say - her business was property management, she dealt with architects, planners, everything. She managed her own properties – she did rental property and looked after the interest of the building.

109. It was suggested that if there was a leak or electrical issue, she would be intimately aware of the issues. She said that if a tenant contacted her and asked about pipes etc, if she knew the information she would help.

110. It was put to her that she was the landlord. She said that she was the freeholder and superior landlord. She was asked if the tenants could contact her by telephone. She said that she had her own email address. It was put to her that when the Applicants moved out, she was there to watch them. She denied this and said that she had never introduced herself to the Applicants. It was put to her that, because Ms. Gilbert was scared, she had asked the Second Respondent to manage the Property. She denied this and said she was not asked, but she had observed the Applicants herself. It was suggested to her that this was when she was at the Property. She said that she was at the building, not at the Property, and she had never checked on the Applicants – she said that Ms. Gilbert was capable of doing her own job.

111. The Second Respondent was referred to AR19 and asked why she would have been put down as the landlord. She said that Mr. Phillips would need to ask Ms. Xiao. She was asked how Foxtons would have her contact details. She said that that was not her telephone number and it was probably the number for the managing agent, Residential Property London, as it was managing the Property at the time. Mr. Phillips said that he did not understand how Foxtons would have her full name and if it did not have dealings with her. She said that she had known Foxtons for many years, she had had dealing with them and it was possible they would have her details on its system for years. She said that sometimes people put two and two together, but that did not mean it was true or

right. She said that she did not know why her name was there, she had not authorised it. She denied that she had access to the email address on AR19, she said she had her own. Mr. Phillips put to her that it was more likely that Foxtons had her details as she had liaised with them. She denied this and said that it was not her mobile telephone number, and the one given belonged to Residential Property London. She said that she did not know who would answer that number. She was asked how she knew it belonged to the business. She said that she assumed it from the email address beneath and the fact that it was not her.

112. The Second Respondent was taken to AR22 and the fact that she was given as landlord/agent. She asked who the certificate was from and it was clarified that it was a Deposit Protection Certificate. It was put to her that it gave her telephone number. She said it was a company number, not a personal one. She denied that it went through to her (and denied that it ever had). She was asked how she knew it was a company number, she said she assumed it. She confirmed that the email address was hers. She said that she did not know who put her details down, that it could have been Foxtons, but it was nothing to do with her. She confirmed she did not know about the deposit and did not know this had been done. She was referred to the email address and she agreed that MS Property was the limited company that managed the Property (i.e. the First Respondent). She then confirmed that the Second Respondent was the landlord. She was asked how manged the Property and said that Mr. Phillips would have to ask the First Respondent. He put to her that she is a director of the First Respondent. She said that she was, prior to stopping some of her work. It was put to her that, according to Companies House, she was a director in May 2025. She said that she had come off the register before that. She was taken to A135. She asked how she could know it was accurate. It was put to her that she was still a director according to these records. She said that she did not believe that it was accurate. The Tribunal referred to the Companies House website, which confirmed that the Second Respondent had terminated her directorship on 10 February 2024, but that this information had only been received for filing on 25 February 2026. The Second Respondent said that the accountant had delayed. It was put to her that there was no evidence of that. She said that she had not expected to be asked that question. Mr. Phillips referred to the company name of MS Property (MCL) Ltd and she agreed that her initials were MS.

113. The Second Respondent was asked what her relationship was to the First Respondent until 10 February 2024 when she resigned as a director. She said that she was entitled to assign a lease to a company if she chose. She said that she did not have capacity to manage everything on her own. She assigned the lease. She said that they also had leases of five years, but that people did not live up to expectations, and the cost of management was far greater, which is why they went to three-year tenancies.

114. Mr. Phillips asked the Second Respondent why the first we had heard of the Rent to Rent agreement was that morning. She said that she did not know she had to provide a copy to anyone, it was a confidential document between her and the tenant, and she had no idea until Ms. Siri asked her for it asked (the Tribunal then intervened to warn her about mentioning what had been said between her and her barrister). She was asked why she had not referred to it in her witness statement. She said that the tenancy agreement was clear, it referred to the superior landlord in that agreement, it referred to the obligations of the tenant and landlord. There was nothing in there that made her think she had to produce her agreement with some other party. She said she had no idea it was relevant.

115. She was asked what her day-to-day role at the First Respondent was until she resigned. Her response was initially "no comment" but she said that she dealt with construction, development, retail, commercial work, lettings or dealing with tenants, and the more commercial side. She was asked if, during the Applicants' tenancy, she had an active role in the company, had visited the Property. She said that she had scaled down her work. She was asked if she would visit and encounter the Applicants. She said that when she was in the building she had said hello, but did not know who was who. She said that she had not been inside the Property unless she was asked to help with something. She said that she did not believe she had gone into the Property during the Applicants' tenancy.

116. Mr. Phillips referred to the Applicants' evidence that they had seen her a couple of times a week. The Second Respondent said that they did not have tea together, and she had not seen them a couple of times a week. She was asked what the nature of her visits were (if she did not manage tenancies at the building). She said that she was not at the Property, she was at the building. She was conducting works on the other floors and there were some works upstairs. She was asked if the licence for Flat 5 was in her name. She said it possibly was, but she did not remember. She was asked if she remembered holding licences for any of the flats at the building. She said that she did not remember. She knew a licence was granted for flat 5 but she did not know that it was in her name.

117. The Second Respondent said that she had never telephoned the Applicants. She was referred to their evidence that she had telephone them (and had a distinctive voice). She said that this was a lie. She denied sending them emails. She was referred to their evidence that she knew of the content of emails and would talk to them about it. She denied this and said that she had never introduced herself to them. Mr. Phillips said that this did not mean they could not know who she was. She said that there was no reason for her to be in contact with them unless they asked her something when she was walking up and down. She denied that they had ever asked her anything. She said that when the First Applicant was on the street, when they were leaving at the end of tenancy, she (the Second Respondent) said that she had been told a few things. The First Applicant said that she had not paid all the bills.

The Second Respondent said that she did not deal with that. The First Applicant went on to tell the Second Respondent that she had not let anyone in the Property from the local authority. The Second Respondent said that if she had, she should tell the Second Respondent. The Second Respondent said that the First Applicant She obviously recognised her. The Second Respondent did not know that the First Applicant knew her name. Mr. Phillips asked how the Second Respondent knew the First Applicant's name and who she was if she just saw her outside the building. The Second Respondent said that Ms. Gilbert told her. She said that Ms. Gilbert was not with her, but she had told her (the Second Respondent) that the Applicants were not telling them what was happening, why the local authority were at the building.

118. The Second Respondent was asked why she would be interested if someone was coming to the Property. She said that if at some point a tenant came back to her about planning or licensing, I needed to know if anything was wrong, she needed to comply with any statutory obligations. She was asked about her reference to "us" in terms of telling "us" know if someone was at the building and she confirmed that she meant herself and her tenant, the First Respondent.

119. She was asked who she said should have applied for the licence. She said that there was an agreement between her and her tenant, the First Respondent, and it needed to fulfil its duties in terms of the sublet. Whatever licence or consent or planning was needed, it needed to follow the rules and make an application and she needed to approve it, and that was what she had put in: approval. She said that sometimes people asked if they could use the bedroom etc, and she had to check that fitted with fire regulations or not, if the accommodation was fit enough for it. In those instances, she did have involvement. It was a standard thing, to ask the freeholder for consent. She was told there was an issue and they were not getting answers and did not know how to progress it. She was asked to point to where in the Rent to Rent it said that the onus was on the Second Respondent to apply for the licence. She said that she did not have a copy, but it was in all her agreements.

