FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AL/HMF/2025/0866**
Property	**:**	**Flat 107, Dragoon Hall, Farndale Court, Master Gunner Place, London SE18 4PW**
Applicant	**:**	**Ms Patricia Coelho**
Representative	**:**	**Mr Soloman Baptiste**
Respondent	**:**	**Mrs Susan Alice Read**
Representative	**:**	**Mr Des Taylor (Landlords Defence Limited)**
Type of application	**:**	**Application for a rent repayment order pursuant to ss.40 to 44 of the Housing and Planning Act 2016**
Tribunal members	**:**	**Judge J Moate; Ms R Kershaw**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**30 October 2026**

DECISION

The Tribunal determines that it shall exercise its discretion to make a rent repayment order in terms that the Respondent shall pay to the Applicants the sum of £294.46 within 35 days of the date of this decision.

The Tribunal determines that the Respondent shall reimburse the Applicant's application and hearing fees of £341, to be paid within 35 days of receipt of the decision.

Introduction

1. The Tribunal is asked to make a rent repayment order pursuant to section 41 of the Housing and Planning Act 2016 ("HPA 2016").

Relevant law

2. The relevant statutory provisions are set out in Appendix 1 to this decision.

The Application

3. The application is dated 24 June 2025. It alleges an offence under s.72(1) of the Housing Act 2004 ("HA 2004") on the part of the Respondent, i.e. she was a person in control of or managing a HMO which was not licensed and was required to be.

4. The Applicant contends that she has been the tenant of the property from December 2011 to the present date.

5. The period of claim set out in the application is 17 August 2023 to 17 July 2024. The Applicant claims an order in the total sum of £7,800 based on rent payments of £650 per month.

6. The property consists of six individual bedrooms each with their own shower and WC and access to a shared kitchen and dining area. The Applicant occupies Room A. The Applicant claims the property is a HMO of a prescribed description under s.254 of the HA 2004.

The Issues

7. On 05 December 2025 directions were given in this matter by Judge Hamilton-Farey.

8. The issues for the Tribunal are as follows:

(1) Whether the Tribunal is satisfied beyond reasonable doubt that the landlord has committed the alleged offence.

(2) Whether, on the balance of probabilities, the landlord has a 'reasonable excuse' for having committed the relevant housing offence on which the financial penalty is based, such that they have a defence to it.

(3) Did the offence relate to housing that, at the time of the offence, was let to the tenant?

(4) Was an offence committed by the landlord in the period of 12 months ending with the date the application was made?

(5) What is the maximum amount that can be ordered under section 44(3) of the Act?

(6) Whether any conduct relied upon in the defence, even if not enough to establish a reasonable excuse, nevertheless justifies a reduction in the amount of the penalty to be imposed. What account must be taken of:

(a) The conduct of the landlord?
(b) The financial circumstances of the landlord?
(c) Whether the landlord has at any time been convicted of an offence shown above?
(d) The conduct of the tenant?
(e) Any other factors?

9. Prior to the hearing there were several applications and case management orders which resulted in the following relevant decisions:

a) Order of Judge Martyński dated 14 April 2026 dismissing the Applicant's application for the Respondent to produce unredacted bank statements, and the Respondent's application for the Applicant to provide proof of payment of rent outside of the period claimed for a Rent Repayment Order, are dismissed. Judge Martynski stated as follows:

> *"It is up to the parties to provide evidence to the tribunal to support the assertions made. The Respondent has produced a schedule of rent arrears. If the Applicant disputes this, it is open to her to provide evidence of payment of rent not included in the Respondent's schedule (if for some reason the Applicant is unable to do this, she should explain why). If the Applicant does not provide evidence to counter the Respondent's schedule, the tribunal may accept that schedule as evidence of arrears".*

b) Order of Judge Cooke in the Upper Tribunal (Lands Chamber) refusing permission to appeal Judge Martyński's order. Judge Cooke stated as follows:

> *"What underlies the FTT's decision is the fact that it is for the landlord to prove the rent arrears. The FTT is not saying that the landlord has already proved them. Whether the landlord has done so or not will be determined at the final hearing. What the FTT is refusing to do is to force the landlord to produce evidence in a particular format. It is for the landlord to choose their own evidence, which the FTT will then assess.*
>
> *It is, as the applicant rightly says, not for the applicant to prove that she is not in arrears. However, no doubt she has her own records of rental payments and it would be sensible for her to produce them since she is aware of the landlord's assertion that she is in arrears. Or she may choose instead simply to argue that the landlord's evidence of arrears is insufficient. These are matters for the final hearing in the FTT."*

c) Order of Judge Dutton of 18 March 2026, barring the Respondent from arguing that an offence had not been committed under the Housing and Planning Act 2016 and the Housing Act 2004 s72(1). Judge Dutton stated as follows:

> *"Having reviewed the Respondent's bundle it is clear to me that the Respondent accepts that at the relevant time the property did not have an HMO licence. Indeed, in the Conclusion it is said on the Respondent's behalf that "A fair and proportionate reduction in any penalty is therefore requested and that any award should be used to reduce the very significant rent arrears".*
>
> *However, the respondent is entitled to fully argue the question of quantum and other matters raised in the bundle produced on 6 March 2026 save that liability to make a potential rent repayment is not disputed.*
>
> *Therefore, for the reasons set out herein, the respondent is barred from seeking to argue that an offence under the Housing and Planning Act 2016 and the Housing Act 2004 s72(1) has not been committed."*

10. The Tribunal notes that on 09 September 2025 the Respondent conceded application LON/00AL/HMF/2025/0605 for a Rent Repayment Order brought by Mr Baptiste in respect of the same Property for being in control of or managing a HMO without a valid licence during the period of 06 April 2023

to 04 March 2024.

