FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/33UG/HMK/2025/0625**
Property	**:**	**19 Larman Lane, Norwich NR5 8TZ**
Applicants	**:**	**(1) Mohammed Mujahid Hussain, (2) Erin Blandford (3) Ahmed Ramadan Ragheb Mahmoud Eish (4) Luisa Fernanda Sevilla Monroy (5) Wu Chen (6) Yousif Al-Assadi**
Representative	**:**	**In person, led by Yousif Al-Assadi**
Respondent	**:**	**Chwee 'Larry' Chan**
Representative	**:**	**In person, assisted by Jenna Veneziani**
Type of application	**:**	**Application for a rent repayment order by a tenant under Sections 40, 41, 43 and 44 of the Housing and Planning Act 2016**
Tribunal members	**:**	**Judge A. Arul** **Gerard F. Smith MRICS FAAV**
Date of hearing	**:**	**28 April 2026**
Date of decision	**:**	**15 May 2026**

DECISION

<u>Decisions of the Tribunal</u>

(1) The Tribunal does not have jurisdiction to hear the applications because the time limit requirements of section 41(2)(b) of the Housing and Planning Act 2016 have not been met.

(2) The Tribunal will not therefore make a Rent Repayment Order.

(3) The Tribunal makes the determinations as set out in the decision below.

<u>Reasons</u>

The Applications

1. The Applicants sought a determination pursuant to section 41 of the Housing and Planning Act 2016 ("the 2016 Act") for a rent repayment order ("RRO"). The Applicants allege that the Respondent landlord has committed the offence of control or management of an unlicensed house, contrary to section 72(1) Housing Act 2004 ("the 2004 Act"). This relates to an alleged failure to obtain a licence for a house in multiple occupation ("HMO") under Part 2 of the 2004 Act.

2. The sum sought in the application form is the rent from 12 months prior to the application, alternatively £4,800, which is said to be the rent paid relating to the period of two months between 14 August 2024 and 15 October 2024. The Applicants clarified at the hearing that the sum sought was £4,800 for the two month period; and not any longer period.

Procedural history and documents

3. The application, dated 9 September 2025, was lodged at the office for the Eastern region (where the Property is situated). On 5 February 2026, a Procedural Judge gave case management directions which required that, by 5 March 2026, the Applicants should send a bundle of relevant documents to the Tribunal and to the Respondent; and thereafter the Respondent, by 2 April 2026, should send a bundle of relevant documents to the Applicants and the Tribunal. The Applicants then had permission to send, by 14 April 2026, a brief reply to the issues raised by the Respondent. The directions were varied on 23 March 2026 to permit the use of electronic bundles only.

4. The Applicants filed a bundle of documents running to 45 pages which included the application form, a copy of the tenancy agreement and an amendment to it, some extracts from bank statements showing rent payments and copies of emails.

5. The Respondent filed a bundle running to 117 pages which included a statement of response to the application together with some documentation relating to the HMO licencing process, emails and extracts from bank records, amongst other documents.

6. There were no witness statements submitted on behalf of any of the Applicants. There were two witness statements submitted on behalf of the Respondent, one from Mr Chan and one from Jenna Veneziani, the managing agent, both dated 31 March 2026.

7. The Tribunal has based its decision on the documents contained within the aforementioned bundles and the submissions made at the hearing; no site visit having been deemed necessary. All those documents have been read by the Tribunal, but it is not necessary in this decision to set out each and every one of them. They all contributed to the reasoning of the decision.

The Hearing

8. The hearing was conducted via CVP.

9. The Applicants, Ms Blandford, Mr Chen, Ms Monroy and Mr Al-Assadi attended the hearing and represented themselves, with Mr Al-Assadi leading the representations. Mr Hussain and Mr Eish did not attend.

10. The Respondent also attended the hearing and represented himself. He was accompanied by his witness, Ms Veneziani.

11. There was a preliminary point raised in the Respondent's statement of case as to whether Mr Al-Assadi was sufficiently authorised to represent all the Applicants. The Tribunal notes that he was the only signatory to the application form, however all Applicants are named and appear to have been copied into the email submitting this to the Tribunal. Thereafter, the other Applicants are copied into some (but not all) other emails with the Tribunal and the Respondent. At the hearing, four of the six Applicants attended and confirmed that they were happy for Mr Al-Assadi to lead their submissions and to supplement those as they wished. In view of this, the Respondent did not pursue this preliminary point and the Tribunal was satisfied that Mr Al-Assadi had appropriate authority to speak for all the Applicants.

The Background Facts

12. 19 Larkman Lane, Norwich NR5 8TZ ("the Property") is owned by the Respondent and it is not disputed that he is the registered proprietor. At the material times it was managed by agents, Focus Property Group Limited, who appear to operate a website known as *lettingssupermarket.com*. We were told that the Respondent had been

letting the Property to students since around 2010, he had three properties in total (two requiring HMO licences) and these were his only source of income.