120. She was asked how she first hear about the local authority officer attending. She said that post came to the commercial tenant letter box. She said that this was not post she would touch – it was brought to Mr. Gilbert's attention, her (the Second Respondent's) name was reflected there and she (the Second Respondent) was concerned and did not know what was going on. She confirmed that Ms. Gilbert informed her. She was asked why Ms. Gilbert would do that if the onus was on the Second Respondent to apply for the licence. The Second Respondent said that if it is a notice, it is an obligation of the First Respondent to notify the landlord in first instance immediately. She said that action needed to be taken immediately if it was anything to do with statutory obligations. She said that there was a duty to notify.

121. Mr. Phillips put to the Second Respondent that when the application was made in 2022, the managing agent was Property in the UK Ltd, and the Second Respondent was the only director. She said that she was at that time, but the company had “folded” and it was set up to deal with short lets. It was put to her that CLGMS Trust Properties LLP had applied for the licence in 2024 and she was a director of that company. The Second Respondent said that she had been a director of many companies and she would need to check. It was put to her that CLGMS Trust Properties LLP was, essentially, Ms. Gilbert and the Second Respondent was, essentially, her (the Second Respondent). She denied that.

122. It was put to the Second Respondent that, in respect of CLGMS Trust Properties LLP, then “CG” stood for Clere Gilbert and the “MS” stood for Melinda Serpes. She said that that was not correct, that the assertion was ‘rude and disturbing”.

123. It was put to her that she was a director of CLGMS Trust Properties LLP, which was now dissolved. She said that she did not remember, but she had closed down a few businesses because of her health. It was put to her that the Second Respondent had an active proposal to strike off. She said that that had been there for 3 years. She was asked why and she said that their accountant had failed to do certain things, they had have struggled to get back in line, but it was being taken care of. She was asked if the reason the accounts were overdue was down to the accountant and she said that it was. The position was the same in respect of the confirmation statement. It was put to her that the Second Respondent did not “look to be in great health” as far as Companies House was concerned. She said that she did not know what Mr. Phillips was looking at, but Ms. Gilbert would know. She was asked about her resignation as a director and how it had only come to be updated on Companies House about two weeks earlier, why it was only filed about two weeks earlier. She said that her accountant had “slept on it” and did not do due diligence. Mr. Phillips said that by coincidence it had been done about two weeks earlier and asked why she had not prompted on this. She said that she had been on the accountant’s “case” to “get his act together” but without the necessary code, she could not update records, that was the rule for Companies House and she would need to to get another code. It was put to her that she was a director of CLGMS Trust Property. She asked to see the print-out. Mr. Phillips showed her his computer and the live public record. Her response was “no comment”. Mr. Phillips put to her that there were a string of companies of which she was the director which had been dissolved. She said that she had closed down a few businesses. It was put to her that the Second Respondent did not hold or own any properties when she was a director. Her response was “no comment”. It was put to her that the Second Respondent was another company which could be dissolved. Her response was “no comment”.

124. The Second Respondent was asked about the utilities at the Property. She denied that there is one main metre at the building and then sub-meters. She was asked to explain how the utilities were provided. Her

response was “no comment” but she then said that the Property had its own metre and the tenancy agreement was clear, that tenants could call the supplier and get a service if they didn’t want to use the landlord’s meter. She said that there were commercial and residential metres. She said that the property had its own account. She denied that the Property only had a submeter. It was put to her that this did not accord with Ms. Gilbert’s evidence. The Second Respondent said that she knew the building. It was put to her that Ms. Gilbert had said that a meter would need to be installed at the property. The Second Respondent said that in her experience, when people wanted to change meter or change suppliers, different suppliers had different ways.

125. It was out to her that Ms. Gilbert had said that bills went to the building owner and were then billed out. She said she would get bills for the commercial tenants, based on square footage, and they would be apportioned, not for residential. For the residential tenants, she thought what had been done was that they had landlord meters as well. Some of the residents had been diplomats and they did not want to pay bills, so they were given a one-off charge and the landlord dealt with it. She said that, on average, from what she now knew, the general cost of utilities would be in the order of £1,500 per annum. Gas would be £1,400-£1,700 depending on the size. Based on that, there would be a calculation and analysis to include VAT, which probably was 5% but it would depend on the supplier. Different companies supplied different parts of the building. The Applicants said that they would not pay the bills. She was asked why they would tell her if it was nothing to do with her. She said that it what the First Applicant told her. She was asked why it would come up if she (the Second Respondent) was nothing to do with the tenancy. She said that they were talking when the Applicants were leaving.

126. The Second Respondent was asked by the Tribunal if there was anything that she wanted the Tribunal to know about her financial circumstances. She said that there wasn’t.

127. There was no re-examination.

128. The Tribunal then heard submissions from both representatives.

129. Mr. Sirin said that he assumed Mr. Phillips relied on *Cabo v Dezotti* [2022] UKUT 240 (LC). He said that he adopted his Skeleton Argument. He relied on the personal circumstances of the Second Respondent and said that she had suffered bereavements in this period. He referred to paragraph 7 of his Skeleton Argument and said that there were several visits by the local authority, the first of which was in 2022. He said that none of these visits generated any adverse inferences about the condition of the Property. He said that the reason the first application was rejected was lack of payment of £270 and it was a “but for” situation, that we would not be here but for that. He said that there had been an outright

rejection of the application as payment of £270 had been accepted the previous evening. He referred to paragraph 8 of his Skeleton Argument and said that the tenancy was granted on 20 August 2023 and there was pre-payment of rent for six months. He relied on *Pearton v Betterton Duplex Limited* and said that the £20,000 should not be part of the Tribunal's determination. He referred to paragraph 10 of his Skeleton Argument and said that, in terms of the landlord's conduct, there had never been any similar issues or penalties prior to this date. As far as the local authority was concerned, the landlord had no black marks. In terms of the Applicants' new evidence about the civil penalty, it was against the First Respondent and not the Second Respondent. He said that was significant, as the local authority considered the First Respondent to be the liable party, not the Second Respondent. He referred to paragraph 12 of his Skeleton Argument and said that there was a need for tenants to convey to the landlord anything relevant to the Property. This was a contractual term and they did not. He read from paragraph 13 of his Skeleton Argument. He said that there was no reconsideration except for the financial aspect. The only issue was the Applicants saying the gas safety certificate was not valid (which he said was not correct) but the only reason we were here was the £270. He referred to paragraph 14 of his Skeleton Argument and said that it could be inferred that the Property was in good order. He referred to paragraphs 15-16 of the Skeleton Argument. He said that the money for the original application had been accepted.

130. In terms of reasonable excuse, he said that the money for the original application was accepted. He said that there was a reasonable excuse on this occasion. The only issue was the £270 which was a failure at the low end and was a credit card issue.

131. In terms of *Cabo*, he said referred to paragraph 3 of the decision and said that there was a written management agreement which was not intended to create tenant relationship. The Second Respondent had a right to work for her company. In *Cabo*, the freeholder had no dealings with the tenant or the management co. He said that *Cabo* was to do with holiday lets. He said that there was no sham agreement here. In *Cabo*, Ms. Cabo was responsible for the Council Tax and the rent was only a peppercorn. He said that none of those features are here. In the instant case, the income from the property was to be retained by the First Respondent. In *Cabo*, Top holdings did not manage property in the usual course of its business, which was different to the instant case. In *Cabo*, the parties had lied about their personal relationships. He referred to the evidence of Mr. Gilbert about her relationship with the Second Respondent, but said that she had given an explanation as to why she did not want to talk about being her daughter. In *Cabo*, Ms. Cabo paid the mortgage but the company retained all the income, which was not the case here. In *Cabo*, there was a lopsided agreement and the company had no property inters. The Second Respondent was not the person in control of the managing of the property. It was different in *Cabo*, as Top Holdings was never granted a tenancy.

