



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

Case Reference	:	LON/00AC/HMF/2026/0043
Property	:	Flat 2, 757A High Road, London, N12 8LD
Applicant	:	Ms Kiera Cannan
Representative	:	In person
Respondent	:	J T Wheeler Properties
Representative	:	No appearance
Type of Application	:	Application for a rent repayment order by a tenant
Tribunal Members	:	Tribunal Judge Prof R Percival Mr A Harris LLM FRICS
Date and venue of Hearing	:	30 September 2026 10 Alfred Place, London WC1E 7LR (Remote hearing)
Date of Decision	:	2 October 2026

DECISION

Orders

- (1) The Tribunal makes rent repayment orders against the Respondent to the Applicant in the sum of £2,805, to be paid within 28 days.
- (2) The Tribunal orders under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 13(2) that the Respondent reimburse the Applicants together the application and hearing fees in respect of this application in the sum of £341.

The application

1. On 10 October 2025, the Tribunal received an application under section 41 of the Housing and Planning Act 2016 (“the 2016 Act”) for Rent Repayment Orders (“RROs”) under Part 2, Chapter 4 of the Housing and Planning Act 2016. Directions were given on 4 March 2026.

The hearing

Introductory

2. Ms Cannan represented herself. No representative of the Respondent appeared. At the hearing, we considered whether we should hear the application in the absence of the Respondent, applying the criteria in Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 34. We did so on the basis that the Respondent had had actual notice of the application and subsequent communications from the Tribunal, delivered to what we believed was an active email account. We now understand that all of the Tribunal’s letters were also sent by post.
3. After the hearing, we were made aware of an email sent to the Tribunal office late the day before (29 September, at 16.34) by Christopher Harniman. That letter states that Mr Harniman represents Ms J Wheeler in the UK.
4. We accordingly reconsidered our original determination under rule 34.
5. The Respondent is J T Wheeler Properties Ltd. Ms Jean Wheeler is given as the sole director of J T Wheeler Ltd in the Respondent's Companies House records, and her correspondence address is given as Park House, 8 Parkfield View, Potters Bar, Hertfordshire, United Kingdom, EN6 1US. The letter states that this is her home address. It goes on that she has been unable to collect correspondence there as a result of, it appears, a dispute with an occupant who claims to be a lessee. Ms Wheeler is, Mr Harniman says, in California. The email also states that “I am aware that a claim has been presented. However, there

are issues outstanding in the regard to the grant of an HMO licence, which I have been trying to resolve with the council, as yet without success.” The email says that Ms Wheeler “received this notice I believe by email from Ms Cannan.”

6. The Respondent, through Ms Wheeler has not appointed Mr Harniman as her representative in these proceedings in writing.
7. However, the email shows that Mr Harniman knew of the claim and was acting in relation to HMO licensing on its behalf. That he was engaging with the council in relation to what must be a new HMO licence application has substantive no relevance to Ms Cannan’s claim in respect of a past failure to licence the property. Despite knowing there was a claim, and claiming to be Ms Wheeler’s representative, he has not contacted the Tribunal, to provide alternative means of communication or to adhere to the Tribunal’s directions.
8. The email also makes it clear that Ms Wheeler in person had notice of the application, and the hearing. Similarly, she has not sought to do any of those things.
9. It seems that the purpose of the email was to inform the Tribunal that Mr Harniman could not attend the hearing on 30 September for medical reasons.
10. Taking into account the new material, we consider that we were right to conclude that the criteria in rule 34 were satisfied.
11. We now know that the Respondent’s only director was aware of the application and the hearing. We also know that Mr Harniman knew of both. Neither contacted the Tribunal, until the very last minute when Mr Harniman’s email was received. Even then, the purpose of the email was to assert that he was unable to attend the hearing. It did not make an application that the hearing be postponed.
12. We conclude that the Respondent, either through its director or her purported UK representative, has wilfully declined to engage with the Tribunal either substantively or to ensure better routes of communication. In those circumstances, it is clear that the Respondent had notice of the hearing, and that it was in the interests of justice for it to proceed.
13. The property is a three-bedroom flat in a converted house containing three flats.