13. The Property is a detached bungalow comprising six bedrooms available for let to paying tenants. The shared facilities including a living room, conservatory, open plan kitchen and three shower rooms. We were not presented with evidence as the extent of conversion, if any, which has taken place to facilitate the current specification of the Property. However, we noted that the Property is set across two floors, so some sort of loft or attic conversion may have occurred in the past. The Property is served by gas central heating.

14. There was a written tenancy agreement dated 18 June 2024 granted by the Respondent, known as 'Larry' Chan, to (1) Erica Maria Marreiros (2) Mohammed Mujahid Hussain, (3) Erin Blandford (3) Ahmed Ramadan Ragheb Mahmoud Eish (5) Luisa Fernanda Sevilla Monroy. This was for a fixed term between 14 August 2024 and 7 August 2025 at a rent of £2,400 per calendar month. The rent was to be paid on the 14th day of each calendar month in one transaction by the lead tenant, who was Mr Hussain. The tenancy agreement provides that a fair proportion of the utility costs should be paid by the tenants, and, further, that council tax should be paid by them. The tenancy agreement was signed electronically by the Respondent as landlord and the (initial) five tenants on various dates in June 2024. There were also signatures from the named guarantors.

15. There was a deed of assignment by agreement dated 20 September 2024 which had the effect of substituting Ms Marreiros, as an outgoing tenant, for Mr Al-Assadi as an incoming tenant. This deed of assignment also noted Mr Chen as one of the existing tenants, meaning a total of six rather than five tenants. It was clarified at the hearing that Mr Chen become a tenant on or around 28 June 2024, so was a sixth tenant by the commencement date of 14 August 2024. The deed of assignment provided for payment of £276 by Mr Al-Assadi to Ms Marreiros, who had paid that sum in rent for the period 22 September 2024 to 13 October 2024. It was then stated that rent would be paid monthly, commencing 14 October 2024.

16. The bank statement extracts from Mr Hussain's bank account showed payments to him of £400 from each of Ms Blandford, Mr Chen, Ms Marreiros, Ms Eish and Ms Monroy between 3 and 12 September 2024. There is then a payment of £2,400 to the Respondent on 16 September 2024 (which corresponds with the Respondent's record of payments received). There are further payments to Mr Hussain of £400 from each of Ms Blandford, Ms Eish, Ms Monroy, Mr Al-Assadi and Mr Chen between 30 September 2024 and 14 October 2024. There is then a payment of £2,400 to the Respondent on 14 October 2024. For completeness, the Respondent's records also show a payment of £2,400

on 6 September 2024, which is not subject of the application and appears to be a deposit or advance rent payment. Those records also show payments of £2,400 being received on or around the 14th day of each month thereafter well into 2025. This is of note because the bank statements from the Applicants did not correspond precisely with the time period for which an RRO is sought (i.e., the payment made for 14 August 2026 was missing) however the Respondent accepted that he had received rent for the relevant period totalling £4,800 and that there were no arrears of rent throughout the tenancy.

17. The Respondent admits that the Property was operated as a HMO (meaning more than five occupants comprising more than two separate households) between 14 August 2024 and 15 October 2024 (and, indeed, before and after that period). It appears that a licence was held, on the Respondent's case, since around 2018 when mandatory licencing came into effect. It expired on 13 August 2024. The Respondent was reminded about this in a communication from the local authority, Norwich City Council, dated 23 August 2024. In its email of 5 September 2024, the local authority stated that this was sent as part of an ongoing programme of investigations rather than as a result of any complaint. The Respondent applied to renew it on 26 August 2024. A notice of intention to refuse the application was issued by the local authority on 30 August 2024, the Respondent made representations on 2 September 2024, and a final decision refusing was issued on 23 September 2024. It seems that this was on the basis that a new application rather than renewal was required given that the previous licence had already expired. Despite having until 21 October 2024 to appeal, the Respondent submitted a new application with a new fee on 16 October 2024. This appears to have been processed promptly, with notice of intention to issue a licence (with a maximum occupancy of seven) along with a draft application being issued on 1 November 2024. The Respondent says that there was a genuine oversight in the existing licence expiring, historically there had been delays with the local authority processing renewals. This was recognised in the email from the local authority dated 5 September 2024, in which the officer concerned confirmed that they accepted that a genuine error had been made and also stated that no enforcement action would be taken. Notwithstanding, on 2 November 2024, the local authority confirmed that it would not be refunding the £619 fee paid for the renewal application. In effect, the Respondent had therefore paid twice.

18. The Property was granted a HMO licence by the local authority with effect from 16 October 2024. The position is peculiar because it appears that the original licence had been granted without any inspection and the new licence was produced in draft on 1 November 2024 but retrospectively applied from 16 October 2024. However, the final licence was not granted until 20 March 2026 i.e., nearly 18 months later. This was representative of the delays which the Respondent had recounted in his statement of case and witness statement. In essence, post the Covid-19 pandemic from March 2020, local authority processing was

haphazard with applications sometimes taking one to two years to process (but backdated to the date of application). Further, the draft licence was issued without an inspection, however one was carried out on 20 March 2025 and there were then some works undertaken at the request of the local authority. We were shown some of the communications in this regard between April and June 2025 i.e., postdating the period in issue. We did note some issues in October 2024 whereby Mr Al-Assadi raised some concerns with the managing agent about the cleanliness of the carpets and presence of mould behind a chest of drawers. This is discussed in our decision below.

