



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

Case Reference : HAV/00HB/HMF/2025/0629

Property : 6 Greenway Drive, Bristol, BS10 5LU

Applicant : Edward Jason Barker

Representative : ----

Respondent : Ileana Constantinescu
Razvan Constantinescu

Representative : ----

Type of Application : Application for a rent repayment order by
Tenant
Sections 40, 41, 42, 43 & 45 of the Housing
and Planning Act 2016

Tribunal Members : Judge J Dobson
Mr D Jagger FRICS

Date of Hearing : 14th May 2026

Date of Decision : 22nd May 2026

DECISION

Summary of the decision

- 1. The Tribunal is satisfied beyond reasonable doubt that the Respondent landlord committed an offence under section 72 of the Housing Act 2004 from.**
- 2. The Tribunal has determined that it is appropriate to make a rent repayment order in favour of the Applicant.**
- 3. The Tribunal makes a rent repayment order in favour of the Applicant in the sum of £3,780.00. The payment is to be made within 28 days of this order.**
- 4. The Tribunal determines that the Respondent pay the Applicants £341.00 as reimbursement of Tribunal fees to be paid within 28 days.**

Application and background

5. By an application dated 22nd October 2025 [2- 10], the Applicant applied for a rent repayment order in respect of rent paid during the period, insofar as relevant, of 1st August 2024 to 30th September 2025 inclusive. The amount claimed was £750.00 per month payable by 1st of the month, inclusive of bills. Various supporting documents were provided, including bank statements [82- 148] in respect of payments of rent, excluding the last month which was paid for from the deposit paid at the start of the tenancy. The application was submitted comfortably in time.
6. The application was brought on the ground that the Respondents had committed an offence pursuant to section 72 of the Housing Act 2004 of failure to hold a licence for a house in multiple occupation (“an HMO Licence”) and which required an HMO Licence in relation to 6 Greenway Drive, Bristol, BS10 5LU (“the Property”), which possessed up to 5 lettable rooms, including an Additional Licence from 6th August 2024. In addition, there are 3 bathrooms, 1 ensuite, and a kitchen.
7. The Respondents are the owners of the Property. The Applicant was the tenant of a room at the Property from 1st August 2024 until 30th September 2025.
8. A written tenancy agreement (“the Agreement”) [22- 33] was entered into by the parties dated 31st July 2024 (taking the date of the later signature of those of the parties) for the tenancy of what was described as Room 3, including items listed. The Agreement included an entitlement to use shared facilities and common parts. The Applicant noted in his statement that the Agreement included provisions relevant to an HMO.
9. Directions [11- 18] were given on 9th March 2026 by a Legal Officer in the usual terms for cases of this broad nature, providing for the parties to

provide details of their cases and the preparation of a hearing bundle. The final hearing was listed as video proceedings.

10. The Applicant provided a hearing bundle comprising 150 pages.
11. That included, amongst other documents, written statements from the Applicant, Mr Barker, [19- 21]; from Dr Constantinescu [37- 40]; a further statement from Mr Barker in reply [78- 79]; and a copy of the licensing application when made [41-48].

The law and jurisdiction in relation to Rent Repayment Orders

12. 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 the circumstances of this case.
13. Section 40 gives the Tribunal power to make a rent repayment order where a landlord has committed a relevant offence. Section 40 (2) explains that a rent repayment order 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).
14. Section 41 permits a tenant to apply to the First-tier Tribunal for a rent repayment order against a person who has committed a relevant offence, including the offence mentioned at paragraph 7 above, if the offence relates to housing rented by the tenant and the offence was committed within the period of 12 months ending with the day on which the application is made.
15. 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 the offence, the Tribunal is satisfied beyond reasonable doubt, whether stated specifically or not.
16. It has been confirmed by established 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. The standard of proof for matters found by the Tribunal other than in respect of the question of whether the offence was committed by the landlord is the balance of probabilities.
17. Where the application is made by a tenant, and the landlord has not been convicted of a relevant offence, section 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 –discussed further below.

18. The relevant offences are firstly those identified in various sections of the Housing Act 2004 (“the 2004 Act”). One of those offences is being in control of or managing a licensable HMO without a HMO Licence being in place, pursuant to section 72(1) of the 2004 Act. That enables others than only the landlord to be guilty if an offence, although it is only a landlord who commits such an offence who can be the subject of a rent repayment order.
19. The other relevant offences under the 2004 Act relate to other aspects of housing management offences. Relevant offences can also be committed under section 21 of the 2016 Act and under older legislation in relation to unlawful eviction and violence to secure entry.