The alleged criminal offence

14. The Applicant alleges that the Respondent was guilty of the having control of, or managing, an unlicensed house in multiple occupation contrary to Housing Act 2004 (“the 2004 Act”), section 72(1). The offence is set out in Housing and Planning Act 2016, section 40(3), as one of the offences which, if committed, allows the Tribunal to make a rent repayment order under Part 2, chapter 4 of the 2016 Act.
15. The Applicant’s case is that the property was situated within an additional licensing area as designated by the London Borough Barnet.
16. The evidence as to the existence of the relevant scheme was somewhat limited in Ms Cannan’s advance evidence. Nonetheless, we were satisfied that there was and is a whole-area additional licensing scheme in place in Barnet. First, email conversations with the landlord’s representative disclosed in the bundle showed that the representative was aware (at the time of the conversation) that an HMO licence was needed for the property, which in the circumstances had to be an additional licence.
17. Secondly, there was, in the correspondence, a copy of an additional licence held by the previous controller/manager of the property. The property had been managed or controlled by O’Neill Investments Limited. It was transferred to the Respondent on 8 October 2024. Both had initially been identified as Respondents, but O’Neill Investments had, with the agreement of the Applicant, been removed as a respondent earlier in the proceedings. However, O’Neill Investments disclosed an HMO licence with a duration of five years from 22 March 2024 in respect of the property. This is quite sufficient to make us sure that the property required a licence and that it was a licence under the additional scheme.
18. Had we not had this evidence, we would have in any event been prepared to accept that there was a scheme in place. Both members of the panel had personal knowledge that there was such a scheme. While we could not rely on such knowledge as evidence of the fact of the scheme, it would have been open to us to have adjourned to allow the Applicant to present evidence in the form of, say, the scheme’s declaration and map. And doing so would have been wasteful and pointless, given our sure personal knowledge.
19. Ms Cannan gave evidence of the occupation of the property. The RRO was claimed for the period between 10 October 2024 and 10 October 2025. The upshot of the evidence was that during the last month of the relevant period, there had been only Ms Cannan and one other flatmate in residence, so that for that period the offence was not being committed.

20. We were satisfied with Ms Cannan's evidence that the property was the main or only home of herself and her flatmates.
21. We considered whether the (possibly) still in force licence granted to the Respondent's predecessor as controller or manager of the property was such as to relieve the Respondent of criminal liability. We concluded it did not. A licence is particular to the person to whom it is granted and does not transfer with a change of ownership or of the person with the the status of controller or manager: *Taylor v Mina An Ltd* [2019] UKUT 249 (LC), [2020] HLR 10.
22. The Respondent did not, of course, make an argument as to reasonable excuse. The Tribunal considered on its own initiative whether the facts could possibly disclose a reasonable excuse, and concluded that they did not.
23. We have a discretion not to make an RRO even if we find the criminal offence made out. It is a discretion to be used to deny an RRO only very rarely, and there is no reason to do so in this case.
24. We find beyond a reasonable doubt that the Respondent was guilty of the offence (at least) in the period from October 10 2024 to late August 2025.

The amount of the RRO

25. In considering the amount of an RRO, the Tribunal will take the approach set out in *Acheampong v Roman and Others* [2022] UKUT 239 (LC) at paragraph 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. ...
 - (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 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).”

26. In respect of the relationship between stages (c) and (d), in *Acheampong* Judge Cooke went on to say at paragraph [21]
- “I would add that step (c) above is part of what is required under section 44(4)(a) [conduct of the parties]. 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.”
27. As to stage (a), by sections 44(2) and (3) of the 2016 Act, the maximum possible RRO is the rent paid during a period of 12 months, minus any universal credit (or Housing Benefit – section 51) paid during that period.
28. In this case, the offence was being relevantly committed for a period of eleven months. Ms Cannan’s rent during the period was £511 a month. Ms Cannan was not in receipt of the relevant benefits. The maximum RRO is accordingly £5,610.
29. The tenants paid the utilities, so there is no deduction to be made at stage (b).
30. In assessing the seriousness starting point under stage (c), there are two axes of seriousness. The first is the seriousness of the offence, compared to the other offences specified in section 41 of the 2004 Act. The offence under section 72(1) is significantly less serious than those in rows 1, 2 and 7 in the table in section 40 of the 2016 Act, and we take that into account (see *Ficcara v James* [2021] UKUT 38 (LC), paragraphs [32] and [50]; *Hallet v Parker* [2022] UKUT 239 (LC), paragraph [30]; *Daff v Gyalui* [2023] UKUT 134 (LC), paragraphs [48] to [49] and the discussion in *Newell v Abbott and Okrojeck* [2024] UKUT 181 (LC), paragraphs [34] to [39]).
31. We turn to the seriousness of the offence committed by the Respondents compared to other offences against section 72(1). In doing so, we consider both stages (c) and (d) of *Acheampong*.
32. We do are mindful of what the Deputy President said in *Newell* at paragraph [61]:
- “The Tribunal has said in the past that it is not possible to be prescriptive about the sort of conduct which might potentially be relevant under section 44(4), 2016 Act (see *Kowalek*, at paragraph [38]). But that should not be taken as an invitation to landlords and tenants to identify every possible example of less than perfect behaviour to add to the tribunal scales in the hope of increasing or reducing the penalty. When Parliament

enacted Part 2 of the 2016 Act it cannot have intended tribunals to conduct an audit of the occasional defaults and inconsequential lapses which are typical of most landlord and tenant relationships. The purpose of rent repayment orders is to punish and deter criminal behaviour. They are a blunt instrument, not susceptible to fine tuning to take account of relatively trivial matters. Yet, increasingly, the evidence in rent repayment cases (especially those prepared with professional or semi-professional assistance) has come to focus disproportionately on allegations of misconduct. Tribunals should not feel that they are required to treat every such allegation with equal seriousness, or to make findings of fact on them all. The focus should be on conduct with serious or potentially serious consequences, in keeping with the objectives of the legislation. Conduct which, even if proven, would not be sufficiently serious to move the dial one way or the other, can be dealt with summarily and disposed of in a sentence or two.”

33. Ms Cannan did not refer to any adverse conduct of the Respondent during or before the relevant period. Since then (she remains in occupation), the property suffered water ingress as a result of (we think) a blocked rainwater down pipe. The only intervention by the landlord was to have plastic sheeting suspended over the part of the wall through which the ingress was made. It had, Ms Cannan said, been effective during the recent warm weather, but was unsightly and unlikely to survive winter rain.
34. She agreed that she had occasionally been in arrears for a brief period within a month during which payment was due, but never outside the month and only occasionally.
35. Her account indicated that the property appears to be in a reasonable condition in terms of fire safety. There were smoke and heat alarms. Ms Cannan could not say with any certainty whether they were battery operated or wired in. There were fire doors, and a fire blanket in the kitchen.
36. We do not think that the evidence shows anything that would significantly “move the dial”, in the Deputy President’s words in *Newell v Abbott* either way.
37. In assessing the quantum of the RROs at stages (c) and (d), we have taken account of the guidance provided by the Upper Tribunal, including particularly where the Upper Tribunal has substituted percentage reductions in making a redetermination. The key cases are set out in (with respect) a most helpful manner in the course of the redetermination in *Newell v Abbott and Okrojeck* from paragraph [47] to [57]. We do not repeat that material here, but have been guided by it.

38. Summing up, the Deputy President said this, at paragraph [57]:
- the level of rent repayment orders varies widely depending on the circumstances of the case. Awards of up to 85% or 90% of the rent paid (net of services) are not unknown but are not the norm. 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
39. Our conclusion is that the condition and circumstances generally are close to those in *Newell v Abbott* itself. In that case, the Deputy President substituted a percentage of 60%, but said that were it not for the lengthy period of offending, the award would have been 50%. In this case, it does not appear there had been such a period of offending, given the licence that was valid until the transfer of ownership. Accordingly, we conclude that we should award an RRO of 50% of the possible maximum.

Reimbursement of Tribunal fees

40. The Applicant applied for the reimbursement of the application and hearing fees paid by the Applicants under Rule 13(2) of the Rules. In the light of our findings, we allow that application.

Rights of appeal

41. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the London regional office.
42. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
43. If the application is not made within the 28 day time limit, the application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

44. The application for permission to appeal must identify the decision of the Tribunal to which it relates, give the date, the property and the case number; state the grounds of appeal; and state the result the party making the application is seeking.

Name: Tribunal Judge Professor Richard Percival **Date:** 2 October 2026

Appendix of Relevant Legislation

Housing Act 2004

72 Offences in relation to licensing of HMOs

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

Housing and Planning Act 2016

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
 - (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.
- (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 to that landlord.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
7	This Act	section 21	breach of banning order

- (4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

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 –
- (a) the offence relates to housing that, at the time of the offence, was let to the tenant, and
 - (b) the offence was committed in the period of 12 months ending with the day on which the application is made.
- (3) A local housing authority may apply for a rent repayment order only if –
- (a) the offence relates to housing in the authority's area, and
 - (b) the authority has complied with section 42.
- (4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

42 Notice of intended proceedings

- (1) Before applying for a rent repayment order a local housing authority must give the landlord a notice of intended proceedings.
- (2) A notice of intended proceedings must—
- (a) inform the landlord that the authority is proposing to apply for a rent repayment order and explain why,
 - (b) state the amount that the authority seeks to recover, and (c) invite the landlord to make representations within a period specified in the notice of not less than 28 days ("the notice period").
- (3) The authority must consider any representations made during the notice period.
- (4) The authority must wait until the notice period has ended before applying for a rent repayment order.

(5) A notice of intended proceedings may not be given after the end of the period of 12 months beginning with the day on which the landlord committed the offence to which it relates.

43 Making of a 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 had 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 with –
 - (a) section 44 (where the application is made by a tenant);
 - (b) section 45 (where the application is made by a local housing authority);
 - (c) section 46 (in certain cases where the landlord has been convicted etc).

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 this 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>
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

- (3) The amount that the landlord may be required to repay in respect of a period must not exceed –
 - (a) the rent 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,
 - (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.