Issues

19. The Tribunal must determine the following issues, which requires careful consideration of the legislation and the relevant authorities.

a) Is the Tribunal satisfied beyond reasonable doubt that the Respondent has committed the alleged offence?

b) Does the Respondent have a 'reasonable excuse' defence or any other full or partial defence?

c) Should the Tribunal make an RRO?

d) If so, what amount of RRO, if any, should the Tribunal order?

i. What is the maximum amount that can be ordered under s.44(3) of the Act?

ii. What account must be taken of:

(1) The conduct of the Respondent

(2) The financial circumstances of the Respondent

(3) The conduct of the Applicants?

e) Should the Tribunal order that the Respondent reimburse the Applicants' application and hearing fees?

The Legal Framework

The Housing Act 2004 ("the 2004 Act")

20. The 2004 Act introduced a new system of assessing housing conditions and enforcing housing standards. Part 2 of the Act relates to the licencing HMOs whilst Part 3 relates to the selective licensing of other residential accommodation.

21. Section 61(1) provides:

"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.

(2) A licence under this Part is a licence authorising occupation of the house concerned by not more than a maximum number of households or persons specified in the licence."

22. Section 72 provides:

"(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

...

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

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

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

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine."

23. Section 254 provides:

"(1) For the purposes of this Act a building or a part of a building is a "house in multiple occupation" if—

...

(a) it meets the conditions in subsection (2) ("the standard test");

...

(c) it meets the conditions in subsection (4) ("the converted building test");

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

(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;

(b) the living accommodation is occupied by persons who do not form a single household (see section 258);

(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);

(d) their occupation of the living accommodation constitutes the only use of that accommodation;

(e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and

(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

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

(a) it is a converted building;

(b) it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);

(c) the living accommodation is occupied by persons who do not form a single household (see section 258);

(d) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);

(e) their occupation of the living accommodation constitutes the only use of that accommodation; and

(f) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation."

24. Section 259 provides:

"(1) This section sets out when persons are to be treated for the purposes of section 254 as occupying a building or part of a building as their only or main residence.

(2) A person is to be treated as so occupying a building or part of a building if it is occupied by the person—

(a) as the person's residence for the purpose of undertaking a full-time course of further or higher education;

(b) as a refuge, or

(c) in any other circumstances which are circumstances of a description specified for the purposes of this section in regulations made by the appropriate national authority."

25. Section 263 provides:

"(1) In this Act "person having control", in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act "person managing" means, in relation to premises, the person who, being an owner or lessee of the premises–

(a) receives (whether directly or through an agent or trustee) rents or other payments from–

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

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

The Housing and Planning Act 2016 ("the 2016 Act")

26. Part 2 of the 2016 Act introduced a raft of new measures to deal with "rogue landlords and property agents in England". Chapter 2 allows a banning order to be made against a landlord who has been convicted of a banning order offence and Chapter 3 for a data base of rogue landlords and property agents to be established. Section 126 amended the 2004 Act by adding new provisions permitting local housing authorities to impose financial penalties of up to £30,000 for a number of offences as an alternative to prosecution.

27. Chapter 4 introduced a new set of provisions relating to RROs. An additional five offences were added, in respect of which a RRO may be sought. The maximum award that can be made is the rent paid over a period of 12 months during which the landlord was committing the offence. However, section 46 provides that a tribunal must make the maximum award in specified circumstances.

28. The phrase "such amount as the tribunal considers reasonable in the circumstances" which had appeared in section 74(5) of the 2004 Act, does not appear in the 2016 Act provisions. It has therefore been accepted that the case law relating to the assessment of a RRO under the 2004 Act is no longer relevant to the 2016 Act.

29. In the Upper Tribunal (in *Rakusen v Jepsen* [2020] UKUT 298 (LC)), Martin Rodger KC, the Deputy President, considered the policy of Part 2 of the 2016. He noted (at [64]) that: *"... the policy of the whole of Part 2 of the 2016 Act is clearly to deter the commission of housing offences and to discourage the activities of "rogue landlords" in the residential sector by the imposition of stringent penalties. Despite its irregular status, an unlicensed HMO may be a perfectly satisfactory place to live. The main object of the provisions is deterrence rather than compensation."*

30. In the Court of Appeal, Arnold LJ endorsed these observations. At [36], he noted that Part 2 of the 2016 Act was the product of a series of reviews into the problems caused by rogue landlords in the private rented sector and methods of forcing landlords to either comply with their obligations or leave the sector. Part 2 is headed "Rogue landlords and property agents in England". At [38], he noted that the 2016 Act conferred tough new powers to address these problems. At [40], he added that the 2016 Act is aimed at *"combatting a significant social evil and that the courts should interpret the statute with that in mind"*. The policy is to require landlords to comply with their obligations or leave the sector.