The hearing

11. The hearing was held in person on 25 August 2026. In attendance were the following people:

    - The Applicant: Ms Patricia Coelho

    - The Applicant's representative: Mr Soloman Baptiste

    - The Respondent: Mrs Susan Read accompanied by Moya Sherwood (managing agent) and her husband, Terry Sherwood

    - The Respondent's representative: Mr Des Taylor

12. The Tribunal had received a separate bundle from each party, copied to both parties. In addition, Mr Taylor had filed and served a skeleton argument along with some relevant authorities and Mr Soloman had filed and served a skeleton argument with three Freedom of Information Act documents which were not opposed by Mr Taylor.

13. The Tribunal reminded the parties that the standard and burden of proof lay on the Applicant to establish an offence beyond reasonable doubt, but any defence of reasonable excuse raised by the Respondent need only be proved on balance of probability.

14. The Tribunal took the opportunity to remind the Respondent that while she could not be prosecuted for any offences for which a financial penalty had been imposed, she could be prosecuted for other matters admitted by her or in respect of which the Tribunal made findings of fact; that she did not have to answer any question or make any statement which might tend to incriminate her, although the Tribunal might draw an adverse inference from her failure to answer.

15. Both parties gave evidence and were cross-examined. Mr Soloman and Mr Taylor made submissions on behalf of the tenant and the landlord respectively.

16. Notably, Mr Taylor admitted the licensing offence from 17 August 2023 to 15 July 2024. He said he did not seek to re-open liability. Mr Soloman claimed the licensing offence ran from 17 August 2023 to 17 July 2024.

Additional submissions after the hearing

17. On 27 August 2026, before judgment was handed down, Mr Taylor on behalf of the Respondent filed an Order 1 form asking the Tribunal to defer its determination and permit a short supplementary submission limited to the lawful commencement date of the licensing offence and the consequential rent repayment order period and quantum.

18. The Respondent contended that the Property was excluded from mandatory HMO licensing under The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 because it is a flat contained within a purpose-built block of flats with more than 3 flats. The Respondent contended that the Royal Borough of Greenwich's (RBG's) additional licensing designation did not come into force until 1 January 2024. The Respondent averred that, contrary to its position at the hearing on 25 August 2026, the licensing offence did not start until 01 January 2024.

19. The Tribunal noted the Respondent's previous admission but recognized that if the Property was not required to be licensed until 1 January 2024, no statutory offence could have been committed before that date, irrespective of any admissions or otherwise by the Respondent. Owing to the Respondent's previous position, no submissions had been made on that point at the hearing.

20. Accordingly, the Tribunal gave the parties permission to provide supplementary submissions along with supporting documentation, limited to the issue of when the relevant licencing offence started. Both parties provided supplementary submissions on this point.

21. The Tribunal reconvened on 15 October 2026 to consider those submissions but noted that neither party had provided evidence of RBG's additional licensing scheme(s) which were allegedly in place from 01 October 2017 to 30 September 2022 and from 01 January 2024 to 31 December 2028.

22. The Tribunal requested production of the additional licensing scheme(s) before reaching its decision. The Respondent provided these on 15 October 2026. The additional licensing scheme in place was/is as follows:

    a) 01 October 2017 – 30 September 2022: The Royal Borough of Greenwich Designation of an Area for Additional Licensing of Houses in Multiple Occupation 2017

    b) 01 January 2024 – 30 September 2028: The Royal Borough of Greenwich Designation of an Area for Additional Licensing of Houses in Multiple Occupation 2023

(1) Whether the Tribunal is satisfied beyond reasonable doubt that the landlord has committed the alleged offence?

Evidence and discussion

23. The Applicant contends that the licensing offence ran from 03 April 2023 until 05 June 2025. The Applicant's period of claim is from 17 August 2023 to 17 July 2024.

24. With respect to the alleged start date of the offence, the Applicant contends as follows:

> *The Respondent errs in relying on the 2018 Prescribed Description Order to claim a licensing exemption prior to 1 January 2024. The 2018 Order provides exemptions solely for Mandatory Licensing under Section 55 of the Act. As an established HMO, the property was continuously regulated under the Royal Borough of Greenwich's (RBG) devolved Additional Licensing scheme pursuant to Section 56.*
>
> *Documentary evidence establishes the Respondent had actual notice of this continuing Section 56 regulatory requirement 52 months prior to these proceedings. On 10 May 2022, the Respondent's managing agent ("Moya Sherwood") emailed the Respondent acknowledging the impending licence expiry. Concurrently, RBG Licensing Officer Tracy Witchlow provided written confirmation that the Additional Licensing scheme (active since 1 October 2017) was extending, stating the council would "extend current licenses for the full 5-year period".*
>
> *Having accepted this jurisdiction in 2022, the Respondent's current reliance on a Section 55 exemption is a retroactive misapplication of the law. As affirmed in LDC (Ferry Lane) GP3 Ltd v Garro and others [20241 UKUT 40 (LC) at Paragraph 12, properties exempt from mandatory licensing remain bound by active Section 56 schemes. Consequently, the strict liability offence commenced upon the prior licence's expiration on 2 April 2023.*

25. With respect to the end date, the Applicant contends that the Application was not "duly made" on 16 July 2024 because it lacked the requisite fire plans. In his submissions Mr Baptiste states as follows:

> *Section 63(3) and (5) of the Act, read concurrently with Schedule 2, Paragraph 2(1)(f) of SI 2006/373 mandate that an application is "duly made" only when accompanied by all prescribed particulars including fire precaution documents.*

26. Mr Baptiste argues that because RBG requested floor plans which were not included with the original application, the application was not "duly made". He relies on the following Freedom of Information Act disclosure from RBG:

a) 06 July 2026 (RBG responses in bold)

FOl request: FOI-7232
Thank you for your request dated 08/06/2026.
Our response is as follows:
I require the Authority to disclose the precise date upon which the initial application for a property licence, pursuant to the Housing Act 2004, was received by the Royal Borough of Greenwich in respect of the Subject Premises.
Ongoing Legal Proceedings regarding Flat 107 Dragoon Hall, SE18 4PW
The licence application was submitted on 05/06/2025.

b) 20 August 2026 (RBG responses in bold):

2. Administrative Determination of Ref 2409587: Please disclose the final administrative outcome of form reference 2409587 Specifically, please confirm whether this submission was:

- *Rejected or deemed invalid due to missing statutory documentation (e.g., absence of an EICR, Gas Safety Certificate, or compliant floor plans);*
  Additional floor plan requested as fire safety measures were missing - not rejected or deemed invalid
- *Formally refused due to property standards or fire safety deficiencies;*
  Not formally refused due to property standards or fire safety deficiencies
- *Withdrawn by the applicant; or*
  not withdrawn by applicant
- *Replaced, amended, or superseded by a subsequent application.*
  Not replaced, amended or superseded by a subsequent application

3. Statutory Notices (July 2024 - June 2025): Please confirm whether the Royal Borough of Greenwich issued or served any Notice of Intent to Refuse or Notice of Decision to Refuse an HMO licence, or issued any formal or informal deficiency/remedial action notices, in respect of Flat 107 Dragoon Hall between 16 Jully 2024 and 5 June 2025.
- a Schedule of Works under the HMO Management Regulations was sent to the landlord
- 20-08-2024 - Section 235 - requirement to produce documents

5. Timeline Attribution: Please provide any recorded explanation or administrative note detailing why the official submission date for the property's HMO licence is recorded by the Authority as 05/06/2025 (as

stated in FOl-7232), rather than 16 July 2024
Our records show the application was received on 16/07/2024, the receipt number with the initial fee was also received on 16/07/2024 (WPFM00|49250) for the initial fee.

We cannot see any notes on the application to suggest the application was received on 05/06/2025 but just a request for documentation on this date sent to the licence holder due to delays in processing applications withing the HMO team. This may be where the misunderstanding came from as the application was sitting in our backlog until this date (05/06/2025) where the admin team then started processing.

27. The Respondent admits the offence insofar as the Property was required to be licensed from 01 January 2024 onwards under RBG's Additional Licensing Scheme, but was not so licensed.

28. As to alleged start date of the offence as claimed in the Application, the Respondent contends that the Property was exempt from mandatory licensing pursuant to section 55 HA 2004 because the Property is a flat contained within a purpose-built block of flats with more than 3 flats. She contends that RBG's additional licensing scheme lapsed on 01 October 2022 and did not start again until 01 January 2024. She relies on the email from Tracy Witchlow of RBG dated 10 May 2022 which states:

You will be aware that the current Additional Licensing scheme operated by the Royal Borough of Greenwich is due to end on 1 October 2022. The Royal Borough is intending to extend the scheme for a further 5 year period subject to review and consultation. In order to facilitate this and ease the burden on landlords, the Royal Borough intends to extend current licenses for the full 5 year period from the original date of issue. This means, that should a further scheme be adopted, there will be no requirement for you to reapply for a license until the 5 year expiry date, saving on costs and administration.

If no further scheme is adopted a license will naturally end on the 1 October 2022 and Licence Holders will not need to do anything further.

29. Consequently, she argues that the licensing requirement (and hence the offence) with respect to the period of claim commenced on 01 January 2024.

30. As to the end date, the Respondent contends the offence ended when she applied for a licence on 16 July 2024. She does not accept that her application was "not duly made" or was deficient in any way. She says that RBG asked for floor plans as an additional document but that her application was not rejected

or deemed invalid. She relies on the response of RBG dated 20 August 2026 under the Freedom of Information Act 2000.

The Tribunal's decision on the alleged offence

31. The Tribunal finds that the RBG had two additional licensing schemes in place over the course of the Applicant's tenancy which required the licensing of all HMOs, including the Property. The first scheme ran from 01 October 2017 to 30 September 2022 and the second ran from 01 January 2024 to 30 September 2028.

32. Section 55 of HA 2004 provides as follows:

> ***Licensing of HMOs to which this Part applies***
> *(1) This Part provides for HMOs to be licensed by local housing authorities where—*
> *(a) they are HMOs to which this Part applies (see subsection (2)), and*
> *(b) they are required to be licensed under this Part (see section 61(1)).*
> *(2) This Part applies to the following HMOs in the case of each local housing authority—*
> *(a) any HMO in the authority's district which falls within any prescribed description of HMO, and*
> *(b) if an area is for the time being designated by the authority under section 56 as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in the designation.*

33. Paragraph 4 of The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 provides as follows:

> *"An HMO is of a prescribed description for the purpose of section 55(2)(a) of the Housing Act 2004 if it—*
> (a) *is occupied by five or more persons;*
> (b) *is occupied by persons living in two or more separate households; and*
> (c) *meets—*
> (i) *the standard test under section 254(2) of the Act;*
> (ii) *the self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or*
> (iii) *the converted building test under section 254(4) of the Act."*

34. The Tribunal finds that the Property was exempt from mandatory HMO licensing under section 55 (2) (a) HA 2004 because it is a flat contained within a purpose-built block of flats comprising more than three self-contained flats

pursuant to the Prescribed Description Order 2018. The Applicant does not deny this description or offer any alternative. He acknowledges that "*properties exempt from mandatory licensing remain bound by active Section 56 schemes"*. The Tribunal agrees with this analysis.

35. Accordingly, the Tribunal finds that the Property was not required to have a licence from 30 September 2022 to 30 December 2023, when no active additional licensing scheme was in place.

36. The Tribunal does not agree with the Applicant's contention that "*as an established HMO, the property was continuously regulated under the Royal Borough of Greenwich's (RBG) devolved Additional Licensing scheme pursuant to Section 56*". Tracy Witchlow's email suggests the opposite; either additional licences would be extended for a further 5 years (which they were not – but based on the email if they had been there would have been no breach and no steps to take) or the requirement to license would lapse. The Tribunal finds that the additional licensing scheme lapsed and was not re-instated until 01 January 2024, when the offence commenced.

37. The decision in *LDC (Ferry Lane) GP3 Ltd v Garro and others [2024] UKUT 40 (LC)* at Paragraph 12, referred to by the Applicant, is not relevant because RBG had no active section 56 HA 2004 scheme in place.

38. The Tribunal is satisfied beyond reasonable doubt that the property was required to have a licence from 01 January 2024 onwards under RBG's Additional Licensing Scheme, but was not licensed.

39. As to the end date of the offence, the Tribunal finds that the application for a licence was "duly made" on 16 July 2024. RBG accepted the application on that date, as demonstrated by the response of RBG dated 20 August 2026 under the Freedom of Information Act 2000. The Tribunal does not agree that the absence of floor plan alters the date of the application, given that the application was accepted by the RBG on that date and was not subsequently withdrawn, amended or refused.

40. The Tribunal is also satisfied that the Respondent was at all material times a person having control of the premises, being in receipt of the rack rent for the Applicants' occupation of the property.

41. Accordingly, the Tribunal is satisfied beyond reasonable doubt that the Respondent committed a licensing offence between 01 January 2024 and 15 July 2024.

(2) Whether, on the balance of probabilities, the landlord has a 'reasonable excuse' for having committed the relevant housing offence

on which the financial penalty is based, such that they have a defence to it.

42. No defence of reasonable excuse was advanced by the Respondent. The Tribunal considered the matters raised by the Respondent in mitigation and found that none amounted to a defence of reasonable excuse.

(3) The offence related to housing that, at the time of the offence, was let to the tenant

43. The Respondent admitted that the property was let to the Applicant during the period of claim. Accordingly, the Tribunal finds this matter satisfied beyond reasonable doubt.

(4) Was an offence committed by the landlord in the period of 12 months ending with the date the application was made?

44. As set out above, the offence was committed from 01 January 2024 until 15 July 2024. The Respondent applied for a licence under the RBG additional licensing scheme on 16 July 2024.. The Application was brought on 24 June 2025, which falls within 12 months of the end of the offence.

45. The Tribunal finds that the offence was committed by the landlord in the period of 12 months ending with the date the application was made.

(5) What is the maximum amount that can be ordered under section 44(3) of the 2016 Act?

46. By section 44(2) of the 2016 Act, the amount must relate to rent paid by the Applicant in respect of a period not exceeding 12 months during which the landlord was committing the offence.

47. In calculation the amount of rent paid, deductions must be made for payment for utilities and bills which benefited the tenant only. Pursuant to paragraph 20 of the decision in *Acheampong v Roman* [2022] UKUT 239 (summarized in *David v Martins and others* [2022] UKUT 249 (LC)), the approach the Tribunal should take at the final stage of the determination of the amount of any rent repayment order is 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 deductions from, or in addition to, that figure should be made in the light of the other factors set out in section 44(4).

48. With regard to step A, the Applicant paid six monthly rental payments during the offending period totalling £3,900 (£650 per month for 6 months) as follows:

18/01/24	£650	
19/02/24	£650	
18/03/24	£650	
18/04/24	£650	
17/05/24	£650	
17/06/24	£650	
~~18/07/24~~	~~£650~~	(not included; paid after licence application made)

49. **Accordingly, the Tribunal finds that the total rent paid during the relevant period was £3,900.**

50. As to step B, Mr Taylor submitted that after deductions, the maximum amount should be calculated as follows:

- Deduct £150 each month (total £900) because Ms Coelho had not paid the £150 rent increase up to £800 during the relevant period (£150 x 6);

- less £1,641.98 deductions for utility bills.

51. The Applicant had provided a schedule for each utility bill showing the pro rata monthly amount for the relevant period divided by 6 rooms. Mr Taylor submitted this was a globally recognized method of calculating the Applicant's

one sixth share of the bills. Applied to the relevant 6 months, it produces the following results:

a) Council Tax Apportionment: £150.67

b) Electricity Cost Apportionment: £739.47

c) Water Cost Apportionment: (01/01/24 - 15/07/24 =197 days) @ 1.9885 per day = £391.73, divided by 6 rooms = £65.29

TOTAL: £955.43

52. Mr Baptiste accepted that bills for council tax, electricity and water were included in the rent, and therefore deductible when determining the maximum amount. However, he opposed the Respondent's calculation method for the amount to be deducted because it was not precise. He argued that it was unfair to divide the utility bills equally between the 6 rooms when they may have individually different usage, e.g. for electricity. However, he was unable to offer an alternative method of calculating the amount to be deducted

53. The Tribunal does not agree with the Respondent that £150 per month should be deducted from the total rent paid to account for the £150 shortfall. That deduction would only be relevant if the rent calculation was based on the higher amount of £800 per month. £3,900 reflects the actual rent paid.

54. The Tribunal finds that the amount to be deducted from the total rent paid is £955.43. Given that the property does not have "per room" meters, the only rational way of calculating the utility bills per room is by the methodology adopted by the Respondent. The Applicant was unable to offer an alternative calculation method. The Tribunal therefore adopts the Respondent's calculations as set out (as amended based on the period of licensing breach) in paragraph 50 above.

55. **The Tribunal finds that the maximum amount which could be ordered is £2,944.57 (£3,900 - £955.43).**

(6) What account must be taken of the matters in s.44(4) or any other factors?

56. The Applicant had prepared a witness statement alleging the following conduct issues which she considered should be taken into account:

a) Removal of her heater, which has still not been returned, accompanied by a message from the landlord via her agent on 07 June 2023 that: "*you can*

have your heater back once you sign a new contract or disclaimer with fair usage explicitly detailed plus no personal heaters anywhere, or else you can have it back when you leave".

b) Disrepair including failures in heating, lighting, plumbing and ventilation. In particular the Applicant relied on a leak in January 2012 which she said remained unresolved until 2025, alleged lack of bathroom lighting for 2 years and an Environmental Health Inspection in January 2025.

c) Non-functional heating for 11 + days in December 2025.

d) Service of a notice to quit under s21 Housing Act 1988 in December 2023.

e) Failure to protect the deposit of £480 paid in 2011.

f) Attempt to "duress" the Applicant into signing a contract limiting the amount of electricity used and that the Applicant would be liable to pay any excess and/or electricity re-sale.

57. The Respondent had not prepared a statement but had filed several documents as part of her statement of case upon which she sought to rely. These included the following:

a) The email dated 10 May 2022 referred to above from The Royal Borough of Greenwich to Moya Sherwood about the licensing scheme.

b) A letter to the tenants of the Property dated 05 April 2023 advising them that following the Environmental Health Inspection, freestanding heating appliances are not permitted as they pose a serious fire health and safety risk. The letter asks for all such items to be removed by 21 April 2023 and that, if not, they will be removed in the room inspection on the same date.

c) A notice from the "Management Team" dated circa 12 July 2024 stating that the kitchen is in a totally unacceptable condition and requesting the tenants to clean and clear collectively. The notice says that if it is not done by the reinspection date the tenants will be charged £10 each.

d) A note from Moya Sherwood (managing agent) dated 14 January 2026 explaining the circumstances of the heating not working on 10 December 2025 and it being remedied on 12 December 2025.

e) A deposit protection certificate showing the deposit was protected from 06 January 2012.

f) A rent arrears schedule for Ms Coelho showing arrears of £21,850 (as amended) up to 17 August 2026.

g) A s13 rent increase notice dated 16 July 2023 proposing a rent increase to £800 per month from £650 per month from 17 August 2023.

58. Ms Coelho at first did not wish to give oral evidence but after a short adjournment agreed to confirm her witness statement and be cross-examined.

59. Ms Coelho said it was Mr Baptiste who had told her the property was unlicensed. She said her heater had been removed by the landlord/agent and it had not been returned. She said the landlord had no right to take her property and that the heating in her flat had not been working. As to her rent payments, she said she did not know when she last made a payment and she "would have to check". She said she had given evidence as to payments for the period of the offence and that beyond that it was the landlord's burden of proof. Ms Coelho confirmed that she was aware of the s13 notice served to increase the rent to £800 per month, but she didn't agree to the increase because the property was unlicensed. She said she did not know she would need to appeal the notice if she did not agree the new amount.

60. As to whether she had ever paid the increased amount of £800, Ms Coelho said: "I'll have to check". She said she could not check because she was in court. She admitted she had not paid the rent due on 17 August 2026. For all dates prior to that she said: "I'll have to check"; she said she did not know whether she had accrued over £21,000 of rent arrears. She said she had the means to pay that sum if it was deemed due and owing.

61. In respect of the deposit protection, Ms Coelho said she had not received any of the prescribed information when the deposit was given. As to the allegations about electricity re-sale Ms Coelho said: "I'll have to check".

62. Mr Taylor at first said that he did not intend to call any oral evidence but after a short adjournment decided to call Mrs Read to confirm the documents she had presented to the Tribunal. The Tribunal permitted questions on those documents but did not give permission for Mrs Read to give additional evidence about the tenant's conduct as she had not prepared a statement on such matters. The Tribunal considered it would be unfair to present new evidence on the day of the trial as the Applicant would be deprived of an opportunity to respond.

63. Mrs Read explained that she had understood the council's email about licensing dated 10 May 2022 to mean that she did not need to take further action. She confirmed that she understood now that her licence had expired and she had applied as soon as possible to renew it. She said she had applied

on 16 July 2024 to renew the license and that her application had been accepted.

64. As to the rent arrears, Mrs Read confirmed the rent arrears statement (as amended) and said that she had not received any rent since the payment of £650 on 18 July 2024. She confirmed the arrears of £21,850. She further confirmed the bank statements showing payments of £650 per month during the relevant period. Mrs Read confirmed the electricity, water and council tax apportionment calculations and the deposit protection certificate. She said her managing agent had set up the deposit protection account 14 years ago which remained in place and that she had not returned the deposit. She did not know if the prescribed information had been provided but observed that the Applicant had not brought a claim.

65. With respect to the alleged disrepair Mrs Read said that she dealt promptly with any repairs which were reported but that Ms Coelho had refused to provide an email address, refused to speak when contacted by telephone and was generally unresponsive. As to the removal of the heater, she said her agent had warned tenants about the removal, that the heater was dangerous and was a safety risk; she did not deny the removal of the heater. As to the cleaning of the communal parts, she said she considered the agent's actions not unreasonable because the tenants were not cleaning or taking out their rubbish. She said she was not aware that it was unlawful to issue fines under the Tenant Fees Act 2019.

66. In submissions, Mr Baptiste said the starting point was £7,150. He said the Respondent's arrears schedule/evidence on arrears was not reliable because it contained two errors, first, the date when payments stopped was expressed as either July 2024 and/or August 2024 and second, there was a missing £200 payment on 17 October 2022. He reiterated that it was for the landlord to prove the arrears. He submitted that the increase to £800 should not be applied as the property was unlicensed at that time, although he did not advance any legal or contractual basis for such assertion. He further submitted that Mrs Read's application for a licence was not duly made because (based on his Freedom of Information Act request) it appeared to have missing floor plans.

67. He submitted that the landlord had failed to clean the communal areas, which was their duty under Regulation 7 of the Management of Houses in Multiple Occupation (England) Regulations 2006/372 ("the 2006 Regulations"). He further submitted that the property had suffered mould, damp and no lighting in the bathroom for 2 years.

68. Mr Taylor submitted that the application for a HMO licence was duly made because it had been confirmed by the council as made on that date and not rejected or deemed invalid. He further submitted that the rent arrears were effectively admitted by the tenant as she was unable to advance a positive case

and had not denied them. He relied on the case of *Awad v Hooley* [2021] UKUT 55 (LC) for the proposition that substantial rent arrears and tenant conduct are relevant when determining the amount of a Rent Repayment Order. He relied on Regulation 10 of the 2006 Regulations as to the tenant's duty to comply with reasonable instructions as to fire safety, dispose of litter appropriately and not hinder or frustrate the manager in the performance of his duties.

69. As to quantum, Mr Taylor argued that the amount awarded should be nil, or if an award were to be made that it should take into account the tenant's arrears and offset any award against those arrears.

The Tribunal's decision on s.44(4) and other factors

Seriousness of the offence

70. In respect of the seriousness of the offence, compared to other types of offence for which a RRO may be made, the failure to procure a licence under an additional licensing scheme is at the lower end of the range of seriousness. More serious offences include unlawful eviction or harassment and breach of a banning order.

71. Within its own category of a licensing offence, the Tribunal finds that the offence is towards the lower end of the range of seriousness. The Tribunal finds that Mrs Read acted out of ignorance and not out of malice. She gave a straightforward account of her misunderstanding about licensing obligations and how she sought to resolve this as soon as she became aware of her mistake. The Tribunal is satisfied that Mrs Read made an application to renew her licence on 16 July 2024, which was duly accepted by the council. The licensing breach lasted just over 6 months. There is no evidence to suggest she is a professional landlord.

72. Given the length of the breach and considering the examples in paragraphs 48-56 of the decision in *Newell v Abbott* [2024] UKUT 181 (LC), the Tribunal considers that 40% of the maximum amount represents the appropriate starting point to reflect the seriousness of the offence.

73. **Accordingly, before consideration of the factors in section 44(4), the award is assessed at 40% of the maximum amount.**

Landlord conduct

74. The Tribunal finds that in general Mrs Read and/or her agent fixed problems (such as heating and repairs) when they were reported. The Tribunal notes that Ms Coelho alleges that there was no lighting in the bathroom for two years,

along with mould, damp and leaks from 2012-2025. However, Ms Coelho did not bring a claim for disrepair and there is no documentation to support this allegation. The Environmental Health records show that mould and damp issues were raised on 24 January 2025 and resolved on 24 February 2025, on which date the Environmental Health Officer states: "*There is no disrepair that would negatively impact the health of the occupants*". The heating record shows that the heating breakdown on 10 December 2025 was due to the disappearance of the universal gateway (the device which operates the heating panels in the flat) which was replaced two days later. The Tribunal therefore finds there is insufficient evidence to establish disrepair or other serious environmental health issue which could be given weight or impact on the amount ordered.

75. The Tribunal accepts Mrs Read's account, supported by deposit certificate, that the deposit was protected at the start of the tenancy and has not been returned. The Tribunal is not satisfied that the evidence supports the Applicant's claim of electricity resale. The Tribunal further finds that these matters, including the service of a s21 Notice are not conduct which should be given weight or impact the amount ordered.

76. There are two matters of landlord conduct which the Tribunal finds do impact the amount ordered. These are a) the removal of the heater and accompanying message, and b) the threat of fees to be imposed for cleaning of the communal area. As observed by Environmental Health Officer on 24 January 2025, it is the landlord's responsibility to ensure that common parts are kept clean and tidy pursuant to Regulation 7 of the 2006 Regulations. The Tribunal finds that the way in which these matters were managed by the landlord, via her agent, were oppressive. The Tribunal notes that the landlord did not seek to distance herself from these actions by suggesting the agent was responsible. The Tribunal finds that the landlord and/or her agent should have gone through the proper legal channels to deal with alleged breaches of tenancy and breaches of the Regulation 10 rather than threaten fees and confiscate items by entering without permission.

77. **The Tribunal determines that an upward award of 10% is appropriate to take into account the factors identified at paragraph 76 above. This takes the award up to 50% of the maximum.**

<u>The Landlord's financial circumstances</u>

78. The Tribunal finds that Mrs Read's financial circumstances do not have any impact on the amount ordered. Although Mrs Read said in her oral evidence that an order would put her in financial difficulty, she did not provide any financial evidence in support of that contention.

<u>Whether the landlord has at any time been convicted of a relevant offence</u>

79. Neither party submitted that the landlord had been convicted of an offence under Chapter 4 of the Housing and Planning Act 2016. The Tribunal notes that a previous rent repayment order relating to the same property was made by consent. Because that order was made by consent, the Tribunal does not treat it as authority for the proposition that a licensing offence was committed throughout the whole of the period covered by that application.

Tenant conduct

80. The Tribunal found Ms Coelho evasive in her oral evidence with respect to her rent arrears; she did not give straightforward answers. She did not deny the arrears but refused to confirm them. The Tribunal was not persuaded that she did not know or "would have to check" what rent she had paid or whether she had arrears. Ms Coelho was given ample opportunity in these proceedings to check her arrears or provide statements showing any payments made but declined to do so. She did not heed the orders of Judge Martyński and Judge Cooke which said that it would be sensible for her to produce her own records of rental payments and that if she did not, the tribunal may accept that schedule as evidence of arrears. Instead, Ms Coelho chose to rely on the landlord's burden of proof.

81. The Tribunal is satisfied that the landlord's schedule of arrears (as amended) is accurate. The two issues identified by Mr Baptise were corrected in Mr Taylor's skeleton argument and Mrs Read confirmed the current arrears figure in her oral evidence. Based on the documentary and oral evidence, the Tribunal finds that the Respondent has established on the balance of probabilities that Ms Coelho has not paid any rent for over two years, since July 2024, resulting in arrears of £21,850 on 17 August 2026.

82. The Tribunal accepts that the majority of those arrears arose after the licensing offence ended on 15 July 2024. However, section 44(4)(a) requires the Tribunal to take into account "the conduct of the landlord and the tenant". The statutory wording is broad and is not limited to conduct occurring during the precise period in respect of which the offence was committed or rent is recoverable. The Tribunal therefore considers that the Applicant's conduct in relation to the tenancy as a whole remains relevant to the exercise of its discretion.

83. The Tribunal bears in mind that a rent repayment order is not a mechanism for enforcing rent arrears, nor can any award be set off against arrears in these proceedings. The Tribunal has not reduced the award simply because money remains owed to the Respondent. Rather, the Tribunal considers the Applicant's sustained failure to pay rent over a period exceeding two years to be relevant evidence of tenant conduct for the purposes of section 44(4)(a), consistent with the observations of the Upper Tribunal in *Awad v Hooley* at

paragraph 36, *Yi v Hobbs* & Alaike [2024] UKUT 155 (LC) at paragraph 23 and *Kowalek v Hassanein Ltd* (CA) [2022] 1 WLR.

84. The Tribunal considers that the tenant's failure to pay rent for more than two years, resulting in arrears substantially exceeding the maximum rent repayment order available in these proceedings, is an exceptional factor warranting a substantial reduction.

85. The Tribunal accepts that the Applicant's conduct should not extinguish the Respondent's liability for the licensing offence. However, taking account of the scale of the arrears, their duration, the Applicant's failure to engage candidly with questions concerning payment of rent, and the Tribunal's finding that the arrears have been established on the evidence, the Tribunal considers the Applicant's conduct warrants a reduction of 40 percentage points.

86. **Accordingly, the Tribunal finds that the appropriate rent repayment order is 10% of the maximum amount (40% + 10% - 40% = 10%)**.

Conclusion

87. The Tribunal determines that it shall exercise its discretion to make a rent repayment order in terms that the Respondent shall pay to the Applicant the total of £294.46, calculated as follows:

    a) Maximum amount under section 44(3): £2,944.57

    b) Seriousness of the offence: 40% of the maximum amount.

    c) Landlord conduct: increase of 10 percentage points, resulting in 50% of the maximum amount.

    d) Tenant conduct: reduction of 40 percentage points, resulting in 10% of the maximum amount.

    e) Accordingly, the appropriate rent repayment order is 10% of £2,944.57, namely **£294.46**.

88. This is a statutory debt owed to the tenant. The Tribunal has no power to offset this sum against rent arrears. The Respondent will need to take such action as she sees fit to recover the rent arrears due.

Costs application

89. The Applicant has applied under paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for an order that the Respondent reimburse the application fee of £114 and the hearing fee of £227, giving a total of £341.

90. As the Applicant has been successful in this claim, the Tribunal is satisfied that it is appropriate in the circumstances to order the Respondent to reimburse the application and hearing fees of £341. This sum should be paid within 35 days of receipt of the decision.

Judge: J Moate

Date: 27 October 2026

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. 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.

Appendix 1

Housing and Planning Act 2016 Section 40

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

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to – (a) repay an amount of rent paid by a tenant …

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

Act	Section	General description of offence
1) Criminal Law Act 1977	Section 6 (1)	Violence for securing entry
2) Protection from Eviction Act 1977	Section 1 (2), (3) or (3A)	Eviction or harassment of occupiers
3) Housing Act 2004	Section 30 (1)	Failure to comply with improvement notice
4)	Section 32 (1)	Failure to comply with prohibition order etc
5)	Section 72 (1)	Control or management of unlicensed HMO
6)	Section 95 (1)	Control of management of an unlicensed house
7) This Act	Section 21	Breach of a banning order

Section 41

(1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.

(2) A tenant may apply for a rent repayment order only if – (a) the offence relates to housing that, at the time of the offence, was let to the tenant, and (b) the offence was committed in the period of 12 months ending with the day on which the application is made.

Section 43

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

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

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

Section 44

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

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

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

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

(a) the rent paid in respect of that period, less

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

(4) In determining the amount the tribunal must, in particular, take into account—

(a) the conduct of the landlord and the tenant,

(b) the financial circumstances of the landlord, and

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

Housing Act 2004

Section 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.

(2) **...**

(3) **...**

(4) 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

(b) an application for a licence had been duly made in respect of the house under section 63, and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or

(3) 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 permitting the person to occupy the house, or

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

254 Meaning of "house in multiple occupation"

(1) For the purposes of this Act a building or a part of a building is a "house in multiple occupation" if– (a) it meets the conditions in subsection (2) ("the standard test"); (b) it meets the conditions in subsection (3) ("the self-contained flat test"); (c) it meets the conditions in subsection (4) ("the converted building test"); (d) an HMO declaration is in force in respect of it under section 255; or (e) it is a converted block of flats to which section 257 applies.

(2) A building or a part of a building meets the standard test if–

(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;

(b) the living accommodation is occupied by persons who do not form a single household (see section 258);

(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);

(d) their occupation of the living accommodation constitutes the only use of that accommodation;

(e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and (f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

(3) A part of a building meets the self-contained flat test if—

(a) it consists of a self-contained flat; and

(b) paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).

(4) A building or a part of a building meets the converted building test if—

(a) it is a converted building;

(b) it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);

(c) the living accommodation is occupied by persons who do not form a single household (see section 258);

(d) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);

(e) their occupation of the living accommodation constitutes the only use of that accommodation; and

(f) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.

(8) In this section–

"basic amenities" means– (a) a toilet, (b)personal washing facilities, or (c) cooking facilities;

"converted building" means a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed;

"enactment" includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30);

"self-contained flat" means a separate set of premises (whether or not on the same floor)– (a) which forms part of a building; (b) either the whole or a material part of which lies above or below some other part of the building; and (c) in which all three basic amenities are available for the exclusive use of its occupants.

S.263 Meaning of "person having control" and "person managing" etc.

(2) In this Act *"person having control"* , in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of

another person), or who would so receive it if the premises were let at a rack-rent.

(3) In subsection (1) *"rack-rent" means* a rent which is not less than 2-thirds of the full net annual value of the premises.

(4) In this Act *"person managing" means*, in relation to premises, the person who, being an owner or lessee of the premises–

(a) receives (whether directly or through an agent or trustee) rents or other payments from–

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.

(5) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).

(6) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018

"4. An HMO is of a prescribed description for the purpose of section 55(2)(a) of the [Housing] Act [2004] if it—

(a) is occupied by five or more persons;

(b) is occupied by persons living in two or more separate households; and

(c) meets—

(i) the standard test under section 254(2) of the Act;

(ii) the self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or

(iii) the converted building test under section 254(4) of the Act."