132. In terms of conduct and the relevant factors, he relied on his Skeleton Argument.

133. He said that if the issue turned on whether the freeholder (the Second Respondent) was the controlling mind (based on *Cabo*), he relied on *Jepsen v Rakusen* and said that the Tribunal needed to be careful about "overturning" that decision. He said that it had heard evidence as to why person who is freeholder could be distinguished from. He referred to the "corporate body principle" and said that a person can work on his/her own account and for work for a company.

134. The Tribunal asked him, if it made an order, whether he had submissions as to the amount. He said £5,000.

135. Mr. Phillips made submissions.

136. In terms of the identity of the landlord, he said that the Second Respondent was the person exercising control and management of the Property and should be treated as such. The First Respondent appeared to be a convenient vehicle for liability and was on the brink of being struck off. He said that all the companies were confusing but the same individuals were involved: the Second Respondent and sometimes daughter. The Second Respondent had direct involvement and it had been demonstrated that she was actively involved in the management of property – she knew the tenants by sight and name. In her evidence, she said that she dealt with the tenants in respect of utilities and other tenancy matters, the tenants recognised her voice on the telephone and confirmed she was at property on a number of occasions. The evidence from Ms. Gilbert was that that the Second Respondent would step-in when matters were difficult or overwhelming and she would manage matters alongside her.

137. In terms of *Cabo*, he referred to the Applicants' Reply. He said that this was an analogous situation. The Tribunal found that, where there was a company, with no proprietary interest, it was not to be treated as the landlord and the superior landlord was deemed to be in control and was treated as the landlord for purpose of the RRO. In this case it was the Second Respondent. He referred to the start of the tenancy and the email from Foxtons, which identified her as the landlord. He said that the only way that could have happened was if they had had interactions with her about the tenancy. She must have approved the tenants before they were placed there. Foxtons told the tenants that she was the landlord. The deposit was protected in her name with her email address. When the deposit was protected, she would have received an email and would have had the opportunity to make a challenge.

138. The late production of the Rent to Rent agreement raised concerns about its credibility. There was no reference to it in the earlier correspondence or submissions. The late introduction prevented proper scrutiny and

there was no proof of payments in accordance with the obligations in that document.

139. The HMO licence was refused on 19 September 2023 and the Respondents relied on the payment receipt without context. It said nothing about the status of the licence.

140. He said that the evidence about Greg and the failure to make payment only emerged today and there was no copy of the licence application, which would have showed who had applied and which email address was used. Even if the Respondents believed that the licence would be granted after the inspection, it was not capable of being a reasonable excuse. The refusal was not until September 2023 which was at least nine months after the inspection. The Respondents had an obligation to follow up with local authority concerning the status of the licence. He referred to *Marigold v Wells* and said that the excuse had to be reasonable in all the circumstances. It was not reasonable to wait nine months to a year for a licence you believed to be coming.

141. He said that there should be no deduction in respect of utilities. The Tribunal clarified that, as it understood the position, the utility payments did not form any part of the rent, so there would be no deduction from this, but it may go to conduct (and the amount of any award). He said that the utility charges were prohibited by the Tenants Fees Act 2019.

142. He said that the contention concerning harassment had not been explored in detail, but there was evidence, especially in the Applicants' Reply bundle, of threats to report the Applicants to the Home Office and to their universities. Given they were young students, this was egregious.

143. Mr. Phillips asked for any RRO to be 100% given the obfuscation on the part of the Respondents.

144. He said referred to the Applicant's document about the civil penalty and said that, as of the day before the hearing, the financial penalty remained on the database and the Tribunal had accepted this as evidence.

145. Mr. Phillips asked for reimbursement of the Tribunal fees in any event (relying on the late disclosure of the Rent to Rent agreement) of £341 – (£114 application fee and £227 hearing fee). Mr. Siri said that this should not be ordered.

146. The Tribunal then went back to the issue of Mr. Phillips request for further documentation in light of the Rent to Rent agreement. It ordered the following:

(a) By 2 April 2026 the Respondents must provide to the tribunal and to all other parties any bank statement showing payments made or received under the Rent to Rent agreement dated 1 Feb 2022 between the Respondents;

(b) By 9 April 2026 the Applicants must provide to the tribunal and to all other parties any submissions (of no more than 1,000 words) on either the documents provided by the Respondent or any failure to provide such documents;

(c) By 16 April 2026, the Respondent must provide to the tribunal and all other parties any submissions (of no more than 1,000 words) in response to the Applicants' submissions

147. The Tribunal did receive further documentation:

148. There is a witness statement from Ms. Gilbert (dated 1 April 2026) which attaches bank statements, which show:

(a) 09/02/22 - £12,500 – payment out from the First Respondent;

(b) 03/08/22 - £4,200 – payment out from the First Respondent to the Second Respondent;

(c) 09/09/22 - £2,003 – payment out from the First Respondent to the Second Respondent;

(d) 16/09/22 - £21,000 – payment out from the First Respondent to the Second Respondent;

(e) 21/10/22 - £11,000 – payment out from the First Respondent to the Second Respondent;

(f) 06/01/23 - £4,520 – payment out from the First Respondent;

(g) 21/01/23 - £8,000 – payment out from the First Respondent.

149. There is a "Submission Statement" from the Second Respondent (dated 12 April 2026). This states, among other things, that she sent the First Respondent rent demands and she issued rent receipts acknowledging payments. The First Respondent paid the rent and approximately £63,223 under the Rent-to-Rent agreement and some advance payment for services which was agreed. This exceeds the rent that would have been due if the contract had been operated strictly. She accepted flexible payments due to Covid 19. She states that the First Respondent obtained the licence, paid the fee, managed the Property and dealt with the tenants.

150. The Applicant sent a Response to the Respondent's Further Evidence (sent on 10 April 2026). This contended that the further evidence supported the Applicant's case that the Rent-to-Rent agreement is a sham (or not a genuine agreement). It is said that the agreement

required a deposit of £3,000 before 1 February 2022, payment of £24,000 on 1 March 2022 and payment of interest on any sums overdue by more than 14 days. The payment evidence shows that immediate departure from the payment structure was agreed on the same day the agreement was signed. It is said that the Respondents' Skeleton Argument states that a pre-payment of six months' rent of £22,620 was made in June 2023, but this is not borne out by the documentation. It is also said that Ms. Gilbert states in her witness statement that payments were made in accordance with the Rent-to-Rent agreement, but this is not the case – the payments which were made bear no resemblance to the contractual mechanism and the pattern is more consistent with reverse engineering. In the further evidence, Ms. Gilbert states that rent was paid as and when possible subject to rents received because of Covid and the first six months' rent was immediately paid, but the Applicant submits that this is unsupported and implausible as the Rent-to-Rent agreement was entered into on 1 February 2022 and the Respondents have not provided any remittance statements, any side letters, any amended agreement, any emails recording the revised payment structure, any evidence of the landlord chasing for the overdue sums.

151. Further, the Applicant submits that none of the transfers contain a reference to the Property or to the Applicants and so there is nothing linking those sums to this tenancy. There is no evidence of any onward transfer of the rent paid by the Applicants from Commercial Property London Ltd to the First Respondent.

152. It is said that the Metro statements show funds arriving from Foxtons and being transferred to the Second Respondent, which is inconsistent with a genuine Rent-to-Rent agreement and consistent with money being paid into the company account from other sources and remitted to the Second Respondent when received. Further, the bank evidence does not show any payments of substance to any other than the Second Respondent (e.g. not to other employees).

153. The Applicants states that the Respondents have not provided the evidence ordered for the full period of 14 September 2023-3 June 2024. There is also a change from Metro company statements to the Second Respondent's personal Santander account for January 2023. It is said that the material has been assembled to support their case rather than disclose the true financial position.

154. The Applicants also submit that the Tribunal is being asked to accept that the superior landlord accepted only about 53% of the rent being achieved from the Property.

