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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	HAV/00HB/HMF/2025/0634
Property	:	19 Hurston Road, Bristol, BS4 1SU
Applicant	:	Cristian Daniel Semplican (1) Arran James Batchelor (2) Jessica Rose-Sealy (3) Chloe Elizabeth Dawn Rose Hodge (4)
Representative	:	----
Respondent	:	Caitlin George
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 Ms P Gravell
Date of Hearing	:	25th June 2026
Date of Decision	:	10th July 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 4th April 2025 to 14th May 2025.**

2. **The Tribunal has determined that it is appropriate to make a rent repayment order in favour of the 1st and 2nd Applicants.**

3. **The Tribunal makes a rent repayment order in favour of the Applicant in the sum of £855.00. The payment is to be made to Mr Batchelor on behalf of them within 28 days of this order.**

4. **The Tribunal determines that the Respondent pay the 1st and 2nd Applicants £241.00 as part reimbursement of Tribunal fees, to be paid to Mr Batchelor on behalf of the Applicant within 28 days.**

Application and background

5. By an application dated 20th November 2025 [2- 11], the Applicants applied for a rent repayment order in respect of rent paid during the period, April to October 2025 inclusive. The amount claimed was £2,300.00 per month payable by the month, inclusive of bills. The rent covered the period from 20th of the first month until 19th of the next month. Various supporting documents were provided, including screenshots [7] and other records [107- 111] in respect of payments of rent. The application was submitted comfortably in time.

6. The application was brought on the ground that the Respondent had committed an offence pursuant to section 72 of the Housing Act 2004 of failure to hold a licence from 4th April 2024 for a house in multiple occupation ("an HMO Licence") and which required an Additional HMO Licence, being 19 Hurston Road, Bristol, BS4 1SU ("the Property"). That possessed 2 lettable bedrooms. In addition, there is a bathroom, a living room and a kitchen.

7. The Respondent is one of two owners of the Property. The other owner is not a party, not having been named as a respondent by the Applicants, and so has no direct involvement in the application. The 1st and 2nd Applicants were the tenants of the whole house and only permitted full- time occupiers from 29th March 2025. The 3rd and 4th Applicants became tenants from 4th April 2025. The Property was then occupied by 2 couples, each living together as one household, hence 2 households overall.

8. A written tenancy agreement ("the 1st Agreement") [67- 86] was entered into by the 1st and 2nd Applicants and the Respondent dated 29th March 2025 at a rent of £2,000.00. A further written tenancy agreement ("the 2nd Agreement") [87- 106] was entered into by the same parties dated 4th April 2025 for a fixed term of 12 months commencing 20th April 2025 and up to

and including 19th April 2026. That was at an increased rent of £2,300.00 per month.

9. Both of the agreements as signed by the 1st and 2nd Applicants were electronic documents. However, the 2nd Agreement as a whole also included supplemental pages signed by the 3rd and 4th Applicants on paper, one page each [12 and 13] and titled "Additional Tenancy Agreement". For the avoidance of doubt, those were also individually dated 4th April 2025. Each referred to a sum of £150.00, hence the overall increase by £300.00. There was some lack of clarity as to exactly how it was agreed to enter into the later agreement, returned to below to an extent.

10. Directions [15- 22] were given on 17th April 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.

11. The Applicants provided a hearing bundle comprising 123 pages, although only after the issue of further Directions dated 22nd June 2026 [not in the bundle]. The Applicants originally provided a defective bundle of only 67 pages which omitted the Respondent's case and other required documents.

12. The Tribunal refers to pages of the bundle where relevant. Insofar as it does so, references are to PDF numbering and page numbers are shown in square brackets [ ].

<u>The law and jurisdiction in relation to Rent Repayment Orders</u>

13. 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.

14. 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).

15. 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.

16. 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 (unless 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.

17. 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.

18. 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.

19. 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. Section 72(4)(b) of the 2004 Act provides a statutory defence for the period where a duly completed licence application has been submitted to the local authority and has not been determined.

20. 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

21. The hearing was listed for an afternoon session. The parties had not queried the length of the hearing and the Tribunal was content that whilst it required matters to keep moving, it was proportionate to the maximum level of award realistically achievable and indeed actually achievable following the sensible concession referred to below.

22. The Applicants and Respondent attended the hearing remotely. Mr Batchelor largely represented the Applicants and to a lesser extent Mr Semplican did so. The 3rd and 4th Applicants only participated to the extent of being present and gave no evidence nor made submissions.

23. 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.

24. The Respondent provided an email with what at first blush may have been additional documents shortly before the hearing commenced. However, it was established that those were contained in the Applicants' revised bundle. There were other minor matters regarding documents and the bundle, minor in the sense that the parties expressed no strong concerns and the Tribunal had read the contents of the bundle.

25. It was helpfully conceded on behalf of the Applicants that they accepted that there could be no licensing offence from 15th May 2025, the date on which the Respondent submitted an application for a licence to Bristol City Council [55- payment receipt]. The Tribunal had understood the Applicants' original position to be that the Respondent had continued to commit an offence because the application was not finalised. However, that had been explained by the Respondent to reflect the Applicants having left and the Respondent seeking to sell the Property and not further letting it, such a licence was then no longer needed. In light of that and the lack of any suggestion that the application had not been appropriately completed when made, the Tribunal considered that a sensible concession- there was no prospect that the Tribunal might have determined an offence to be committed from 15th May 2025 onwards.

26. The Tribunal received written witness evidence from the 1st Applicant [58-60] and from the other Applicants [61- 66]. The Tribunal also received written evidence from the Respondent [25- 26 and 27- 31]. It also heard oral evidence from both Mr Semplican for the Applicants and from Ms George, the Respondent, each side questioning the other, to which were added questions from the Tribunal where clarification was sought. The parties were then able to make closing comments. The Tribunal was not wholly convinced by the evidence of either side, finding that to an extent that leant towards what the party thought best for themselves.

27. Without seeking to criticise the parties who were representing themselves and accepting that part of the role of the Tribunal is to ascertain the matters relevant without descending into advocacy for one party or another, there were matters which had been touched upon by a party in written evidence not addressed by the parties in the hearing and there were documents which might have been commented upon and were not. The Tribunal asked various questions of the witnesses but that could only go so far within the available time. The Tribunal was left with a somewhat unclear picture of some aspects which might have had a modest impact on the level of award (although that is modest to start with) and so the Tribunal needed to apply some caution to that extent, although nothing which would have affected the determination of whether or not an offence was committed.

<u>Was a relevant offence committed and during what period?</u>

28. The offence alleged in the application is being in control of or managing a licensable HMO without a HMO Licence being in place.

29. The basic circumstances of the alleged offence were that the Property was let for occupation by 3 or more persons and was not licensed.

30. 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.

31. As to the date of commencement of the potential offence, the Tribunal determines that was 4th April 2026, so the point at which the Tribunal finds that there were 4 occupiers in the Property residing in the Property as their only or main residence and living in 2 or more households (in practice 2 households as noted above).

32. The Respondent in an email 10th June 2026 [23] asserted to the Applicants that there was no agreement for the 3rd and 4th Applicants to move in during what she described as the 30- day period in which the licensing application "was being put in place". She suggested in closing that internet sites had suggested a landlord had a month or 21 working days (the Tribunal may not have understood the exact period correctly but that affects nothing) to make an application. The implication was a link between those two elements.

33. The 4th April 2025 Agreement is, as identified above, perfectly clear about the 4 occupiers- all four signed documentation with the Respondent, although for the 3rd and 4th Applicants that was by way of separate paper documents rather than the principal electronic document. It can be added that the Respondent said that was because of difficulties with amending the principal document to add the 3rd and 4th Applicants. The Tribunal found it unclear why that was but little more was said and the Tribunal does not consider it necessary to make any finding for the purpose of the period of the offence.

34. It is notable that the term of the principal and electronic part of the 2nd Agreement, is said to commence on 20th April 2025. That could be interpreted as only permitting the 3rd and 4th Applicants to only become tents on that date of to only be able to occupy as their only or main residence from that date. However, 20th April was the next rent payment date and the Tribunal finds that to be the reason for the stating of that date, considering that the sensible inference to draw and consistent with the matters below.

35. The Tribunal finds it entirely clear from the evidence provided that the 3rd and 4th Applicants did in practice occupy as their only or main residence from 4th April 2026 and the Respondent knew that they did so. As

identified above, they signed their "Additional tenancy agreements" on that date and there is no suggestion on those pages that there was a delay in the ability to start occupying as tenants.

36. The Tribunal is mindful that the Applicants case was that the 3rd and 4th Applicants had always been entitled to occupy the Property full- time. However, despite the lack of clarity about various matters and hence a number of possible scenarios around March and April 2025, the Tribunal did not find that consistent with other information. Most obviously, that is the increased sum payable on the basis of the 3rd and 4th Applicants.

37. The Tribunal was not satisfied to the criminal standard in respect of any or all of the few days 29th March to 3rd April 2025 and anything less than that is irrelevant for these purposes.

38. A landlord ceases to commit an offence at the time at which a valid application for a Licence is made and not any later date on which such application is granted (see above). Hence, the last day of the potential offence was the last day before the Respondent's application, so 14th May 2025. Case law has made plain that the full day of the date on which the application is made is excluded for the purpose of the period of the offence.

39. The next matter was the question of a defence of reasonable excuse for not holding an HMO Licence for the Property and hence whether there was an actual offence.

40. In her witness statement, the Respondent stated- and this was not specifically challenged- that she became aware of the need to license on 6th April 2025 or at least during the week commencing with that (and the Tribunal for ease refer to the specific date as nothing is affected by that and for ease). The Tribunal noted that her case was that she was contacted at that time by Bristol City Council, it was said in response to a complaint by a neighbour.

41. There was an implication in evidence from the Applicants that the Respondent may have known from the outset that she needed a licence but was looking to fly under the radar, ruined when the Council became involved. The Tribunal was not wholly impressed with the Respondent's evidence- see for example contact with the council around 15th May 2026 below- about all matters and does not discount that possibility entirely. However, there is insufficient for the balance of probabilities to tilt that way prior to 6th April 2025.

42. The Respondent also said, and the Tribunal accepts, that she had owned the Property for a couple of years but had lived there and had not rented it out previously.

43. The Tribunal determines that if there could have been a reasonable excuse due to lack of knowledge on 4th and 5th April, or indeed earlier, that had certainly ended by 6th April 2025. However, in practice that has no effect as

the Tribunal determines that mere lack of knowledge does not amount to a reasonable excuse in any event.

44. The Respondent said that she then engaged with the council and given that there was a licensing application made the following month, there is support for that in general terms. There is no suggestion that the Respondent was incapable of applying sooner.

45. However, the Tribunal particularly notes the content of evidence produced by the Respondent herself in respect of contact with the council [47] early in the morning of 15th May 2025.

46.. The Tribunal notes that the Applicants did not question the Respondent on those messages and nothing else was said about them. The Tribunal does not go beyond what they specifically state.

47. One of the messages says as follows:

"Thank you, I have just looked on the site and with 2 people and the 2 stating maximum if 3 week(sic) this is not needed.

I have also asked the guys to be honest and say if there(sic) staying more so when they come back to me i can attach this as evidence"

48. The second reveals that the Respondent the sent the principal part of the 2nd Agreement to the council with a message stating:

"Please find attached signed contract with Aaran and Daniel being tenants."

49. The Tribunal considers that there is no other possible way of reading those messages other than the Respondent was stating to the council that there were only 2 occupiers (tenants) occupying as their only or main residence and presenting the 3rd and 4th Applicants as simply staying part of the week, the Respondent going so far as to provide a document which insofar as provided appears to support her statement.

50. That is glaringly contradicted by the terms of the 2nd Agreement as a whole and in particular the separate pages which make it plain that the 3rd and 4th Applicants are also tenants and further there is an increase rent payment for that reason. The Tribunal finds that the Respondent was in no doubt that the 4 Applicants were all tenants.

51. It is not clear what subsequently happened- the Tribunal has little information on the matter- but such as is displayed on the page suggests that there were calls to the Respondent from two officers of the council. Plainly at some stage later that day the Respondent accepted that was a need for licensing and submitted the application, as contemporaneously confirmed by her email to the council the following day.

52. Nevertheless, there was a point at which the information presented to the council by the Respondent was misleading.

53. The Tribunal has considered carefully whether it should go further than that finding. At first blush, they may be scope to do so and make further and stronger findings. However, the Tribunal does not consider it appropriate to do that where the point was not put to the Respondent in the hearing for her to respond. Hence, as said above, the Tribunal limits itself to that specifically revealed by the documents and does not seek to make any finding about intention or any other feature.

54. The Tribunal is also careful in those circumstances not to allow the aspect to infect its approach to other aspects of the case beyond the immediate one of the application. If the Respondent had been given the opportunity to explain and the Tribunal had disbelieved her, the Tribunal would have been entitled to weigh that with the Respondent's other evidence, but equally the Respondent may have provided a good explanation which the Tribunal believed and about which it was content.

55. The Tribunal does find, given that it is obvious from what the Respondent said in the messages, that the Respondent was not, at least at that time, straining every sinew to make the necessary application for a licence, indeed the opposite at least for a time.

56. The Respondent also said that she had to wait until she (and/ or her partner) were paid before she was able to pay the HMO licence application fee. The Tribunal notes that is not mentioned in any contact with the council which has been produced g. No financial information was provided by the Respondent. Even if there were not more to the picture, the Tribunal would not find that an inability to pay the fee was the reason why an application for a licence was not made sooner. Given the very much related issue arising from the messages, it may very well be that if the balance had otherwise favoured accepting the Respondent's assertion, the misleading information would have amply weighed against that but as the scales never tilt in the Respondent's favour in the first place, the messages have no impact on the finding made.

57. In any event, it was not explained why the Respondent could not have paid on a credit card or otherwise have had the cost covered in the short term where at first blush such options would be expected to be available. However, the Tribunal cannot find a lack of ability to pay the required fee at the particular time to be a reasonable excuse in any event (and hence as to whether the Respondent could or could not pay sooner does not require any specific finding) nor the other matters within this paragraph and the previous ones to provide a reasonable excuse defence in any event.

58. For the avoidance of doubt, whilst the Tribunal has mentioned the Respondent's argument that the 3rd and 4th Applicants should have not moved in when they did, it has been explained above that the Tribunal does not accept that. If the Respondent had not wished the 3rd and 4th Applicants to occupy as their residence from 4th April 2026, other provision could have been made. Instead, the Respondent was aware of and enabled their occupation as tenants from 4th April. The Tribunal

rejects there having been an agreement that the 3rd and 4th Applicants would not move in until a licensing application had been made.

59. The Respondent ought not to have let the Property as residence for 4 persons without a licence, accepting her not to be aware but that not to amount to a reasonable excuse. There may or may not have been other arrangements which could have been made to enable payment- the Tribunal goes no higher than that it does not know that there were none on the evidence presented and it does not need to go beyond that. There is also the wider principle that if an inability to pay the fee were to be treated as a reasonable excuse, that could create a number of problems with the licensing regime which would plainly run contrary to the purposes of the statute.

60. The Tribunal found that those matters did not amount to a reasonable excuse for failing to hold an HMO Licence.

61. Whilst nothing turns on the matter in the circumstances, the Tribunal also noted that it was put to the Respondent in cross- examination (although not contained in the Applicant's own evidence) that the Property had been advertised for 2 to 4 occupiers and the Respondent did not dispute that. If 4 had occupied originally in response to the advertisement, the Respondent would have required a licence from the outset. The Respondent apparently did not, but ought to have, checked licensing requirements before advertising to let and would have established the maximum number without her holding a HMO licence was 2.

62. The Applicants also suggested in cross- examination that the Respondent may have been aware of the need to licence for 4 people by way of comments it was asserted she made about the neighbour. The Tribunal makes no finding of such knowledge, although it noted that the Respondent was somewhat evasive about certain matters around the time of the 2nd Agreement and that would, if it had been relevant, have tended to detract from her credibility.

63. The Tribunal therefore determined that the Respondents committed an HMO licensing offence in respect of the Property from 4th April 2025 to 14th May 2025, being a period of 41 days (and so well below the maximum period of 12 months for which a rent repayment order could be made).

64. For completeness, the Tribunal records that the Applicants listed 4 grounds, of which the HMO offence was one. The other 3 read as follows:

"2. Lack of transparency and failure to provide bill details
3. Overcharging for bills and taxation
4. Wrongful and unfounded charges for property damage"

65. However, the Tribunal determines that none those provides a separate ground. They may be relevant features of conduct which may affect the amount of a rent repayment order in the event of the Tribunal deciding to make one.

The decision in respect of making a rent repayment order

66. 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 an order has been made out.

67. 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."

68. 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.

69. The Tribunal is given a wide discretion and considers that it is entitled to look at all 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 follows from there being a discretion to make an order, as opposed to such an order following as a matter of course, that there will be occasions on which it may 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.

70. 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, exercises its discretion to make a rent repayment order. At this stage, the Tribunal determines it appropriate to adopt that approach in respect of all Applicants, although it will be seen below that in practice there is a clear distinction between the 1st and 2nd Applicants on the one hand and the 3rd and 4th Applicants on the other.

The manner of determining the amount of rent to be repaid

71. 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.

72. 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'.

73. 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.

74. 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."

75. Hence, the Tribunal can only order repayment of rent paid during the period of the offence and which related to the period during which there was an offence.

76. It necessarily follows that anyone who does not pay rent and in particular pay rent meeting the twin above requirements cannot receive a rent repayment order. Anyone who did pay rent meeting those requirements can as a maximum receive an order for those rent payments.

77. The Tribunal has a discretion as to the amount to be ordered of that which has been paid, 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.

<u>Relevant caselaw in respect of the amount of a rent repayment order</u>

78. 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.

79. 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.

80. 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.

81. 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.

82. 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.

83. 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."

84. 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."

85. However, the President then adds:

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

86. That appeared to settle matters.

87. 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.

88. 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.

89. 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."

90. 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.

91. 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.

92. 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).

93. 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."

94. The Tribunal does not consider it a necessity 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 partis as to the approach the Tribunal has taken.

<u>The amount of rent paid during the relevant period</u>

95. The evidence demonstrates that the rent paid during the period 4th April 2025 to 14th May 2025 was £2300.00. Strictly, that was paid by the 2nd Applicant to the Respondent.

96. However, the 1st Applicant explained that he had paid half to the 2nd Applicant, who had then passed on the full sum. It was apparent that was not controversial as between the Applicants.

97. The 1st and 2nd Applicants had been tenants from the outset occupying separate bedrooms but renting the Property as a whole. There was nothing to suggest that the two would not both contribute or that they would not do so equally. Whilst there was no direct evidence on the point, the Tribunal infers that the Respondent understood the 1st and 2nd Applicants to contribute to the rent and the 2nd Applicant to be making a single payment on behalf of both of them.

98. As the rent was a single sum for the Property as a whole, that has no impact on the amount of any rent repayment order in any event.

99. The position as to the 3rd and 4th Applicants as indicated was that they did not in practice make any payment. Certainly, nothing in their written evidence said so and they did not seek to give oral evidence. It may be that

sums passed between the members of each couple and so in practice £150.00 or sum other sum was contributed by the 3rd and or 4th Applicants but the Tribunal received no evidence of any such arrangement.

100. The rent paid to the Respondent during the period of the offence was paid on 29th April 2025 and the Tribunal finds was for the month 20th April 2025 to 19th May 2025. It was paid late to that extent as compared to the payment date in the principal part of the agreement but by a handful of days and no party suggested that had significance to this application.

101. There is, the Tribunal acknowledges, some scope for uncertainty because of lack of clarity, as with so much else in this case. The Additional documents require the £150.00 x 2 to be paid on 29th of a month, so a different date to the other £2,000.00. In addition, the evidence provided indicates that the payments were made together as £2,300.00 on 29th rather than two separate sums on separate dates throughout the tenancy and it was not demonstrated that was queried. That creates the possibility that the payment date and perhaps even the rent period was varied.

102. However, the Tribunal was not provided with any document which stated that there was a variation and no evidence was given of a variation. The Tribunal has no information as to why the additional £300.00 was to be paid by 29th of a month, including as to whether that was simply a misunderstanding and error, and considers that no inference can properly be drawn. The 1st Agreement had been dated 29th (of March) and it is at least as plausible as anything else that the payment date agreed in the principal part of the 2nd Agreement was forgotten about rather than there being any actual agreed variation of it.

103. The Tribunal has noted that the period for which the principal part of the rent was paid therefore slightly exceeds the period for which the offence continued. However, the £2,000.00 rent for that period became payable on 20th April 2026 pursuant to the 2nd Agreement: there was no suggestion of apportionment of rent day by day. If for some reason the tenancy had ceased on a date earlier than 19th May 2025, or indeed 14th May 2025, there was no refund due to the Applicants. They simply contracted to make a single payment on a given date covering up to the end of the period provided for and so the rent paid for the period was the full sum.

104. The same applies in respect of the further £300.00, albeit the relevant dates are 29th and 28th.

105. Hence, that full sum was the relevant rent paid for the purpose of this application (as opposed to the only slightly in the event smaller sum which there would have been had the rent been payable up to 14th May 2025, day by day).

106. It was accepted that the rent included payment for utilities which only benefited the Applicants. Those are listed in the Agreement as including water, gas, electricity and council tax for what was said to be up to a

combined cost of £400.00 per month but the Respondent pointed to the additional pages on paper which had been signed by the 3rd and 4th Applicants in which those Applicants agreed to pay £150.00 each per month and it was suggested that those sums related to increased utility usage.

107. The Tribunal notes those documents do not state that the £150.00 relates to additional utility costs. Indeed, the pages give no indication of the reason for the payments. The payments are not indeed stated to be rent at all, although plainly that is what they amounted to, whether additional rent for additional bills or otherwise.

108. The principal part of the 2nd Agreement in the section titled "Custom Clause Notice" [at 85] includes the following:

> "Custom Clause 4. All bills that are included are: Electric, gas, water and council tax. But not go over amount £400.00 per month if so this will be charged extra in leu."

109. That provision is not terribly well expressed and hence is rather less clear than it might be. Presumably "leu" should read "lieu", although in lieu of what is not explained. The implication is that simply to any extent that bills exceed £400.00, the Applicants will be charged the exact same figure as that by which bills go above £400.00. However, that is not said in terms. On that basis, there is not a fixed sum of £400.00 as such.

110. It is also unclear whether the Respondent was billed monthly by suppliers and if then whether the £400 is an average over a number of months. There is nothing to suggest that the Applicants can pay less then £400.00 per month if the bills fall below that figure. It is perfectly possible that the Applicants accepted a minimum and an excess some months but without a saving in other months. That said, there is no obvious attraction to such an arrangement for the Applicants. It would at first blush be logical that there would be a balancing process between payments exceeding the level of bills in one month and payments lower than the level of bills in another month.

111. The Respondent said that in arriving at the figure for bills, her partner and herself had looked at the bills previously paid and then had worked on the same figure for occupation by the 1st and 2nd Applicants, which the Tribunal accepted as logical. It did not explain the lack of clarity in the wording used.

112. There was no adequate explanation of how any additional charge to the 3rd and 4th Applicants to reflect additional usage and so higher bills fitted in with any of that. The Tribunal was not persuaded that there had been a specific agreement between the parties to that extent.

113. It was, in any event, far from clear that there had been any higher bills for the short period of the offence (or indeed that bills had been lower).

114. The Respondent also said that the addition of the 3rd and 4th Applicants had impacted in terms of the insurance for the Property. There was again no detail provided but the Tribunal inferred that the additional charge related at least in part to that.

115. The Tribunal finds on the balance of probabilities that the additional £300.00 did not relate to increased utility bills payable by the Respondent and agreed to be paid (or if it was at all then it was not to any identifiable sum).

116. Doing the best that it can, the Tribunal finds that the most likely sum for bills included in the specific rent payments was the £400.00 which was expected in the usual course to cover the cost of the bills for a given month.

117. Hence, as an appropriate deduction is required to ascertain the net rent for the purpose of the rent repayment order, the Tribunal finds that to have been £400.00 per month, the sum stated in the 2nd Agreement as being what the bills included were expected to amount to.

118. The Respondent did provide some copies of bills or other evidence of the amounts of payments. However, it was not identifiable that those impacted on the sum payable as rent in respect of bills in the relevant period of the offence even leaving aside other issues.

119. The net rent for these purposes is therefore £1,900.00 per month where paid during the period of the offence.

120. Whilst no part of the Decision is affected by the matter in the event, the Tribunal notes that where tenants rent an entire property as opposed to individual rooms, it would be more usual for them to pay utilities direct to the provider. Rent inclusive of bills is a much more usual set- up in an HMO or other house- share between tenants of rooms.

The relevant factors

121. 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

122. The Tribunal considers that the offence is not the most serious of those for which a rent repayment order may be made, although is not without seriousness during the period of its commission.

123. 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, the word “solely” should be taken with some caution: there are many cases where there is no HMO Licence and there are various other problems with the given property, not

uncommonly such that no licence would be granted or would only be granted if conditions imposed about addressing the condition of the property were met.

124. In this instance, it was common ground between the parties that the Property was in 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 and which might not have been licensed if the application made by the Respondent had been the subject of a decision by the council.

125. The Tribunal had regard to the lack of any suggestion that the Respondent owned other house, whether which operated as HMOs and had been or should have been licensed or which were let more generally, and her own firm evidence that this was her first letting which the Tribunal considers reduces the appropriate level of award.

126. The Tribunal on balance accepts the evidence of the Respondent that she was unaware of the need for the Property to be licensed once 4 occupiers were permitted. The evidence which the Tribunal considers it can properly take account of and would go to cast some doubt on that, was not sufficient. As explained, that does not amount to a reasonable excuse to prevent an offence but is relevant to seriousness of the offence.

127. The Tribunal also found it relevant that the offence was committed for only a short time. The Property started having 4 permitted occupiers on 4th April 2025 and the application for a HMO licence was made on 15th May 2025.

128. Given that 1st Agreement does not state that the Property was originally provided for 3 or more occupiers and there is insufficient evidence to demonstrate a contrary intention, there would be logic to not seeking a licence for 2 occupiers who moved in even if the Respondent were aware of HMO licensing for 3 or more or 5 or more occupiers. The advertisement for up to 4 occupiers of course detracts from that to an extent and plainly the Respondent would have committed an offence from day 1 had the Tribunal found there to be 4 occupiers occupying as their only or main residence from the outset.

129. The fact that the offence ceased to be committed because a licensing application was submitted within a few weeks is relevant.

130. Having said that, during the period of the offence 4th April 2025 to 14th May 2025, there were on the Respondent's own case only 2 days in which she had not been contacted by the council about licensing. Whilst the Respondent said that she was co-operating with the council and her case was that she applied as soon as she could, the Tribunal has not accepted that for the various reasons explained when it discussed the offence and any reasonable excuse.

131. The Respondent's awareness may have been less at the start- and that is the Respondent's position which the balance of evidence supports- but

that increased. It is not practical to seek to divide up a period of a few weeks in precise terms and such an exercise would almost certainly be disproportionate in light of the limited sums involved.

132. Taken together those features put the offence some way along the scale of seriousness for a licensing offence. The Tribunal considers that the offence was a more serious one than in Hallet for (at least almost all of) the period of its commission- in Hallett, the landlord remained unaware of the need for licensing and let only one property, where the Respondent in this case had awareness. That said, it is far less serious than Simpson House and whilst there are other cased authorities which are of a more similar nature, every case differs on its fact and has to be considered accordingly.

Financial circumstances

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

134. There was certainly nothing to suggest that the Tribunal ought to alter upwards or downwards the amount of any rent repayment order from the level that it would otherwise have ordered.

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

Conduct

136. The parties both made some comments about conduct of the other side in the early days of the period of occupation, at least by the 1st and 2nd Applicants.

137. The Applicants were unhappy at the increased cost under the 2nd Agreement and what they asserted was pressure to agree to that or face potential action for breach of the 1st Agreement. However, they failed to explain such asserted pressure, failed to raise the matter adequately in the hearing and failed to persuade the Tribunal on the balance of probabilities that there had been such pressure, still less to a sufficient extent as to amount to conduct relevant in this instance.

138. The Respondent said that the 1st and 2nd Applicant informed her that their girlfriends- the 3rd and 4th Applicants- would be staying only 3 night s per week and that had not been correct. Rather all 4 had moved in the first day. The fact that within a few days a varied agreement was accepted on the basis of the 3rd and 4th Applicants residing at the Property gives that some credence as mentioned above. The Respondent contended that the Applicants were therefore in breach of their agreement, by which she must have meant the 1st Agreement.

139. The Respondent also indicated that there had been nuisance caused by the Applicants, or at least the 1st and 2nd Applicants, and their friends and similar. As touched upon above, the council was indicated to have become involved because of a noise complaint by neighbours and that triggered the identification of, for example, the need for a HMO licence. Hence, there is support at least for some noise nuisance in the early part of the occupancy.

140. The Respondent stated in one sentence in her witness statement that the police attended on several occasions due to incidents. She did not offer any other information, such as what was said to have happened, when that was, what information the police received or what the police made of it such information or did with it. The Applicants did not specifically challenge that but that was consistent with lack of challenge to various matters by the parties representing themselves or each other and there was far too little for the Tribunal to have any regard to the alleged incidents.

141. The Respondent had also sent a letter about alleged breach by the Applicants in respect of the 3rd and 4th Applicants occupying, which was certainly not a valid notice seeking possession [119]. There were other related messages and the tone was less than ideal [120]. However, again nothing was added about that in the hearing and it pre- dated the 2nd Agreement.

142. On the whole, the Tribunal considered that largely reflected a lack of understanding of the landlord and tenant relationship and correct documentation rather than anything of greater note, although it provided a degree of level of relevant conduct.

143. As touched upon above, neither side explored the matters with the other side in evidence or dealt with the matters in oral submissions. Given that, the Tribunal concluded that it would not seek to explore matters itself, not least where it was far from obvious that the Decision would have been altered. than marginally if at all.

144. The Tribunal determined that it lacked sufficient to determine the actions of either side to amount to matters of conduct such as to affect the amount of the order in this case.

145. The Applicants also complained that the Respondent had failed to provide meter readings so that charges could not be verified. This was, the Tribunal understood, the "Lack of transparency and failure to provide bill details" which had been stated as ground for an order.

146. However, it was not clear to the Tribunal whether and to what extent the Respondent had sought to charge above £400.00. The Tribunal noted some general information provided [117]. Most significantly, the Agreement made between the parties was that the Applicants would pay £400.00, subject to potentially any greater sum being payable and otherwise the amount payable by the Applicants was not agreed to be dependent upon the actual cost each month.

147. That is notwithstanding the poor wording used and issues with that and the other points made above about the part of the rent which reflected a charge for bills. Overall, despite the Tribunal being less than satisfied with the Respondent's overall approach to the bills charged, the Tribunal does not find a failure to produce bills to compare with a fixed sum specifically agreed to be paid to amount to a significant issue of conduct and by significant the Tribunal means one affecting the amount of the order. Nevertheless, the Tribunal considers that the Respondent's approach was poor practice.

148. It was put that when the Respondent had requested more because of, the Tribunal understand, the level of council tax, the document provided to the Applicants was cropped. The Respondent said that was to remove the correspondence address to which the bill had been sent. It was not clear how far the Respondent had taken the matter or that the Applicants had made any additional payment. The Tribunal did not consider the point took the parties anywhere in the context of this case and made no finding or determination.

149. The Applicants made a related allegation in their application form under the heading of the asserted ground reading "Overcharging for bills and taxation" that the Respondent had unlawfully inflated costs for financial gain. That is in effect an allegation of fraud against the Respondent. The Tribunal finds there to be nothing like sufficient basis for the making of such an allegation, still less a finding of it as correct. There is therefore no basis for the Tribunal finding there to be relevant conduct on the part of the Respondent.

150. In contrast, there is an argument that making an allegation of fraud without clear foundation could be an issue of conduct as against the Applicants. However, the Tribunal is mindful of the Applicants acting for themselves and not continuing to push the issue. In the event, the Tribunal has concluded that the making of the allegation is not a matter of conduct such as affect the level of the award.

151. Insofar as there was a more general assertion of overcharging, the Tribunal does not need to repeat the observations above that the parties agreed a sum of bills to be included in the monthly rent, subject to the Respondent potentially demonstrating a basis for a greater one.

152. Further, there was an allegation in the application form that there was relevant conduct by the Respondent because of sums sought to be charged for damage to the Property, the "Wrongful and unfounded charges for property damage" ground. However, the Respondent's written evidence was that deductions sought through the deposit scheme were for matters properly damage. There were also inventories in the bundle [32- 44] and some information about asserted damage [50- 54]. The Tribunal noted there at least plainly had been a dispute between the parties, but the Tribunal heard nothing about such matters. The parties had dealt with the deposit paid and deductions from it pursuant to the deposit scheme [45].

153. There was both insufficient on which the Tribunal considered it could make any finding on that matter and further the Tribunal did not consider it appropriate to seek to do so in any event when the parties had already engaged in a process.

154. There was one other matter which the Tribunal considered might be a relevant aspect of conduct, namely that the Respondent was said by the 4th Applicant- who was not challenged on the matter- sought £1038.00 from a guarantor about insurance claims. The implication was that was not appropriate and it was not obvious that it would have been. There was simply a part- sentence stating the matter with no other information and so nothing like enough for the Tribunal to give it more than passing weight as conduct, which the Tribunal considered it appropriate to do.

155. In all of those circumstances, the Tribunal finds there are some relatively modest matters above as to conduct which should go to alter the level of order otherwise appropriate by increasing the award.

156. That leaves the element of misleading the council, the licensing authority. The Tribunal need not repeat matters in respect of that. The Tribunal does determine that it merits a specific increase in the level of order. The Tribunal has been mindful the matter seems to have been short-lived but it remains significant such that it is appropriate to reflect it in the award.

Previous offence

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

158. The Tribunal found there was no previous relevant offence.

Other circumstances than those specifically listed in the 2016 Act

159. The Tribunal did not identify any other relevant circumstances.

The appropriate award

160. Given other factors than the fact and nature of the HMO licensing offence itself weigh only moderately, the Tribunal has principally concentrated on the offence itself, including but not limited to how that sits with the Upper Tribunal cases referred to above, and then making allowance for the conduct matters insofar as found

161. 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. The Tribunal considers that would merit 35% of the rent.

162. The Tribunal determines it appropriate to add a further 5% in relation to matters of conduct other than misleading the council and additional 5% for misleading the council.

163. The Tribunal awards the 1st and 2nd 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. So, 45% of £1,900.00, that necessarily being limited by the relatively short period of the offence and single rent payment during that period.

164. The Tribunal does not make any award to the 3rd and 4th Applicants in the absence of any evidence of payment of rent by them in practice and notwithstanding the specific sums shown on the Additional tenancy agreement documents.

The amount of the repayment

165. A rent repayment order is therefore made in favour of the 1st and 2nd Applicants in the sum of £855.00.

166. That sum shall be paid by the Respondent within 28 days.

Application for refund of fees

167. 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 Applicants sought the fees back should they be successful, namely reimbursement of the £114.00 issue fee and the £227.00 hearing fee.

168. It is 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.

169. Fees having needed to be paid in order to bring the claim and the 1st and 2nd Applicants have been successful in the proceedings in the sense of the Respondent being ordered to repay an amount of rent. However, they have been successful to the tune of £855.00. They sought £18,100.00- 1 x £2,000.00 and 7 x £2,300.00. The level of success is very modest as compared to the level of application brought. The Tribunal considers it only appropriate to reflect those twin elements in the approach taken to fees.

170. The Tribunal does order the Respondents to pay part of the fees paid by the Applicant and in the sum of £241.00.

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.