31. In the subsequent decision of *Kowalek v Hassanien Limited* [2022] EWCA Civ 1041, Newey LJ summarised the legislative intent in these terms (at [23]):

> *"It appears to me, moreover, that the Deputy President's interpretation of section 44 is in keeping with the policy underlying the legislation. Consistently with the heading to part 2, chapter 4 of part 2 of the 2016 Act, in which section 44 is found, has in mind "rogue landlords" and, as was recognised in Jepsen v Rakusen [2021] EWCA Civ 1150, [2022] 1 WLR 324, "is intended to deter landlords from committing the specified offences" and reflects a "policy of requiring landlords to comply with their obligations or leave the sector": see paragraphs 36, 39 and 40. "[T]he main object of the provisions", as the Deputy President had observed in the UT (Rakusen v Jepsen [2020] UKUT 298 (LC), [2021] HLR 18, at paragraph 64; reversed on other grounds), "is deterrence rather than compensation". In fact, the offence for which a rent repayment order is made need not have occasioned the tenant any loss or even inconvenience (as the Deputy President said in Rakusen v Jepsen, at paragraph 64, "an unlicensed HMO may be a perfectly satisfactory place to live") and, supposing damage to have been caused in some way (for example, as a result of a failure to repair), the tenant may be able to recover compensation for it in other proceedings. Parliament's principal concern was thus not to ensure that a tenant could recoup any particular amount of rent by way of recompense, but to incentivise landlords. The 2016 Act serves that objective as construed by the Deputy President. It conveys the message, "a landlord who commits one of the offences listed*

in section 40(3) is liable to forfeit every penny he receives for a 12month period". Further, a landlord is encouraged to put matters right since he will know that, once he does so, there will be no danger of his being ordered to repay future rental payments."

32. Section 40 provides:

> *"(1) This Chapter confers power on the First-Tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.*
>
> *(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—*
>
> > *(a) repay an amount of rent paid by a tenant, or*
> >
> > *(b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy."*

33. Section 40(3) lists seven offences "committed by a landlord in relation to housing in England let by that landlord". Those include "control or management of an unlicenced HMO", and "control or management of an unlicenced house".

34. In *Acheampong v Roman* [2022] UKUT 239 (LC), the Upper Tribunal established that a FTT is obliged to assess the relative seriousness of seven categories of offence which "can be seen from the relevant maximum sentences on conviction" in assessing any RRO.

35. The failure to licence a property is one of the less serious offences of the seven offences for which a rent repayment order may be made.

36. Section 41 deals with applications for RROs. The material parts provide:

> *"(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. "*

37. Section 43 provides for the making of RROs:

> *"(1) The First-Tier Tribunal may make a rent repayment order if satisfied, <u>beyond reasonable doubt</u>, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted)."*

38. Section 44 is concerned with the amount payable under a RRO made in favour of tenants. By section 44(2) that amount "must relate to rent paid during the period mentioned", in a table which then follows. The table provides for repayment of rent paid by the tenant in respect of a maximum period of 12 months. Section 44(3) provides (emphasis added):

> *"(3) The amount that the landlord may be required to repay in respect of a period must not exceed—*
>
> > *(a) the rent paid in respect of that period, less*
> >
> > *(b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period."*

39. "Rent" is not defined in the Act. However, under the Rent Acts, "rent" has a clearly defined meaning, namely "the entire sum payable to the landlord in money" (see Megarry on the Rent Acts, 11th Ed at p.519 and the reference to *Hornsby v Maynard* [1925] 1 KB 514 and subsequent cases). The meaning is the same at common law as under the Rent Acts (see the current edition of Woodfall "Landlord and Tenant" at 7.015 and 23.150).

40. Section 44(4) provides:

> *"(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."*

41. Section 46 specifies a number of situations in which a FTT is required, subject to exceptional circumstances, to make a RRO in the maximum sum. These relate to the five additional offences which have been added

by the 2016 Act where the landlord has been convicted of the offence or where the local housing authority has imposed a financial penalty.

42. In *Williams v Parmar* [2021] UKUT 244 (LC); [2022] HLR 8, the Chamber President, Fancourt J, gave guidance on the approach that should be adopted by FTTs in applying section 44:

(i) A RRO is not limited to the amount of the profit derived by the unlawful activity during the period in question (at [26]);
(ii) Whilst a FTT may make an award of the maximum amount, there is no presumption that it should do so (at [40]);
(iii) The factors that a FTT may take into account are not limited by those mentioned in section 44(4), though these are the main factors which are likely to be relevant in the majority of cases (at [40]);
(iv) A FTT may in an appropriate case order a sum lower than the maximum sum, if what the landlord did or failed to do in committing the offence is relatively low in the scale of seriousness ([41]);
(v) In determining the reduction that should be made, a FTT should have regard to the "purposes intended to be served by the jurisdiction to make a RRO" (at [41] and [43]).

