FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	HAV/43UD/HMF/2026/0007
Property	**:**	10 Ashenden Road, Guildford GU2 7UU
Applicant	**:**	Jasmine Lennox, Millie Walker- Mousley Alisa Fielder, Olivia Wilkes, Jac Williams, Holly Stuart
Representative	**:**	Miss Eva Sherratt Justice for Tenants
Respondent	**:**	Ambikapathy Aravinthan
Representative	**:**	Mr Reys Jones (counsel)
Type of Application	**:**	Rent Repayment Order Housing and Planning Act 2016
Tribunal Members	**:**	Tribunal Judge Pattni-Evans (Chair) C. Barton (Professional valuer member)
Date and venue of Hearing	**:**	13 October 2026
Date of Decision	**:**	23 October 2026

DECISION

DECISION

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(A) The Tribunal does not make a Rent Repayment Order and the application is dismissed.

(B) The Applicants proved the constituent elements of the licensing offence under section72(2) of the Housing Act 2004 beyond reasonable doubt.

(C) The Respondent proved the statutory defence on the balance of probabilities.

The reasons for decisions are given below.

INTRODUCTION

1. This is an application for a rent repayment order ('RRO') based on an alleged breach of section 72 of the Housing Act 2004 ('the 2004 Act') for the offence of having control of / managing an unlicensed HMO. The Applicants sought an RRO in the combined sum of £45,534.21 for rent paid for the period 1 September 2024 to 9 June 2025 during which the Applicants resided at 10 Ashenden Road Guildford GU2 7UU ('the Property') pursuant to individual tenancy agreements.

2. The application was made on 18 February 2026; it was within 12 months of the alleged offence and therefore 'in time' for the purposes of section 41(2) of the Housing and Planning Act 2016 ('the 2016 Act').

3. The Respondent defended on the basis that he had a reasonable excuse for non-compliance with the licensing regime and, alternatively that the Tribunal's discretion should not be exercised in favour of an RRO.

4. We are grateful to the parties for attending the hearing, giving evidence and making their contributions. During the hearing, we heard from Miss Lennox, Miss Walker-Mousley, Miss Wilkes and Mr Williams. Two of the Applicant's witnesses namely Miss Fielder and Miss Stuart were unable to attend the hearing, and we were invited to give full

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weight to their written statements and for the avoidance of doubt we did so. We noted in particular that Miss Sherratt ensured the salient points arising from those statements were properly explored in cross-examination. For the Respondent, the Tribunal heard from Mr Aravinthan. We also have the benefit of the statements and documents that were in the hearing bundle(s) and the skeleton arguments prepared by the representatives.

5. The lack of mention of a particular document, point of evidence, or submission should not be regarded as indicating that it has not been considered. The Tribunal has focused on the key issues identified that require determination. In writing this decision the Tribunal has had regard to the Senior President of Tribunals Practice Direction – Reasons for Decisions, dated 4 June 2024.

Preliminary Issue

6. Before the Tribunal could proceed to determine the substantive application, it was necessary to consider the Respondent's written and oral application for relief from sanctions arising from the late service of his evidence and bundle.

7. On behalf of the Respondent, Mr Jones accepted that the Respondent's evidence had been served late, solicitors had been instructed but the preparation of the evidence had taken longer than anticipated due to the volume of material requiring review. He accepted that the breach was serious and significant so focussed his submissions on the circumstance of the case.

8. The Respondent said the contents of the bundle were highly relevant in that it contained correspondence with the local authority. The reasonable excuse defence largely turned on the local authority's involvement with the Property. The Applicants had been in possession of the material for approximately one week, if additional time were

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genuinely required, the Tribunal could adjourn the proceedings in the interests of justice.

9. The Applicants opposed the application. Miss Sherratt focused on the absence of a satisfactory explanation for the breach; the Respondent's explanations lacked clarity and did not establish any proper reason for non-compliance with the Tribunal's directions. The late service created unfairness because the Applicants had insufficient time properly to consider the Respondent's case and take instructions. Whilst maintaining their objection to the late evidence, the Applicants indicated that their preference was for the matter to proceed rather than be adjourned.

10. The Tribunal considered the submissions in line with the relief from sanctions framework set out in *Denton v TH White Ltd* [2014] EWCA Civ 90. As to the first two stages, the Tribunal finds that the Respondent failed to comply with the extended deadline of 25 September 2026 and served its bundle on 7 October 2026, approximately twelve days late and shortly before the final hearing. This constituted a serious and significant breach. Compliance with directions is essential to the efficient and fair conduct of proceedings, particularly where a previous extension of time has already been granted.