The Hearing

20. The Applicant and Respondents attended the hearing remotely. Mr Barker represented himself and Dr Constantinescu represented himself and in effect also his wife given that there were not differences of position expressed between them. Mrs Constantinescu only participated to the extent of indicating that she had not questions to ask or additional submissions to make.
21. The Tribunal identified the documents received and explained the steps which were required to be taken. The Tribunal particularly explained that it had to decide that the evidence demonstrated to a criminal standard that the offence had been committed and that if the Tribunal determined that there may be an offence, the Tribunal would be required to specifically consider whether there was a defence that there was a reasonable excuse for the Property being unlicensed. The Tribunal set out the elements of the alleged offence.
22. Dr Constantinescu stated that he- and the Tribunal inferred his wife also as she did not demur- accepted that the Property was required to be licensed given the number of tenants during the period. He said that the Respondents had endeavoured to apply for a licence. The Tribunal clarified whether that was stated as being relevant to the amount of any rent repayment order or as to there being no offence committed such that no order could be made at all. Dr Constantinescu replied that he submitted there to be a reasonable excuse.
23. The Tribunal explained that it would reach a decision when the members met following the end of the hearing and so would not reach any decision a stage at a time. However, the Tribunal also explained that it considered it sensible to deal with the relevant evidence for each aspect of stage separately. There was nothing discernible with which the Applicant could assist the Tribunal in respect of the Respondents’ contended defence of reasonable excuse and so the Tribunal heard evidence from Dr Constantinescu.

24. It should be said that the Respondent's case about reasonable excuse was light at best in their written case. There was considerable expansion on that in oral evidence. However, the Tribunal considered that whilst that could potentially have been criticised by the Applicant as being somewhat generous, nevertheless it was appropriate for the Respondents to be able to provide their case as to any defence and for the Tribunal to lead the questioning with the opportunity for Mr Barker to then ask additional questions if required and for the Respondents to clarify any matters. The Tribunal address the reasonable excuse defence below.
25. The Tribunal subsequently heard oral evidence from both Mr Barker and again from Dr Constantinescu with regard to any matters relevant to the level of any rent repayment order. The parties were then able to make closing comments. The Tribunal refers to those matters where relevant below.

Was a relevant offence committed and during what period?

26. The offence alleged in the application is being in control of or managing a licensable HMO without a HMO Licence being in place.
27. The basic circumstances of the alleged offence, which circumstances were accepted by Dr Constantinescu, were that the Property was let to 3 or more persons and was not licensed.
28. The Property required a Licence if occupied by at least three occupiers as their main residence and living in two or more households. The Bristol City Council required a property to be so licensed as from 6th August 2024, extending the licensing regime from the minimum statutory requirement of an HMO Licence for a property with five occupying as their main residence and living in two or more households and adopting a discretionary Additional HMO licensing policy as it is permitted to do. The date when the Council adopted the additional licensing requirements was therefore more than 12 months before the Applicant ceased to be a tenant and so has no impact on his case in respect of the most recent 12 months.
29. As to the date of commencement of the offence, that will have been at the point at which there were 3 tenants in the Property living in 2 or more households. The Applicant's written statement and Dr Constantinescu in his oral evidence both agreed that the Applicant was the first tenant. The Applicant said in his statement that "the other tenants" began their tenancies "At the same time", although no information was provided as to how many that meant.
30. Hence, the date from which there were three tenants was not crystal clear. However, in light of the admission by Dr Constantinescu that there were at least 3 tenants at the relevant times, the Tribunal determined that it did not need to make any specific finding. The Tribunal proceeds on the footing that for at least a 12- month period, so from 1st October 2024, until the Applicant's tenancy ended on 30th September 2025, there were 3

occupiers. Indeed, Dr Constantinescu's admission would have supported a longer period had it been relevant.