43. The Deputy Chamber President, Martin Rodger KC, has subsequently given guidance of the level of award in his decisions *Simpson House 3 Ltd v Osserman* [2022] UKUT 164 (LC); [2022] HLR 37 and *Hallett v Parker* [2022] UKUT 165 (LC); [2022] HLR 46. Thus, a FTT should distinguish between the professional "rogue" landlord, against whom a RRO should be made at the higher end of the scale (80%) and the landlord whose failure was to take sufficient steps to inform himself of the regulatory requirements (the lower end of the scale being 25%).

44. In *Acheampong*, Judge Cooke stated that FTTs should adopt the following approach:

> *"20. The following approach will ensure consistency with the authorities:*
>
> *a. Ascertain the whole of the rent for the relevant period;*
>
> *b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures*

are not available an experienced tribunal will be able to make an informed estimate.

c. Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step:

d. Consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4).

21. I would add that step (c) above is part of what is required under section 44(4)(a). It is an assessment of the conduct of the landlord specifically in the context of the offence itself; how badly has this landlord behaved in committing the offence? I have set it out as a separate step because it is the matter that has most frequently been overlooked."

45. In *Fashade v Albustin* [2023] UKUT 40 (LC), the Deputy President, Martin Rodger KC (at [21]) summarised the approach adopted by the Chamber President in *Williams v Palmer* in these terms:

"It was necessary in each case to consider the seriousness of the offence (a crucial element of the landlord's conduct) and to fix the amount of the order having regard to its seriousness and all other relevant considerations, including those particularly identified in subsection (4)."

46. Most recently, the Deputy President, Martin Roger KC summarised a number of the decisions above in *Newell v Abbott and Okrojek* [2024] UKUT 181 (LC). The Tribunal has applied the guidance in all the above cases to its decision.

Decisions on the Issues

47. It was not disputed that the Property did not have a HMO licence from 14 August 2024, because the existing one expired. It was also not disputed that the Respondent did apply for a new licence and that the licence was granted effective from 16 October 2024. It was common

ground that the Property had six bedrooms, which were occupied by six people. Importantly, occupation was by way of letting to five or more occupants comprising two or more separate households.

48. The Respondent admitted that an offence had been committed prior to the grant of the licence on 16 October 2024 but argued a defence that an application had been duly made. If successful, this would be a partial defence, meaning an offence between 14 August 2024 and 25 August 2024 and no offence between 26 August 2024 and 15 October 2024. The Tribunal is satisfied beyond reasonable doubt that the Respondent had committed an offence over at least some of the relevant period, however that he had a defence once he submitted the application. It is therefore important to consider the precise periods of time that an offence was committed. This also has an impact on the Tribunal's jurisdiction due to the timing of the application for an RRO.

Jurisdiction

49. The application for an RRO was sent to the Tribunal office on 8 September 2025 at 21.24pm and is dated 9 September 2025.

50. Section 41(2)(b) of the 2016 Act states: *"(2) A tenant may apply for a rent repayment order only if … (b) the offence was committed in the period of 12 months ending with the day on which the application is made."* The term 'apply' is not constrained by any specific time or rules. Rule 15 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 states that an act required by those Rules, a practice direction or a direction to be done on or by a particular day must be done before 5pm on that day. However, this does not apply to the 2016 Act itself. Therefore, notwithstanding that the application was filed after 5pm on 8 September 2025, we consider that the Applicants did 'apply' for an RRO on that day.

51. The period of 12 months ending with the day on which the application is made is therefore 9 September 2024 to 8 September 2025. The principle of counting backwards and including the day of the application itself was confirmed by the Upper Tribunal in the case of *Moh and others v Rimal Properties Ltd* [2024] UKUT 324 (LC).

52. We must therefore consider whether the Respondent was committing an offence on or after 9 September 2024. Section 72(1) of the 2004 Act states: *"(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed."* The Respondent accepted that he did not have a licence between 14 August 2024 and 16 October 2024. On the face of it, an offence was being committed on 14 August 2024 and for each day thereafter except to the extent that any defence applies.

53. Section 72(4) of the 2004 Act states: *"(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time … (b) an application for a licence had been duly made in respect of the house under section 63, and that notification or application was still effective (see subsection (8))."* It was not disputed (and, in any event, it is obvious from the subsequent grant of a licence) that an application was made on 26 August 2024 and again on 16 October 2024. Importantly, there was a dispute as to whether the first application (for renewal) should be treated as having been duly made and thus amount to a statutory defence.

54. The burden of proof lies with the Applicants to demonstrate that an offence was being committed being reasonable doubt over the relevant period. For the purposes of jurisdiction, it must have been committed on or after 9 September 2024. The burden of proof in relation to any defence lies with the Respondent, however this is to the lower standard of balance of probabilities.

