FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	HAV/23UE/HMF/2025/0630
Property	:	37 Streamside, Tuffley, Gloucester, GL4 0TA
Applicants	:	Aaron Judge Marc Price Euan Alexander Craig Daniel King
Representative	:	Edward Phillips (Justice for Tenants)
Respondent	:	Matthew Lauchlan
Type of Application	:	Application for Rent Repayment Order under the Housing and Planning Act 2016
Tribunal Members	:	Tribunal Judge Hugh Lumby Mr M E Williams FRICS
Date of Hearing	:	26th May 2026
Date of Decision	:	30th June 2026

DECISION

Decisions of the Tribunal

(1) The Tribunal orders the Respondent to repay to the Applicants the sum of £8,360 by way of rent repayment, such repayment to be made within 28 days of the date of this decision.

(2) The Tribunal also orders the Respondent to reimburse to the Applicants their application fees of £114 each and the hearing fee of £227 (amounting to £683 to be reimbursed in total), such repayment to be made within 28 days of the date of this decision.

Introduction

1. The Applicants have applied for a rent repayment order against the Respondent under sections 40-44 of the Housing and Planning Act 2016 ("**the 2016 Act**"). The application was received on 27 October 2025.

2. The application when originally made also included Alizah Ghalib but she has subsequently withdrawn as an applicant, with the Tribunal's consent.

3. The basis for the application is that the Respondent was controlling and/or managing a house in multiple occupation (HMO) which was required to be licenced under Part 2 of the Housing Act 2004 ("**the 2004 Act**") at a time when it was let to the Applicants but was not so licensed and that he was therefore committing an offence under section 72(1) of the 2004 Act.

4. The Applicants' claim is for repayment of rent paid during various periods each amounting to 12 months and running in aggregate from 1 October 2023 to 23 October 2024, amounting to £20,900. This breaks down as follows:

   (i) Aaron Judge - £4,400 for 24 October 2023 to 23 October 2024

   (ii) Marc Price - £5,100 for 1 October 2023 to 30 September 2024

   (iii) Euan Alexander Craig - £4,800 for 17 October 2023 to 16 October 2024

   (iv) Daniel King - £6,600 for 1 October 2023 to 30 September 2024

5. The Property comprises a seven bedroom three-storey detached house with communal kitchen and bathroom facilities; the seventh bedroom

was not let. The Respondent is the registered proprietor of the freehold of the Property.

6. The Property was let by the Respondent or by a company where the Respondent was sole director to the Applicants and Ms Ghalib and occupied by each of them as follows:

   (i) Daniel King lived at the Property from 1 May 2023 to 31 October 2024 and paid a rent of £550 per month

   (ii) Aaron Judge lived at the Property from 24 April 2021 until at least 27 October 2025 and paid a rent of £370 per month

   (iii) Marc Price lived at the Property from 29 November 2019 and continues to reside there, paying a rent of £425 per month

   (iv) Alizah Ghalib lived at the Property from 20 September 2021 until 30 March 2025 and paid a rent of £365 per month

   (v) Euan Alexander Craig lived at the Property from 17 February 2020 until 13 December 2024 and paid a rent of £400 per month

7. Each of these occupiers formed separate households and was their sole or main residence.

8. For the purposes of this application, the Tribunal is satisfied that the Property was occupied by at least five people living as separate households from 1 May 2023 until 31 October 2024.

9. Gloucester City Council issued a Financial Penalty of £13,98.40 to the Respondent on 13 February 2025. This related to the offence committed on 24 October 2024 of having control of an HMO which required to be licensed but was not so licensed. The penalty confirmed that the Respondent had HMO licences for the Property from 19 November 2007 until 18 November 2019 but not subsequently. An inspection on 24 October 2024 *"confirmed that the property was a shared house, occupied by 6 persons 6 individual households who share the kitchen and amenities and is therefore a House in Multiple Occupation and requires a licence"*. It also said that *"the Council considers the level of culpability to be high, with low level risk to the occupants. The failure to renew or, apply for a new HMO licence demonstrates a flagrant disregard to the legislation and is reflected in the level of fine imposed in this decision."*

10. The Respondent appealed against the Financial Penalty but subsequently withdrew that appeal.

11. The Applicants have received confirmation from the council that no application for an HMO licence or request for a temporary exemption was received by it in relation to the Property during the relevant period. The Tribunal is satisfied that that the Property did not have an HMO licence between 1 May 2023 and 31 October 2024.