31. On 22nd October 2025, the application mentioned above for a HMO Licence for the Property was made on the part of the Respondents. A landlord ceases to commit an offence at the time at which a valid application for a Licence is made and not the later date on which such application is granted.
32. The part of this case which occupied the most time in the hearing and in the Tribunal's consideration of the case was the question of a defence of reasonable excuse for not holding an HMO Licence for the Property.
33. Dr Constantinescu in oral evidence explained that his wife and himself live next door to the Property, together with their disabled son. Dr Constantinescu and his wife purchased the Property in May 2022 with the intention of renovating it and that their son would live in one of the rooms there, with the ability for there to be live- in support. An extension was built, the roof was repaired, new bathroom and kitchen fittings and appliances were installed. The intended bedroom for the Respondents' son was given an en- suite suitable for his needs. The intention was for the son to move in when the renovation was complete and to look to let other rooms.
34. At that time, the Respondents owned 2 licensed HMOs, which they had owned since 2016 (or perhaps earlier, it mattered not). It was established neither was in the same street- the Applicant thought that 1 was- although 1 nearby. Dr Constantinescu said that they are to the same standard, the only difference being that the Property has an extra bathroom. Those 2 had been licensed since 2016 but Dr Constantinescu said were of a "straightforward configuration". The licences had been renewed subsequently, although Dr Constantinescu said were not shown as licensed currently because despite renewal applications in 2025, the Council's backlog is such that they have still not been processed and finalised.
35. However, a Romanian family comprising 2 adults and 3 children were all (or at least the adults were- the specifics were not clear and did not matter for these purposes) injured in an accident such that the mother required care. They lost their jobs. The Respondents agreed that the family could move into the Property. The Respondents were assisting that family, although Dr Constantinescu accepted that they received rent for the Property. No HMO Licence was relevant at that time.
36. In Spring 2024, the family decided to move to Romania, giving notice- the exact amount was not noted by the Tribunal, but the Tribunal understood it to be in the region of 2 to 3 months. The Respondent's son decided against moving in. The Property was advertised as a family home but without any interest being received.

37. Therefore, Dr Constantinescu said that in July 2024, it was decided to rent out individual rooms and so the Respondents firstly advertised rooms at the Property and secondly contacted the Council in respect of licensing.
38. As to the latter, Dr Constantinescu said early in his evidence that they queried with the Council whether a licence was required for the particular configuration of the Property, being with a bedroom with an en- suite bathroom and what he referred to as a spare room- although the Tribunal understood that latter relied upon fewer than 5 rooms being decided to be let. He contended that there was ambiguity on the part of the Council as to whether an HMO Licence was or was not required and that he was asked to measure the hallway and the “spare” room. Dr Constantinescu asserted that the Council said that whether or not an HMO Licence would be required depended on the floor area of the communal parts. Dr Constantinescu also said that it had been queried by the Respondents with the Council whether the en- suite room could be regarded as a separate self- contained unit if cooking facilities were provided within it.
39. The Tribunal did not in the event need to make any specific finding on what the Council may or may not have said. It was, however, difficult to identify the potential relevance of any of the above matters, given that even if the ensuite room and the “spare room” were ignored, there would still be 3 other rooms being let, sufficient on its own to require an HMO Licence.
40. Dr Constantinescu indicated that there had been other communications about the need for an HMO Licence. He said that the Respondents believed that the documents submitted to the Council were an application. He said that the Respondents thought that there would be an assessment by the Council. Dr Constantinescu contended that only when the Applicant raised the lack of application did the Respondents check and at that time he said they were informed that there had been a “glitch”.
41. Dr Constantinescu said that at that point the application for a HMO Licence was “re- submitted”. He explained that he checked with the council that they had definitely received the application and it was confirmed that that they had.
42. Dr Constantinescu conceded on the Tribunal’s enquiry, that the Respondents had not previously sent in the application form and had not paid the fee. He also accepted in oral evidence that the Respondent’s should have known. For example, there had been an inspection of the Respondent’s other properties following applications being made and there had been no reference to an inspection of the Property.
43. The Tribunal found that those matters did not amount to a reasonable excuse for failing to hold an HMO Licence.
44. If the Respondents had submitted an application form with the supporting documents required and had paid the fee, potentially even if they had not paid the fee because a payment request needed to be generated and there had not then been one, and then a “glitch” had been demonstrated to have

arisen, the Tribunal would have been likely to accept that as a reasonable excuse and so a defence to the offence would have been made out and that would have been the end of the matter. (It may be that strictly any offence had ended in any event and so a defence was irrelevant.)