55. Upon hearing from the parties and considering the documents submitted, we accept the starting point that the Respondent was committing an offence between 14 August 2024 and 15 October 2024, the 16 October 2024 having been the date of the second (new) application for a licence and the date when the HMO licence eventually granted was operative from. However, we accept that he had a partial defence because he duly made an application for a licence on 26 August 2024. We note that the legislation merely requires an application to be made. The renewal on 26 August 2024 and the new application on 16 October 2024 were identical in form save that one was submitted by clicking the renewal option on the council's website and one by clicking the new application option. The automated receipt system distinguished them by renewal or new and contained different receipt numbers. However, these were the only differences, the substance of both applications was otherwise identical. It follows that, for the purposes of duly making an application under the 2004 Act, the Respondent had erred in form only, not in substance. The material presented to the local authority, the request to issue a licence, and the payment of the fee were all carried out on 26 August 2024. The 2004 Act does not prescribe a form or say that an application is not duly made if the option clicked on the recipient local authority's website is wrong. It is of note that the local authority accepted the application fee and processed the application, notwithstanding that it was later rejected.

56. The effect of the Upper Tribunal decision of *Moh* is that the Respondent was no longer committing an offence from 00.00am on 26 August 2024 irrespective of the time on that day that the application was in fact submitted or when it might have later been processed by the recipient local authority.

57. The offence was therefore committed between 14 August 2024 and 25 August 2024. Thereafter, from 26 August 2024 to 15 October 2024 an application had been submitted and, from 16 October 2024, onwards a licence had been granted. In both instances, there was a defence, and this does not mean that an offence was committed but excused – it means that no offence was committed at all.

58. Our conclusion, therefore, is that the application seeking an RRO made on 8 September 2025 was submitted out of time. This would be the case whether it is treated as being submitted on 8 or 9 September 2025. To be on time, it needed to be submitted on or before 24 August 2025, being the period of 12 months starting with the last day of the offence on 25 August 2024 and ending on the day of the application to the Tribunal. The 12 month period under the 2016 Act is calculated backwards from the date of the application, not any 12 month period going back indefinitely in time.

59. The statutory provisions provide no discretion to the Tribunal to extend time; the application was outside of the time limits, so the Tribunal simply has no jurisdiction to hear it at all. We must reject it in its entirety on that basis.

Findings on RRO but for jurisdiction

60. If we had found that we had jurisdiction to hear the application, we would have gone on to consider several other aspects. As we considered evidence and submissions on these points, it is helpful to set out what our findings were, emphasising that these are hypothetical because we are unable to make an RRO as we do not have jurisdiction to do so.

<u>Defences</u>

61. Having found that a relevant offence had been committed for some of the period contended for (14 August 2024 to 25 August 2024), we would have considered whether there was any other relevant defence, whether an RRO should be made and, if applicable, the amount of a RRO.

62. As we have indicated earlier in this decision, we have found that the statutory defence of an application having been submitted applied from 26 August 2024.

63. The Respondent's primary position was that no licence had been obtained because of a genuine oversight. He said that his oversight was a genuine one and, as soon as he became aware, he applied promptly. We have in mind the timeline of events. From receiving a reminder letter dated 23 August 2024 (a Friday), the Respondent applied to the local authority on 26 August 2024 (a Monday). There was a dialogue with the local authority about the correctness of the application made and his

responses were prompt. Instead of appealing, he incurred another fee of £619 to simply get things moving quickly. We are not bound by the views of the local authority; however it is noteworthy that they also took the view that this was a genuine oversight. Further, they took no enforcement action. Even if we had found that an offence had been committed until the new application was made on 16 October 2024, we are still of the view that the Respondent acted sincerely in his dealings with the local authority and that his use of the renewal procedure was a genuine error which he sought to correct quickly and at a cost to him.

64. Notwithstanding the above findings about the Respondent's sincerity and prompt actions, the Tribunal has considered a number of cases where a Respondent has argued that they had forgotten to renew or were not aware of a deadline or rule. In all of those cases, as here, the answer is that inadvertence or ignorance of the law is simply no excuse. As such, we find that, just because the Respondent says that he overlooked the renewal deadline, that does not amount to a reasonable excuse. Had we not found that the licence application made on 26 August 2024 was duly made, and therefore provided a statutory defence, we would have found that there was a reasonable excuse between 26 August 2024 and 15 October 2024 for the reasons noted above – in particular, that there the error was of form, not substance. However, that cannot apply for pure inadvertence for the period 14 August 2024 to 25 August 2024.

65. That is not to say that the Respondent's arguments of inadvertence or not knowing of the dates or rules cannot be relevant when considering whether to make an RRO, or the amount of an RRO. But they do not amount to a reasonable excuse to not obtain, or in this case, renew a licence.

Whether to make an RRO

66. Having established that a relevant offence was committed and that no absolute defence applied for the entire period in issue, we would have considered whether it was appropriate to make an RRO. We have regard to the statutory framework and policy objectives of sanctioning non-compliance, improving housing standards and deterrence. We consider that there are compelling circumstances, falling short of a formal defence, but which would justify not making an RRO.

67. For the reasons mentioned above, our view is that there was a genuine oversight. The Respondent had held a licence for some six years prior and had overlooked the renewal. As soon as he became aware, he acted on the very next working day. The offending period was 11 days. Even if we had found that the offending period was 2 months and 1 day, we would have still considered this to be a modest infringement given the history of licencing.