155. Finally, the Applicants state that they are concerned that the First Respondent is being positioned to bear liability as it has not real substance.

156. The Respondents have also provided submissions in response. These state (in summary):

(a) Further documents were attached, including rent receipts;
(b) The allegations of a sham agreement are not supported;
(c) Payments were made to the Second Respondent as funds became available;
(d) The assertion made in the Skeleton Argument did not refer to rent payable by the First Respondent to the Second Respondent, but related to the Applicants' rent;
(e) The £3,000 deposit was paid from another bank account;
(f) The first six months' of the Applicants' rent was paid to Foxtons and later rent payments were made to the First Respondent;
(g) The Foxtons' receipts show funds being received and then payments made to the Second Respondent, consistent with the First Respondent applying available funds to sums owed to the Second Respondent.

157. As the Respondents had provided new documents, the Applicants were asked to respond and have provided an "Applicants' Reply to the Respondents' Submissions of 17 April 2025". In brief (and in summary) the Applicants say that the Respondents' submissions do not cure the defects in the Respondents' case and the documents provided do not prove that the Rent to Rent agreement was a genuine operative arrangement. The agreement requires a £3,000 deposit and yearly rent in advance of £24,000 from 1 March 2022 and the payments do not reflect this. The bank evidence shows Foxtons' receipt followed by transfer to the Second Respondent. It is also said that the Respondents have not answered the issue of commercial implausibility (why they would accept only about 53% of the rent). It is submitted that the Respondents' reliance on *Rakusen* assumes that the First Respondent was the genuine immediate landlord.

Statutory regime

158. The statutory regime is set out in Chapter 4 of Part 2 of the 2016 Act.

159. Rent repayment orders are one of a number of measures introduced with the aim of discouraging rogue landlords and agents and to assist with achieving and maintaining acceptable standards in the rented property market. The relevant provisions relating to rent repayment orders are

set out in sections 40-46 Housing and Planning Act 2016 ("the 2016") Act, not all of which relate to the circumstances of this case.

160. Part 2 of the Housing Act 2004 ("the 2004 Act") introduced licensing for certain HMO's. The Local Authority may designate an area to be subject to additional licencing where other categories of HMO's occupied by three or more persons forming two or more households are required to be licenced.

161. Section 40 of the 2016 Act gives the Tribunal power to make an RRO where a landlord has committed a relevant offence. Section 40(2) explains that an RRO is an order requiring the landlord under a tenancy of housing in England to repay an amount of rent paid by a tenant (or where relevant to pay a sum to a local authority). A relevant offence is an offence, of a description specified in a table in the section and that is committed by a landlord in relation to housing in England let by that landlord. The table includes s.72(1) Housing Act 2004.

41 Application for a rent repayment order
(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
...

162. Section 41 permits a tenant to apply to the First-tier Tribunal for a rent repayment order against a person who has committed a specified offence, if the offence relates to housing rented by the tenant(s) and the offence was committed in the period of 12 months ending with the day on which the application is made.

43 Making of rent repayment order
(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);
...

163. Under section 43, the Tribunal may only make a rent repayment order if satisfied, beyond reasonable doubt in relation to matters of fact, that the landlord has committed a specified offence (whether or not the landlord has been convicted). Where reference is made below to the Tribunal being satisfied of a given matter in relation to the commission of an offence, the Tribunal is satisfied beyond reasonable doubt, whether stated specifically or not.

164. It has been confirmed by case authorities that a lack of reasonable doubt, which may be expressed as the Tribunal being sure, does not mean proof beyond any doubt whatsoever. Neither does it preclude the Tribunal drawing appropriate inferences from evidence received and accepted. The standard of proof relates to matters of fact. The Tribunal will separately determine the relevant law in the usual manner.

165. Where the application is made by a tenant, and the landlord has not been convicted of a relevant offence, s.44 applies in relation to the amount of a rent repayment order, setting out the maximum amount that may be ordered and matters to be considered. If the offence relates to HMO licensing, the amount must relate to rent paid by the Applicants in a period, not exceeding 12 months, during which the Respondent was committing the offence. This aspect is discussed rather more fully below.

44 Amount of order: tenants
(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.
(2) The amount must relate to rent paid during the period mentioned in the table.

If the order is made on the ground that the landlord has committed	The amount must relate to rent repaid by the tenant in respect of
...	
An offence mentioned in row 3, 4, 5, 6, or 7 of the table in section 40(3)	A period, not exceeding 12 months, during which the landlord was committing the offence
...	

(3) The amount that the landlord may be required to repay in respect of a period must not exceed-
(a) the rent repaid in respect of that period, less
(b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.
(4) In determining the amount the tribunal must, in particular, take into account-
(a) the conduct of the landlord and the tenant,
(b) the financial circumstances of the landlord, and
(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

Determination of the Tribunal

166. The Tribunal has considered the application in four stages-

(i) whether the Tribunal was satisfied beyond reasonable doubt that the First and/or Second Respondent had committed an offence under section 72(1) of the 2004 Act in that at the relevant time the First and/or Second Respondent was a person who controlled or managed an HMO that was required to be licensed under Part 2 of the 2004 Act but was not so licensed.
(ii) whether the Applicant was entitled to apply to the Tribunal for a rent repayment order.
(iii) Whether the Tribunal should exercise its discretion to make a rent repayment order.
(iv) Determination of the amount of any order.

Was a relevant HMO licensing offence committed during the period 14 September 2023-3 June 2024 and by whom?

167. The Tribunal applies, as it must, the criminal standard of proof (s.43(1)).

168. The Tribunal finds that, during the relevant period(s), the Property was a "HMO" (s.254-259) and the Property required an additional licence (A113, A149) in order to be occupiable by three or more persons living in two or more separate households. The Tribunal is also satisfied that the Property was, at the material times, occupied by three people living in more than two separate households.

169. Section 72(1) of the 2004 Act is one of those listed in section 40 of the 2016 Act in respect of which the First-tier Tribunal may make a rent repayment order. The section provides that:

"A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed... but is not so licensed".

170. Section 61(1) states:

"Every HMO to which this Part applies must be licensed under this Part unless-
(a) a temporary exemption notice is in force in relation to it under section 62, or
(b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4".

171. Section 55 states:

"(1) This Part provides for HMOs to be licensed by local housing authorities where-
(a) HMOs to which this Part applies (see subsection (2)), and
(b) they are required to be licensed under this Part (see section 61(1)).
(2) This Part applies to the following HMOs in the case of each local housing authority-
(a) any HMO in the authority's district which falls within any prescribed description of HMO, and
(b) if an area is for the time being designated by the authority under section 56 as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in the designation".

172. It is not disputed that there was no additional licence during the Applicants' tenancy, but in any event, on the evidence, the Tribunal would have found (applying the criminal standard) that there was no additional licence in place during the Applicants' tenancy (A93-99). The Property is situated in an area designated for additional licensing (A107).

173. There was, therefore, an offence committed during the period for which an RRO is sought (14 September 2023-3 June 2024), subject to any defence pursuant to s.72(4) Housing Act 2004 and any reasonable excuse defence (which the Tribunal will go on to consider).

174. The next question is by whom the offence was committed.

175. In *Cabo v Dezotti* [2022] UKUT 240 (LC) the Deputy Chamber President held that a company may let a property in its own name on behalf of a principal, and the principal be treated as the landlord for the purposes of an. The following factors in *Cabo* gave rise to the finding of a relationship of agent/principal between company/landlord, in circumstances where the purported landlord under the tenancy was the company:

(a) The company had no interest of its own in the property, whilst the individual Respondent did (para [81])

(b) The Company managed the property for the benefit of the principal, who received at least part of the rental income (para [73]).