45. It was plain that the Respondents had not submitted an actual application with the relevant form or similar and had not paid the required fee at that time or received anything about payment of a fee. They had, on their case, submitted various documents. There had been communications about those. On no sensible analysis could that be regarded as amounting to an application. In contrast, it was clear that they were pre- application queries.
46. Those documents did not and could not amount to an application. The Respondents did or ought to have known that they would not amount to an application, having made previous licensing applications, not least where no fee had been paid. Indeed, Dr Constantinescu conceded that. The Respondents did not obtain other confirmation from the Council that it possessed a completed application for the Property.
47. The Tribunal accepted that there was a degree of scope for potential uncertainty where other applications, for renewal, had been made but not finalised. However, reasonably the Respondents could not expect there to be any potential for the grant of a licence in this instance where they had not submitted the actual application and paid the fee. There was nothing which could be awaiting processing where no application had been made.
48. The Tribunal did not accept that there had been a “glitch”, certainly not on the part of the Council. That term suggests something went awry on the part of the Council in processing an application. However, there was none identified- there had been no application. There is no identifiable error on the Council’s part. The Tribunal did not accept any suggestion of blame on the part of the Council as appropriate.
49. Most significantly, the Respondents let the Property long before they made the application and long before they had sought and obtained any confirmation that a completed application had been received. Indeed, whilst they were enquiring what was required and, the Tribunal understood from the evidence received, in the early days of that.
50. It is very simple what ought to have happened. There ought to have been any relevant enquires and those been resolved and then an application for an HMO Licence ought to have been submitted. Alternatively, the application ought to have been submitted and then any queries ironed out during the course of the application process.
51. In either event, only once there had been an HMO Licence granted ought there to have been the letting of rooms. Whilst an offence ceases to be committed once a completed application has been made, that does not mean that submitting an application, which may or may not be granted,

and then letting rooms without awaiting the outcome is the proper approach to take.

52. The Tribunal has little doubt that by adopting such a course, the Respondents would have been required to wait a time in order to let the Property. In doing so, they would have no doubt have lost out financially as compared to the position which did occur, that is to say letting rooms at the Property from August 2024. Indeed, they may well have benefitted significantly from letting when they did and doing so long in advance of a proper application for an HMO Licence.
53. Letting at a time when the Respondents at best did not know that they could do so without an HMO Licence and seeking to address matters with tenants already in situ and paying rent cannot in the Tribunal's judgement- and whatever the precise enquiries and queries- facilitate a defence of a reasonable excuse.
54. Mr Barker additionally made the point in cross examination that the Respondents have referred to being members of the National Residential Landlords Association, which offer advice. The Tribunal found that the Respondents did not obtain such advice about the need for an HMO Licence or related matters.
55. The Applicant also stated in his statement that as at 19th October 2025, the Respondents were advertising rooms at the Property stating that the Property was licensed when it was not- and indeed a completed application had not been made. Evidence was provided [31]. Even if the Respondents had submitted a completed application and had evidence of such- which plainly the Respondents did not- it was still an obviously incorrect statement to make to state that the Property actually possessed a HMO Licence where even putting the Respondents' case at its highest they knew that they had not received one.
56. The Tribunal therefore determined that the Respondents committed a HMO licensing offence in respect of the Property from at least 1st October 2024 to 30th September 2025, being the maximum period of 12 months for which a rent repayment order could be made.

The decision in respect of making a rent repayment order

57. Given that the Tribunal is satisfied, beyond reasonable doubt, that the Respondents committed an offence under section pursuant to section 72(1) of the 2004 Act, a ground for the making of a rent repayment order has been made out.
58. Pursuant to the 2016 Act, 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 or housing benefit then the Tribunal should be reluctant to refuse an application for rent repayment order.”

59. 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.

60. 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. That is a different exercise to any determination of the amount of a rent repayment order in the event that the Tribunal exercises its discretion and makes such an order, albeit that there may be an overlap in factors relevant. It necessarily follows from there being a discretion to make a rent repayment order, as opposed to such an order following as a matter of course, that there will be occasions on which it may be considered not appropriate to make an order notwithstanding that a relevant offence has been found to have been committed, albeit such occasions are likely to be very rare.

61. The Tribunal having considered the circumstances and the submissions on behalf of the Respondent and giving the most weight to the purpose of the 2004 Act, exercised its discretion to make a rent repayment order in favour of the Applicants.