68. We had regard to the concerns raised by the Applicants about the condition of the Property. The Applicants pointed out that the fire door was not compliant from 14 August 2024 to 10 June 2025 and other issues such as lack of extractor fans remained for a similar period. In other words, whilst the licencing offence was a short period, they were living in conditions which were non-compliant for much longer. In view of the fact that the licence was originally issued in 2018 without an inspection, and a new licence was issued on 1 November 2024 without an inspection, we do not consider these to be instances of poor conduct by the Respondent. Inspections are not a necessity or pre-condition to a licence. The Respondent has an obligation to meet safety requirements whether the Property is inspected or not, however for the purposes of the licensing regime, he was entitled to consider that he had complied unless and until the local authority stated otherwise. As soon as the local authority undertook an inspection on 20 March 2025, it imposed conditions which were addressed within a reasonable time. It asked for remedial works but did not take enforcement action, which must be an indicator that it regarded these as at the lower end of seriousness and had confidence that the works would be carried out voluntarily and promptly (which they were). It is also noteworthy that there was no re-inspection and the local authority were satisfied of compliance by the submission of photographs.

69. We were not supplied with photographs of the Property, however we had copies of emails. Mr Al-Assadi complained of cleanliness shortly after taking occupation, on 10 October 2023. These issues were resolved within 2 weeks, having been acknowledged on 14 October 2023 and approved foe remedial work on 15 October 2023. Mr Al-Assadi later complained of noise from other tenants, which is not in itself a landlord responsibility. We were not told of any other difficulties the tenants experienced and, indeed, all Applicants apart from Mr Al-Assadi seemed content to remain in occupation for the full term (to 7 August 2025). We were told that there were some communication issues however we do not consider that these make the Respondent a culpable landlord or even put him in breach of an obligation. He was entitled to use agents and, provided the tenants had a means of communication with those agents, he was not obliged to have personal contact with them. We deal with the Respondent's statutory obligation later in this decision.

70. We had regard to the local authority inspection on 20 March 2025. We were told that no inspection had taken place on grant of the licence initially or upon the new licence on 1 November 2024. It is curious that the local authority undertook an inspection to assess compliance with 'licence conditions' when the licence, and hence those conditions, were not finalised for one year later, on 20 March 2026. Nonetheless, we consider the requirements were modest – mechanical extraction in the kitchen above the gas cooker and bathroom (which had no window) and improvements to the fire door for the living area. We were told that a fire risk assessment was carried out in 2018 when the licence was first applied for. This would be consistent with the licencing regime having

come into effect at that time. There was no suggestion from the 20 March 2025 inspection that other doors in the Property were not compliant. We consider it likely that the fire door in question was indeed a fire door in the sense of being constructed of sufficient fire-resistant materials to meet the minimum 30-minute requirement. It was simply not up to modern standards in terms of having intumescent strips and a self-closing mechanism. Fire safety is a serious matter, however, in context, these were lower-level infringements which were quickly resolved between 20 March 2025 and 10 June 2025.

71. For all these reasons, having regard to the policy objectives of ensuring compliance and maintaining housing standards, we would not consider it appropriate to make an RRO. We find that the Respondent is not a rogue landlord, or indeed a culpable landlord. We consider that the matters in issue arise from a genuine oversight, there was minimal (if any) harm to the occupants, the period of offending was very short and there is in our view no real risk of re-offending.

<u>Amount of RRO</u>

72. The Applicants were seeking a RRO for 12 months' rent or £4,800.

73. In determining the amount of any RRO, the Tribunal must consider the rent paid by the Applicants for a period, not exceeding 12 months, during which the Respondent was committing the offence. The Respondent was committing the offence, without an applicable defence, between 14 August 2024 and 25 August 2024. An award therefore cannot exceed that period, which is 11 days.

74. We consider it appropriate to look at the reality of who was paying rent and in what amounts, notwithstanding that it was collated and paid in one payment to the Respondent. For the period of 2 months and 1 day, the payments would have been:

(i) Mohammed Mujahid Hussain paid £813.15;

(ii) Erin Blandford paid £813.15;

(iii) Ahmed Ramadan Ragheb Mahmoud Eish paid £813.15;

(iv) Luisa Fernanda Sevilla Monroy paid £813.15;

(v) Wu Chen paid £813.15;

(vi) Yousif Al-Assadi paid £276 to Erica Maria Marreiros for the period 22 September 2024 to 13 October

2024. We are prepared to accept this as a payment of rent since that is what it related to, Ms Marreiros had paid it to the Respondent. Mr Al-Assadi would have paid £26.30 for 14 and 15 October 2024. In total he therefore paid £302.30;

(vii) Erica Maria Marreiros paid rent from 14 August 2024 to 21 September 2024 but has brought no application.