176. The Court of Appeal affirmed the Deputy President's decision ([2024] EWCA Civ 1358).

177. In *Mrs Elanga Longane et al v Frank Mukahanana and Wealth Harbour Consulting Ltd* LON/00AH/HMG/2018/0002, at para [36] Judge P Korn concluded: 'It is true that the Second Respondent has been called the landlord in the tenancy agreement, but as it has no property interest in the Property it cannot be anything more than an agent of the landlord.'

178. In LON/00BG/HMF/2022/0087, the Tribunal was considering an application for an RRO. The respondent in that case said that the applicants shared accommodation with him and also said that the tenancy agreements were not with him, but with KJSZ Ltd and that he never received fees or rent from the applicants. When dealing with the identity of the landlord, it was said:

"32. The contention put forward by the Respondent in his statement appeared to be that he was not the Applicants' landlord but, rather, this was a company known as KJSZ Ltd. Indeed, he stated that the Applicants had signed lodger's agreements with that company (page 205).

33. This assertion was inconsistent with the evidence before the Tribunal. Firstly, it was satisfied that the Respondent is the registered proprietor of a leasehold interest in the property (pages 17 – 18). Secondly, the Applicants both produced written agreements, described as lodger agreements. That for Ms. Lopez is at pages 188 to 191. It is a pro-forma agreement with spaces to be completed by the parties. In it the Respondent is named as both the "householder" (page 189) and is described as the landlord (page 190), though the agreement purports to have been signed on behalf of KJSZ Ltd (page 189). The agreement also requires rent to be paid to KJSZ Ltd (page 190). The agreement for Ms. Vicente is at pages 51 to 53. It is in the same form as that of the First Applicant and the Respondent is again named as both householder and landlord, and it states that rent should be paid to KJSZ Ltd. This agreement purports to have been signed by "the Householder" who is named in the document as Mr. Mansour.

34. On the face of the documents themselves the Respondent is the Applicants' landlord and KJSZ Ltd. receive the rent on his behalf. The Respondent has not provided any evidence to show that he has created any leasehold interest in the property in favour of KJSZ Ltd, and there is no evidence that they have any proprietary interest in the property. The evidence of the Applicants was that they regarded Mr. Mansour as their landlord.

35. Taking the evidence together it was clear to the Tribunal that, regardless of who received the rent, the Applicants' immediate landlord was clearly the Respondent Mr. Mansour".

179. When dealing with management and/or control, the Tribunal said as follows:

"36. Having concluded that the Respondent was the immediate landlord of both Applicants, the Tribunal then considered whether he was either a person having control of the property or whether he was managing it.

37. In order to be a person in control of the property Mr. Mansour must be the person who receives the rack-rent of the premises or who would so receive it if the premises were let at a rack-rent (section 263(1) of the 2004 Act).

38. There was insufficient evidence from which the Tribunal could be satisfied that the Respondent in fact received any of the rent paid by the Applicants. The evidence was that rent was paid to KJSZ Ltd, which is what the agreements entered into with the Applicants required. There was no evidence of the rent being forwarded on to the Respondent. The Tribunal was not, therefore, satisfied that the Respondent was a person having control of the property.

39, To be a person managing the property the Respondent must be firstly, either an owner or lessee of the premises. There is no doubt that he is a lessee as shown by the registered leasehold interest.

40. Secondly, he must either receive some rent or payment from those in occupation or must be a person who would so receive those rents but for having entered into an arrangement with another person, who is not an owner or lessee of the premises, by virtue of which that other person receives the rent or payments.

41. Whilst there was insufficient evidence to show that the Respondent himself received rent, it was clear from the lodger agreements that the reason for this was that he had agreed with the Applicants that they would pay their rent to KJSZ Ltd. From this the Tribunal inferred that the Respondent must have entered into an agreement with KJSZ Ltd. for the company to receive the rent on his behalf. There was no evidence that KJSZ Ltd. was itself an owner or lessee of the property.

42. It followed, therefore, that the Respondent was a person managing the property by virtue of section 263(3)(b) of the 2004 Act".

180. The Tribunal concludes that the First Respondent was the Applicants' immediate landlord for the following reasons:

181. (1) The Applicants' tenancy agreement does create a relationship of landlord and tenant between them and the First Respondent. As a result of the Rent to Rent agreement (dealt with further below), the First Respondent did have an interest in the Property.

182. (2) On 1 September 2023 the Second Respondent's name was given as landlord, but her evidence was that it was not her telephone number

given and the email was a generic email at Residential Property London. Further, by email of 6 September 2023, the Second Applicant was told that the landlord was a company (A22).

183. (3) It is noted that in *Rakusen* it was said that [40], on the facts of that case, all the "rogue" landlord had to do to escape an RRO was to set up to rent-to-rent scheme, rendering itself the superior landlord by letting to a company which would then sub-let to the applicant. In that case, an RRO against the immediate landlord would need to be brought against the company. It was said that, in that scenario, the company may have insufficient assets to justify the RRO. It was noted that this represented a "major concern" and it was accepted that the interpretation taken by the Supreme Court rendered RROs less effective that they "perhaps could be if they were to be made available against superior landlords" but it was said that that development would undermine the clear definition of an RRO and would require new legislation.

184. (4) The Second Respondent is the freehold owner (A91), but there is a "Rent to Rent Tenancy Agreement" between the First Respondent and the Second Respondent which provides for a rent of £2,000 per month and which provides that the Second Respondent lets the Property to the First Respondent for the term of three years from and including 1 February 2022

185. In terms of the payments made, it is noted that the Tribunal ordered "**any** bank statement showing payments made or received under the Rent to Rent agreement dated 1 Feb 2022 between the Respondents" (emphasis added for the purpose of this decision) and, if the Respondents wished to rely on any bank statements showing payments made in respect of the Rent to Rent agreement, they had to be provided to the Tribunal (and the Applicant). The Tribunal therefore proceeds on the basis that the only bank statements evidencing payments are those provided to the Tribunal. It is also noted that, although it is alleged that the Second Respondent sent the First Respondent rent demands and she issued rent receipts acknowledging payments, none have been provided. The scope of the Tribunal's order did not cover these documents, but the position remains that if the Respondents had wished to rely on them, they needed to have provided them. They have not. It is true, therefore, that the Respondents have not provided any remittance statements, any side letters, any amended agreement, any emails recording the revised payment structure, any evidence of the landlord chasing for the overdue sums.

186. It is, however, the case that there is evidence of payments being made. It is noted that there is nothing in the bank statements to link the transactions to the Property, but it is noted that payments were made out from the First Respondent's account (£63,223), £38,203 of which are linked to the Second Respondent. The Second Respondent states that she accepted flexible payments due to Covid 19.

187. There are payments in to the First Respondent's Metro bank account from Foxtons. Again, there is nothing to link this to the Property, but it is evidence of receipt of rent from Foxtons (and the Property was rented through Foxtons). The payment on 3 August 2022 is the same amount of the transfer out to the Second Respondent, but this is not the case for the money received on 9 September 2022, 21 October 2022. These transactions are consistent with money being received from Foxtons (being rent due under the Applicants' tenancy agreement) and payments out to the Second Respondent in respect of the Rent to Rent agreement (using the money received from the rent – the Respondents state that payments were made to the Second Respondent as funds became available).

188. It is the case that all of the payments out to the Second Respondent would not have been in respect of the Rent to Rent agreement (as £27,000 was due and £63,223 was paid out, but the Tribunal is satisfied that payments were made by the First Respondent to the Second Respondent under the Rent to Rent agreement. It is the case that the (then) director of the First Respondent was the daughter of the Second Respondent, which does explain any "flexibility" in arrangements, but does not mean that the Rent to Rent agreement was a sham and the Tribunal does not find it to be such.