The manner of determining the amount of rent to be repaid

62. Having exercised its discretion to make a rent repayment order and determined the period for which the order should be made, the next decision was how much should the Tribunal order.

63. In the absence of a conviction, the relevant provision is section 44(3) of the 2016 Act, which states in respect of the offence found to have been committed by this Respondent that the amount ordered to be repaid must “relate to” rent paid during the period identified as relevant in the table in section 44(2), being:

‘a period, not exceeding 12 months, during which the landlord was committing the offence’.

64. The up to twelve months rent which may be ordered to be repaid need not have been paid during the last twelve months prior to the date of the application and could, in principle, be any twelve months during which the offence was committed. The point does not in any event arise in this instance and so need not be dwelt on.

65. Section 44(3) explains that the Tribunal must not order more to be repaid than was actually paid out by the Applicants to the Respondent during that period. The section explains that:

“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.”

66. The Tribunal has a discretion as to the amount to be ordered, such that it can and should order such amount as it considers appropriate in light of case law and the relevant facts of the case.

Relevant caselaw in respect of the amount of a rent repayment order

67. There were several decisions of the Upper Tribunal between 2020 and 2022, in relation to the approach to be taken to the level of order made in rent repayment order cases. The position, at least with regard to the level of order, has very much settled down since.

68. The Tribunal is mindful that the parties did not cite any of those and the Tribunal did not raise any with the parties requesting any submissions from them. As the Tribunal formed the firm impression that the parties were unaware of the relevant caselaw, the Tribunal considered that the parties may find it difficult to make relevant submissions on it.

69. In those circumstances, the Tribunal has essentially only considered such of the judgments of the Upper Tribunal as are now well-established, as deal in broad principles and as are apparently uncontroversial and applied on a regular basis.

70. 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.

71. 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 fact of the rent being inclusive of the utilities where it was so. In those instances, the rent should be adjusted for that reason.

72. Given that some confusion existed as to the appropriate amount of rent repayment orders following that judgement and subsequent ones, on 6th October 2021, the judgment of The President of the Upper Tribunal (Lands Chamber), Fancourt J, in *Williams v Parmar* [2021] UKUT 0244 (LC) was handed down. 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.”

73. Secondly, 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”. In *Williams*, they are described as “the main factors that may be expected to be relevant in the majority of cases”. Fancourt J in *Williams* says this:

“A tribunal must have particular regard to the conduct of both parties (including the seriousness of the offences committed), the financial circumstances of the landlord and whether the landlord has been convicted of a relevant offence.”

74. However, the President then adds:

“The Tribunal should also take into account any other factors that appear to be relevant.”

75. That appeared to settle matters.

76. Subsequently, some further applications in relation to which the Tribunal had made awards prior to that decision were the subject of hearings before the Upper Tribunal.

77. The Tribunal cautiously briefly refers to two judgments have been handed down by Martin Rodger KC, Deputy President of the Upper Tribunal (Lands Chamber) in the cases of *Hallett v Parker and Others* [2022] UKUT 165 (LC) and *Simpson House 3 Limited v Osserman and Others* [2022] UKUT 164 (LC). Both related to offences of failures to hold HMO Licences. The outcome of those cases in terms of the amount of the rent repayment order made and the percentage of the rent to which that was equivalent differed considerably. The consistent factor was the importance of the conduct of the parties.

78. The Deputy President also said, at paragraph 51 as follows:

“The policy underlying the rent repayment regime is directed towards the maintenance of good housing standards. It is consistent with that policy that a landlord who lets a property in good condition and who complies with its repairing obligations should be treated differently from one who lets property in a hazardous or insanitary condition.”

79. Those matters were relevant in those two cases. The size of the landlord's portfolio and the extent of the landlords' professionalism was relevant, although there was quite particular, and vindictive, conduct in the latter case which plainly weighed heavily in respect of the level of award made being a much higher percentage of the rent- 90%- than in the former case- 25%. In the 25% instance, the property was the only rental property owed by the landlord and the landlord was unaware of the need to licence.

80. That is quite a contrast and demonstrates the potentially wide range of outcomes dependant on the nature of the offence, the factors specified in the 2016 Act and the other circumstances.

81. Notwithstanding that the approach to take appeared to have been settled by *Williams*, the Upper Tribunal chose to give more specific guidance about the approach to be taken to the level of rent repayment orders in the case of *Acheampong v Roman (and Others)* [2022] UKUT 239 (LC).

82. At paragraph 20, the judgment of Judge Cooke says this:

“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.”

83. That takes matters beyond *Williams* and is more specific than the 2016 Act. The Tribunal does not consider it necessary for the Tribunal to always work through the specific steps in order to arrive at an appropriate answer,

although it accepts that the factors identified are relevant. Nevertheless, in this instance, the Tribunal considers that it is suitable and convenient to follow the steps set out in *Acheampong* so that it is clear to the unrepresented parties as to the approach the Tribunal has taken.

The amount of rent paid during the relevant period

84. It was accepted by the Respondents that the rent included any payment for utilities which only benefited the Applicant. Those are listed in the Agreement as including water, gas, electricity, television licence and broadband internet access. The list also added council tax. The Applicant accepted that an appropriate deduction would be made to ascertain the net rent for the purpose of the rent repayment order.
85. The Respondents provided no copies of bills or other evidence of the amounts of payments. The different utilities plus council tax listed are likely to have varied in costs somewhat and of course only a percentage would be applicable to the Applicant.
86. Applying its expertise to the question of the market value of the room in the absence of bills being included, the Tribunal considered that would be in the region of £50.00 to £75.00 per month lower. Bearing in mind that the Respondents could have provided evidence of the cost of the utilities and any costs appropriate and that they had not done so, the Tribunal considered that it ought to take a cautious approach to the level of deduction from the inclusive rent.
87. The Tribunal therefore applied a deduction of £50.00 per month, such that the net rent for these purposes is £700.00 and so the total for 12 months, so the maximum period, is £8,400.00.

The relevant factors

88. The Tribunal turns to the factors relevant in this application and to the particular facts of this application and to the outcome of weighing those factors.

Seriousness of the Offence

89. The Tribunal considers that the offence is not the most serious of those for which a rent repayment order may be made.
90. The Tribunal determines that in general- and the extent will differ from one case to the next- cases involving unlawful eviction and/ or violence to obtain entry are likely to be more serious than offences which relate solely to the absence of a HMO licence. However, perhaps the word “solely” should be taken with some caution: there are cases where there is no HMO Licence and there are various other problems with the given property for example.

91. In this instance, it was common ground between the parties that the Property was in a very good condition. There was no suggestion at all that the lack of a HMO Licence reflected a property which was not in condition to be licensable, far from it. The Respondents provided relevant certificates and information [49- 77].
92. The Tribunal did have regard to the Respondents owning 2 other houses which operated as HMOs and had been licensed, which it considers increases the appropriate level of award.
93. This is not a situation in which the Respondents were unaware of the licensing regime, as mentioned above. They did not inadvertently let the Property without a licence. The Tribunal accepts that they intended to obtain a licence.
94. However, the Respondents chose to let the Property without having obtained one and without submitting a completed application with fee payment. In doing so, they achieved a financial benefit as compared to a situation in which they made any enquiries and then submitted the application and at the earliest only then commenced letting. Indeed, even if they had submitted the application in or about August 2024 and only then sought to start letting, there would have been some financial impact which the Respondents avoided.
95. Not only did they let it in that situation but also by the time that the Applicant's tenancy ended, some 14 months after he moved in, the Property was still not licensed. The fact that the Tribunal finds that it would have been licensable does not alter the fact that it lacked a licence. Indeed, it lacked even a completed application for a licence. That is a very considerable time further on.
96. In a situation in which the Respondents knew that HMOs with three or more tenants were required to be licensed, that increases the seriousness.
97. Further, landlords with some 3 houses and with something above 10 and possibly up to 15 lettable rooms- the Tribunal did not receive an exact figure and infers the range from the evidence received about the houses generally- are what can properly be termed professional landlords. The number of rooms just mentioned if at an average rent around the level of the rent for the Applicant's room, would receive a monthly income of somewhere from £7,000.00 to potentially above £10,000.00, so above £80,000.00 and potentially some way beyond £100,000.00 per annum.
98. The Tribunal was additionally troubled by the Respondents continuing to advertise the Property as licensed where, even from the point that they submitted a completed an application and so had a defence to the offence of operating an unlicensed HMO, as a matter of simple fact the Property was not yet licensed.

99. The final point considered, although of marginal weight in the event, was that despite being members of an organisation able to provide advice, the Respondents had failed to take such advice.

Financial circumstances

100. In terms of the financial circumstances of the Respondents, the Tribunal was not in possession of any specific relevant information. The Respondents made no comments in their case and produced no relevant documentary evidence.

101. The Tribunal was told that the Respondents own 3 HMOs, plus the house in which they live. No value was provided and the Tribunal does not consider it appropriate to seek to provide its own valuation even of the Property- it has no details of the other houses to even attempt to. No information was provided about any mortgages or similar on any of the properties.

102. The Tribunal was cautious about seeking oral evidence from Dr Constantiescu. Given his other evidence, the Tribunal was not confident that he would have sufficient knowledge or information to hand to give accurate responses.

103. There was certainly nothing to suggest that the Tribunal ought to reduce the amount of any rent repayment order from the level that it would otherwise have ordered. In all of the circumstances and having had regard to the 3 HMOs in relation to the seriousness of the offence, the Tribunal also determined that it would not increase the amount of the order for any reason related to the Respondents' financial circumstances.

104. The Tribunal therefore did not alter the level of order otherwise considered appropriate.

Conduct

105. The Applicant said during the hearing that he found the Respondents' inspections of the communal areas and requirements to be intrusive. He explained it was that which caused him to decide to vacate the Property.

106. There was also reference in text messages within the bundle [80- 81] to the Respondents unhappiness about the kitchen in the Property and the Applicant's equipment. The Respondents had maintained that the common areas fell outside of the room let to the Applicant. The Tribunal noted that the Agreement includes a usual type of provision for notice of access from the Respondents but in relation to the room let.

107. However, the Applicant did not contend that those matters amounted to harassment. Given the positions of the parties, the Tribunal considered that no finding was required from. Rether, the Tribunal treated the matter as one in which the approaches of the parties differed and where those differences had caused a degree of difficulty between them, rather than it

amounting to a matter of conduct or otherwise sufficient to affect the amount of the order in this case.

108. The Respondents did not in their written case identify the above as relevant conduct on the part of the Applicant. Neither did they identify any other relevant conduct.

109. There is a brief mention of some modest cost to the Respondents after the end of the tenancy which may have gone a little beyond matters arising from fair wear and tear but sufficiently modest that it has no effect on the appropriate award.

110. In those circumstances, the Tribunal finds no matters as to conduct which should go to alter the level of order otherwise appropriate.

Previous offence

111. The Applicants did not assert any previous relevant offence had been committed by the Respondents and there was no evidence of any.

112. The Tribunal found there was no previous relevant offence to take account of.

Other circumstances than those specifically listed in the 2016 Act

113. The Tribunal did not identify any other relevant circumstances on the evidence presented.

The appropriate award

114. In the absence of any other factors to weigh save for the fact and nature of the HMO Licensing offence, the Tribunal has concentrated on the offence itself, including but by no means limited to how that sits with the Upper Tribunal cases referred to above.

115. The Tribunal has carefully weighed the seriousness of the offence in the context of rent repayments orders and has considered the appropriate percentage of the relevant rent paid which reflects that.

116. The Tribunal awards the Applicants a sum equivalent to 45% of the net rent paid in respect of the period in which the offence of failing to hold an HMO Licence was committed

The amount of the repayment

117. A rent repayment order is therefore made in favour of the Applicant in the sum of ££3,780.00.

118. That sum shall be paid by the Respondents within 28 days.

Application for refund of fees

119. There was nothing specific said in the hearing in relation to the fees paid in respect of the application. However, it is rather implicit that the Applicant seeks the fees back should he be successful, namely reimbursement of the £114.00 issue fee and the £227.00 hearing fee and it is very difficult to identify what the parties could have advanced which would have assisted the Tribunal with considering how to approach the fees beyond the impact of the outcome of the application.
120. Fees having needed to be paid in order to bring the claim and the Applicants having been successful in the proceedings, the Tribunal considered that the fees should be paid by the Respondent. The Tribunal could identify no reason why the Applicant ought not to recover the fees for their successful application against the Respondents.
121. The Tribunal does order the Respondents to pay the fees paid by the Applicant and so the sum of £341.00.

Rights of appeal

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28- day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28- day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.