11. The Tribunal was not satisfied that the explanation advanced by the Respondent amounts to a good reason for the default. The reasons given largely concerned the ordinary challenges associated with preparing evidence and reviewing documents for a final hearing. Those are matters ordinarily contemplated when directions are made and do not, without more, justify non-compliance. No satisfactory reason was established for the breach. However, the Tribunal does consider that the significance of the breach is marginally mitigated by the fact that the Respondent was not in breach of a debarring order, nor is it one where granting relief necessitated vacating the hearing date.

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12. At the third stage of the *Denton* analysis, the Tribunal must consider all the circumstances of the case in order to deal with the proceedings justly and fairly. Having done so, the Tribunal was not persuaded that it would be appropriate either to exclude the Respondent's evidence in its entirety or effectively to prevent the Respondent from advancing its case.

13. This is principally because the prejudice relied upon by the Applicants is less substantial than first appeared. The Tribunal reviewed the Respondent's index and noted that a substantial proportion of the underlying documentary material was already before it as part of the Applicants' bundle. Of particular significance were the local authority's dealings with the parties. Evidence of those dealings was already contained within the Applicants' bundle, both in the email correspondence and in the Applicants' witness statements. In those circumstances, regardless of the late admission of the Respondent's documents, the relevant issues would have required consideration and exploration during the hearing in any event.

14. The Tribunal also considered the nature of the proceedings. The allegations, if established, could result in a significant RRO in the region of £45,000. The Upper Tribunal has repeatedly emphasised that tribunals should be slow to determine allegations of this nature by procedural default where the substantive issues can properly be determined on their merits.

15. The Tribunal had regard in particular to *Jalay Enterprises Ltd v Ramsdale [2023] UKUT 247 (LC)*, in which the Upper Tribunal described debarring participation as a draconian step and stressed the importance of ensuring that parties facing serious allegations have a fair opportunity to participate in proceedings. The Tribunal also has regard to *Dean v London Borough of Newham [2024] UKUT 300 (LC)*, which confirms that, when considering procedural defaults in

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proceedings involving allegations of criminal conduct, the interests of justice and the strength of the underlying issues remain relevant considerations.

16. Balancing all of those matters, the Tribunal concluded that the just and proportionate course was to grant the Respondent relief from sanctions. Whilst the breach was serious and unsupported by a satisfactory explanation, both parties were legally represented, the issues were not unusually complex, the hearing could proceed without adjournment, and any prejudice arising from the late service can adequately be reflected in the weight ultimately attached to the Respondent's evidence.

LAW

17. An RRO is an order of the Tribunal requiring the landlord under a tenancy of housing in England to repay an amount of rent paid by a tenant. Such an order may only be made where the landlord has committed one of the housing related offences specified in section 40(3) of the 2016 Act. Section 41(2) provides that 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.*

18. Section 43 of the 2016 Act provides that, if a tenant makes such an application, the Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that the landlord has committed one of the offences specified in section 40(3) (whether or not the landlord has been convicted).

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19. Included in the list of specified offences is section 72(2) of the 2004 Act, the relevant provisions make it an offence if an HMO which is required to be licensed is not so licensed. The offence is committed by any person who has control of or is managing the HMO and, any person who is the landlord. There is a specified statutory defence whereby the person defending the allegation is required to prove that they had a reasonable excuse for non-compliance (section 72(5)).

20. The statutory defence was notably considered in *IR Management Services Limited v Salford* [2020] UKUT 81 (LC) and *Thurrock Council v Palm View Estates* [2020] UKUT 355 (LC) from which the following principles can be distilled: first that when considering a reasonable excuse, the offence is not the failure to apply for an HMO licence, it is the management or being in control of an HMO without a licence; second, that it is for the respondent to make out the reasonable excuse defence to the civil standard.

21. The reasonable excuse must exist for the whole period for which the RRO is sought; was it objectively reasonable in the circumstances of the case for the landlord to have been ignorant of the requirement in question and for how long (*Marigold v Wells* [2023] UKUT 33 (LC)).

22. Section 43 of the 2016 Act provides that the Tribunal may make an RRO if it is satisfied beyond reasonable doubt that the offence has been committed. The decision to make an RRO award is therefore discretionary.

23. Where the Tribunal decides to make an RRO in favour of a tenant, it must go on to determine the amount of that order in accordance with section 44 of the 2016 Act. If an order is made, the amount must relate to rent paid during a period, not exceeding 12 months, during which the landlord was committing that offence (section 44(2)). However, by virtue of section 44(3), the amount that the landlord may be required to repay must not exceed:

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a) the rent paid in respect of the period in question, less

b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

24. In certain circumstances the amount of the rent repayment order must be the maximum amount found by applying the above principles. The Tribunal otherwise has a discretion as to the amount of the order. However, section 44(4) requires that the Tribunal must take particular account of the following factors when exercising that discretion:

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 any of the specified offences.

Background

25. The areas of common ground were as follows. The Property comprised a seven-bedroom, two-storey semi-detached house with shared kitchen and bathroom facilities. Each of the Applicants occupied the Property under a separate tenancy agreement, the occupation timeline is:

Mr Williams: 4 September 2023 to 29 August 2025;
Miss Stewart: 9 September 2024 to 28 August 2025;
Miss Wilkes: 1 September 2024 to 30 August 2025;
Miss Lennox: 1 September 2024 to 27 August 2025;
Miss Walker-Moseley: 9 September 2023 to 29 August 2025; and
Miss Fielder: 1 September 2024 to 25 August 2025.

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26. Mr Aravinthan is named as the landlord in the tenancy agreements and is identified as the registered proprietor and beneficial owner of the Property on the land registry title. At the material time, he was the 'person having control' of the Property within the meaning of the 2004 Act, being the person who received the rent of the premises. He was also the person 'managing' the property within the meaning of section 263(2) of the 2004 Act.

27. The Tribunal had sight of the tenancy agreements, which were in materially the same form. Those agreements provided, in some instances, for utility charges to be included within the rent. The bank statements produced by the Applicants corroborated the payment of rent during their respective periods of occupation. Finally, there was an HMO Licence for the Property dated 10 June 2025, which expires on 9 June 2030. The 'end date' for the relevant period was therefore agreed.

The Applicants' Evidence

28. Turning then to the oral evidence, Miss Lennox adopted her witness statement and confirmed the accuracy of the evidence. She confirmed the rent included utility bills up to a specified cap, with any excess charges potentially recoverable from tenants' deposits at six-month intervals. In relation to licensing, Miss Lennox said that the first indication she received that there may be an issue was a letter addressed to "the occupier" from Guildford Borough Council, which she believed was received in July 2025. The letter was not included in the bundle nor was the date set out in her witness statement. She understood that the Council considered the Property may not have been licensed. She had not contacted the Council herself to check and was unaware of any other tenant having done so. Her reason for vacating the Property is that she had reached the end of her tenancy.

29. Miss Lennox gave evidence that mould was present in a communal bathroom when she moved into the Property and subsequently spread

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across the walls and into the bathroom flooring. Although she initially cleaned the mould, it reappeared. She reported the issue to the Respondent on multiple occasions and referred to correspondence showing a response from the Respondent dated 6 October 2024. She accepted that the Respondent responded to her complaints and took some remedial steps, including the installation of a ventilation system, but considered his measures to be ineffective in resolving the issue. In her view, replacement of the affected flooring and further investigation of the bathroom would have been appropriate. Miss Lennox also accepted that the Respondent generally addressed maintenance requests. She referred to a request for a replacement mattress in May 2025, which was subsequently provided.

30. In relation to the communal areas, Miss Lennox stated that there were two shared bathrooms and three en-suite bathrooms. There was no formal cleaning rota. She said that she undertook much of the cleaning of one of the communal bathrooms – which was the only bathroom that had a bathtub, where she identified the mould and confirmed that the same bathroom was used by most of the tenants. She also referred to an issue with a shared door handle, which she believed had been reported to the Respondent. She understood that the relevant door was fitted with a double lock.

31. Miss Walker-Moseley gave evidence next and also confirmed the contents of her witness statement in which she said, 'during the tenancy there was no real issues with the property, we did have a situation where the storm knocked the Wi-Fi out for over a week but that was really it in that tenancy'. She did not refer to any issues relating to mould. She said that the Property contained two communal bathrooms (there were also four ensuite bathrooms). Miss Walker-Moseley also gave evidence that, on 25 August 2025, she reported a potential leak to the Respondent. She stated that the Respondent attended the following day. After subsequently taking a shower, she experienced a further issue which caused the electrical supply to trip.

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She was unable to provide any further information about the matter as she vacated the Property shortly afterwards.

32. In relation to licensing, Miss Walker-Moseley confirmed that she had received the same letter from the local authority regarding the Property. Prior to receiving that correspondence, she had not been aware that the Property might require an HMO licence. The letter that she received was not exhibited and she did not provide a date for when she received it. She left the Property because her tenancy had come to an end.

33. Miss Wilkes adopted her witness statement and confirmed its contents were true. She gave evidence that she had reported a dispute with another misbehaving tenant to the Respondent and that the Respondent dealt with the matter promptly. She also referred to an issue with the washing machine. Miss Wilkes stated that there was mould in her bedroom, which she believed pre-dated her occupation. She recalled mentioning the issue to the Respondent shortly after moving in but was unable to say when this occurred and accepted that she made no further reports. She did not attempt to remove the mould herself and could not explain why no mould or damp issues were identified by the local authority when they later inspected it. In her witness statement she refers to a number of issues including operation of the front door lock which she said you really had to budge it to stop it from opening; that they had no option to choose their own energy supplier; and, the washing machine breaking down. She also raised a complaint regarding they're being insufficient general waste or recycling bins.

34. She described the Property as having a communal kitchen but no separate living room. As a result, tenants tended to spend most of their time in their bedrooms. Miss Wilkes confirmed that she had not contacted the local authority regarding the Property and was unaware of any tenant having done so**.** She did not produce a copy of the letter

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from the Council. She did however say that on the 25 of June [2025] she received a message from the landlord stating, 'the licence is due for renewal, and the Guildford council compliance officer will be visiting the property 4th July [2025] to carry out her inspection'. She confirms that the compliance officer came to inspect the Property and she subsequently received a letter alerting her that the house had not been licenced during most of the tenancy.

35. Mr Williams adopted his witness statement and confirmed that its contents were true. His main complaint regarding the Property is that the skirting board in his bathroom had become loose and that he had mentioned it to the Respondent who had failed to fix it. He gave evidence that a garden table was damaged by Miss Walker-Moseley when she attempted to insert a parasol into the table, causing the glass surface to shatter. He subsequently reported the damage. Mr Williams stated that there had been a delay in the protection of his tenancy deposit, but that was not set out in any detail in his witness statement and appeared to be raised by the Applicant in response to the Respondent's late evidence around being a good landlord.

36. Mr Williams' also reported concerns to the Respondent about another misbehaving tenant. Whilst he was unable to recall precisely when, he understood that the Respondent took action in response. In relation to the washing machine, Mr Williams recalled that it had broken down and that there was a period before it was repaired or replaced. During this time, he incurred some expense using a launderette. However, he explained that he was not residing at the Property full-time towards the end of his tenancy as he frequently travelled home. Although he still considered the Property his main place of residence.

37. The Tribunal was also referred to the witness statement of Alisa Fielder. She did not attend the hearing however; her statement largely echoes the concerns raised by the other residents and she also refers to the fact that they did not have control over the heating and hot water

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programming. In terms of the interaction with the landlord, she explains in her witness statement that she had met him a handful of times where he would be looking at various issues in the Property. On 25 June 2025, she received a text from the landlord stating that the licence he 'held' for the property was going to be inspected and 'renewed' by the council inspector on 4 July 2025. On 5 July 2025, the landlord advised that the inspection had gone well. She first discovered the property may not have had an HMO licence after the local authority inspection when she received a letter from Guildford Borough Council dated 9 July 2025 addressed to the occupiers alerting the occupants that they believe the landlord had not licenced the property as an HMO, she contacted the council via telephone on 14 July 2025 and was directed to 'Justice for Tenants'.

38. Finally, the Tribunal also had the written statement of Holly Stuart. She did not attend the hearing. Her concerns around the Property focused on a toilet which she says was not properly sealed, and that as a result of ongoing damp, mushrooms began growing on the bathroom floor. She confirms that a plumber was sent around to fix it but didn't consider the matter finally resolved. She echoed concerns around the washing machine. Miss Stuart also reported experiencing homophobic abuse - but it was unclear how this concerned the Respondent, her principal complaint regarding him was that she was required to pay for a deep clean for her room at the end of her tenancy, when in her view she had left her room in a good condition.

The Respondent's Evidence

39. The Respondent adopted his witness statement and confirmed its contents were true. He applied for an HMO licence on 30 November 2018 and paid the required fee on the basis of a five-year licence. Following an inspection by a Council compliance officer, Fay Lamph, on 7 October 2019 he was advised that planning permission for a *sui generis* HMO use was required before a full licence could be granted. A

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'Notice of Intention' was issued on 18 October 2019; this formally required him to obtain planning permission. He was advised that once planning permission had been granted, he would receive the five-year HMO licence. His understanding was that the Council had already determined, in principle, to grant the five-year licence and that obtaining the necessary planning permission simply enabled that process to be completed.

40. The Respondent applied for planning permission on 24 February 2020 and obtained it in September 2020. He invested approximately £15,000 to £20,000 in the process, including works to convert the Property into an HMO. He understood, based on advice from Council officers, that an HMO licence would be issued following an inspection. As inspections were not being carried out during the pandemic, he assumed the licence would be issued without further action. He accepted that it was ultimately his responsibility to ensure that the Property was properly licensed and to check the status of any application. However, he believed that no further application was required, as the Council would process the matter automatically.

41. The Respondent received no further correspondence from the Council and accepted that he should have followed matters up. In the absence of any communication, he believed that the Property had been licensed for five years from September 2020, coinciding with the grant of planning permission. He stated that he applied to renew the licence in June 2025 in anticipation of its expiry in September 2025. A Council officer carried out an inspection in July 2025 for that purpose. He confirmed that he did not have a copy of the letter sent by the Council to the occupiers in July 2025 and was unaware that it would be sent.

42. The Respondent disputed the Applicants' suggestion that he knowingly operated the Property without an HMO licence. He relied on his experience managing rental properties which included other HMOs. He says in his statement of case that he has no relevant previous

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convictions, this is his first licensing offence, the omission was not deliberate and there was no intention to circumvent the licensing regime.

43. In relation to Property conditions, he accepted the complaint regarding mould from Miss Lennox. He attended the Property, inspected the bathroom and arranged for the existing ventilation system to be replaced with a continuously operating extraction system. He advised the occupiers to keep windows open to improve ventilation. He considered that condensation and cleaning issues contributed to the problem and observed moisture on bathroom surfaces during his inspections. The Respondent stated that no complaint had ever been made to him regarding mould in Miss Wilkes' bedroom.

44. The Respondent also addressed the issues concerning the washing machine which experienced repeated failures caused by items obstructing the filter and pump, including food and a shoelace. He said that he attended the Property on a number of occasions to investigate and repair the machine. The replacement machine was delivered within a few days after it finally stopped working.

45. He disputed aspects of Miss Stewart's evidence concerning a leak in the bathroom. He stated that the issue reported to him was a loose fixing bolt which resulted in water escaping. He arranged for repairs to be carried out promptly and stated that no mould issue was reported to him at that time. Following the repair, he inspected the bathroom and noted that the extractor fan had been switched off.

46. In relation to the leak reported by Miss Fielder shortly before the end of her tenancy, the Respondent stated that he attended the following day and was unable to identify any leak. He said that he tested the shower and sink for an extended period without observing water escaping and received a subsequent message indicating that the issue appeared resolved.

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47. The Respondent accepted that there had been a delay in protecting one of the tenancy deposits which was an administrative error on his part. He accepted that the heating and hot water controls were secured within a locked box and were therefore not directly accessible to tenants. This arrangement was adopted following previous incidents where occupiers had altered the settings, resulting in a loss of hot water. The tenants could contact him if adjustments were required.

48. The Respondent denied having been informed of any defect with the front door lock during the Applicants' occupation. He had requested an additional refuse bin from the local authority when one bin had gone missing. He subsequently paid for a replacement. He also stated that tenants were provided with a safety induction on moving into the Property and that documents such as gas safety certificates were available.

Evidence from the Council

49. The Tribunal notes that there was no witness statement from the local authority. The Applicants' case relied on an email dated 8 August 2025 from Jelena Taylor a private sector housing compliance officer to Justice for Tenants which says as follows:

> *The property was previously licenced under mandatory licencing regime. According to our records, the previous licence was issued on 14th November 2019 with a licence start date of 10-12-2018 (I believe the licence start date was linked to the date the application was deemed full and valid). The licence was originally issued for one year from the date (expiry of 14-11-2020) But should have been varied to five years (from the start date of the licence) after sui generis planning permission was obtained. I do not believe the variation was processed which is likely to be an administrative oversight by GBC at the*

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time. If the licence was correctly varied at the time the expiry date would have been 9th December 2023 [five years from the issue date would have been 13th November 2024).

50. In the Respondent's bundle there was an e-mail from the same compliance officer dated 24 June 2025 which said:

> *'Your application was processed as a renewal application, however I would like to highlight that the property did not have a valid licence since 2020. The term of the licence was 10th December 2018 to 14th November 2020. The expiry date was a year from the issue date of 14th November 2019.*
>
> *Although I appreciate there might have been confusion as to whether the licence would be automatically re-issued in Sui Generis planning permission was granted, in any event, 5 years from the licence commencement date would have expired in December 2023 (18 months ago) and 5 years from the issue date would have expired in November 2024 (7 months ago)'.*

51. She also says that it was a condition of the HMO licence that it is clearly displayed within the common parts of the house (condition 5.4 schedule A) and the licence expiration date would have been observable upon a very basic visual inspection. But, as the Respondent points out, it was impossible to know this without the licence being physically issued.

Closing Submissions

Respondent

52. In closing submissions, the Respondent's argument focused on there being a reasonable excuse for non-compliance. Alternatively, it was submitted that the fact and circumstances of this case were exceptional

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such that the Tribunal ought not to make an RRO. It was submitted that the Property could not lawfully operate as an HMO until planning permission was granted in September 2020. As a matter of common sense, any HMO licence would be expected to run from the point at which the property became capable of lawful use as an HMO and not from an earlier date. The 'expiry' dates offered by the local authority were retrospective and hypotheticals.

53. The Respondent contends that the circumstances prevailing at the time were exceptional due to the Covid-19 pandemic. During that period, local authority services were disrupted, and normal administrative processes were not operating in the ordinary way. Although in different circumstances the Respondent might have actively pursued the matter with the local authority, the pandemic provided a partial explanation and context.

54. Nonetheless, the documentary evidence gives rise to genuine confusion regarding the duration and status of the licence and applications. The Tribunal was invited to consider the genuineness of the Respondent's evidence and that any uncertainty should be weighted in his favour.

55. Reliance is placed on the fact that, in June 2025, before the local authority issued the relevant licence, the Respondent made what was described as a 'renewal application' – indeed, it was processed as a renewal despite the local authority's contention that there was no extant licence. The Respondent argues that it would be inherently unlikely for a landlord knowingly operating without a licence to draw the matter to the attention of the local authority by seeking a renewal.

56. It is said that this conduct supports his account that he believed a valid licence was already in existence and that the five-year period ran from the date the HMO became lawfully operable. The Respondent notes that it is common ground that the Applicants' tenancies were naturally coming to an end during the summer of 2025, the implication being

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that if the Respondent wanted to circumvent the licensing regime, he only had to wait a couple of months before no issue would have arisen – the Property would have been largely empty with the Applicants none the wiser.

57. The Respondent further submitted that substantial sums, estimated at between £15,000 and £20,000, had been expended in obtaining planning permission. It would make little sense for a landlord who had made such investment not to pursue the ultimate grant of a licence, and that the circumstances are better explained by administrative confusion arising during a period of exceptional upheaval. Considered objectively, this gives rise to a reasonable excuse defence for the whole period but alternatively, whilst maintaining the primary position, the Respondent suggested there was partial defence up to November 2024, based on the local authority's email.

58. As to conduct, the Respondent submits that he acted as a responsible landlord. He is said to have engaged with the Council, arranged property inspections, installed a new ventilation system, communicated with tenants, and responded to concerns raised at the property. The local authority inspections in July 2025 and subsequently did not identify matters warranting enforcement action. The Respondent contends that these matters are also relevant to the Tribunal's discretion when considering whether to make a Rent Repayment Order ("RRO") and, if so, in what amounts.

59. The primary submission was that no order should be made because of the unusual circumstance of this case. Should the Tribunal determine otherwise, the award should be modest and begin no earlier than November 2024. An appropriate award would be approximately 10% of the total rent received, amounting to just over £3,000 per tenant.

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Applicants

60. The Applicants submit that responsibility for ensuring that a valid HMO licence is in place rests squarely with the landlord. Whilst acknowledging that the Covid-19 pandemic created unusual circumstances, the Respondent's failure lay in not following up the matter and not verifying the position once the initial licence period had expired.

61. The Applicants submit that, on any view of the evidence, the latest possible expiry date for the five-year licence would have been in November 2024. Accordingly, they contend that, at the very least, the Respondent did not hold a valid licence after that date and so no reasonable excuse could apply from that point onwards. The application in June 2025 demonstrates continuing uncertainty on his part as to the duration and validity of any licence. Reference was made to the local authority's email where possible explanations were offered regarding the licence history.

62. The Applicants argue that the planning position provides no assistance to the Respondent. The local authority was capable of issuing a licence notwithstanding the planning issue and that this is demonstrated by the fact that a one-year licence was granted, subject to conditions and with the possibility of subsequent variation. There was never any form of tacit or implied consent extending the licence beyond its stated duration.

63. The Applicants accept that the Respondent may have been genuinely mistaken or confused. However, they submit that confusion alone does not amount to a reasonable excuse. They expressly disavow any suggestion of deliberate wrongdoing or a calculated attempt to avoid licensing requirements. Nevertheless, they contend that many mistakes do not constitute a reasonable excuse and that a landlord who failed to revisit or review the licence position over a prolonged period cannot

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rely upon such confusion as a defence. As to quantum, the Applicants submit that, if the Tribunal finds the offence proved, it should exercise its discretion to make an RRO. Relying upon *Newell v Abbott*, they argue for a conduct-neutral starting range of approximately 50–60%.

64. The Applicants accept that the Respondent was not an irresponsible landlord in every respect. However, they submit that the remedial steps taken were insufficient. They point to evidence of persistent issues within the property, including damp and mould and, in particular, mould affecting bathroom flooring. These matters are relevant aggravating features within the framework identified in *Acheampong* and justify an award at the higher end of the available range. It is argued that such conditions are unrelated to the licensing issue itself but remain relevant to an assessment of the landlord's overall conduct.

65. The Applicants further submit that the conduct of tenants will often have limited relevance, given that tenants are not generally familiar with licensing requirements. No deductions should be made for any period of absence from the Property, as the tenants were all entitled to the full benefit of their tenancy agreements.

Findings and Conclusions

Can the Applicants establish beyond reasonable doubt that the Respondent committed an offence of managing an unlicenced HMO?

66. The Tribunal notes that there are a number of areas that are common ground between the parties: the Respondent is the landlord of the Property; the Property was an HMO by virtue of its composition and shared facilities; the occupants were five or more and unrelated to each other and the Property required a mandatory licence. The relevant period commenced on 1 September 2024 from which point, the Property ought to have had a mandatory licence, but it did not.

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67. The Tribunal is satisfied beyond reasonable doubt that the elements of the statutory offence under section 72(2) of the 2004 Act are met, namely that the Respondent was in control of an unlicensed HMO for the period 1 September 2024 to 9 June 2025.

Can the Respondent prove on the balance of probabilities that he had a reasonable excuse for non-compliance?

68. The burden of establishing the statutory defence rests upon the Respondent. The applicable standard of proof is the balance of probabilities. The Tribunal reminds itself that the question for the Tribunal is whether, considering all the relevant circumstances, the Respondent had a reasonable excuse for having control of or managing an HMO which was not licensed. The test is an objective one.

69. The Tribunal is satisfied that the defence is established. In reaching that conclusion, the Tribunal has considered the documentary and oral evidence, together with the particularly unusual history of the Property's licensing and planning position. In that regard we note again the number of features between the parties that were in fact agreed.

70. To begin with, the Tribunal finds that this is not a case in which the Respondent failed altogether to engage with the licensing regime. The evidence demonstrates that an HMO licence application was made in 2018 and that the Property was previously licensed. Following engagement with the local authority, the Respondent was required to obtain *sui generis* planning permission before the licensing position could be regularised. Planning permission was subsequently granted in September 2020 following a process involving substantial expenditure and works to the Property. There was no evidence before the Tribunal suggesting that the Property failed to satisfy the substantive requirements for the grant of a full licence.

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71. The Tribunal places particular weight upon the documentary material emanating from the local authority. No officer attended the hearing and no witness statement verified by a statement of truth was provided. Accordingly, the Tribunal's assessment of the local authority's position is derived solely from the contemporaneous correspondence contained within the hearing bundle. The Tribunal has approached that material with appropriate caution. In the email dated 8 August 2025, the Council officer stated that the previous licence "should have been varied to five years" following the grant of planning permission and that the failure to do so was "likely to be an administrative oversight". The correspondence further identified differing potential expiry dates depending upon whether the licence period was calculated by reference to the commencement date or the issue date. The Tribunal finds that the correspondence reveals uncertainty as to the administration and duration of the licence.

72. That uncertainty is reinforced by the earlier email dated 24 June 2025, in which the Council officer acknowledged that there may have been confusion regarding whether a licence would automatically be reissued or varied following the grant of planning permission. Whilst expressing the view that any licence would have expired no later than November 2024, the correspondence also recognises ambiguity in the licensing history. The Tribunal further notes that, notwithstanding the local authority's position that no licence was then in force, the Respondent's application in June 2025 was processed as a renewal application – which seems entirely at odds with their stated position.

73. The Tribunal considers it sufficient to find that the documentary evidence demonstrates uncertainty regarding the status and duration of the licence following the grant of planning permission. The Respondent's evidence was that he understood the licence would be granted or varied without the need for any further application on his part. The local authority correspondence does not contradict that

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account and is consistent with there having been uncertainty as to the procedural steps required following the grant of planning permission. Further, there is no evidence that an HMO licence would not have been granted. The issue is really an administrative one.

74. The Tribunal accepts the Applicants' submission that responsibility for compliance with the licensing regime rests with the landlord. However, Parliament has expressly provided a statutory defence of reasonable excuse. The question for the Tribunal is therefore whether, viewed objectively and in all the circumstances, the Respondent has established such a defence.

75. The Tribunal notes that Ms Sherratt accepted that the circumstances were capable of giving rise to a reasonable excuse, although she submitted that any such excuse could not have extended beyond November 2024, put simply, it was not objectively reasonable for him to maintain that belief for years without making further enquiry. The Tribunal is unable to accept that submission.

76. First, the date of November 2024 was not communicated to the Respondent at the material time. It emerged only from the local authority's retrospective analysis of the licensing history following the Respondent's application in June 2025. There is no evidence before the Tribunal that the Respondent was informed that any licence would expire in November 2024.

77. Secondly, the November 2024 date itself was dependent upon assumptions regarding how the licence should have been varied and from which date the licence period should have been calculated. The local authority correspondence identifies more than one potential approach. The Tribunal is therefore not satisfied that November 2024 represented a clear and objectively ascertainable expiry date. If the local authority itself was unable, years later, to identify with confidence what licence should have existed and when it should have expired, the

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Tribunal is not persuaded that the Respondent ought reasonably to have appreciated that the Property was unlicensed during the relevant period.

78. Thirdly, the Tribunal attaches significant weight to the Respondent's conduct in June 2025. At a time when the Respondent believed the existing licence was approaching expiry; he submitted what was processed by the local authority as a renewal application and informed the occupiers that the Property was subject to licence renewal. The Tribunal considers that conduct to be highly significant and the Tribunal finds that this is not the conduct one would ordinarily expect from a landlord who appreciated that the Property had remained unlicensed for a prolonged period. Rather, it is entirely consistent with the Respondent's evidence that, following the grant of *sui generis* planning permission in September 2020, he understood that the licensing process had been regularised and that the licence period ran from, or was connected to, that grant of permission.

79. The Tribunal has also considered the timing of the Respondent's reliance upon the reasonable excuse defence. Whilst the Respondent's bundle emerged relatively late in the proceedings, circumstances giving rise to the defence are apparent from the local authority correspondence relied upon by both parties. The Tribunal does not regard it as an afterthought or a case advanced solely for the purpose of resisting the application.

80. Standing back and considering the evidence as a whole, the Tribunal is satisfied that the Respondent has established the statutory defence on the balance of probabilities. The Tribunal accepts that the Respondent believed the Property was licensed and finds that, having regard to the unusual licensing history of the Property and the uncertainty disclosed in the local authority's correspondence, that objectively considered, he had a reasonable excuse for managing an unlicensed HMO.

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81. The Tribunal therefore distinguishes between the factual ingredients of the offence and the statutory defence. The Tribunal is satisfied beyond reasonable doubt that the factual elements required by section 72 of the 2004 Act are established. However, the Respondent has discharged the burden of proving the statutory defence of reasonable excuse on the balance of probabilities. Accordingly, the statutory precondition for the making of a rent repayment order under Chapter 4 of Part 2 of the Housing and Planning Act 2016 is not satisfied and the application must be dismissed.

82. In light of that conclusion, it is unnecessary for the Tribunal to make findings in relation to the parties' wider allegations concerning the condition, repair or management of the Property save insofar as those matters were relevant to the issue of reasonable excuse. It is likewise unnecessary to consider the exercise of the Tribunal's discretion under section 43 of the 2016 Act or the assessment of any award under section 44. However, in case the Tribunal is wrong in its conclusion on the statutory defence, we record that this was in any event a highly unusual case. Had the Tribunal concluded that the statutory defence was not established, it would have attached significant weight to the particular circumstances of the case when exercising its discretion under section 43 of the 2016 Act. Those circumstances would have pointed strongly towards a substantial reduction from any award that might otherwise have been made, with a low award being the likely outcome.

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APPEAL RIGHTS

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 .

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.

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.

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.

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