189. (5) The Tribunal does not have regard to the "Mediation Settlement Agreement" as it states that, save for enforcement, it is confidential (and the local authority has not waived confidentiality), but in any event, an agreement between the Respondents and the local authority as to the appropriate person or body against who a civil penalty should be made would not change the Tribunal's findings.

190. (6) Invoices for the utilities came from Residential Property London, to be paid to the First Respondent (R41-45). The rent was paid to the First Respondent (A84-86).

191. (7) The initial application for the licence was in the name of the First Respondent. Later correspondence about it came from Residential Property London (R38, R40), who was acting as the First Respondent's agent.

192. (8) The s.8 notice (R49) gives the landlord as the First Respondent.

193. (9) The Second Respondent may have had some involvement with the Applicants, but she was acting for and on behalf of the First Respondent, not in her own, personal, capacity. She was, at the material time, still registered as a director of the Second Respondent, but so was Ms. Gilbert (A135). The First Respondent and the Second Respondent are distinct legal entities. Pursuant to *Kaszowska v White* [2022] UKUT 11, the only person against whom an RRO could be made was an occupier's landlord and if Parliament had intended to provide for such an order to be made

against a director of a corporate landlord, it would have made express provision.

194. (10) The fact that there is an active proposal to strike off the First Respondent company cannot and does not change the factual findings as to the identity of the Applicants' landlord.

195. The Second Respondent was not the Applicants' immediate landlord for the purposes of s.40(2) Housing and Planning Act 2016. In *Jepsen v Rakusen* [2023] UKSC 9, the Supreme Court confirmed that an RRO cannot be made against a superior landlord.

196. The Tribunal has considered whether the Second Respondent was the person in control of the property but concludes that she was not, as she was not the person who received the rack-rent (or who would so receive it). It has also considered if she was the person "managing" the Property but, for the reasons already given, it concludes that she was not.

197. The Tribunal determines that the offence was committed by the First Respondent, being the "person" within the meaning of s.71(1) and s.263 Housing Act 2004, who had control of the Property and/or the "person" managing the Property during the material time.

198. The Tribunal then has to consider potential defences by the First Respondent. An application for a licence was made (as evidenced by its refusal – R36). Section 72(4) Housing Act 2004 states:

In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time-

(a) A notification had been duly given in respect of the house under section 62(1), or
(b) An application for a licence has been duly made in respect of the house under section 63

And that notification or application was still effective (see subsection 8).

199. Subsection (8) provides that an application is "effective" at a particular time if at that time it has not been withdrawn, and either-

(a) The authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or
(b) If they have decided not to do so, one of the conditions set out in subsection (9) is met.

200. When the application was made, it was "duly" made as the fee necessary to start the application was paid (the Part A payment). The Property is treated as unlicensed, until the full fee is paid, but he application was effective, until the local authority decided not to grant an application. That engages subsection (8)(b) and, consequently, subsection (9), which states:

The conditions are-

(a) That the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or

(b) That an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

201. There has been some reference to an appeal being lodged, but the Tribunal has received no evidence to confirm this. The application was therefore effective until 28 days after the refusal (which was 19 September 2023 – A95). The First Respondent therefore has a defence up to and including 17 October 2023.

202. The First Respondent relied on the payment evidenced by the document provided at the hearing, showing that a payment of £270 was made on 11 March 2026 at 10:49:17, the night before the hearing. This does bear the reference number of the application made in 2022. The fact that this money was paid to the local authority does not change the fact, however, that the local authority made a decision to refuse to grant an HMO licence and, by virtue of the statutory provisions referred to, the application ceased to be effective on 17 October 2023.

203. Where the First Respondent would otherwise have committed an offence under section 72(1) of the 2004 Act, there is a defence if the Tribunal finds that there was a reasonable excuse pursuant to section 72(5). The standard of proof in relation to that is the balance of probabilities. Where the Tribunal makes findings of fact in relation to such an aspect of the case, it does so on the basis of which of the two matters it finds more likely. It does not need to be sure in the manner that it does with facts upon which the asserted commission of an offence is based.

204. The offence is strict liability (unless the First Respondent had a reasonable excuse) as held in *Mohamed v London Borough of Waltham Forest* [2020] EWHC 1083. The intention or otherwise of the First Respondent to commit the offence is not the question at this stage, albeit there is potential relevance to the amount of any award. The case authority of *Sutton v Norwich City Council* [2020] UKUT 90 (LC) in

relation to reasonable excuse held that the failure of the company, as it was in that case, to inform itself of its responsibilities did not amount to reasonable excuse. The point applies just the same to individuals.

205. The Upper Tribunal gave guidance on what amounts to reasonable excuse defence was given in *Marigold & Ors v Wells* [2023] UKUT 33 (LC), *D'Costa v D'Andrea & Ors* [2021] UKUT 144 (LC) and in *Aytan v Moore* [2022] UKUT 027 (LC):

(a) the Tribunal should consider whether the facts raised could give rise to a reasonable excuse defence, even if the defence has not been specifically raised by the Respondent;
(b) when considering reasonable excuse defences, the offence is managing or being in control of an HMO without a licence;
(c) it is for the Respondent to make out the defence of reasonable excuse to the civil standard of proof.
(d) 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 him/herself of the licensing requirements without relying upon an agent (e.g. because the landlord lived abroad).

206. In terms of reliance on an agent (Commercial Estate Management) there is no evidence on a contractual obligation on the part of the agent to keep the landlord informed of licensing requirements; there is no evidence that the landlord had good reason to rely on the competence and experience of the agent; there is no evidence of a reason why the landlord could not inform him/herself of the licensing requirements without relying upon an agent. The Tribunal therefore finds, on the balance of probabilities, that no reasonable excuse defence on this basis is made out.

207. In terms of the reason for the refusal of the licence (failure to make the Part B payment), the Tribunal notes that, in *Marigold v Wells*, it was held: In considering whether a landlord had a reasonable excuse for failing to comply with a licensing or regulatory requirement, the first step for the First-tier Tribunal is to establish what facts the landlord asserts give rise to a reasonable excuse; this may include the belief, acts or omissions of the landlord or any other person, the landlord's own experience or relevant attributes, the situation of the landlord at any relevant time and any other relevant facts; secondly, it should decide which of those facts are proven; thirdly, it should decide whether, viewed objectively, those proven facts initially amounted to a reasonable excuse and whether they continued to do so; the tribunal should take into

account the experience and other relevant attributes of the landlord and the situation in which they found themselves at the relevant time or times; in this context, it might assist the tribunal to ask itself: "was what the landlord did (or omitted to do or believed) objectively reasonable for this landlord in those circumstances?"

208. This was a professional landlord. It was aware that the Property needed a licence and the onus was on the First Respondent to ensure that the Property was licensed. Being aware that the Property had been inspected (with no issue) and then assuming (for at least about nine months) that the licence would be issued does not amount to a reasonable excuse. Further, having known that the agent had submitted the application, and then being aware that he had returned to Hungary, the onus was on the First Respondent to ensure that matters the agent had been dealing with, such as the licence, were dealt with. The First Respondent either knew or should have known that copies of licences are provided and, without such or confirmation that a licence had been granted, it either knew or ought to have known that the Property was unlicensed. The Notice of Intention to Refuse to Grant an HMO Licence (R36) states that the local authority could not be satisfied that suitable management arrangements were in place. In this respect, and at the material time, suitable management arrangements were not in place.

209. The Tribunal therefore finds, on the balance of probabilities, that no reasonable excuse defence is made out.

210. The Tribunal finds that the offence was committed by the First Respondent for the period of 17 October 2023-3 June 2024.

Should the Tribunal make an RRO?

211. Given that the Tribunal is satisfied, beyond reasonable doubt, that the First Respondent committed an offence under section 72(1) of the 2004 Act, a ground for making a rent repayment order has been made out.