75. We concluded that the maximum amount that can be awarded for a RRO for the 11 days offending period is £867.95. If we had found that an offence was committed for 2 months and 1 day, the maximum would be £4,368.05. This figure takes account that Ms Marreiros did not bring an application and Mr Al-Assadi had a shorter stay. As noted above, we accept that he had 'paid rent' albeit this was not always directly to the Respondent. This is because the Respondent ultimately received it. Whichever figure might have applied, it would be apportioned between the Applicants to what they had actually paid, as noted above. There were no relevant deductions for universal credit or expenses paid by the Respondent for the benefit of the Applicants such as for utilities.

76. The amount of an RRO must be considered in the context of these maximum amounts taking account of the statutory factors including conduct of the parties and financial circumstances of the Respondent.

77. As to the financial circumstances of the Respondent, there was very little documentary evidence provided. The Respondent did indicate that there would be financial pressure, rental income from three properties being his only source of income. The Property is mortgaged and he referred to expenses including mortgage interest and contractor costs increasing over the years. There was no evidence supplied of this, although we take judicial notice that general rental expenditure is likely to have increased over the years. This is not unique to the Respondent, however, and he did confirm that he does turn over a net profit overall. He suggested a penalty at or close to £4,800 would mean 2-3 years of pressure on household finances. We had no documentary evidence to support this. The Respondent also accepted that any hardship would not be 'severe'. However, in our view, any penalty against a landlord will create a degree of financial pressure on the individual concerned. We were not satisfied that there was anything exceptional for the Respondent.

78. We must also consider the conduct of the parties. We accept that the Respondent acted quickly to secure a new licence once he knew that his existing licence had expired. We also accept that it was a genuine oversight not to on time apply to renew, and a genuine error to then use the renewal form rather than the one which applied for a new licence. We accept that he acted reasonably in querying this with the local authority and then making the new licence application rather than

spending further time on an appeal. We note that he incurred two fees in doing so.

79. The Applicants did refer to some complaints about the condition of the Property, however our view is that the examples given such as the cleanliness of the carpet and mould behind the chest of drawers soon after Mr Al-Assadi took occupation were nothing out of the ordinary, we regard these as routine landlord and tenant issues, which, as we have noted earlier in this decision, the Respondent appears to have addressed promptly. We noted that remedial works required after 20 March 2025 relating, for example, to a new fire door. This was outside the period that an offence was committed and, whilst that does not preclude it being evidence of the Respondent's conduct, it has less weight. In any event, these were not in our view significant items and we consider that the Respondent addressed them promptly and there was no evidence of further action by the local authority – who dealt with this informally rather than serve formal statutory notices.

80. The Applicants also stated that there were communication issues – as we have noted above, we do not consider that there were unreasonable response times, indeed the managing agent appeared to sometimes respond on the same day, for example the email chains of 2 December 2023. The speed of responses between Ms Veneziani and Mr Al-Assadi on that occasion was remarkable, and contrary to Mr Al-Assadi's submission that there were long delays. The reports of lack of cleanliness and mould from 10 October 2023 were resolved within two weeks, which is reasonable in our view. The complaint about a lack of response by the agent to Ms Blandford's email of 13 August 2025, which was only raised at the hearing, seems to have postdated not only the period of the offence but also the tenancy itself. As we have noted above, the Respondent was not obliged to communicate directly with the tenants. He had provided an address for service in the tenancy agreement satisfying, for example, the requirements of section 47 and 48 of the Landlord and Tenant Act 1987. There is no requirement that this was his home address or an email address.

81. With regard to the Applicants, there was no evidence of rent arrears or other breaches of the tenancy agreement. The Respondent did not allege a breach. There was in our view nothing in the Applicants' conduct which would justify adjusting a RRO and the Respondent made no such allegations.

82. In considering the seriousness of this offence, the Tribunal determines it to be towards the less serious end of the scale, of a less serious offence. That is because there is no malfeasance on the part of the Respondent and, although not a statutory defence, his failure to renew/obtain a licence was, we find, a genuine oversight which was quickly corrected.

83. We would have considered that an RRO of 20% of rent paid during the period of offending was appropriate to reflect the above factors. In arriving at this percentage, we had regard to the Respondent's conduct, with the offence being an oversight of short duration and promptly attended to. We had regard to the fact that this was at his own cost with an additional £619 paid to the local authority with no reimbursement. Any RRO would, had we had the jurisdiction to make it, have been £173.59 (being 20% of £867.95 which is 11 days between 14 August 2024 and 25 August 2024) apportioned to what each Applicant had actually paid. Alternatively, it would have been £873.61 (20% of £4,368.05 which is 2 months and 1 day between 14 August 2024 and 15 October 2024) apportioned to what each Applicant had actually paid. **We do not have jurisdiction, so make no order in these sums, or at all.**

84. The Applicants have not succeeded in their application because we have found that it was submitted outside of the statutory time limit. We also note that their claims were significantly higher than we would in any event have awarded. We do not have jurisdiction over the applications at all, so cannot make an order in respect of application fees. However, we in any event would not consider it just and equitable to order the Respondent to reimburse the application or hearing fees and therefore make no order as to the same.

Name: Judge A. Arul **Date:** 15 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).