FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/24UP/HMF/2020/0011 & 0016
Property	:	72 Stuart Crescent, Winchester SO23 9LJ
Applicants in 0011	:	Bethan Stevens, Eleanor Scalley, Sam Loyd-Bisley, Giles Pickett, Michael Antony, Eloise Pepper & Elliot Phillips
Applicants in 0016	:	Alisha Macleod, Alice Kyte, Gabriella Ebbs, Lewis Bates, Megan Humphrey, William Gillard and James Leadbetter
Representative	:	Mr Nathan Mountney Litigation Solicitor Winchester City Council
Respondent	:	Mr Gurjiven Singh Chhokran
Representative	:	Mr Ekwall Tiwana of Counsel
Type of Application	:	**Application for a rent repayment order by tenant** Sections 40, 41, 43 & 44 of the Housing and Planning Act 2016
Tribunal Member(s)	:	Judge Tildesley OBE Mrs J Coupe FRICS Mr P Gammon MBE
Date and venue of the Hearing	:	7 August 2020 Havant Justice Centre Video Hearing on Cloud Video Platform
Date of Decision	:	17 September 2020

DECISION

Summary of Decision

1. The Tribunal orders the Respondent to pay the first set of Applicants the sum of £18,000.00 (£2,571.43 for each Applicant) by way of a rent repayment order and to reimburse the Applicants with the application and share of hearing fee in the sum of £200.00 within 28 days from the date of this decision.

2. The Tribunal orders the Respondent to pay the second set of Applicants the sum of £10,000.00 (£1,428.57 for each Applicant) by way of a rent repayment order and to reimburse the Applicants with the application and share of hearing fee in the sum of £200.00 within 28 days from the date of this decision.

Background

3. This decision involves two separate Applications for rent repayments orders (RRO) for successive periods involving the same landlord and the same property.

4. On 26 March 2020 the first set of Applicants applied under section 41 of the Housing and Planning Act 2016 (2016 Act) for a RRO in the sum of £30,330.00 plus reimbursement of application and hearing fees. The Applicants were required to pay rent of £3,370.00 per calendar month and the amount claimed represented a period of nine months from 1 October 2018 to 30 June 2019.

5. On 5 June 2020 the second set of Applicants applied under section 41 of the Housing and Planning Act 2016 (2016 Act) for a RRO in the sum of £16,960.79 plus reimbursement of application and hearing fees. The Applicants were required to pay rent of £3,370.00 per calendar month and the amount claimed represented a period of five months and one day from 1 July 2019 to 2 December 2019.

6. Both set of Applicants occupied the property under Assured Shorthold Tenancy agreements dated respectively 26 July 2018 (period 1 July 2018 to 30 June 2019) and 1 July 2019 (period 1 July 2019 to 30 June 2020). The Respondent was named as the landlord on the tenancy agreements. Dybles Independent Estate Agents of Winchester arranged the tenancies as letting agents but did not manage the property. Under the tenancy agreements both sets of Applicants were required to pay the Respondent rent of £3,370.00 per calendar month in advance commencing the 1st of each month.

7. The accommodation was a former three bedroom Council house used as a four bedroom HMO for students until 2017 when purchased by the Respondent who extended the ground floor to create a seven bedroom HMO. The property was arranged over two floors with four bedrooms, a lounge diner and shower/toilet on the ground floor and three bedrooms and bathroom on the first floor. There was a garden to the rear.

The Dispute

8. Both sets of Applicants alleged that the Respondent had committed an offence of controlling or managing an HMO which was not licensed for the period of 1 October 2018 to 2 December 2019 contrary to section 72(1) of the Housing Act 2004.

9. There was no dispute that the property was an HMO which required a licence from the 1 October 2018 when the new Regulations came into force.

10. Mr John Easey, Senior Private Sector Housing Technician for Winchester City Council, confirmed that there was no HMO licence in force for the property from 1 October 2018 until 6 February 2020. Mr Easey also stated that the Respondent submitted a valid application for a HMO licence on 2 December 2019.

11. The Respondent contended that he had submitted a valid application for a HMO licence in September 2018 and that the City Council had lost the application. The Respondent pointed out that at the time he said he made the Application the City Council was operating a paper based process and that the Council had warned on the website that there was a considerable backlog in dealing with applications. The Respondent stated that he did not chase the City Council about the Application because the Council advised that he could continue to let the property as an HMO until the licence was processed. The Respondent said that he left it in good faith with the City Council to revert back him once the Application had been considered.

12. Mr Easey stated that despite an intensive investigation he could not locate an HMO application for the property. Mr Easey decided to invite the Respondent for interview under caution which was held on 4 December 2019 at which the City Council officers gave the Respondent various opportunities to substantiate his assertion that he had applied for an HMO licence. The City Council was not satisfied with the Respondent's explanation and imposed a financial penalty of £1,000.00 for the offence of having no HMO licence. The Respondent paid the penalty and did not appeal the decision. The Respondent contended that his acceptance of payment of the £1,000 financial did not amount to an admission that he had committed the offence.

13. The dispute between the parties focussed on whether the Respondent had a defence to the offence of having no HMO licence. If the Tribunal finds that the Respondent had a defence that would conclude the matter in the Respondent's favour.

14. If the Tribunal does not find in the Respondent's favour, it would be necessary for the Tribunal to determine the quantum of the RRO. On the question of quantum the Respondent argued that he was a responsible landlord who provided a good standard of

accommodation and that there were serious question marks over the Applicants' conduct, and in such circumstances the amount of any order should be kept to the minimum. Both sets of Applicants denied that their conduct was to blame for the Respondent's offence. The Applicants pointed out that if the Tribunal found that the Respondent had committed the offence of having no HMO licence that should weigh heavily in determining the appropriate amount of the Order.

The Proceedings

15. On 2 April 2020 Mr Banfield issued directions for CHI/24UP/HMF/2020/0011 to be determined on the papers because at the time the UK was in lockdown in response to the Pandemic.

16. On 3 July 2020 Judge Tildesley OBE reviewed the case following receipt of the determination bundle and decided that it was not suitable to be heard on the papers and that it would be heard together with CHI/24UP/HMF/2020/0016. The latter case involved an application for a RRO in relation to the same property and the same landlord but for a subsequent tenancy by a different set of tenants. Judge Tildesley directed that both cases would be heard remotely by video on 7 August 2020.

17. On 3 July 2020 Judge Tildesley issued directions in the second case ending 2020/0016 which required the parties to file and exchange statements of case and witness statements by 21 July 2020. The parties were given the right to make a concise reply by 30 July 2020. Finally the parties were advised not to include documents already supplied with the determination bundle for the first case ending 2020/0011.