212. Pursuant to the 2016, a rent repayment order "may" be made if the Tribunal finds that a relevant offence was committed. Whilst the Tribunal could determine that a ground for a rent repayment order is made out but not make such an order, Judge McGrath, President of this Tribunal, said whilst sitting in the Upper Tribunal in the *London Borough of Newham v John Francis Harris* [2017] UKUT 264 (LC) as follows:

"I should add that it will be a rare case where a Tribunal does exercise its discretion not to make an order. If a person has committed a criminal offence and the consequences of doing so are prescribed by legislation to include an obligation to repay rent housing benefit then the Tribunal should be reluctant to refuse an application for rent repayment order".

213. The very clear purpose of the 2016 Act is that the imposition of a rent repayment order is penal, to discourage landlords from breaking the law, and not to compensate a tenant, who may or may not have other rights to compensation. That must, the Tribunal considers, weigh especially heavily in favour of an order being made if a ground for one is made out.

214. The Tribunal is given a wide discretion and considers that it is entitled to look at all of the circumstances in order to decide whether or not its discretion should be exercised in favour of making a rent repayment order. The Tribunal determines that it is entitled to therefore consider the nature and circumstances of the offence and any relevant conduct found of the parties, together with any other matters that the Tribunal finds to properly be relevant in answering the question of how its discretion ought to be exercised.

215. Taking account of all factors, the evidence and submissions of the parties, including the purpose of the 2004 Act, the Tribunal exercises its discretion to make a rent repayment order in favour of the Applicants.

<u>**The amount of rent to be repaid**</u>

216. Having exercised its discretion to make a rent repayment order, the next decision was how much should the Tribunal order?

217. In *Acheampong v Roman* [2022] UKUT 239 (LC) at [20] the Upper Tribunal established a four-stage approach for the Tribunal to adopt when assessing the amount of any order:

(a) ascertain the whole of the rent for the relevant period;
(b) subtract any element that represents payment for utilities;
(c) consider the seriousness of the offence, both compared to other types of offences 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 is a fair reflection of the seriousness of this offence? That percentage of the total amount applies for is the starting point; it is the default penalty in the absence of other factors, but it may be higher or lower in light of the final step;
(d) consider whether any deductions from, or addition to, that figure should be made in light of the other factors set out in section 44(4)".

218. In the absence of a conviction, the relevant provision is section 44(3) of the 2016 Act. Therefore, the amount ordered to be repaid must "relate to" rent paid in the period identified as relevant in section 44(2), the subsection which deals with the period identified as relevant in section 44(2), the subsection which deals with the period of rent repayments relevant. The period is different for two different sets of offences. The first is for offences which may be committed on a one-off occasion, albeit they may also be committed repeatedly. The second is for offences committed over a period of time, such as a licensing offence.

219. At [31] of *Williams v Parmar* [2021] UKUT 244 (LC) it was said:

> "... [the Tribunal] is not required to be satisfied to the criminal standard on the identity of the period specified in s.44(2). Identifying that period is an aspect of quantifying the amount of the RRO, even though the period is defined in relation to certain offences as being the period during which the landlord was committing the offence".

220. The Tribunal is mindful of the various decisions of the Upper Tribunal in relation to rent repayment order cases. Section 44 of the 2016 Act does not when referring to the amount include the word "reasonable" in the way that the previous provisions in the 2004 Act did. Judge Cooke stated clearly in her judgement in *Vadamalayan v Stewart and others* (2020) UKUT 0183 (LC) that there is no longer a requirement of reasonableness. Judge Cooke noted (paragraph 19) that the rent repayment regime was intended to be harsh on landlords and to operate as a fierce deterrent. The judgment held in clear terms, and perhaps most significantly, that the Tribunal must consider the actual rent paid and not simply any profit element which the landlord derives from the property, to which no reference is made in the 2016 Act. The Upper Tribunal additionally made it clear that the benefit obtained by the tenant in having had the accommodation is not a material consideration in relation to the amount of the repayment to order. However, the Tribunal could take account of the rent including the utilities where it did so. In those instances, the rent should be adjusted for that reason.

221. In *Vadamalayan*, there were also comments about how much rent should be awarded and some confusion later arose. Given the apparent misunderstanding of the judgment in that case, on 6th October 2021, the judgment of The President of the Lands Chamber, Fancourt J, in *Williams v Parmar* [2021] UKUT 0244 (LC) was handed down. *Williams* has been applied in more recent decisions of the Upper Tribunal, as well as repeatedly by this Tribunal. The judgment explains at paragraph 50 that: "A tribunal should address specifically what proportion of the maximum amount of rent paid in the relevant period, or reduction from that amount, or a combination of both, is appropriate in all the circumstances, bearing in mind the purpose of the legislative provisions."

222. The judgment goes on to state that the award should be that which the Tribunal considers appropriate applying the provisions of section 44(4). There are matters which the Tribunal "must, in particular take into account". The Tribunal is compelled to consider those and to refer to them. The phrase "in particular" suggests those factors should be given greater weight than other factors. In *Williams*, they are described as "the main factors that may be expected to be relevant in the majority of cases"- and such other ones as it has determined to be relevant, giving them the weight that it considers each should receive. Fancourt J in *Williams* says this: "A tribunal must have particular regard to the conduct of both parties includes the seriousness of the offences committed), the financial circumstances of the landlord and whether the landlord has been convicted of a relevant offence, The Tribunal should also take into account any other factors that appear to be relevant."

223. The Tribunal must not order more to be repaid than was actually paid out by the Applicants to the First Respondent during that period (ignoring for these purposes a provision about universal credit not of relevance here). That is entirely consistent with the order being one for repayment. The provision refers to the rent paid during the period rather than rent for the period.

224. It was said, in *Williams v Parmar*, by Sir Timothy Fancourt [43] that the *Rent Repayment Orders* under the Housing and Planning Act 2016: Guidance for Local Authorities identifies the factors that a local authority should take into account in deciding whether to seek a Rent Repayment Order as being the need to: punish offending landlords; deter the particular landlord from further offences; dissuade other landlords from breaching the law; and remove from landlords the financial benefit of offending. It was indicated [51] that the factors identified in the Guidance will generally justify an order for repayment of at least a substantial part of the rent. It was also said that a full award of 100% of the rent should be reserved for the most serious of cases.

225. The Tribunal has carefully considered the amount of the rent for the relevant period of the licencing offence that should be awarded.

<u>Ascertain the whole of the rent for the relevant period</u>

226. The relevant rent to consider is that paid during "a period, not exceeding twelve months, during which the landlord was committing the offence".

227. The period for which an RRO is sought (and which is the "relevant period") 17 October 2023-3 June 2024.

228. In the case of *Kowalek v Hassanein Ltd* [2022] EWCA Civ 1041, the Court of Appeal held, among other things that, on a true construction of s.44(2) of the 2016 Act, in order to be recoverable under an RRO, the rent in question had both to have been paid to discharge indebtedness which had arisen during the relevant period of offending by the landlord and in fact paid during that period.

229. In *Pearton v Betterton Duplex Limited* [2025] UKUT 175 (LC) the Upper Tribunal found that the First-tier Tribunal was correct in finding that it could not make an RRO where the rent had been paid before the offence was being committed.

230. The tenancy agreement (A62) provided that the second tenancy started on 20 August 2023 and was £870 per week (£3,770 pcm), with £22,620 to be paid half yearly in advance, and there after £22,620 every six months in advance.

231. Pursuant to *Kowalek*, the initial £22,620 is not rent in the relevant period. Rent fell due again on 20 February 2024. It is only payments which fell due after 20 February 2024 which can be "relevant" rent. Under the tenancy, agreement, the sum of £22,620 was due and liable (rent being due in advance).