12. The Tribunal was provided with a bundle by the Applicants running to 230 pages. Nothing was received from the Respondent. The contents of all these documents were noted by the Tribunal.

13. The hearing was held online by CVP. Mr Phillips represented the Applicants. Mr Craig, Mr King and Mr Price of the Applicants attended and gave evidence. They also confirmed that the witness statements given by Mr Judge and Ms Ghalib were correct so far as they were aware, bar some minor clarifications (neither Mr Judge nor Ms Ghalib attended).

14. The Respondent did not attend. Given that no correspondence had been received from him, the Tribunal was concerned that he was not aware of the proceedings. The Tribunal had used an email address contained in the occupational leases and there was nothing to suggest that this was incorrect; he was sent a chaser at the start of the hearing and no bounce back was received. In addition, some of the occupational leases had a mobile phone number for him and this was used to attempt to contact him; the call went to voicemail. Messages were also sent to the number and no response received. The Tribunal also called the letting agents named in a number of the occupational leases; they confirmed that the number given for the Respondent was correct. Based on all this, the Tribunal was satisfied that the Respondent was aware of the proceedings and the hearing; it therefore decided to proceed with the hearing in the Respondent's absence.

15. Enquiries were also raised with Mr Phillips about the Respondent's knowledge of the proceedings. He confirmed that information about the proceedings had been emailed by Justice for Tenants to the Respondent, using the same email address as the Tribunal. He also stated that letters about the proceedings had also been sent to all addresses available for the Respondent from the papers, including the address held by the Land Registry. It subsequently emerged that these letters had not been actually sent. This does not affect the Tribunal's decision to proceed. However, if the Respondent wishes to make representations about his awareness of the proceedings and/or the hearing, he may do so within 14 days of the sending of this decision by writing to the Tribunal with a copy to the Applicants' representative; the Tribunal will consider any such representations and accompanying evidence.

Relevant statutory provisions

16. The relevant statutory provisions are set out in the Schedule to this decision.

Alleged Offence

Licensing of Houses

17. The relevant alleged offence is that the Respondent was controlling and/or managing an HMO which was required to be licenced the 2004 Act at a time when it was let to the Applicants but was not so licensed and that he was therefore committing an offence under section 72(1) of that Act.

18. The Applicants argue that the Property was an unlicenced HMO on the basis that it was rented to five or more people who form five or more households.

19. The Tribunal finds that all relevant times the various constituent elements for the offence pursuant to section 72(1) were fulfilled. In particular, it finds that that the Property was occupied by at least five people living as separate households from 1 May 2023 until 31 October 2024 with shared bathroom and kitchen facilities, that it was an HMO during that period which required to be licensed and that it was not licensed during that period.

20. The question therefore is whether the Respondent was controlling and/or managing the Property at the relevant time. It is noted for these purposes that at all material times he was the registered proprietor of the Property, that whilst external letting agents were used they did not manage the Property and the occupational leases were either granted by the Respondent or by a company of which he was the sole director.

21. The Tribunal began by considering whether the Property was controlled by the Respondent. Section 263 of the 2004 Act has a very specific definition of control, as set out in the Schedule. This says the person in control is the person who receives the "rack-rent" of the premises, where rack-rent is in turn defined as being not less than two-thirds of the full net annual value of the premises. In this case, the Respondent received the full monthly rent from the Applicants. No representations were received as to what the rack rent is but the Tribunal considers the amounts paid would at least meet this definition, especially absent any evidence to the contrary. The fact that the Respondent met the utilities and other household bills does not affect this. This means that the Respondent meets the threshold for control.

22. Accordingly, the Tribunal determines that the Respondent was in control of the Property for the purposes of section 263 of the 2004 Act.

23. The Tribunal next considered whether the Respondent was managing the Property, again as defined by section 263. This definition is also very specific and slightly eclectic; it is again set out in the Schedule. That definition has a number of components. The Tribunal considered each of the relevant parts.

24. The definition provides that the manager is required to be *"an owner or lessee of the premises"*. The Respondent owns the freehold of the Property and there are no intermediate interests; he therefore meets this requirement.

25. The manager must receive "*(whether directly or through an agent or trustee) rents or other payments from…persons who are in occupation as tenants or licensees of parts of the premises"*. The Respondent received the rents and so again meets this requirement.

26. Accordingly, the Respondent fulfils the requirements of the definition of managing the Property. As a result, the Tribunal determines that the Respondent was managing the Property at the relevant time for the purposes of section 263 of the 2004 Act.

27. This means that the Respondent was both controlling and managing the Property between 1 May 2023 until 31 October 2024. Throughout this period the Property was an HMO which required to be licensed but was not licensed.

28. As a result, the Tribunal is therefore satisfied beyond reasonable doubt, based on the evidence provided, that the Respondent was during this period both and controlling and managing an unlicensed HMO which required to be licensed. He has therefore potentially committed an offence pursuant to section 72(1) of the Housing Act 2004.

Reasonable excuse

29. Accordingly, having established the ground for potentially making a rent repayment order, the Tribunal considered whether the Respondent had a reasonable excuse for committing the offence. This would operate as a defence to the claim and mean that a rent repayment order could not be made.

30. The Respondent has not offered any reasonable excuse.

31. The Tribunal considered the Upper Tribunal guidance on what amounts to a reasonable excuse defence in the cases of *Marigold & ors v Wells*

[2023] UKUT 33 (LC) and *D'Costa v D'Andrea & ors* [2021] UKUT 144 (LC). The offence in question here is managing or controlling an HMO without a licence, not the failure to apply for a licence. The Upper Tribunal held in *Marigold* that a person wishing to utilise a reasonable excuse defence must show that they had a reasonable excuse for the whole period in question. That period in this case is from 1 October 2023 to 23 October 2024.

32. In *Marigold* the Upper Tribunal approved a test for assessing reasonable excuse, set out in the case of *Perrin v HMRC* [2018] UKUT 156 (TCC). That test comprises first setting out the facts asserted by the landlord that give rise to a reasonable excuse, secondly deciding which of the facts are proven and finally establishing objectively whether these facts amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. This test has been slightly altered by the case of *Stevan Gorgievski v Carl Griffiths and Ors* [2025] UKUT 65 (LC)), in which the third limb was changed slightly to "Do those proven facts provide an objectively reasonable excuse for R's conduct, taking into account their experience and other relevant characteristics?"

33. Absent any pleaded reasonable excuse, the Tribunal considered whether this could be ascertained from the documentation. It notes that in his correspondence with the council, he suggests his managing agent is to blame. Absent any other suggestion, we will treat this as the fact relied upon by the Respondent.

34. The Tribunal next considered which of these facts are proven. It finds that there is nothing to support this contention.

35. The Tribunal next considered whether these facts provide an objectively reasonable excuse for the Respondent not having a licence. Given that the Respondent was the sole director of the relevant company and knew about the requirement for a licence having obtained these before, the Tribunal considers from a reasonably objective viewpoint that at no point during the relevant period did the Respondent have a reasonable excuse for not having a licence.

36. Taking these factors into account, the Tribunal finds on an objective basis that at no point did the Respondent have a reasonable excuse for not having a licence.

37. As a result, the Tribunal finds that the Respondent does not have a reasonable excuse to the offence.

Consideration of grounds

38. The Tribunal is satisfied beyond all reasonable doubt that the offence was committed and that the relevant dates when the offence was committed for these purposes were between 1 May 2023 and 31 October 2024.

Rent Repayment Order

39. Section 43 of the 2016 Act provides that where a Tribunal is satisfied beyond reasonable doubt that a landlord has committed a relevant offence, it may make a rent repayment order. The Tribunal does therefore have a discretion as to whether to make an order although it has been established that it would be exceptional not to make a rent repayment order (*Wilson v Campbell* [2019] UKUT 363 (LC)).

40. In this case, the Tribunal is satisfied beyond reasonable doubt that an offence has been committed and that there is no reasonable excuse for the offence. It does not consider that there are any exceptional circumstances preventing it making an order and therefore determines that a rent repayment order should be made.

Submissions on amount of order

41. Having determined that a rent repayment order should be made, the Tribunal next considered what the amount of such order should be.

42. The Applicants argue that the offence committed by the Respondent is serious, pointing to the length of the offence, alleged breaches of the relevant HMO regulations and disrepair in the Property and the high culpability identified by the council in setting the level of the Financial Penalty. They argue that a rent repayment order is intended to punish offending landlords; deter the particular landlord from further offences; dissuade other landlords from breaching the law; and remove from landlords the financial benefit of offending. They therefore contend that this justifies an award of the vast majority if not all of the rent applied for.

43. No representations were received from the Respondent.

Method of assessing amount of order

44. Section 46 of the 2016 Act specifies circumstances where a Tribunal is obliged to make a rent repayment order in the maximum amount (subject to exception circumstances). These do not apply where the tenant is seeking to rely on offences under section 72(1) of the 2004 Act, as is the case here. The Tribunal therefore has discretion as to the percentage of the rent it can order be repaid.

45. Section 44 of the 2016 Act specifies the factors that a Tribunal must take into account in making a rent repayment order. This has been qualified by the Upper Tribunal in guidance given in the case of *Acheampong v Roman* [2022] UKUT 239. That guidance is summarised as follows:

(i) ascertain the whole of the rent for the relevant period;

(ii) subtract any element of that sum that represents payment for utilities that only benefited the tenant, e.g. gas, electricity and internet access;

(iii) consider how serious the 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?

(iv) finally, 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), namely the matters the Tribunal must 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 identified in the table at section 45 of the 2016 Act.

Tribunal assessment of amount of order

46. The Tribunal has followed the guidance in *Acheampong v Roman* set out above.

47. The Applicants' claim is for £20,900, which they say is the aggregate rent paid by them for the relevant periods. The Tribunal accepts that these sums were paid and each fall within the period during which the offence was being committed. In addition, as they each relate to periods of 12 months, the sums claimed are all claimable pursuant to the 2016 Act. The Tribunal therefore accepts this figure as a starting point.

48. The leases to the Applicants generally provide that the landlord is responsible for paying for utilities, broadband and council tax. It was accepted in evidence by the Applicants that these had all been paid for by the Respondent. The Tribunal had not been provided with the actual costs incurred on these by the Respondent. It therefore concludes that a discount of 20% should be made to reflect these costs. This means that the net amount to be considered by the Tribunal is £16,720.

49. The Applicants confirmed that none of them had received universal credit. Accordingly, no deductions should be in made in respect of this.

50. The Tribunal did not consider that the offence was a serious one when compared to the other offences in respect of which a rent repayment order could be made. However, and as the Applicants have pointed out, the council found a high degree of culpability in the Respondent's conduct, given he was fully aware of the requirement to have an HMO licence but had chosen not to apply for one. This increases the seriousness of the offence. The Applicants argue that this is increased by alleged breaches of the HMO regulations and the disrepair of the Property. They accept that the council identified the risk to occupiers as being low but argued the council was incorrect in its assessment. The Tribunal has considered the evidence put forward in this regard by the Applicants and finds there is not strong support for their contentions; it therefore prefers the council's assessment. In addition, the Tribunal considers that the Applicants cannot plead the Financial Penalty when it suits them but look to disregard it when it does not.

51. The Tribunal considered the case of *Hallet v Parker* [2022] UKUT 165 (LC); in that case, the Tribunal made a rent repayment order equal to 25% of the total rent paid where this was a first offence by the landlord, in circumstances where the landlord was not told by his agent he needed to be licensed and applied immediately on being told of the issue. The Respondent argued to the council that his agents were responsible but this was rejected by them on the basis he was the sole director of the identified agent. In addition, he was aware of the need for an HMO licence, having obtained these previously for the Property. A substantially smaller discount is therefore appropriate here.

52. However, a key factor to be considered here is the Financial Penalty already imposed. The council acknowledged that it had been set at a high level and the result is that much if not all of any benefit from the failure to obtain a licence is likely to have gone. The Respondent has been punished already for the offence. Whilst this does not prevent a rent repayment order being made, the Tribunal considers that the amount payable should be discounted substantially as a result.

53. Taking this in the round, the Tribunal therefore conclude that an order at 50% of the net rent paid is appropriate.

54. The Tribunal then considered the conduct of the Respondent. The specific issues raised by the Applicants, including the length of the offence, contended HMO regulations breaches and disrepair, have already been taken into account in assessing the seriousness of the offence. These should not be double counted and so it therefore considers that no further adjustment to take account of this is appropriate. This has already been taken into account in setting the repayment level.

55. The Tribunal noted that there had been no question raised of misconduct by the Applicants and concluded that it was therefore inappropriate to make any adjustments as a consequence.

56. The Tribunal next considered the Respondent's financial circumstances. No evidence of the Respondent's financial circumstances has been provided by him. The Tribunal therefore concluded that it was inappropriate to make any adjustments as a consequence.

57. The Tribunal noted that there is no evidence that the Respondent has previously been convicted of an offence identified in the table in section 45 of the 2016 Act (which is set out in the Schedule to this decision). No adjustment for this was therefore appropriate.

58. Taking all these factors into account, the Tribunal determined that the amount payable by the Respondent should be reduced by 50%, leaving the amount to be repaid as £8,360.

Tribunal determination

59. The Tribunal determines that it is satisfied beyond all reasonable doubt that the Respondent were managing an HMO which was required to be licenced under Part 2 of the 2004 Act but was not so licensed between 1 May 2023 and 31 October 2024 and that he was therefore committing an offence under section 72(1) of the 2004 Act during that period. It also determines that the Respondent had no reasonable excuse for that offence.

60. The Tribunal has determined that it should make a rent repayment order in respect of that offence and has calculated the amount of that order as £8,360.

61. Accordingly, the Tribunal orders the Respondent to repay to the Applicants the sum of £8,360 by way of rent repayment, such repayment to be made within 28 days of the date of this decision.

Cost applications

62. The Applicants have applied under paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for an order that the Respondent reimburse the application fee of £114.00 per Applicant and the hearing fee of £227.00. This excluded the application fee paid by Ms Ghalib, as she had withdrawn.

63. As the remaining Applicants have been successful in this claim, the Tribunal is satisfied that reimbursement of these fees should be made. The Respondent's non-engagement reinforces this decision.

64. The Tribunal therefore orders the Respondent to reimburse to the Applicants their application fees of £114 each and the hearing fee of £227 (amounting to £683 to be reimbursed in total), such repayment to be made within 28 days of the date of this decision.

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

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.

SCHEDULE

Relevant statutory provisions

Housing and Planning Act 2016

Section 40

(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 ...

(3) A reference to "an offence to which this Chapter applies" is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

	Act	*section*	*general description of offence*
1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO

6		section 95(1)	control or management of unlicensed house
7	Housing and Planning Act 2016	section 21	breach of banning order

Section 41

(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.

Section 43

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

(2) A rent repayment order under this section may be made only on an application under 41.

(3) The amount of a rent repayment order under this section is to be determined in accordance with – (a) section 44 (where the application is made by a tenant) ...

Section 44

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

(2) The amount must relate to rent paid during the period mentioned in the table.

If the order is made on the ground that the landlord has committed	***the amount must relate to rent paid by the tenant in respect of***
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

(3) The amount that the landlord may be required to repay in respect of a period must not exceed – (a) the rent 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.

(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.

<u>Housing Act 2004</u>

<u>Section 72</u>

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

(4) In proceedings against a person for an offence under subsection (1) ... it is a defence that he had a reasonable excuse ... for having control of or managing the house in the circumstances mentioned in subsection (1) ... .

<u>Section 263</u>

(1) In this Act “person having control”, in relation to the 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.

(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 ...

(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