18. On 28 July 2020 Respondent's Counsel applied for disclosure of the following matters:

    a) Copies of all letters, emails, texts or other written communication along with notes of any telephone calls between John Easey and any other Council officers involved in this case including David Crowhurst and Kevin Reed and any of the applicant students. This includes the first contact with both groups of students.
    b) Record/notes taken of the property inspection carried out on the 21st November 2019 (without section 239 notice) prior to PACE interview.
    c) Record/notes of the property inspection on the 16th December 2019.
    d) If not disclosed in the response to a), then clarification of the basis on which Winchester City Council are instructed by the Applicants to represent them in this matter given that Winchester City Council are also the statutory local housing authority responsible for enforcing the provisions of the Housing Act 2004 and Housing and Planning Act 2016 relevant to houses in multiple occupation.

19. The grounds for the disclosure were that two pieces of evidence had come to light which Counsel said raised serious concerns about the role of the City Council in these proceedings, and that effectively the City Council had a conflict of interest in representing the Applicants in these proceedings.

20. On the same day Judge Tildesley refused the application for disclosure because the documents were not relevant to the issues to be determined by the Tribunal. Judge Tildesley also noted that the Respondent was in breach of directions in failing to exchange his statement of case in respect of the second Application by 21 July 2020.

21. On 29 July 2020 Counsel informed the Tribunal that the parties had agreed an extension of time for exchanging statements of case which did not affect the hearing date. On learning this Judge Tildesley withdrew his finding that the Respondent was in breach of directions but confirmed his decision refusing disclosure.

22. On 6 August 2020 Counsel informed the Tribunal that the Respondent would be calling Mrs Anisha Kaur, the Respondent's wife, as a witness and producing an additional piece of documentation, namely, the inventory list for the second set of Applicants. The City Council objected to the Respondent's proposal to call Mrs Anisha Kaur and the admission of the inventory.

23. At the hearing on 7 August 2020 Mr Nathan Mountney solicitor of Winchester City Council, represented both sets of Applicants. Mr Elliot Philips attended on behalf of the first set of Applicants, and spoke to his witness statement [A147-152]. Mr James Leadbetter attended on behalf of the second set of Applicants, and spoke to his witness statement [B56-58]. The Applicants relied on the evidence of Mr John Easey, Senior Private Sector Housing Technician for the City Council, [B1-B7] and Mr David Crowhurst, Private Sector Housing Technician for the City Council [B62-64] who were also in attendance and were cross examined by Counsel for the Respondent.

24. Mr Eckwall Tiwana of Counsel represented the Respondent. The Respondent appeared in person together with Mrs Anisha Kaur, the Respondent's wife.

25. The City Council had prepared a bundle of documents for each set of Applicants. The Respondent's case for the first set of Applicants was included in the City Council's document bundle. The Respondent supplied a separate case for the second set of Applicants.

26. The Tribunal heard the evidence for the two Applications separately but the Tribunal did not rehear the evidence given in the first Application which was common to both Applications. The

parties were permitted closing addresses with the Respondent speaking last.

27. During the hearing the Tribunal dealt with the Respondent's application to permit Mrs Anisha Kaur to give evidence and to receive the inventory in respect of the second set of Applicants. After receiving representations the Tribunal allowed Mrs Anisha Kaur to give evidence but refused the application to admit the inventory.

Consideration

28. The Housing Act 2004 introduced RROs as an additional measure to penalise landlords managing or letting unlicensed properties. Under the 2016 Act Parliament extended the powers to make RRO's to a wider range of "housing offences". The rationale for the expansion was that Government wished to support good landlords who provided decent well maintained homes but to crack down on a small number of rogue or criminal landlords who knowingly rent out unsafe and substandard accommodation.

29. Sections 40 to 47 of the 2016 Act sets out the matters that the Tribunal is required to consider before making a RRO.

30. The Tribunal is satisfied that both sets of Applicants met the requirements for making an application under section 41 of the 2016 Act. Both sets of Applicants alleged that the Respondent had committed an offence of control or management of an HMO without a licence contrary to section 72(1) of the Housing Act 2004 (2004 Act) whilst the property was let to them. An offence under section 72(1) falls within the description of offences for which a RRO can be made under section 40 of the 2016 Act.

31. In respect of the first set of Applicants the alleged offence was committed from 1 October 2018 to 30 June 2019 which was in the period of 12 months ending on the day in which the Applicants made their application on 26 March 2020.

32. In respect of the second set of Applicants the alleged offence was committed from 1 July 2019 to 2 December 2019. which was in the period of 12 months ending on the day in which the Applicants made their application on 5 June 2020.

33. The Tribunal turns now to those issues that it must be satisfied about before making a RRO.

Has the Respondent committed a specified offence?

34. The Tribunal must first be satisfied beyond reasonable doubt that the Respondent has committed one or more of seven specified offences. The relevant offence in this case is under section 72(1) of

the 2004 Act, "control or management of an HMO without a licence".

35. The offence under section 72(1) is one of strict liability. In order to prove the offence the Applicants are required to establish beyond reasonable doubt that (1) the Respondent had control of or managed the HMO as defined in section 263 of the 2004 Act; (2) that the property was an HMO that required to be licensed; and (3) the property was not so licensed (*Mohamed & Lahrie v Waltham Crescent* [2020] EWHC 1083).

36. Under section 72 (4) of the 2004 Act in proceedings against a person for an offence under section 72(1) of the 2004 Act it is a defence that at the material time an application for a licence has been duly made in respect of the house under section 63 of the 2004 Act and that the application was still effective.

37. Under section 72(5) of the 2004 Act in proceedings against a person for an offence under section 72(1) of the 2004 Act it is a defence that the person had a reasonable excuse.

38. The Upper Tribunal, *I R Management Services Limited v Salford Council [2020] UKUT 81(LC)* and *Nicholas Sutton (1) Faiths' Lane Apartments Limited (in administration) (2) v Norwich City Council [2020] UKUT 90(LC)* considered the burden of proof for the statutory defences in the context of financial penalties under section 249A of the Housing Act. The principles established by the Upper Tribunal have equal application where those defences are relied upon in RRO applications.

39. The Tribunal applies the following principles from the Upper Tribunal decisions which apply to this case, and where appropriate have been adapted to reflect the citation of the alleged offence relied upon by the Applicants:

a) The proper construction of section 72(1) of the 2004 Act is clear. There is no justification for ignoring the separation of the elements of the offence and the defences of valid application and reasonable excuse.

b) The offence of failing to comply with section 72(1) of the 2004 Act is one of strict liability subject only to the statutory defences of valid application and reasonable excuse.

c) The elements of the offence are set out comprehensively in section 72(1) of the 2004 Act. Those elements do not refer to the defences which, therefore, do not form an ingredient of the offence, and are not matters which must be established by the Applicant.

d) The burden of proving the statutory defences fall on the Respondent, and that it need only be established on the balance of probabilities.

e) The burden does not place excessive difficulties on the Respondent to establish the defences.

f) Whether an excuse is reasonable or not is an objective question for the Tribunal to decide.

40. The evidence on whether an offence had been committed was common to both applications.

41. The Tribunal finds the following in relation to the elements that constitute the offence of having no HMO licence contrary to section 72(1) of the 2004 Act:

a) The property was let for rent to seven students from 1 July 2018 to 30 June 2020 on two separate assured shorthold tenancies. Each student had their own living accommodation but shared basic amenities of kitchen, bathroom and lounge. The house met the standard test for an HMO as defined by section 254 of the 2004 Act.

b) As the property fulfilled the "standard test" and was occupied by five or more persons living in two or more separate households it met from 1 October 2018 the prescribed description of HMO for the purposes of licensing under section 55(2)(a) the 2004 Act.

c) There was no licence in force for the property from 1 October 2018 to 6 February 2020.

d) The Respondent submitted a valid application for a licence on 2 December 2019.

e) The Respondent owned the freehold of the property and received the rents. The Respondent met the meaning of person having control or managing an HMO as defined by section 263 of the 2004 Act.

42. The Tribunal is satisfied beyond reasonable doubt that the elements of the Offence under section 72(1) of the 2004 Act were made out. The Respondent did not dispute the facts making up the elements of the offence. The issue was whether the Respondent could avail himself of one of the statutory defences.

43. The Respondent said that he submitted an application for licence by post to the City Council in September 2018. The Respondent stated that the City Council via its website advised landlords that there was a substantial backlog of applications and that landlords were able to operate an HMO whilst a licence was pending. The

Respondent said that he had contacted the City Council in January 2019 asking about the application and was told it was being processed. The Respondent asserted that he in good faith left the application in the hands of the City Council to revert back to him once the licence had been processed.

44. To support his proposition regarding the backlog the Respondent relied on The City Council's Public Register for HMOs which showed only five Licences which had a "valid from" dates between October to December 2018 despite the legislation coming into force in October 2018. According to the Respondent, this was followed by an increase in the number of licences with 'valid from' dates in the first half of 2019 with the volume continuing throughout the remainder of the year. The Respondent assumed that his application for a licence must have been misplaced by the City Council whilst it was coping with the backlog.

45. The Respondent advised that on 18 June 2019 his letting agent, Dybles, had contacted Winchester City Council regarding the registration of the property as an HMO. An "A Strandberg" of the City Council responded stating that "s/he now had a chance to assess the situation regarding the HMO at 72 Stuart Crescent. s/he can confirm that the property is in fact registered HMO"[1]. The Respondent said that following this email he believed that no further action was required on the licence. The Respondent asserted that his letting agent would not have let the property out to tenants without being satisfied that there was licence in place.

46. The Respondent said he was alarmed to receive a letter from the City Council on 27 November 2019 informing him there was no record of an HMO licence for the property, and requiring him to attend for interview under caution on 4 December 2019. At first the Respondent was confused and contacted the City Council and was told that he did not have an HMO licence for the property. In the light of this information the Respondent submitted an application and fee on 2 December 2019. The Respondent stated that he fully co-operated with City Council regarding the inspection of the property, and that only two minor matters required completion for the issue of the licence which was granted on 6 February 2020.

47. The Respondent pointed out that he voluntarily attended the interview under caution on 4 December 2019 with Mr Easey and Mr Crowhurst of the City Council. The Respondent found the interview an extremely exhaustive process and that as a result he lost his chain of thought and forgot to emphasise key points in his favour.

48. Respondent's Counsel submitted that there were serious flaws in the way in which the City Council in its role as a local housing

[1] The email exhibited at [A72] from A Strandberg only showed the first two lines of his/her response.

authority investigated the alleged offence and carried out the interview under caution. Counsel alleged that there had been (1) breaches of the relevant PACE code; (2) that the Council had failed to disclose all materials when asked by the Respondent to explain the consequences of accepting the financial penalty; (3) there was clear evidence of predetermination by the Council officer concerned and; (4) that the Respondent had been induced into accepting the financial penalty by the officer's statements in interview.

49. On 11 December 2019 the Council sent the Respondent a Notice of Intent to issue a Financial Penalty which was re-issued on 16 December due to errors in the original Notice. The Respondent made representations in respect of the Notice of Intent. On 15 January 2020 the Council issued a financial penalty in the sum of £1,000. The Respondent said he was extremely disheartened that a penalty had been imposed particularly in view of his full-co-operation and provision of core evidence.

50. The Respondent decided not to appeal the decision to impose a financial penalty for a variety of reasons, which included that (1) he had already provided compelling evidence that the property was in fact a registered HMO; (2) that during interview he was told that if he paid the penalty it would discharge the offence; (3) the City Council advised that the penalty was at the low end and that if he appealed the Tribunal might increase it; (4) he did not want any further appeals to delay the issue of the licence; (5) he did not want to prolong the ordeal.

51. The Respondent insisted that he was misled during the interview into paying the penalty and had he been better informed at the time he would never have paid the penalty.

52. Mrs Anisha Kaur gave evidence on behalf of her husband. In her witness statement Mrs Kaur confirmed that the Respondent applied for an HMO licence for the property prior to the legislation coming into force. Mrs Kaur pointed out that there was no reason for the Respondent not to apply for a licence because the property was compliant with requirements and had always been in great condition with no safety defects. Mrs Kaur was proud of her husband in maintaining his properties to an excellent condition which was probably why in her view tenants signed up to the tenancies immediately after viewing the properties with the letting agent.

53. Mr Easey explained in evidence that in November 2019 he conducted a thorough search of all HMO applications the City Council had received in the preceding 18 months, and in particular for properties affected by the change in the definition of a licensable HMO which took effect on 1st October 2018. Mr Easey found no application had been received in respect of the property. Mr Easey also stated that the Council had received no emails from

the Respondent or Dybles, his letting agent, with regard to the property and HMO licencing and that there was no record of any telephone contact during this period. The last record on the Council files for the property dated from November 2017 and involved a complaint of damp from one of the tenants at that time.

54. Mr Easey had a telephone conversation with Dybles the letting agent who confirmed that it acted as find-a-tenant agents for the Respondent both for the tenancy starting July 2018 (Philips cohort) and for the tenancy staring July 2019 (Leadbetter cohort). The letting agents also confirmed that they had contacted the Respondent in May 2019 to ask for sight of his HMO licence prior to signing up the Leadbetter cohort, but that this was not provided by the Respondent. Mr Easey produced an email dated 18 June 2019 from Dybles to the Respondent stating that it had not heard from him about the licensing of the property. This email was a reminder of an earlier email sent to the Respondent on 24 May 2019 on the same subject.

55. During his investigations Mr Easey discovered that the Respondent had not applied for planning permission in respect of the conversion to the property adding two ground floor extensions to be built which changed the property from a four bedroom HMO to a seven bedroom HMO. Mr Easey also ascertained that the Respondent had declared to the City Council that the property was occupied by six students not seven for the purposes of Council Tax.

56. On 4 December 2019 Mr Easey together with Mr Crowhurst interviewed the Respondent under caution. The Respondent volunteered that he owned two other HMOs in Southampton which required a licence. The Respondent stated that he had obtained an on line HMO application for the property and posted it second class in October 2018. The Respondent did not have any proof of postage for the document. The Respondent stated that he enclosed a cheque for the fee with the application. The Respondent could not, however, remember the amount that he paid because it was nearly a year ago since he made the application. The Respondent stated that he had his cheque book with him and he could show the stub indicating that a payment had been made to the City Council. The Respondent showed Mr Easey and Mr Crowhurst a stub dated 25 September 2018 to payee Winchester HMO Application Fee but no amount was recorded. The Respondent refused to allow Mr Easey and Mr Crowhurst to examine the cheque book to see details of the stubs either side of the stub stating a payment had been made to the City Council. The Respondent said that the information on the stubs was personal which was why he was not prepared to show them to the City Council.

57. The Respondent did not produce in interview any bank statements to substantiate the payment of the application fee. The Respondent,

however, said that he checked his account and he could see that the cheque for the HMO application fee had not been cashed.

58. The Respondent stated in interview that he had contacted the City Council in January 2019 about his licence application because he had not heard anything about it. The Respondent said that he was told by a City Council official that there was a delay with the applications because of the backlog. The Respondent could not recall the name of the person that he spoke to about the HMO application. The Respondent admitted that he made no further enquiries, and that it did not cross his mind that a cheque would not be honoured by the bank after 6 months which meant that the City Council could not have processed the application after March 2019 if it had been sent in September 2018. The Respondent was unable to give the number of the mobile that he used to contact the City Council in January 2019

59. Following the interview Mr Easey, Mr Crowhurst and Mr Reed, Team Leader, considered the answers that the Respondent had given in evidence and concluded that there was no evidence to support his claim that the Respondent had applied in September/October 2018 for an HMO Licence.

60. Their conclusion was based on three main elements:

a) The Respondent had been unwilling to allow the Council officers to inspect the cheque stubs either side of the one he showed, which might have provided evidence as to the date the cheque stub was completed.

b) The Respondent had been unable and unwilling to provide the Council officers with bank statements to show that this cheque had not been cashed.

c) The Respondent was unable or unwilling to provide the Council officers with the phone number from which he claimed to have called the City Council in early 2019 from which the officers could check the City Council's incoming call records. The officers noted that the Respondent had claimed that the call was made from a different phone number to that on both the tenancy agreements. By the Respondent's own admission this was the only call he claimed to have made to chase up his application.

61. The officers concluded that the threshold of evidence had been met to believe that an offence under section 72(1) of the 2004 Act had been committed and that it was in the public interest to take action.

62. According to Mr Easey the City Council had the choice of taking forward a prosecution in the Magistrates Court or serving a civil financial penalty as an alternative to prosecution. Mr Easey pointed

out that it was the City Council's policy to use the civil penalty route in all but the most serious cases or for repeat offenders. The City Council issued the Respondent with a Notice of Intent to impose a financial penalty.

63. The Respondent failed to address the three elements relied upon by the City Council in his representations to the Notice of Intent to issue a financial penalty. Given the Respondent's failure the Council imposed a penalty of £1,000.

64. The City Council applied its published policy for assessing the size of the financial penalty. This involved scoring the offence against a range of factors, namely, Factor 1 (severity and culpability) which was assessed at 5 points; Factor 2 (deterrence of offender) as 5 points; Factor 3 (harm to tenants) as 2 points; and Factor 4 (removal of financial benefit) as 15 points. This produced a score of 27 points for which the policy recommended a penalty of £1,000.

65. Mr Easey explained that the email sent to Dybles , the letting agents on the 18 June 2019 was from the City Council's Planning Department. Mr Easey acknowledged that the property was registered as an HMO, but insisted that this was not the same as a licensed HMO.

66. Mr Easey pointed out that the property was on the Stanmore Estate which was covered by an Article 4 Planning Declaration regarding the number of HMOs permitted on any street and in the area as a whole. In order to monitor the number of HMOs in the area, the City Council maintained a register of HMOs.

67. The Respondent in cross examination accepted that he had not provided the Tribunal with evidence of the cheque stub, and said that he could not remember the phone number of the mobile he used to make the alleged call to the Council in January 2019 enquiring about the progress of the HMO application. The Respondent did not make further enquiries about the progress of his application because it was not in his nature to harass Council officials

68. The Respondent acknowledged that he had not taken a copy of the application he said he posted to the City Council. The Respondent accepted that he had received hard copies of the HMO licences for his properties in Southampton. The Respondent, however, stated that he did not think it was strange that he had not received a licence for the property. The Respondent said he had been letting properties for nearly 10 years.

69. The Respondent stated that he did not know that the property required planning permission when it was converted to a seven bedroomed HMO. The Respondent thought that the conversion was covered under permitted development. The Respondent admitted

that he had made a mistake when he completed the Council Tax form regarding the number of students at the property.

70. The Respondent was adamant that a registered HMO was the same as a licensed HMO. The Respondent insisted that the City Council officers led him to believe that once the financial penalty was paid it would be the end of the matter.

71. Mrs Anisha Kaur when questioned by Mr Mountney acknowledged that she had no involvement with the application for the HMO licence. Mrs Kaur conceded that she had not witnessed the Respondent complete the application for an HMO licence or post it. Mrs Kaur said that the Respondent was an honest and hard-working man and that she had the utmost faith in him when he said he had posted the application form.

72. Mr Easey in cross examination did not agree there was a significant back log in dealing with applications. The City Council had planned to receive between 200 to 400 applications following the change in law in October 2018. The number actually received of 250 was within projections.

73. Mr Easey was not surprised that only five applications was dealt with in the first three months because of the lead in time it takes to deal with applications. Mr Easey accepted that a mistake had been made in the original Notice of Intent to issue a financial penalty which is why a new Notice had been sent on 16 January 2020. Mr Easey stated that four financial penalties had been issued by the City Council since the new powers had come into force.

74. The Tribunal returns to question of whether it is satisfied beyond reasonable doubt that the Respondent had committed the Offence of managing or controlling an HMO without a licence pursuant to section 72(1) of the 2004 Act. The Tribunal has already found that the elements of the offence have been made out and that the offence is one of strict liability. The Tribunal is now considering whether the Respondent can avail himself of one of the statutory defences under section 72 of the 2004 Act. The Respondent has the initial burden of proving on the balance of probabilities the facts that constitute the statutory defences. If the Respondent discharges the burden it is incumbent upon the Applicants to demonstrate beyond reasonable doubt that the statutory defences do not apply to the circumstances of this case.

75. The first statutory defence is whether the Respondent made a valid application for an HMO licence. The Applicants accepted that the Respondent made a valid application on the 2 December 2019 which brought the continuing offence of no HMO licence to an end.

76. The dispute is whether the Respondent submitted a valid application in September/October 2018. The Respondent's

evidence in support of his contention boils down to his assertion that he posted the application around September/October 2018. The Tribunal finds that (1) The Respondent was unable to provide a copy of the application submitted and a proof of postage for the application. (2) The Respondent could not remember the fee that he had paid. (3) Mrs Anisha Kaur, the Respondent's wife, did not witness him completing and or posting the form. (4) The Respondent on his own admission knew that the supposed cheque authorising the payment of the application fee had not been cashed. (5) The City Council had no record of receiving an application for an HMO licence from the Respondent for the property. (6) The City Council did not have a significant backlog in applications. The number of applications received was within the City Council's projections for new applications following the change in law. The time taken to evaluate applications was necessary to reflect the processes that had to be undertaken before a licence could be granted.

77. The Tribunal is satisfied on the facts found that the Respondent has failed to demonstrate on the balance of probabilities that in September/October 2018 he made a valid application for an HMO licence for the property within the meaning of section 72(4) of the 2004 Act.

78. The next question is whether the Respondent had the defence of a reasonable excuse under section 72(5) of the 2004 Act. The Respondent's excuse for having no licence was that he believed that he had already submitted a valid application for an HMO Licence.

79. Whether an excuse is reasonable or not is an objective question for the Tribunal to decide. The Respondent must demonstrate on the balance of probabilities that his belief that he had submitted an application in September/October 2018 was an honest one and that there were reasonable grounds for the holding of that belief.

80. The Respondent relied on two pieces of evidence to substantiate his belief that a valid application was made for a licence in September/October 2018. The first is that the Respondent said he contacted the City Council about the progress of his application in January 2019. The Respondent's assertion is undermined by his failure to give the City Council the number of the mobile that he said he used to phone the City Council which would have enabled the City Council to have checked whether such a phone call had been made. The implausibility of the Respondent's assertion is compounded by the fact that he apparently used a Pay to Go mobile rather than his regular phone, the number of which appeared on the tenancy agreement and the other documentation.

81. The Tribunal notes that this was the only time the Respondent said he contacted the City Council about the putative application. The Respondent was an experienced landlord who already held HMO

licences for two properties he owned in Southampton and he knew the importance of having valid HMO licences. The Tribunal would have expected a landlord of the Respondent's experience to have made further enquiries of the Council about the application. His excuse for not doing so, that it was not in his nature to harass Council officials was, in the Tribunal's view, incomprehensible in view of the importance of the matter. The Tribunal's circumspection of the Respondent's lack of urgency about checking whether an application had been made was enhanced by the Respondent's admissions that he had not received a hard copy of the licence for the property and that he knew that the alleged cheque for payment had not been cashed. A prudent landlord would have been put on notice that there were serious problems with his application and would have made more than one enquiry to ascertain the delay with the application.

82. The Respondent's second piece of evidence was the email sent to Dybles on 18 June 2019 from the City Council's planning department saying that the property was a registered HMO. The Respondent asserted that a registered HMO was the same as a licensed HMO. In this respect the Tribunal accepts the evidence of Mr Easey that a registered HMO and a licensed HMO are two different concepts. However, that is not the issue here, if the Tribunal accepts for the moment the Respondent's proposition that he believed a registered HMO was the same as a licenced HMO, the Respondent should have questioned the reliability of that belief because on his own admission he had not received a hard copy of the licence from the City Council and that this state of affairs continued until November 2019 when he said he found out that the property was not licensed. Further Dybles, his letting agent, sent him an email following the receipt of the email from the planning department asking him to provide them with a copy of the licence for the property. A prudent landlord on receipt of such an email would have known there was a problem and would have taken immediate steps to discover the nature of the problem.

83. The Tribunal considers that the Respondent's credibility was damaged further by his unwillingness to allow the Council officers to view the cheque book stubs either side of the stub which apparently recorded his payment for the application fee, and to provide them with the number of the mobile phone which he apparently used to contact the City Council in January 2019. The Respondent has exacerbated his failure by not supplying the requested information when he made representations regarding the Notice of Intent to impose financial penalty and as part of his statement of case to the Tribunal.

84. The final piece of the Respondent's case for a reasonable excuse was his assertion that he posted the application form in September /October 2018. The Tribunal considered the evidence in relation to this for the statutory defence under section 72(4)(b) of the 2004

Act (see [75-77] above) and decided that his evidence did not come up to proof.

85. The Tribunal finds the following in relation to whether the Respondent had a reasonable excuse for not having a HMO licence for the property:

a) The Respondent's evidence to substantiate his belief that he had applied for a licence was unconvincing and implausible [80-82].

b) The Respondent's credibility was undermined by his unwillingness to supply information to the City Council to check the reliability of his assertions that he had tendered payment of the application fee for an HMO licence, and had enquired of the City Council about progress of his application in January 2019. The Respondent's continued failure to supply the requested information on two further occasions including the Tribunal hearing was inexplicable and casted serious doubt on the Respondent's veracity [83].

c) The Respondent's inability to corroborate his assertion that he had posted an application in September/October 2018 [75-77]

86. The Tribunal is satisfied on the facts found that the Respondent has failed to demonstrate on the balance of probabilities that the he had a reasonable excuse for not having an HMO licence for the property in accordance within section 72(5) of the 2004 Act.

87. The Tribunal notes that the Respondent misunderstood the planning requirements for the conversion of the four to seven bedroom HMO, and that he made an error in completing the Council Tax form. The Tribunal did not place weight on these two omissions to determine whether the Respondent had a defence to the offence of having no HMO licence. The Tribunal, however, consider they are relevant to his conduct in so far as raising concerns about his attention to detail when dealing with the City Council.

88. Before the Tribunal concludes on whether the Respondent had committed an offence under section 72(1) of the 2004 Act, it is necessary to comment upon Respondent's Counsel's arguments on PACE and the City Council's role in these proceedings.

89. Counsel contended that there were serious flaws in the manner in which the City Council conducted its investigation of the alleged offence of no HMO licence. Counsel argued that the City Council officers had breached PACE when it conducted their interview of the Respondent under caution.

90. Counsel argued there was a clear breach of PACE Code E because the officers had continued their discussion with the Respondent after the interview had been concluded. The Respondent had taken a relative with him who had made a recording of the discussion unbeknown to the officers. According to Counsel, the officers conducted a further question and answer session with the Respondent which Counsel said breached the PACE codes of practice in several respects. The discussion lasted approximately 22 minutes. Counsel also questioned the propriety of the City Council acting for the tenants in these proceedings, and whether it conflicted with responsibilities as a local housing authority. Finally Counsel contended that the City Council's officers had breached data protection legislation by communicating with the tenants about the imposition of the Civil Penalty.

91. Counsel made these submissions in the context of persuading the Tribunal not to construe the Respondent's payment of the £1,000 penalty and his failure to Appeal as an admission of guilt. Counsel also pointed out that section 46 of the 2016 Act which restricted the Tribunal's discretion when fixing the amount of the RRO following a receipt of a financial penalty did not apply to financial penalties imposed for an HMO offence. Counsel accepted that if the Tribunal accepted his submission that the Respondent's acceptance of the penalty did not amount to an admission of guilt it was still open to the Tribunal to conclude that the Respondent committed an offence

92. The City Council for the Applicants did not seek to rely on the Respondent's payment of £1,000 as an admission of guilt. Mr Mountney for the City Council disputed Counsel's submissions on whether PACE had been contravened, and whether the City Council had breached its statutory responsibilities by communicating with the tenants.

93. The Tribunal had prior to the hearing refused an application for disclosure of various documents relating to Counsel's submissions on the ground that they were not relevant to the issues to be decided by the Tribunal. At the hearing Counsel was permitted to ask questions of the officers on these issues because some of the documents which formed the subject of the disclosure application had been included in the Respondent's case.

94. The Tribunal remains of the view the issues of whether the City Council had breached PACE and had compromised its statutory responsibilities had no bearing on whether the Respondent had committed the offence of having no HMO licence. The Respondent had not challenged that the elements of the offence had been made out. The Respondent's case was that he had a statutory defence to the offence. Counsel made no application to exclude the interview, and even if he had, and had been successful it would have made no difference to the Respondent's case because the evidence that the

Respondent relied upon for the statutory defences did not cross the threshold of balance of probabilities by some margin. Given those circumstances it was not necessary for the Tribunal to make findings on whether there had been breaches of PACE and or whether the City Council had overstepped the mark in its support for the tenants.

95. The Tribunal finds

a) The Respondent controlled and managed the property.

b) The property was an HMO which required to be licensed from 1 October 2018.

c) There was no licence in force for the property from 1 October 2018 to 6 February 2020.

d) The Respondent did not make a valid application for a licence until 2 December 2019.

e) The offence is one of strict liability. The Respondent did not have a reasonable excuse for commission of the offence.

96. **The Tribunal is, therefore, satisfied beyond reasonable doubt that the Respondent committed the offence of a person having control of or managing a HMO which is required to be licensed but is not so licensed from 1 October 2018 to 1 December 2019 (inclusive) pursuant to section 72(1) of the 2004 Act.**

97. Although the Tribunal has decided not to construe the Respondent's payment of the £1,000.00 penalty as an admission that he had committed the offence, it remains a fact that a penalty of £1,000.00 was imposed which was paid by the Respondent and no appeal has been made against it. The Tribunal is entitled to have regard to those facts when it fixes the amount of the RRO.

What is the maximum amount that the Respondent can be ordered to pay under a RRO (section 44(3) of the 2017 Act?

98. The Tribunal here is concerned with two separate Applications so the rule regarding the maximum amount is applied anew to each Application.

99. In respect of the first Application the maximum amount that can be ordered under a RRO must relate to a period not exceeding 12 months during which the landlord was committing the offence. The Tribunal has decided that the Respondent committed the offence in respect of the first set of Applicants from the 1 October 2018 to 30 June 2019. During that period the first set of Applicants paid rent of £3,370.00 per calendar month for nine months making a total payment of £30,330.00.

100. The Tribunal, therefore, finds that the maximum amount that the Respondent can be ordered to pay under a RRO in respect of the first set of Applicants is £30,330.00.

101. In respect of the second Application the maximum amount that can be ordered under a RRO must relate to a period not exceeding 12 months during which the landlord was committing the offence. The Tribunal has decided that the Respondent committed the offence in respect of the second set of Applicants from the 1 July 2019 to 1 December. During that period the second set of Applicants paid rent of £3,370.00 per calendar month for five months plus one day making a total payment of £16,960.79.

102. The Tribunal, therefore, finds that the maximum amount that the Respondent can be ordered to pay under a RRO in respect of the second set of Applicants is £ £16,960.79.

What is the Amount that the Respondent should pay under a RRO?

103. In determining the amount, the Tribunal must, in particular, take into account the conduct and financial circumstances of the Respondent in his capacity as landlord, whether at any time the Respondent had been convicted of a housing offence to which section 40 applies, and the conduct of the Applicants.

104. Mr Elliot Phillips gave evidence for the first set of Applicants. Mr Phillips said that the Respondent did not carry out maintenance in good time or respond to enquiries promptly. Mr Phillips referred to problems with damp and mould which he said had been present with the previous tenants, and produced in support an extract of a "building surveyor's" report. Mr Phillips complained about the manner in which the Respondent dealt with the return of the deposit and said that there were proceedings before the County Court in respect of the deposit. Mr Phillips made specific mention of two invoices relating to cleaning and carpentry sent by the Respondent which Mr Phillips said did not include evidence of payment.

105. Mr Phillips stated that on 12 August 2020 he and Ms Eleanor Scally visited the second set of Applicants at the property. According to Mr Phillips, none of the work claimed by the Respondent to the property had been completed. Mr Phillips denied that he had used abusive and threatening language towards the Respondent at any time.

106. Mr Phillips in cross examination acknowledged that the property was in good condition when the first set of Applicants had taken it on, and that at the beginning he had a good relationship with the Respondent. Mr Phillips accepted that the check out inventory had

identified various items that required repair including the kitchen top, the sofa leg, and burnt marks in the bedroom carpet.

107. Mr James Leadbetter gave evidence for the second set of Applicants. Mr Leadbetter stated that the second set of Applicants had paid their rent on time. Mr Leadbetter said that he found out about the property not having an HMO licence when Mr Phillips and Ms Scally visited the property to check that the work the Respondent was charging for had been done. Once Mr Leadbetter became aware that the property should be licensed, he Googled the regulations for HMOs and discovered that the property did not comply with them in respect of having only one kitchen sink for seven tenants and no microwave had been provided. Mr Leadbetter also mentioned that one of the mattress protectors was rotten, there was crack in the kitchen floor tiling which allowed slugs to enter the kitchen, and there were cracks and damage to walls around the property.

108. Mr Leadbetter in cross examination accepted that Ms Alisha Macleod had supplied a microwave for the property. Mr Leadbetter stated that he had no contact with the Respondent who chose to communicate with the lead tenant (Miss Macleod). Mr Leadbetter said he had no problem with the Respondent and denied that he was exaggerating the defects with the property. Mr Leadbetter pointed out that he was asked to identify the defects in the property when drafting his witness statement and that was what he had done.

109. Mr Crowhurst of the City Council stated that he visited the property on 21 November 2019 following a report that it was an HMO. In answer to questions Mr Crowhurst considered the property to be in very good condition. Mr Crowhurst said that the property required two minor matters to be addressed before it could receive an HMO licence (a dishwasher and a fire door not closing properly).

110. The Respondent pointed out that the City Council considered the property to be in good condition and compliant with the legislation with only two minor recommendations which were addressed promptly within seven days. The Respondent relied on a statement made by Mr Easey following the interview under caution in which he said:

> '...I'm quite happy that as you said in terms of the condition of the property it's fine we would have no concerns there, so our concern here is really if you like, the administrative side of not having a license, we have no particular concern about the condition the student tenants are living in'.

111. The Respondent highlighted the fact that both sets of Applicants committed to the tenancy immediately after their first viewing which in his opinion was clear evidence of the excellent condition and appeal of the property.

112. The Respondent denied that the property suffered from damp and mould, and, if it had, it would have been recorded on the inventory which was signed by the Applicants at check in. The Respondent said that Mr Phillips only raised the question of damp and mould on one occasion which when investigated, the mould was found to be superficial and a direct result of condensation caused by the first set of Applicants drying wet clothes inside the property without adequately ventilating the property. According to the Respondent, despite having provided a tumble dryer and a washing line the first set of Applicants continued to dry clothes inside. Finally the Respondent stated that the first set of Applicants never raised the issue of damp and mould with him again.

113. The Respondent questioned the authenticity of the "building surveyors" report provided by the previous tenants. The Respondent pointed out that it was not signed and he suspected it had been drawn up by one of the parents of the previous tenants.

114. The Respondent denied that he had failed to respond to enquiries about the return of the deposit for the first set of Applicants. The Respondent pointed out that the messages relied on by Mr Phillips related to the period when the Respondent was away on his wedding functions and ceremony and his honeymoon. The Respondent said as soon as he returned he provided the first set of Applicants with a comprehensive breakdown of the deductions made from the deposit. The Respondent said that the invoices referred to by Mr Phillips were estimates for repair work which would be carried out once the dispute about the deposit had been resolved. The Respondent maintained that the property was thoroughly cleaned when the first set of Applicants moved out.

115. The Respondent supplied text messages with Mr Phillips and Ms Macleod about inspecting mould, replacing the shower head and service of the boiler to demonstrate that he kept the Applicants informed about repairs at the property and that he did so in courteous manner.

116. The Respondent disagreed with Mr Phillip's assertion that he had not been abusive and threatening to him on the telephone on 23 September 2019. Mrs Kaur said that her husband was very upset after the call from Mr Phillips. The Respondent also sent a message to Mr Phillips' lawyer complaining about harassment and the tone of language used by Mr Phillips. In addition the Respondent pointed out that Mr Phillips had sent him disrespectful and taunting messages which included a message on 15 January 2020 from Mr Phillips "thanking the Respondent so much for allowing him to live there rent free because the Respondent did not have a licence", and a message on social media which referred to the Respondent as "a rogue landlord".

117. The Respondent submitted that had always conducted himself as a responsible, honest and reasonable landlord. The Respondent stated that he had no incentive not to apply for an HMO licence because the property had been compliant with all requirements. The Respondent flagged up that the second set of Applicants had requested to renew their tenancy for another year but due to a change in their circumstances they could no longer do so.

118. The Respondent said he purchased the property with a mortgage and money borrowed from his parents for part of the deposit. The Respondent had the following outgoings in relation to the property

- Mortgage interest only £406 per month
- Agency set up fee of £600
- HMO licence fee of £900
- Gas and Electricity Safety Certificates of £240

119. The Respondent did not consider himself to be a professional landlord. The Respondent pointed out that he owned two other properties and was an engineer by profession. The Respondent stated that he had let properties for about ten years, and in view of his recent experiences had become a member of the Residential Landlords Association. The Respondent indicated that he lived with his parents.

120. The Respondent was not prepared to divulge any further information about his financial circumstances in view of the risk that it might appear on social media. The Respondent indicated that he was prepared to give the information to the Tribunal provided it was not shared with the other parties.

121. The Tribunal starts its consideration on the size of the RRO by considering the decision of the Upper Tribunal in *Mr Babu Rathinapandi Vadamalayan v Edward Stewart and others* [2020] UKUT 0183 (LC). Judge Cooke at [11] observed that there was no requirement that a payment in favour of Tenant in respect of RRO should be reasonable, and at [12] that this meant the starting point for determining the amount of rent is the maximum rent payable for the period in question. Judge Cooke went onto say at [14] and [15] that

> "It is not clear to me that the restriction of a rent repayment order to an account of profits was consistent with Parliament's intention in enacting sections 74 and 75 of the 2004 Act. The removal of the landlord's profits was – as the President acknowledged at his paragraph 26 –not the only purpose of a rent repayment order even under the provisions then in force. But under the current statutory provisions the restriction of a rent repayment order to the landlord's profit is impossible to justify. The rent repayment order is no longer tempered by a requirement of reasonableness; and it is not possible to find in the current statute any support for

limiting the rent repayment order to the landlord's profits. That principle should no longer be applied.

> "That means that it is not appropriate to calculate a rent repayment order by deducting from the rent everything the landlord has spent on the property during the relevant period. That expenditure will have repaired or enhanced the landlord's own property, and will have enabled him to charge a rent for it. Much of the expenditure will have been incurred in meeting the landlord's obligations under the lease. The tenants will typically be entitled to have the structure of the property kept in repair and to have the property kept free of damp and pests. Often the tenancy will include a fridge, a cooker and so on. There is no reason why the landlord's costs in meeting his obligations under the lease should be set off against the cost of meeting his obligation to comply with a rent repayment order".

122. Judge Cooke concluded at [19]

> "The only basis for deduction is section 44 itself. and there will certainly be cases where the landlord's good conduct, or financial hardship, will justify an order less than the maximum. But the arithmetical approach of adding up the landlord's expenses and deducting them from the rent, with a view to ensuring that he repay only his profit, is not appropriate and not in accordance with the law. I acknowledge that that will be seen by landlords as harsh, but my understanding is that Parliament intended a harsh and fiercely deterrent regime of penalties for the HMO licensing offence".

123. The 2016 Act extended the scope of rent repayments orders with an emphasis upon rogue landlords not benefiting from the letting of sub-standard accommodation and it also removed the requirement for the Tribunal to determine such amount as it considered reasonable for the eventual order.

124. The structure of the 2016 legislation requires the Tribunal to determine first the maximum amount payable under an RRO and then to decide the actual amount payable on the circumstances of the case. The Tribunal must in particular take into account the conduct of the landlord and tenant, the financial circumstances of the landlord and whether the landlord has at any time been convicted of a "housing offence" (section 44(4).

125. Counsel for the Respondent emphasised that the use of the phrase "*in particular"* in section 44(4) meant that the Tribunal had a continuing residual discretion to take into account other matters. In his view the Upper Tribunal did not appear to make any statement in the *Vadamalayan* case which would exclude a general discretion.

126. Counsel pointed out that prior to the Vadamalayan case, the Tribunal frequently made significant reductions from the

maximum amounts payable reflecting the obligation to deal with cases fairly and justly. Counsel submitted that to make a very substantial award to students living in a property in extremely good condition simply because of what the City Council itself described as an 'administrative' offence would be wholly disproportionate and not something Parliament would have intended as a consequence of legislation intended to deal with 'rogue' landlords.

127. Counsel referred to "*The heading to Part 2 of the Housing and Planning Act 2016*" which was *"Rogue Landlords and Property Agents in England"*. In Counsel's view the Respondent clearly did not fall into such a category. Counsel submitted that if the Tribunal was minded to make an RRO, it should exercise its discretion in favour of the Respondent and make a substantial reduction from the maximum amount.

128. Mr Mountney contended that Counsel was encouraging the Tribunal to go behind the Upper Tribunal decision in *Vadamalayan*. Mr Mountney emphasised that the commission of the offence was the overriding consideration, and reiterated that mortgage payments were not considered as part of the expenditure to the HMO.

129. The Tribunal finds in relation to the Respondent's conduct and financial circumstances that

a) The Respondent is a professional landlord with a small portfolio. He had been operating as a landlord for ten years and was running his portfolio as a business.

b) The Respondent let the property unlawfully without an HMO licence from 1 October 2018 until 2 December 2019 when a valid application for a licence was made.

c) The Respondent was aware of the requirement to licence the property as an HMO from 1 October 2018. The Respondent was an existing licence holder for two properties in Southampton.

d) The Respondent did not have a reasonable excuse for not having a licence during the period in question. In this regard the Tribunal found the Respondent's evidence not credible and unconvincing.

e) The Respondent failed to co-operate with the City Council in their investigation of the offence as demonstrated by unwillingness to share the cheque stubs and provide the number of the mobile phone.

f) The Respondent received a financial penalty of £1,000 which he had paid and not appealed.

g) The Respondent kept the property in a good and safe condition. The City Council only required two minor matters to be addressed before granting an HMO licence. The Tribunal accepts the Respondent's evidence in respect of the mould and damp. The Tribunal does not doubt Mr Leadbetter's evidence regarding various items of disrepair but considers those items did not detract from the overall good condition of the property.

h) The Respondent attended to his landlord's obligations in a responsible and courteous manner during the terms of the two tenancies. The Respondent was in dispute with Mr Phillips and the first set of Applicants regarding the deposit. In the Tribunal's view this dispute is not relevant to the issue of the appropriate amount of the RRO, and the issues surrounding the deposit will be determined elsewhere.

i) The Respondent was of good character and had no previous convictions.

j) The Respondent gave evidence of the outgoings on the property but declined to provide further details of his financial circumstances unless it was given in private to the Tribunal. The Tribunal advised the Respondent that it was not possible for it to view evidence not seen by the other parties. The Tribunal disregards the outgoings on the property in line with the decision in *Vadamalayan*. The Tribunal having regard to what it knows about the Respondent's circumstances (residing with his parents, receiving rent from two other properties and that letting was not his sole business) concludes that the Respondent would not experience undue financial hardship as a result of an RRO in favour of the two sets of Applicants.

130. The Tribunal is satisfied that the Applicants did not by their conduct contribute to the offence.

131. Counsel's suggestion that Mr Leadbetter had exaggerated the defects in the property and that this amounted to conduct within the meaning of section 44(4) of the 2016 Act was without substance. The Tribunal finds that Mr Leadbetter gave his evidence in a straightforward manner and reported what he saw.

132. Counsel was critical of Mr Phillips' behaviour and argued that any order in his favour should be reduced because of his conduct. The Tribunal considers that Mr Phillips was unwise to publish his views of the Respondent on social media, and that his text to the Respondent about "living rent free" was unnecessary. The Tribunal considers it likely that Mr Phillips was abusive to the Respondent on the phone, particularly in light of the Respondent's reaction of sending an immediate text to Mr Phillips' lawyer asking for the

harassment to stop. The Tribunal, however, finds that Mr Phillips' questionable behaviour occurred after the tenancy had finished and was connected with their dispute about the deposit. Mr Phillips considered that the Respondent had misled him about the cleaning of the property.

133. The Tribunal does not consider that Mr Phillips' conduct amounted to conduct within the meaning of section 44(4) of the 2016. In the Tribunal's view the conduct complained of must be connected in some way with the Respondent's offence. There was no evidence that Mr Phillips was complicit with the Respondent's offending or sought to benefit from it. Mr Phillips did not learn about the property requiring an HMO licence until after he vacated the property.

134. The Tribunal does not consider that there are any other circumstances that are relevant to the amount of the RROs. Counsel's criticisms of the City Council are not a relevant consideration in determining the amount of the RRO. The Tribunal notes that the City Council has a statutory responsibility under section 48 of the 2016 Act to help tenants apply for RROs including conducting proceedings.

135. The Tribunal determines that the maximum amount payable by the Respondent under a RRO is £30,330.00 in respect of the first set of Applicants, and £16,960.79 in respect of the second set of Applicants. The Tribunal then has to consider whether the findings on the Respondent's conduct and financial circumstances, and the Applicants' conduct merit a reduction in the maximum amount payable.

136. The Tribunal is satisfied that these cases do not justify an award of the maximum amounts of £30,330.00 and £16,960.79 respectively. The Tribunal normally considers such an award where the evidence shows that the landlord was a rogue or criminal landlord who knowingly lets out dangerous and sub-standard accommodation. The Respondent did not meet that description.

137. The Tribunal here is dealing with a landlord who provides accommodation to a good condition and meets the safety standards for HMOs but who for some inexplicable reason failed to licence the property and thereby committed an offence.

138. The Respondent's offence weighs heavily in favour of making a substantial RRO which is supported by Judge Cooke's comment in *Vadamalayan*: "*Parliament intended a harsh and fiercely deterrent regime of penalties for the HMO licensing offence*".

139. The Tribunal holds that the Respondent was a professional landlord who did not comply with the law regarding the licensing of the property as an HMO. The property was being let unlawfully for

a significant period of time from the 1 October 2018 to 2 December 2019. These facts together with the finding that the Applicants did not by their conduct contribute to the offence are weighed against the facts that the Respondent apart from his failure to licence the property was a responsible landlord who provided accommodation of good and safe standard, and the Respondent was of hitherto good character. Having regard to all the circumstances the Tribunal considers orders of £18,000 and £10,000 are the appropriate sums balancing the objective of a "fiercely deterrent scheme", the status of professional landlord and the length of the offending against the mitigating circumstances found in favour of the Respondent.

140. As the Applicants have been successful with their Applications for a RRO, the Tribunal considers it just that the Respondent reimburses the Application fee and hearing fee totalling £400.00 to be shared equally between the two sets of Applicants.

Decision

141. The Tribunal orders the Respondent to pay the first set of Applicants the sum of £18,000.00 (£2,571.43 for each Applicant) by way of a rent repayment order and to reimburse the Applicants with the application and share of hearing fee in the sum of £200.00 within 28 days from the date of this decision.

142. The Tribunal orders the Respondent to pay the second set of Applicants the sum of £10,000.00 (£1,428.57 for each Applicant) by way of a rent repayment order and to reimburse the Applicants with the application and share of hearing fee in the sum of £200.00 within 28 days from the date of this decision.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case. The application must be sent by email to rpsouthern@justice.gov.uk

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

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.