232. In terms of payments made after this time:

(a) The First Applicant paid £7,306 on 4 March 2024 (A84);

(b) The Second Applicant paid €9,535.71 (A82 appears to convert this to £7,878) on 5 March 2024 (A85);

(c) The Third Applicant paid £8,743 on 4 March 2024 (A85).

233. The First Applicant did, therefore pay the sum of £6,865.78 in the material period of 20 February 2024-3 June and this was in respect of liabilities which fell due during this period. Adopting the same logic, the Second Applicant paid £7,403.24 and the Third Applicant paid £6,987.86.

234. None of the Applicants were in receipt of Universal Credit or Housing Benefit.

235. The whole of the rent (paid by the Applicants) for the relevant period is therefore £21,256.88.

<u>Deductions for utilities?</u>

236. The evidence was that charges for utilities were made separate and in addition to the rent, so no deductions are made in this regard.

Seriousness of Offence

237. In *Williams v Parmar* [2021] UKUT 244 (LC) it was said that "the circumstances and seriousness of the offending conduct of the landlord are comprised in the 'conduct of the landlord', so the First Tier Tribunal may, in an appropriate case, order a lower than maximum amount of rent repayment, if what a landlord did or failed to do in committing the offence is relatively low in the scale of seriousness of mitigating circumstances or otherwise".

238. As the Upper Tribunal has made clear, the conduct of the First Respondent also embraces the culpability of the First Respondent in relation to the offence that is the pre-condition for the making of the Rent Repayment Order. The offence of controlling or managing an unlicensed HMO is a serious offence, although it is clear from the scheme and detailed provisions of the 2016 Act that it is not regarded as the most serious of the offences listed in section 40(3).

239. In *Daff v Gyalui* [2023] UKUT 134 (LC) it was highlighted that there will be more and less serious examples within the category of offence: [49].

240. The Tribunal determines that the relatively less serious offence committed by the First Respondent (i.e. a licensing offence) should be reflected in a deduction from the maximum amount in respect of which an RRO could be made.

241. In *Newell v Abbot* [2024] UKUT 181 (LC) was an appeal with a number of material similarities to the instant case. In *Newell,* the appropriate starting point was determined to be 60% of the rent paid. The tribunal took into account that

(a) The Respondent is an amateur as opposed to a professional landlord.

(b) The breach which occurred was inadvertent.

(c) The property was in good condition; and

(d) A licencing offence was committed (section 95(1), HA 2004).

242. The Tribunal does find that this is a more serious case than *Newell* in that the instant case concerned an additional licence and the First Respondent cannot be described as an amateur landlord. It is accepted that the Property was generally in a good condition (dealt with more fully under the heading of "conduct").

243. The starting point for the Tribunal, taking account of this, is that an RRO should be made, reflecting 70% of the total rent paid for the relevant period.

Conduct

244. The Tribunal takes into account the conduct of the landlord and the tenant, the financial circumstances of the landlord and whether the landlord has at any time been convicted of an offence to which Chapter 4 of the 2016 Act applies when considering the amount of such order. Whilst those listed factors must therefore be taken into account, and the Tribunal should have particular regard to them, they are not the entirety of the matters to be considered: other matters are not excluded from consideration. Any other relevant circumstances should also be considered, requiring the Tribunal to identify whether there are such circumstances and, if so, to give any appropriate weight to them.

245. The Tribunal bears in mind what was said in *Newell v Abbott*, that Tribunals should not feel that they are required to treat every allegation of misconduct with equal seriousness or to make findings of fact on them all – the focus should be on conduct with serious or potentially serious consequences.

246. Allegations are made about the conduct of the First Respondent and counter-allegations are made about the conduct of the Applicants.

247. The Tribunal finds as follows:

248. No deductions or adjustments are made for the following:

(a) In terms of the mould in the Property (A27-29), there is no evidence before the Tribunal as to the cause (i.e. whether it was lifestyle) and it is noted that this is a period building;

(b) There was a report of a leak (A24). The response was that a check would be carried out to see what the problem was. The suggestion about a bucket was solely to collect the water dripping. There was a further report in April 2024 (A25) and against the response was that it would be checked;

(c) Generally, the Property was in good condition;

(d) In terms of fire safety, there is no evidence that any works or alterations were required by the local authority as a condition of the licence being granted;

(e) There was one party (R47) hosted by the Applicants at which there were more than a few people, with some noise and some unacceptable behaviour from guests, but this was one occasion and would not alter the award;

(f) It was not unreasonable of the Applicants not to arrange installation of a meter or meters in the Property to get bills put into their name;

(g) There was no onus on the Applicants to alert the First Respondent to the lack of licence: *Wilson v Campbell* [2019] UKUT 0363 (which was in any event, a very different case on the facts);

(h) There were allegations made by Ms. Gilbert, on behalf of the First Respondent, that the Applicants were intimidating and rude, but the Tribunal does not make such a finding;

(i) The Second Applicant cannot say that a gas safety corticate was not provided (A19) only that she could not find it. It is noted that there was a valid gas safety certificate (R29);

(j) The deposit was protected (AR22).

249. The Tribunal makes the following findings, which is does take into account when considering conduct:

(a) The tenancy agreement did provide that the tenants were to apply for the accounts for the services to be put in the name of the tenants, but, on the evidence, this was a more complicated process, involving arranging installation of a meter in the Property. Unless and until the account was transferred, the Applicants were to pay £4.50 for gas and £5.45 for electricity. There is no mention of VAT. The utility invoices (R41-42) are based on usage and charged at a rate of £5.45 for electricity and £4.50 for gas, plus VAT at 5% with the following invoices at a slightly higher rate (R43-44). The Applicants asked for updated bills (AR32) but they were not provided. Under the Tenant Fees Act 2019, whilst landlord can charge for utilities, they cannot charge more than they were charged for the utilities themselves. The First Respondent has not provided any bills, so we cannot be satisfied that these were lawful charges;

(b) Residential Property London (acting as agent for the First Respondent) did tell the Applicants that data would be passed to the Home Office, Visa sections and the authorities in previous "address" in home countries;

(c) The Property is not currently licensed as the current licence is in the name of CLGMS Properties Trust LLP, which (assuming that should be CLGMS Property Trust LLP) has been dissolved.

250. Taking account of this and balancing all the factors, the Tribunal makes an adjustment to the amount of the RRO in the amount of 5%, i.e. deciding that an RRO should be made, reflecting 75% of the total rent paid for the relevant period.

Whether landlord convicted of an offence

251. Section 44(4)(c) of the 2016 Act requires the Tribunal to take into account whether the First Respondent has at any time been convicted of any of the offences listed in section 40(3). The First Respondent has no such convictions – a civil penalty has been made as against the First Respondent, but that arises out of the same tenancy (and unlicensed Property) as the current application.

Financial circumstances of the First Respondent

252. The Tribunal takes account of what it was told about the financial circumstances of the First Respondent and makes no adjustment.

The amount of the repayment

253. The Tribunal determines that, in order to reflect the factors discussed above, the maximum repayment amount should be discounted by 25% (i.e. the fine is 75% of the rent paid in the material period). The Tribunal therefore orders under s.43(1) of the 2016 Act that the First Respondent repay to the Applicants the total sum of £15,942.66:

(i) The First Applicant - £5,149.33;
(ii) The Second Applicant - £5,552.43;
(iii) The Third Applicant - £5,240.90.

254. The Tribunal has had regard to all the circumstances in setting a time for payment, including the amount of the RRO.

Application for refund of fees

255. The Applicants asked the Tribunal to award the fees paid in respect of the application should they be successful, namely reimbursement of the issue fee and the hearing fee. The Tribunal does order the First Respondent to pay all of the fees paid by the Applicants and so the sum of £341. In view of the late production of the Rent to Rent agreement, it would have ordered this even if the application for an RRO had been dismissed.

Judge Sarah McKeown
7 May 2026

<u>Rights of appeal</u>

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber)