



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

Case reference	:	BIR/00CN/HSE/2026/0003
Property	:	332 Yardley Green Road, Bordesley Green, Birmingham B9 5JL
Applicant	:	Zanab Ali
Representative	:	None
Respondent	:	Kamran Yousaf and Sarah Yousaf
Representative	:	None
Type of applications	:	Application for a rent repayment order – Housing and Planning Act 2016
Tribunal member	:	Judge C Goodall Ms J Rossiter MBA MRICS Mrs S Sohota
Date and place of hearing	:	28 August 2026 at Centre City Tower, Birmingham (the parties attending by video link)
Date of decision		14 September 2026

DECISION

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Background

1. This is an application dated 6 December 2025 for a rent repayment order under the Housing and Planning Act 2016 (“the Act”). Such an order can only be made if the Respondents have committed one of the offences listed in section 40 of the Act. In this case the offence alleged is an offence under section 95(1) of the Housing Act 2004 (“the Act”) relating to a property at 332 Yardley Green Road, Bordesley Green, Birmingham B9 5JL (“the Property”).
2. The application was heard in the Tribunal’s hearing centre in Birmingham on 26 August 2026. The parties attended by video link.
3. The Tribunal considered the document bundles filed in accordance with procedural directions (Applicant – 2 bundles – one of 50 pages and a second of 159 pages: Respondent – one bundle of 97 pages). The parties had also each submitted more documents very late (“the Additional Documents”). The Applicant provided two further bundles – one of 12 pages and one of 13 pages, and the Respondent provided three more documents being some emails, photographs, and a letter from the current managing agent.
4. On the basis that the Tribunal indicated it would consider all or none of the Additional Documents, neither party objected to the admission of them, and the Tribunal agreed to take them into account.
5. The Tribunal heard oral evidence from the parties, considered the documents before it, and has concluded that it will make a rent repayment order in the terms below. The reasons for the order then follow.

Decision

6. The Tribunal orders the Respondents to pay the Applicant the sum of £3,795.00 by way of rent repayment. It also orders the Respondents to refund the Applicant’s tribunal fees in the sum of £341.00.

Preliminary matters

7. In her application form, the Applicant applied (in addition to applying for a rent repayment order) for an order relating to the tenancy deposit she had paid on the commencement of the tenancy, and for an order that she be paid compensation for being unable to use one bedroom due to damp. Neither of these issues can be determined within a rent repayment application; the Tribunal has no jurisdiction under the Act to determine such applications. The Applicant had realised, by the hearing, that this was the case and did not pursue these remedies at the hearing. She was right not to do so, and if she had, we would have struck out those claims.

8. The application named Mr Kamran Yousaf as the Respondent. However, the tenancy agreements supplied showed Mrs Sarah Yousaf as the landlord. The Respondents told us they are co-owners of the Property. As a rent repayment order can only be made against a landlord, and with the Respondent's agreement, the Tribunal ordered that Mrs Sarah Yousaf be added as a Respondent pursuant to Rule 10 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Law

9. The relevant provisions in Part 3 of the Housing Act 2004 ("the 2004 Act"), so far as this application is concerned are as follows-

"79 Licensing of houses to which this Part applies

- (1) This Part provides for houses to be licensed by local housing authorities where—

- (a) they are houses to which this Part applies (see subsection (2)), and
- (b) they are required to be licensed under this Part (see section 85(1)).

- (2) This Part applies to a house if—

- (a) it is in an area that is for the time being designated under section 80 as subject to selective licensing, and
- (b) the whole of it is occupied either—
 - (i) under a single tenancy or licence that is not an exempt tenancy or licence under subsection (3) or (4)...

85 Requirement for Part 3 houses to be licensed

- (1) Every Part 3 house must be licensed under this Part unless—
 - (a) it is an HMO to which Part 2 applies (see section 55(2)), or
 - (b) a temporary exemption notice is in force in relation to it under section 86, or...
 - (c) a management order is in force in relation to it under Chapter 1 or 2 of Part 4.

95 Offences in relation to licensing of houses under this Part

- (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 (see section 85(1)) but is not so licensed.

...

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

(a) a notification had been duly given in respect of the house under section 62(1) or 86(1), or

(b) an application for a licence had been duly made in respect of the house under section 87,

and that notification or application was still effective (see subsection (7)).

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

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

(b) for failing to comply with the condition, as the case may be.

...

10. The relevant provisions of the 2016 Act, so far as this application is concerned, are as follows –

“40 Introduction and key definitions

(1) This Chapter confers power on the First-tier Tribunal to make a Rent Repayment Order where a landlord has committed an offence to which this Chapter applies.

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—

a. repay an amount of rent paid by a tenant, or ...

(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
6	Housing Act 2004	Section 95(1)	control or management

			of unlicensed house
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41 Application for rent repayment order

- (1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.
- (2) A tenant may apply for a rent repayment order only if —
 - i. the offence relates to housing that, at the time of the offence, was let to the tenant, and
 - ii. the offence was committed in the period of 12 months ending with the day on which the application is made....

43 Making of rent repayment order

- (1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).
- (2) A rent repayment order under this section may be made only on an application under section 41.
- (3) The amount of a rent repayment order under this section is to be determined in accordance with—
 - (a) section 44 (where the application is made by a tenant); ...

44 Amount of order: tenants

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

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
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<i>an offence mentioned in row ...6... of the table in section 40(3)</i>	<i>a period, not exceeding 12 months, during which the landlord was committing the offence</i>
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- (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.
11. In considering the reasonable excuse defence in section 95(4) of the Act, the Upper Tribunal has stated in paragraph 40 of *Aytan v Moore* [2022] UKUT 27 that:
- “40. We would add that a landlord's reliance upon an agent will rarely give rise to a defence of reasonable excuse. At the very least the landlord would need to show that there was a contractual obligation on the part of the agent to keep the landlord informed of licensing requirements; there would need to be evidence that the landlord had good reason to rely on the competence and experience of the agent; and in addition there would generally be a need to show that there was a reason why the landlord could not inform himself of the licensing requirements without relying upon an agent, for example because the landlord lived abroad.”
12. *Newell v Abbott* [2024] UKUT 181 (LC) was a case about a financial penalty where the Applicant had not been aware of the selective licensing scheme for the area of his property. The FTT in the case that the appeal was considering had said that Mr Newell “ought not to have been” unaware of the selective licensing scheme. The FTT had said:
- “It was incumbent on landlords to familiarise themselves with the legal requirements to which they were subject, and Mr Newell had failed to do so. His efforts to keep up to date consisted solely of “a few online searches” and he had not taken professional advice or considered joining a relevant national organisation, which might have provided him with relevant information. Even when he learned of the Council’s attempts to contact

him his own efforts at communication were minimal. He had not provided his tenants with instructions on what to do with post addressed to him, and he did not attend the property to pick it up. In short, the matters he relied on, “do not remotely constitute a reasonable excuse for his failure to get the property licensed”.

13. The Upper Tribunal refused Mr Newell’s appeal, and in so doing supported the FTT’s argument above. The Deputy President accepted that a Tribunal could expect a landlord to be able to show that his actions in relation to being aware of his licensing obligation were objectively reasonable, so he agreed that the FTT had properly stated that it was “incumbent on landlords” to familiarise themselves with the legal requirements.
14. If an offence is established, the next task is to address what amount should be ordered to be paid by way of a RRO. In asking this question, we should follow the methodology recommended to first-tier Tribunals in *Archeampong v Roman and others* [2022] UKUT 239 (LC). At paragraph 26, Judge Cooke outlined that methodology as follows:
 - “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).”
15. In *Newell v Abbott*, the Deputy President provided an overview of recent Upper Tribunal decisions on the amounts ordered to be paid by way of rent repayment. There is a significant range – the highest awards have been 90% of the rent paid; the lowest has been 10%.
16. In paragraph 57 of that decision, the Deputy President provided guidance as follows:

“Factors which have tended to result in higher penalties include that the offence was committed deliberately, or by a commercial landlord or an individual with a larger property portfolio, or where tenants have been exposed to poor or dangerous conditions which have been prolonged by the failure to licence. Factors tending to justify lower penalties include inadvertence on the part of a smaller landlord, property in good condition such that a licence would have been granted without additional work being required, and mitigating factors which go some way to explaining the offence, without excusing it, such as the failure of a letting agent to warn of the need for a licence, or personal incapacity due to poor health.”

The tenancy agreements

17. There are two tenancy agreements in the documents provided. The first is an agreement dated 17 November 2026 made between Sarah Yousaf and the Applicant relating to the Property, letting it on a six month tenancy at a rent of £575.00 per month. Presumably, at the end of the six month term, the tenancy was held over on a monthly basis.
18. The second tenancy agreement is dated 17 November 2022 and is between the same parties at the same rent and for the same term. Neither tenancy appears to contain a contractual provision to increase the rent.
19. The rent has subsequently been increased to the sum of £900.00 per month from 17 August 2026 through the lawful service of a notice under section 13 Housing Act 1988 (as amended).
20. The tenancy agreements require the Applicant to pay for utility costs and Council Tax.
21. The Respondents accept that rent has been paid monthly, on time.

The offence

22. The Applicant has provided evidence that Birmingham City Council introduced a selective licensing scheme that covered the area in which the Property is located, on 5 June 2023.
23. The Respondents accept that they did not apply for a selective licence as they say they were unaware of their obligation to do so, until they received a letter from the Council dated 23 July 2025 (received on 24 July 2025) informing them that they were required to have one. The failure to apply arose because, they say, have lived in Australia since 2016. Their case is that they had employed an agent to manage the Property but that agent failed to advise them about the selective licensing scheme.
24. The Respondents prepared an application for a licence but found that there was no up to date EICR (even though their appointed manager was still in place at the time) and they had no room size data, so the application was not submitted until 14 August 2025.

25. On the basis of the Applicant's evidence, the Tribunal is satisfied that the Property is a house which was required to be licensed under section 95 of the Act but was not so licensed from 5 June 2023 until 14 August 2025. The annual rent was £6,900.00 during that period, which is the maximum sum that can be ordered to be repaid in a rent repayment order.
26. The Tribunal considered whether the Respondents had a reasonable excuse for not applying for a licence. They did not argue that they did. They accepted that they could have carried out research and made enquiries about their obligations, but they failed to do so. They therefore admitted the offence and realised that a rent repayment order would be made against them.
27. In the light of the case law referred to above, the Tribunal considers that the Respondents were right to concede that they had committed the offence. The issue for the Tribunal that now arises is the quantum of the rent repayment order.

The Applicant's evidence and submissions

28. The Applicant gave evidence (in her statement of case and orally) primarily about the condition of the Property, which went to the issue of the amount the Tribunal should order by way of rent repayment.
29. Her evidence at the hearing was that the problems at the Property were:
 - a. Boiler breakdowns
 - b. Draughty windows
 - c. Outdated fuse board
 - d. Inadequate wiring
 - e. Lack of gas safety certificates
 - f. Mould and damp.
30. The Property is a 2 bedroom maisonette on the ground floor of the Property. Once through the front door, there is a storeroom on the left, with a single step down into a small brick-lined area. The bathroom is on the right of the front door. The lounge is beyond the storeroom with the kitchen beyond the bathroom. Through the lounge is access to the two bedrooms.
31. The document bundles show that the Applicant has made the following complaints about the condition of the Property. For the benefit on the parties, page references to the document bundles are given. TB is the Applicant's trial bundle. AB is the Applicant's second bundle:
 - a. 10 October 2017 – leak from flat above [TB29]

- b. 25 April 2019 – window misaligned – causing draughts; damp in back bedroom from leak from upstairs flat; draughts from front reception room; condensation in small hallway causing mould; black mould in the storeroom [TB28 & 30 / AB85]
- c. Approx. 2021 – report of continuing issues over damp to agent who promised to survey [TB34]
- d. 11 March 2021 – complaint of draughts through windows [AB81]
- e. 30 December 2021 – damp issue in living room reported and no hot water in shower [AB81 & 85 & 89 & 130]
- f. 14 January 2022 – boiler breakdown some 2 – 3 days before the report [AB80 & 99 & 130]. There is an email from the agent on 17 January 2022 confirming attendance by an engineer and that the hot water and central heating was working [AB130]
- g. 26 March 2022 – chase up previous complaints about cold water in shower and overhanging trees [AB86 & 131]
- h. 19 December 2022 – email complaint to agent concerning garden fence disrepair, overhanging trees, back door draught excluder perished, condensation above front door, damp in living room, boiler panel falling off, and the smoke alarm needs replacing due to low battery [AB80]
- i. Due to complaints about damp (the Applicant says on multiple occasions, but only those in this list have been specifically identified) the Respondents’ agent sent a surveyor to inspect on 17 January 2023. Although the Applicant was promised a copy of the report, it was not sent to her, but an email from the Applicant to the agent on 17 January 2023 said that the surveyor thinks the issue is condensation and the advice was that the agent should arrange for a ventilation unit to be installed [AB72].
- j. 14 July & 3 August 2023 – boiler not working and damp requires a de-humidifier [TB33 & AB140]
- k. 14 June 2024 - Reported to Council that damp from upstairs flat leak still not resolved and no promised survey yet undertaken [TB34] – Council attended for Part 3 licence inspection in July 2024 [TB34]
- l. 15 May 2025 – damp wall (says reported many times) [TB32 / AB89]
- m. 4 September 2025 – Housing Health and Safety Rating System (“HHSRS”) inspection by Council [TB35]

- n. 28 October 2025 – Further complaint directly to the Respondents of damp, the need for a new carpet, draughts from cracks around the front door entrance, inadequate kitchen storage, garden fence rotten, kitchen door seals partially perished, and cold air from the storeroom [AB79 & 114 & 129]
- o. 6 & 7 December 2025 – leak from upstairs flat [TB40]
32. Photographs produced by the Applicant show that there was black mould evidencing the existence of damp on the floor of the storeroom, and above the front door, a little on the wall of the lounge adjoining the store cupboard, in one cupboard in the kitchen, and in one bedroom.
33. The HHSRS inspection in September 2025 [TB37] resulted in the issue of a “Schedule B” list of recommended works. The Schedule identified that the works were non-enforceable, but there was a strong recommendation that they be carried out. The works were:

Location	Deficiencies	Remedial action
Front entrance	Mould affected wall above the front entrance door	Effectively clean down the mould growth affecting the wall of the front entrance Treat the affected area with an approved mould inhibiting residual fungicide. Repaint as many coats as necessary of mould inhibiting emulsion
Kitchen	There are insufficient provisions for the safe, rapid removal of moisture laden air generated by normal domestic activities. There should be sufficient and appropriate means of rapid ventilation at times of high moisture production in the kitchens and bathroom generated by normal activities without the need to open windows. Opening windows can result in heat loss, noise and may pose a security risk.	Provide and fit an artificial ventilation by the provision of an automatic extractor fan fitted ducted to the outside air and with a flow rate capacity of minimum 15 litres per second. The extractor system is to be coupled independently and incorporated with an appropriate overrun or an appropriately set humidistat

34. The Applicant alleged that the boiler in the Property was defective and she and her daughter had endured periods of unacceptable cold as the heating system had broken. The main incident upon which she relied was in January 2022, when there had been a period of two days and two nights without heating. She had asked for a new boiler, but had been told that the landlady did not want to replace it.
35. The Applicant sought a rent repayment order of 90% of the 12 month rental figure of £6,900.00. Her case was that the Tribunal should take account of:
- a. Duration of the offence over a 26 month period;
 - b. Respondents were portfolio landlords;
 - c. The Respondents knew they should have a licence because their agent told them. Evidence to that effect was provided in the Additional Documents and comprised a text message from the agent on 19 May 2026 saying that the agents sent “several emails to them to licence their properties and they told us that they will do the property licensing themselves. We have proof of all this.” The Applicant did not provide any additional proof;
 - d. The condition of the Property as evidenced in the documents and oral evidence given to the Tribunal;
 - e. Attempts to increase the rent. The Applicant’s case is that these attempts were unlawful and should be considered as retaliatory action, increasing the amount of the rent repayment order. These attempts were
 - i. Service of a section 21 Notice in December 2024 whilst the Property was unlicensed. The Applicant says that she is not able to produce the Notice, but relies on the existence of later attempts to increase the rent (below) as evidence it was served;
 - ii. An email from the Respondent’s agent dated 26 June 2025 providing formal notice of a rent increase [AB116] and stating that “if you remain unwilling to accept the revised rent of £800.00 starting from 17 July 2025, please consider this as a formal notice that you must vacate the property”. The Applicant confirmed that she did in fact make one or two payments of rent in the sum of £800.00 per month, but these were then refunded to her and her rent remained at £525.00 per month until August 2026;
 - iii. An email dated 30 October 2025 from the Respondents saying that they had made the difficult decision to sell the

Property and asking the Applicant to vacate the Property by 13 January 2026 or earlier.

- f. Failure to protect the tenancy deposit;
 - g. Lack of an annual gas safety certificate. This conclusion was based on the Applicant's assertion that she would have known if a contractor had been arranged to provide a certificate, and she has no recollection of any appointments being made for the annual check to be carried out throughout her tenancy. She did acknowledge though that gas engineers attended the property to carry out repairs at least annually, and sometimes more often.
36. The Applicant's submission on the amount of a rent repayment order is that *Newell v Abbott* supports a starting point for a professional landlord with a prolonged period during which an offence was being committed of 75% of the maximum amount that can be ordered, and the conduct issues identified push that award to 90%.

The Respondents' evidence and submissions

37. In their oral evidence, the Respondents said they had left England for Australia in around 2016. They sold their house in England and invested in four buy-to-let properties in order to provide an income and to ensure they had something to come back to. The four properties are three houses and one HMO. Professional managing agents were appointed to manage the properties whilst they were in Australia. The original managing agents changed (probably as a result of the original agent being acquired by the replacing agent) in around November 2022.
38. The Respondents say they relied entirely upon the managing agent whilst they were in Australia. They are clear that they were personally unaware of the legal significance of the selective licensing scheme when it was introduced in June 2023. They say they were not informed of the consequences of failure to obtain a licence.
39. Mrs Yousaf received an email from Birmingham City Council on 24 July 2025 informing her of her licensing obligation and an application for a licence was immediately put in hand, and submitted, after dealing with the administrative requirements of the application, which required room sizes and an EICR. Their agents were unable to supply the latter. Acting as quickly as they could, and in consultation with the Council officer responsible, an application was submitted on 14 August 2025.
40. The Respondents confirmed that their two other houses also required licences, which they put in hand at the same time. They say they have not been pursued by the Council for any financial penalties in respect of any of their properties which are subject to selective licensing.

41. The Respondents terminated their contract with their managing agent in October 2025 and self-managed for a period until 2 June 2026 when a firm called Scrivens were appointed as the new managing agents.
42. Ongoing invoices for repairs to the Property have been paid as they have been commissioned by the agents as follows:
 - a. March 2023 - £280.00 for tree works
 - b. May 2023 - £330.00 for repairs to the bathroom, kitchen and living room;
 - c. December 2023 - £85.00 for repairs to burst pipe;
 - d. June and August 2025 - £2,840.00 on repairs comprising mould treatment, window repairs, and the replacement of the boiler [AB70].
43. The Respondents provided information to the Tribunal concerning their finances. They are both in reasonably well paid jobs and have purchased an expensive property in Sydney with a close to 100% mortgage. There is a reasonable amount of equity in their UK properties though. The mortgage balance on the Property was considerably less than the Respondents' estimate of its value, which we thought was somewhat conservative. Much more detail was provided but it is unnecessary to set it out in this narrative for reasons which appear in the section below on the Tribunal's discussion and conclusions.
44. So far as the Applicant's concerns about the condition of the Property were concerned, the Respondents produced a letter from Mr Charles Scriven, their current managing agent, in the Additional Documents. Mr Scriven is a Chartered Surveyor with some 20 years of experience in the industry. His letter states that before agreeing to manage the Property, he carried out an inspection in the presence of the Applicant, who explained her concerns about damp and mould.
45. Mr Scriven states that he did not identify any obvious building defect, penetrating damp, rising damp, or other structural defect which in his professional opinion would account for the mould spotting being reported. His view was that damp is most probably caused by moisture vapour within the internal atmosphere, influenced by factors that could include internal humidity, heating, ventilation, and the manner in which the property is occupied. A further survey by a specialist damp surveyor is being arranged to allay the Applicant's concerns and if remedial work is in fact identified, the Respondents will arrange it.
46. In the Additional Material, the Respondents provided photographs of some rooms in the Property taken before occupation in 2026, in 2019, and

in 2022. These certainly show furniture and belongings piled up in the living room and the store cupboard.

47. The Respondents did not accept that Mrs Yousaf had refused to countenance the replacement of the boiler. The agents had authority to spend rental income on necessary repairs. The payments made out of rent (above) evidenced that to be the case.
48. Broadly, the Respondents said they had professional managing agents in place and had no reason to know that the Property was not in an acceptable condition, if indeed that is the case. They accepted their failure to licence but feel their default was not deliberate and resulted from misplaced faith in their agent and their lack of knowledge of the impact and consequences of the selective licensing scheme. In their view, the Property was not in a poor condition, and had been repaired when the need arose. They remedied their failure to licence default as soon as they reasonably could. All their actions demonstrated that they were honest and fair landlords and did not seek to evade their responsibilities.

Discussion

49. The contended issue in this application is not whether an offence justifying a rent repayment order has been proved. We have already established that it has above. The issue is what amount should be ordered to be repaid.
50. Applying the *Archeampong* approach, the maximum award is £6,900.00 (step a). The Applicant was responsible for all utilities and council tax, so there are no deductions from that sum (step b).
51. A section 95 offence is at the less serious end of the range of rent repayment order offences. The offence itself was reasonably serious, because of the length of time that the Property was unlicensed. On the other hand, the default was remedied promptly, the Respondents did not contest the allegation they had committed an offence, they had appointed professional agents, it was a first offence, and they appeared to the Tribunal to have been honest and open in their response to the application.
52. We also accept that the offence was not deliberate, and in our view, the Respondents were being truthful in saying they genuinely did not understand that failure to licence was such a serious matter that it could result in it being found that they had committed a criminal offence. The default was not inadvertent, but it was certainly not deliberate. There is a grey area between the two in which this application falls. It may be an inadequate word, but the best we can find is that the Respondents were simply careless. A careless failure to obtain a licence should not be punished as severely as a deliberate failure.

53. We also have to take into account that the Respondents owned a small portfolio of investment properties, and in that sense they were professional landlords, but of course they had delegated the responsibility for management to a professional agent. We would have liked to have heard evidence from that agent. Not least, we would have liked to understand why they did not have their management file any more, their agency only having been terminated within the last 12 months, why they could not provide the EICR on 24 July 2025, whether they served a section 21 notice in December 2024, and why they thought an informal email in June 2025 was adequate to impose a rent increase on the Applicant and / or terminate her tenancy.
54. We are unable to accept as credible the Applicant's claim that the agent had informed the Respondents of the need to apply for a licence on the basis of a text message saying that they had done so (see paragraph 35c above). That message was sent well after their contract had been terminated, and gave no dates or detail on which they based that claim.
55. Our view is that, after considering all of these factors, and having reviewed the range of possible proportions outlined in *Newell v Abbott*, the seriousness of the offence (step c) justifies a rent repayment order in the range 50 – 60% of the maximum award.
56. The next task is to consider the section 44 factors.
57. We have not been informed that the Respondents have been convicted of any offence to which Chapter 4 of the Housing and Planning Act 2016 applies. Section 44(c) therefore does not affect the award.
58. The Respondents have not suggested that the Applicant's conduct should affect the award. We agree.
59. We are satisfied, on the basis of the evidence the Respondents provided, that they have assets that will more than fully cover the award we have in mind, which is reasonably modest, so that we do not adjust the award in the light of the Respondents' financial circumstances.
60. That means that the remaining section 44 matter we need to consider is whether the Respondents' conduct justifies an increase in the award.
61. There are four issues to consider:
 - a. Condition of the property
 - b. Retaliatory action
 - c. Lack of deposit protection
 - d. Lack of gas safety certificate

62. We deal with each in turn:

Condition of the Property

63. Our view is that care must be taken to distinguish between property conditions that are unavoidably present in a property because of its age and general condition, and property conditions that arise because a landlord is in breach of an enforceable legal obligation to prevent the condition of the property being as it is. If a Tribunal is asked to increase the amount of a rent repayment order because of the *conduct* of a landlord, it will need to identify what unlawful action the landlord took that can be regarded as the *misconduct* that justifies an adjustment to the award.
64. With respect to the Applicant, she has not identified any breach of any legal obligation on the part of the Respondents to do anything at the Property that would have improved its condition. We explain our conclusions on each allegation of breach in more detail below.
65. Of course, the Tribunal would be entitled to use its expertise to conclude that there was a breach of a legal obligation if the evidence supported such a conclusion without an applicant being required to identify the obligation itself. The Tribunal understands that section 11 of the Landlord and Tenant Act 1985 contains obligations upon landlords to keep the structure and exterior and the installations in a property in good repair, and local authorities frequently identify hazards in domestic housing that landlords are required to rectify through Part 1 of the Housing Act 2004.
66. But the obligations upon the landlord are to repair, not to ensure that nothing ever breaks. We do not doubt that the Applicant was troubled by the loss of heating due to a boiler breakdown, and disappointed that mould spots and draughts occurred at the Property. The evidence though is that the boiler was repaired on the example occasion that the Applicant explained to us at the hearing. That example therefore cannot constitute evidence of a breach of a legal obligation regarding the heating system.
67. Now considering the specific complaints, we start with the concerns regarding boiler breakdown. The frequency of breakdowns over the ten years 2016 – 2026 from the list of occasions on which the Applicant had complained is that there were two or possible three such complaints – on the new year in 2022 and in the summer of 2023. There was a report of the boiler cover falling off in December 2022 as well, though it is not clear whether that was coupled with a failure of the heating.
68. There is no evidence that the breakdowns were not remedied reasonably promptly.

69. Boilers do breakdown occasionally. It is not necessary to replace them each time they do. We are not able to find that the Respondents were in breach of any obligation regarding the heating system which they breached. We cannot regard boiler breakdown as a good reason to increase a rent repayment order because of the conduct of the Respondents.
70. So far as damp and mould is concerned, we are highly influenced by the fact that the Council conducted an HHSRS inspection in September 2025 and found no basis upon which they could take enforcement action under the Housing Act 2004. That suggests to us that the Property was in reasonable condition at that point in time. The Applicant pointed out that the damp would not have been apparent because it had been cleaned and painted over at that inspection, but that rather makes the point. If the landlord remedies deficiencies, it is complying with its legal obligations, not breaking them.
71. We also took account of Mr Scriven's letter. We give it some weight as he gave his view as a Chartered Surveyor. We do note though that he only saw the Property in 2026 so is unable to comment on the period 2016 until then.
72. The photographs provided by the Respondents to demonstrate that the Applicant was using the Property in such a way as to increase the risk of damp are of limited value as they are simply a snapshot on two dates. Despite the Tribunal being an expert tribunal, it is unable to reach reliable findings on property condition simply on the basis of a few photographs. The Tribunal would have needed professionally prepared surveying evidence if the Applicant had wished us to conclude that there was a failure in the Respondents' obligations regarding damp and mould. We are unable to so conclude.
73. There are four other allegations regarding the Property condition as set out in paragraph 29 above, being draughty windows, outdated fuse board, inadequate wiring, and lack of gas safety certificates.
74. So far as the second and third issue are concerned, the Applicant relied upon her recollection of conversations she had with contractors who attended the Property. No details of who the conversations were with, what exactly was the defect, and what impact it had on her occupation and enjoyment of the Property were provided. There was no evidence that we could safely rely on to establish any failures on the part of the Respondents to comply with any regulation or other obligation relating to electrical safety. We cannot take any account of these complaints to increase any rent repayment order we make.
75. We hold much the same view regarding draughty windows. There were no photographs or professional reports on the condition of the windows. There was no evidence of default on the part of the Respondents with

regard to their obligations to the Applicant relating to the condition of the windows.

76. On the provision of gas safety certificates, we are confident that there was a gas safety certificate in place from 21 June 2025 as there is a copy in the Applicant's Bundle. We heard no evidence about the circumstances of the obtaining of this certificate. We note that it is dated before the date that the Council notified the Respondents of their obligation to obtain a licence. It appears to have been obtained by the Respondents' then agent, whose name is given on the certificate.
77. We do not consider that it would be safe to conclude that the Property had been without gas safety certificates simply on the basis of the Applicant's evidence that she was not aware of appointments being made for one to be prepared. There was a managing agent in place, and however much criticism might be levelled at that manager, we do consider on the balance of probabilities that renewing the gas safety certificate each year is likely to have been a task very much in the mind of a professional managing agent. We are unable to find that the Property did not have a gas safety certificate for each year of the Applicant's tenancy.

Retaliatory action

78. The applicant suggests that the Respondents action set out in paragraph 35e above were retaliatory actions justifying an increase in the rent repayment order.
79. As to paragraph 35e(i), there is simply no copy of a section 21 notice in the bundles, which the Applicant says was served in Nov/Dec 2024. All of the agent's files at the time are unavailable. In her Statement, the Applicant says that she "exhibited contemporaneous evidence of service in my bundle", relying on a Notice to Vacate document dated 26 June 2025 and a communication log showing the date and method of service, which simply appears to be a series of emails ending on 28 October 2025.
80. The Tribunal finds this evidence wholly unconvincing. Later documents cannot be contemporaneous evidence of service of a section 21 notice. The Tribunal finds that no section 21 notice was served.
81. The document referred to in paragraph 35e(ii) was an email asking for a rent increase. It was not a statutory notice in the sense of being on a statutory form. The tenancy agreements signed by the Applicant did not contain a contractual right to increase rent, so only by use of a statutory notice could the Respondents secure an increase. In effect, that email was misconceived and ineffective, and indeed the Applicant eventually refused to pay any increase in rent and was refunded the increased payments she made.

82. In any event, we are not aware of any legal impediment applying to a landlord who seeks an increase in rent whilst a property remains unlicensed.
83. This notice is not retaliatory action, and its service should not, in our view, affect the amount of any rent repayment order.
84. The third document referred to in paragraph 35e was a request for the Applicant to vacate the Property (which she did not do). This was served directly by the Respondents, rather than their agent, but again was wholly inadequate to create any obligation upon the Applicant to leave the Property. By this time (October 2025), the Respondents were legally entitled to serve a section 21 notice had they wished, but they failed to do so. The Respondents were not being advised by any agent at this point and no doubt failed to understand that seeking possession of a let property requires careful compliance with statutory processes. Again, our view is that this email was misconceived, but was not retaliatory action which would justify an increase in the amount of a rent repayment order.

Lack of deposit protection

85. In the Applicant's bundle, there is evidence that her deposit was placed with the Deposit Protection Service on 22 February 2022 through the Respondents' original agent. There is a second document evidencing that that deposit was re-registered in the name of Kamran Yousaf on 11 April 2026, still with the Deposit Protection Service.
86. The Respondents' position is that so far as they were concerned their agent was holding the deposit lawfully. They had no involvement with its protection.
87. When the original agent's contract was terminated, the deposit needed to be re-registered under Mr Yousaf's name.
88. Whilst the initial registration only took place in 2022, and that is unexplained (and really the responsibility of the agent rather than the Respondents), the fact is that the deposit appears to have been in a protected scheme from then until now. We do not regard this as conduct that we should take account of in fixing the level of a rent repayment order.

Decision

89. We do not consider that under stage d of the *Archeampong* guidance, that we should make any adjustments for section 44 factors.
90. Having decided above the range of the percentage award we should make under stage c, we determine that taking account of all the factors raised above, the award we should make is 55% of the maximum award of £6,900.00. That is the sum of £3,795.00.

91. We also order that the Respondents must reimburse the Applicant the fees she has paid to bring this case of £341.00, as she has succeeded in her application.

Appeal

92. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
First-tier Tribunal (Property Chamber)