FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/00HB/HMF/2020/0018**
Property	**:**	**19 Baptist Street, Easton, Bristol BS5 0YW**
Applicant	**:**	**[1] MR BARNEY NECUS** **[2] MS CHARLOTTE DICKERSON** **[3] MR JOSEPH CESSFORD** **[4] MS AMY STILL**
Representative	**:**	**Flat Justice Community Interest Company**
Respondent	**:**	**Vivine Lindemira Smith**
Representative	**:**	**None**
Type of Application	**:**	**Application for a Rent Repayment Order by Tenant – Sections 40, 41, 43 & 44 of the Housing and Planning Act 2016**
Tribunal Members	**:**	**Judge HD Lederman** **I Perry FRICS** **J Playfair**
Date and Venue of Hearing	**:**	**17 August 2020** **Remote hearing by Video Cloud Video platform**
Date of Decision	**:**	**30th September 2020**

DECISION

Decision of the Tribunal

The Tribunal:

a. Waives compliance with paragraph 7 of the Directions order dated 31st July 2020 (requiring the Respondent to supply a copy of her Statement of Case in word or pdf format together with supporting documents as attachment to an e-mail or give a full explanation as to why she could not comply with the direction by 12.00 midday on 6th August 2020) and relieves her from the sanction of being barred from participating further in the case. The Respondent was permitted to participate fully in the hearing.

b. Refuses the Applicants permission to amend their application for a rent repayment order, or for an extension of time to comply with the directions dated 25th June 2020 requiring a statement in reply to the Respondent's case by 4th August 2020 to introduce or rely upon allegations of interfering with the Applicants' quiet enjoyment, interfering with peace and comfort persistently with drawing services and attempted unlawful eviction contained in paragraphs 14-20 of the Skeleton Argument dated 9th August 2020 served on behalf of the Applicants (prepared by Francesca Nicholls of Flat Justice).

c. Orders the Respondent to make payment of a total amount of £2349.83 to Barney Necus and Charlotte Dickerson as a Rent Repayment Order ("RRO") under section 43 of the Housing and Planning Act 2016 ("the 2016 Act").

d. Orders the Respondent to make payment of a total amount of £261.69 to Joseph Cessford and Amy Still as an RRO under section 43 of the 2016 Act.

e. Refuses the Applicants' request for reimbursement of application and hearing fees.

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was CVPREMOTE. A face to face hearing was not held because it was not practicable and no one requested the same or it was not practicable and all issues could be determined in a remote hearing. The documents that we were referred to are in the applicants' (incomplete) bundle of 39 numbered pages, the rent repayment order application and the Respondent's e-mails of the contents of which are recorded in the reasons below.

Reasons

1. In these reasons, references to the page numbers in the Applicant's bundle (consisting of 39 numbered pages) are in [ ]. Where narrative, facts or descriptions are recited, they should be treated as the Tribunal's findings of

fact unless stated otherwise. These reasons address in summary form the key issues raised by the application. They do not rehearse every point raised or debated. The Tribunal concentrates on those issues which go to the heart of the application.

Representation

2. All Applicants were represented by Flat Justice in the preparation of the hearing and at the hearing itself by Francesca Nicholls. Flat Justice is a Community Interest Company that has expertise in preparing and representing tenants for RRO's. Although they are not legal advisers as such, they have considerable experience of these applications and hearings before Tribunals. Francesca Nicholls had some legal training. The Respondent has no legal background and was not professionally represented.

The Application

3. The Tribunal is required to determine an application received on 12th June 2020 under section 41 of the Housing and Planning Act 2016 ("the 2016 Act") for an RRO in respect of 19 Baptist Street, Easton, Bristol BS5 0YW ("the premises"). It is common ground the premises comprised a terraced house with 2 bedrooms, a kitchen/diner, living room and bathroom in the Lawrence Hill area of Bristol: see the RRO application form.

4. The RRO application form asserted (and it was not disputed) that the Lawrence Hill area of Bristol was the subject of Additional Licencing scheme from 8th July 2019 expiring in July 2024 [24].

5. The RRO is claimed in the sum of £4699.66 rent paid for the period 8th July 2019 to 22nd April 2020 (Barney Necus and Charlotte Dickerson) and £523.39 for the period 8th July 2019 to 8th August 2019 (Joseph Cessford and Amy Still).

The Respondent: Preparation and compliance with directions

6. The Tribunal heard evidence from the Respondent and her witness Mr AM Samuels who was part of her extended family. The Respondent said (and having seen and heard from her the Tribunal accepts) that she found difficulty in working with technology. In the introductory parts of the hearing she or a relative had to change devices to remain with the hearing. The tribunal gained the impression the Respondent did not have access to scanning technology. The Tribunal finds from the totality of her evidence that the Respondent was not a professional landlord in the sense of owning a number of properties or being in business as a landlord or property company. She had become a landlord as a means of raising funds having moved out of her accommodation to care for her father who had significant care needs.

7. On 31st July 2020 the Tribunal had directed (by item 7) that unless the Respondent by 12 midday on 6th August 2020 supply a copy of her statement of Case in word or pdf format together with supporting documents as attachments to an e-mail to the Tribunal at rpsouthern@justice.gov.uk and to the Applicant's representative at office@flatjustice.org.uk or give a full explanation as to why the Respondent cannot comply with the direction by putting the documents as an attachment the Respondent shall be barred *from taking further part* in the

case". (emphasis added).

8. The Respondent wrote to the Tribunal as follows by e-mail of 27 07 2020:

> "Dear Sirs
>
> Re CHI/00HB/HMF/2020/0018
>
> STATEMENT IN RESPONSE TO THE ABOVE CASE
>
> I am a law abiding person who works for the good of the community.
>
> Having never been involved in criminal activity, I have never been convicted of any criminal office.
>
> Currently (the past 3 years) I have full responsibility/ care of my 92 year old Father. Previously I carried out these duties remotely ie. coming in daily whilst also continuing to hold a full time job as a support worker for individuals with complex needs.
>
> Changes in my Fathers health meant this was no longer sustainable; it necessitated me becoming his full time carer. Moving into my Fathers home enabled me to carry out all necessary care in a far better and efficient manner.
>
> INCOME
>
> I am in receipt of £113.55 per week therefore my financial circumstances are very limited I would be placed in financial difficulties if instructed pay the RRO being requested.
>
> I would like to make an offer of £1000.00
>
> I deem it unreasonable for me to be able to reimburse the application fee of £100.00 and the hearing fee of £200.00
>
> RENTAL OF BAPTIST STREET
>
> Having moved after some time I listed my house with Agents so tenants could be found to rent Baptist Street. I am not a seasoned landlord or property developer with multiple properties for rent making a living through such means.
>
> I am a landlord through circumstance.
>
> Having worked along with the Agents completing all paperwork, paying all the required fees etc. I was rendered into a complete state of shock when it was brought to my attention I was being charged with the criminal offence of renting an HMO without the appropriate licence.
>
> I had absolutely no idea I was subject to or required to have an HMO license for Baptist Street. Failure regards the HMO licence was a genuine mistake an oversight; not a flagrant disregard of the law. Not wanting to be in breach of the law I immediately set about correcting the situation purchasing the initial part of the licence for Baptist Street on the 23rd April 2020.
>
> My name and reputation are very important to me I therefore always seek to my conduct myself in an upright manner with adherence to high morals.
>
> I wish for these points to be considered in this case."

Yours sincerely

Vivine Smith"

9. Copies of prescriptions and healthcare letters apparently relating to her father had also be seen sent to the Tribunal.

10. The Respondent submitted a statement from Jean Cook of 24th July 2020 to the Tribunal and to Flat Justice as agents for the Applicants by e-mail on 27th July 2020.

11. The Respondent submitted to the Tribunal and to Flat Justice by e-mail a statement from Jénnifer González & Joel Escuder (other occupiers of the premises) dated 26th July 2020 on 27th July 2020. That e-mail read as follows:

"From: Jénnifer González Borrachero <jenni_gb_12@hotmail.com>
Date: 26 July 2020 at 20:19:44 BST
To: "linde.mira@yahoo.co.uk" <linde.mira@yahoo.co.uk>
Subject: CHI/00HB/HMF/2020/0018

REFERENCE: CHI/00HB/HMF/2020/0018

Dear Sir or Madam,

We are Jennifer and Joel, Spanish couple and tenants from Vivine since 10/08/2019.

We would like to praise and clarify some aspects about how is being the treatment of Vivine with us and the experience related with her, that we have got living together with the other couple Barney and Charlotte.

We always have felt, and we still feeling, that Vivine as a Landlady have been always very kind, attentive and helpful person with all of us, from the very first minute. We always have had a very clear, confident and honest relationship. Vivine is very attentive person as a Landlady because whenever we had any kind of problem with the house or with any document or any kind of situation, she has been always on the phone to solve them as quick as she could, always less than 24h unless was weekend and all the business were closed (Plumber, Electrician, etc.)

In the other hand, we always have seen very equally relationship between us and the other couple Barney and Charlotte, never more preference on either side. Therefore, Jennifer and myself always have been trying to response this treatment with the same behave: respectful with the house, keeping it clean and tidy; also respectful with the other couple and above everything with Vivinne.

Unfortunately, we cannot say that we have seen the same kind of respect from Barney and Charlotte to Vivine. We always have noticed that they never liked Vivine because they were expecting from her the best and that every problem was sorted from the first minute at all time. Barney and Charlotte never understood that Vivine is a human been too, and it is not a cyborg that can attend us 24 hours per day. When it was very late in the night or weekend, for Jennifer and myself was more than enough that she could reply our calls and have the solution the day after or when

the weekend was over. We have been witness of very rude behaviour, specially from Barney, in many times by phone call with Vivine: Jellying, hanging up early, insulting her in the back after call, etc.

In conclusion, with this statement we would like to proof and clarify that Vivine is one of the best Landlady that we ever have had and that she does not deserve any other treatment that is not the respect and the very best.

I believe that the facts stated in this witness statment are true.

Best Regards,

Jénnifer González & Joel Escuder"

12. On 27th July 2020, the Respondent sent to the Tribunal and to Flat Justice the following e-mail from Mr AM Samuels:

"On 27 Jul 2020, at 17:36, Andrew Samuels <andrewsamuels64@icloud.com> wrote:

A M SAMUELS
Begin forwarded message:
From: Andrew Samuels <andrewsamuels64@icloud.com>
Date: 27 July 2020 at 16:28:41 BST
To: rpsouthern@justice.gov.uk
Subject: Case reference CHI/00HB/2020/0018 19 Baptist st Bristol BS5 0YW

I write this statement as I have attended 19 Baptist st at the request of the landlord and tenants on a number of occasions to carry out maintenance on the property.

1. The property was lived in as a share between two couples one in each of the two bedrooms with a tv lounge and kitchen/ dinning room on the ground floor

2.There where no locks on the bedroom doors and the tenants seamed to be friends

3. The house was kept to a good standard with any maintenance issues rectified as soon as possible

4. The tenants always seamed to be happy with the property and I never felt that there was any grievance toward the landlord

I believe that the facts in this witness statement are true

A M SAMUELS"

13. On 27th July 2020, the Respondent sent to the Tribunal and to Flat Justice the following e-mails:

"From: Jane Day <jane.day@bristol.gov.uk>
Date: 22 April 2020 at 09:16:20 BST
To: Vivine Smith <linde.mira@yahoo.co.uk>
Subject: RE: HMO Licence required- 19 Baptist Street

Thanks

Jane
From: Vivine Smith [mailto:linde.mira@yahoo.co.uk]
Sent: 21 April 2020 17:04
To: Jane Day
Subject: Re: HMO Licence required- 19 Baptist Street

Dear Mrs Day,

Thank you for your email regarding the application of HMO Licence for the property at 19 Baptist Street, Baptist Mills, Bristol BS5 0YW.

I am going to follow your advice/suggestion to apply for the said HMO Licence; will submit to your office ASAP.

Regards

Vivine Smith

Sent from my iPad"

On 20 Apr 2020, at 13:02, Jane Day <jane.day@bristol.gov.uk> wrote:

Dear Ms Smith,

I am e-mailing you following our recent conversation.

I would suggest applying for the licence.

The fee is divided into 2 parts. If you apply and then pay the first part, and find that the tenants have moved out and you decide that you don't want to rent to another couple or individual in the second room (additional licensing applies to 3 or more occupiers) then we will not request the second part of the fee. (cannot however refund the first part)

This will allow you to serve a S21 notice and the property will not be classified as being unlicensed. (Where a property is unlicensed the tenants can apply for a rent repayment order).

https://www.bristol.gov.uk/housing/help-to-apply-rent-repayment-order

Jane

From: Jane Day
Sent: 25 March 2020 10:15
To: 'linde.mira@yahoo.co.uk'
Subject: HMO Licence required- 19 Baptist Street

Dear Ms Smith,

A new additional licensing scheme has begun in the 12 central wards of Bristol, Central, Cotham, Clifton, Clifton Down, Hotwells & Harbourside, Redland, Ashley, Bishopston & Ashley Down, Easton, Lawrence Hill, Southville and Windmill Hill which applies all smaller HMOs (houses in multiple occupation) with 3 to 4 occupants living in 2, or more households (single people, couples and families).

I understand that your property is occupied by 2 couples (4 occupiers) and is in the Lawrence Hill ward. The property will

require a licence. Please see attached letter for details.

Thanks

Jane
Mrs Jane Day
Environmental Health Officer
Bristol City Council
Private Housing (100TS)
PO Box 3399
Bristol
BS3 9NE
Tel : - 0117 352 1852
Fax: - 0117 352 5022
email : jane.day@bristol.gov.uk"

14. The Respondent did not comply with the direction requiring her to supply a copy of her statement of case in word or pdf format with supporting documents by midday on 6th August 2020. In the Tribunal's view her non-compliance was partly because of her lack of understanding of the significance of the direction and partly because of her difficulty with technology. The Tribunal took the view (following representations from Ms Nicholls on behalf of the Applicants) that the effect of the direction of 31st July 2020 barring the Respondent was prospective. That is, it would only prevent the Respondent from taking part thereafter. That was the effect of the phrase "the Respondent shall be barred *from taking further part* in the case" (emphasis added). Accordingly, if the barring order took effect, the Tribunal would still be required to consider the various statements and e-mails submitted to the Tribunal.

15. The Tribunal confirmed that Ms Nicholls and Flat Justice had received copies of all the e-mails relied upon by the Respondent.

16. The Tribunal noted that the Statement of Case and bundle submitted by Flat Justice was far from satisfactory. Although the index referred to 65 numbered pages, only 39 pages were contained in the bundle provided. The Tribunal and the other parties had to refer to other electronic documents which had been sent by Flat Justice to the Tribunal separately for use during the hearing.

17. The hearing would have been disrupted and difficult to manage because of Flat Justice's omission to prepare a bundle in any event. The impact of the Respondent's omission to do so was certainly no worse than their omission. As the Tribunal would have been required to consider the documents submitted by the Respondent, the Respondent expressed regret for the omission, it was consistent with the overriding objective to permit her to participate in the hearing. The importance of hearing from her about her case, overrode the other factors at play.

18. Insofar as relevant, in deciding to grant the Respondent relief from the sanction of being barred from participating in the hearing in accordance with the principles in *Denton v T H White Limited* [2014] 1 WLR 3296. The *Denton* decision requires the Tribunal to consider the request for an extension of time in three stages:

i) identify and assess the seriousness of the failure to comply;

ii) consider why the default occurred;

iii) evaluate all the circumstances of the case to enable the court to deal justly with the application, including the need for litigation to be conducted efficiently and the need to enforce compliance with rules, practice directions and orders.

19. Tribunals are encouraged to apply a similar approach to time limits and relief from sanctions even though part 3.9 of the Civil Procedure Rules does not apply to the 2013 Procedure Rules: *BPP Holdings v HMRC* [2017] 1 WLR 2945 and *Haziri v London Borough of Havering* [2019] UKUT 330. The Court in *Hysaj v Secretary of State for the Home Department* [2015] 1 WLR 2472 at [44] confirmed the same approach should be adopted at this first stage where there is a litigant in person such as the Respondent.

20. The RRO application form asserted (and it was not disputed) that the Lawrence Hill area of Bristol was the subject of an Additional Licencing scheme from 8th July 2019 expiring in July 2024 [24].

The Applicants' case – evidence and conduct relied upon

21. Francesca Nicholls of Flat Justice is to be congratulated for providing a very helpful and succinct skeleton argument which identified recent case law and the key issues for the Tribunal. Unfortunately, however the skeleton raised a number of issues complaining of about Respondent's conduct for the purposes of seeking to persuade the Tribunal to make a higher award of an RRO pursuant to section 44(4) of the 2016 Act.

22. The allegations of misconduct by or attributed to the Respondent in paragraphs 14 to 20 of the Skeleton were as follows:

"14 The Respondent interfered with the Applicants' quiet enjoyment of the property in the following ways:

i. The Respondent's two family members made an unannounced visit to the property on the 1st April 2020 during the Government enforced lockdown period. Clause 2.58, 2.61, 3.2 and 3.5 of the AST agreement make clear that neither the landlord nor any of her agents can enter the property without 24 hours prior written notification. This was a breach of the AST agreement and interfered with the peace and comfort of the tenants. The Respondent would have had reasonable cause to believe that this would encourage the tenants to leave the premises due to the general angst of sharing the space during a pandemic.

ii. The Respondent permitted workmen, including electricians and plumbers, to enter the premises without prior notice or permission from the tenants. On one of these occasions a plumber entered the bathroom while Ms Charlotte Dickerson was entering the bath. This is a breach of the Applicants right to peace and comfort in the property, and is a further breach of Clause 2.61 of the AST agreement.

iii. The Respondent failed to fulfil her obligation to keep the property and the fixtures repaired. This includes:

a. Failing to repair a defective boiler which would leave the tenants without hot water or central heating for days at a time. This was initially reported on the 24th October 2019 and the issue was never resolved, despite 9 separate requests being made by the Applicants. This was a breach of the landlord's obligation under Clause 3.3 of the AST agreement.

b. Failing to fix a broken bath tap which was out of use for 2 months between 3rd September 2019 and 30th October 2019.

c. Failing to fix a broken kitchen extractor hood which was first reported on 26th September 2018 and was not replaced until 4th February 2019, despite 8 requests made to the Respondent.

d. Failing to fix a faulty shower pump which was first reported on the 22nd September 2018 and not fixed till the 20th December 2018, despite 13 requests made to the Respondent for its repair.

e. Refusing to replace a fridge freezer as it was 'gifted' by the previous tenants. This is a breach of Clause 5.1 of the AST agreement, as the Applicants would not have been able to take the fridge freezer with them upon leaving the property.

15. The Respondent interfered with the peace and comfort of the Applicants and persistently withdrew services reasonably required for occupation in the premises.

16. Furthermore, on the 18th March 2020 an email was sent by the Letting Agency with a S.21 Eviction notice. The notice was invalid on the grounds that:

i. The property was an unlicensed HMO thus rendering the notice invalid under S.75(1) of The Housing Act 2004;

ii. The eviction was made in retaliation to the Applicants complaints to the council regarding the broken boiler; a boiler which had not been properly repaired throughout the Applicants occupation in the premises.

17. On the 17th March 2020, prior to the email from the Letting Agency, the Respondent and her daughter visited the premises unannounced to inform the Applicants of their impending eviction. The nature of the visit caused the Applicant's severe upset and distress.

18. On the 1st April 2020 two of the Respondent's family members asked for the Applicants to leave the property before the end of the S.21 Notice period, despite the notice itself being invalid. The family members suggested the pair should find an Air B&B to stay in.

19. The Respondent therefore made 3 attempts to unlawfully evacuate the Applicants from the premises. It is worth noting that this was also done during a global pandemic which would have added to the distress and upset caused to the Applicants.

20. Not only was the S.21 Notice invalid, but Clause 6.1 of the AST agreement made clear that at least 2 months written notice would be

needed to end the agreement. The Respondent therefore breached the terms of the agreement."

23. The Tribunal explored with Ms Nicholls for the Applicants whether those allegations, many of which amounted to or were tantamount to allegations of additional criminal offences contrary to section 1 and/or 3 the Protection from Eviction Act 1977 (as amended) had been notified to the Appellant before the skeleton argument. None of the allegations were supported by a statement of truth. Ms Nicholls was bound to concede that none of those allegations featured in any of the witness statements served on behalf of the Applicants or in the RRO application form. Ms Nicholls was unable to identify any prior notice of these allegations to the Respondent (despite there being an opportunity to make enquiries). (Ms Nicholls had not been herself involved in the preparation of the papers for the hearing). The allegations related to a number of events alleged to have occurred in the period September 2018 to March 2020. Not one contemporary document or communication referring to these events had been disclosed by the Applicants.

24. This late introduction of serious allegations of misconduct was completely inconsistent with the overriding objective in rule 3 of the 2013 Rules. In particular the Applicants' duty to help the Tribunal to further the overriding objective and co-operate with the Tribunal generally appears to have been overlooked.

25. This left the Respondent who had not had access to legal advice or representation, faced with new allegations of criminal conduct or (at the very least) serious misconduct, for which neither she, nor the Tribunal had been able to prepare adequately.

26. Given the fact that the hearing had been listed for several months, the allegations only went to quantum, and no explanation had been advanced for the omission, the Tribunal declined to permit the Applicants to rely upon those allegations or introduce evidence of them. In effect to allow the Appellant to introduce those allegations would have been to permit an amendment to the RRO or seek an extension of time to introduce them as reply to the Respondent's case.

The Hearing

27. The Tribunal checked that all parties had the same copies of the bundle and documents before the hearing started.

28. The Tribunal Judge indicated at the outset the following issues arose:

    a. Can the Applicants satisfy the Tribunal beyond reasonable doubt (so that the Tribunal is sure) that the Respondent had committed the criminal offence of being a person having control of or managing the premises when they were a House in Multiple Occupation (an "HMO") was required to be licensed but was not so licensed contrary to section 72(1) of the 2004 Act for the dates alleged;

b. If any of the above were established, should the Tribunal exercise its discretion to make an RRO.
c. If so what should the amount of the RRO be (by reference to any offence or offences found to have been committed) taking into account:

> (a)the conduct of the landlord and the tenant,
>
> (b)the financial circumstances of the landlord, and
>
> (c)whether the landlord has been convicted of an offence.

Inspection

29. None of the parties contended the Tribunal needed to inspect the premises. The Tribunal considered an inspection was not proportionate or necessary to determine the issues.

Was the offence under section 72(1) of 2004 Act committed by the Respondent?

30. The Respondent was informed at the outset that she did not need to give evidence about whether the circumstances gave rise to this offence. She was told she could confine her evidence to the issue of quantum of any RRO and simply comment upon the evidence produced by the Applicants. The Respondent chose to give evidence about all issues.

Licensing and Designation

31. Page 36 of the Applicant's Bundle is a copy of an undated copy of a Public Notice of Designation by Bristol Council of wards in central Bristol (including Lawrence Hill in which the premises were located) which were the subject of Additional Licensing from 8th July 2019. This required an HMO in the Lawrence Hill area of Bristol to be licensed.

32. Section 61(1) of the 2004 Act provides that "Every HMO to which this Part applies must be licensed under this Part unless–

> (a) a temporary exemption notice is in force in relation to it under section 62, or
> (b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4."

The relevant part of the 2004 Act is Part 2. Section 55 of the 2004 Act is entitled "Licensing of HMOs to which this Part applies". Sections 55(1) and 55(2) of the 2004 Act provide:

> "(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. The Tribunal turns to the definition in section 254(2) of the 2004 Act. This sets out what constitutes an HMO, falling within the "standard test":

> "A building or part of a building meets the standard test if
> (a) it consists of one or more units of living accommodation not consisting of self-contained flats;
> (b) the living accommodation is occupied by persons who do not form a single household;
> (c) the living accommodation is occupied by the tenants as their only or main residence;
> (d) their occupation of the living accommodation constitutes the only use of that accommodation;
> (e) rents are payable in respect of the living accommodation; and
> (f) two or more of the households who occupy the living accommodation share one or more basic amenities, namely the kitchen, a bathroom and a toilet. "

34. Section 260 of the 2004 Act enacts a presumption that the occupation of living accommodation constitutes the only use of that accommodation where that issue arises in proceedings. There is no presumption (evidential or otherwise) in respect of any of the other elements of the standard test. The burden rests upon the Applicants to establish each element of the offences so the Tribunal is satisfied so that it is sure an offence was committed during the relevant dates.

Controlling or managing the premises

35. The Respondent accepted that she had overall responsibility for repairs and maintenance although she engaged the services of Mr Samuels to assist with day to day repairs. It was clear she had control and management of the premises.

Did the premises amount to an HMO?

36. The Tribunal examines this allegation by reference to the dates set out in the

application for a RRO received on 12th June 2020. This is necessary as some of the dates given for occupation and commission of the alleged offence in the statement differ from the dates given in the application form. The application form is treated as the equivalent to summons alleging a criminal charge.

37. The Respondent once alerted to the need for licence applied for and was granted an HMO licence on 23rd April 2020. If the need for an HMO licence is established, no offence was committed after 22nd April 2020.

38. The Applicants approached this part of their case by reference to what was inaccurately described as a "sworn witness statement" which contained statements of truth signed electronically by each of the Applicants on 7th July 2020. It was not sworn in any sense usually understood by a Court or Tribunal. The Applicants assert by reference to abbreviations representing their names that in the period of time which embraced 8th July 2019 and 22nd April 2020 Barney Necus ("BN") and Charlotte Dickerson ("CD") were occupying the premises as one household. For the first part of that period they assert that at the same time until 19 August 2019 Joseph Cessford ("JC") and Amy Still ("AS") also occupied the premises as a separate household.

39. The Tribunal turns to section 258 of the 2004 Act which describes when persons are to be regarded as not forming part of a single household for the purpose of section 254 of the 2004 Act. Sub-sections 258(2) – (4) of the 2004 Act (as they were in force in the period July- August 2019) provided as follows:

> "2) Persons are to be regarded as not forming a single household unless–
>
> (a) they are all members of the same family, or
>
> (b) their circumstances are circumstances of a description specified for the purposes of this section in regulations made by the appropriate national authority.
>
> (3) For the purposes of subsection (2)(a) a person is a member of the same family as another person if–
>
> (a) those persons are married to each other or live together as husband and wife (or in an equivalent relationship in the case of persons of the same sex);
>
> (b) one of them is a relative of the other; or
>
> (c) one of them is, or is a relative of, one member of a couple and the other is a relative of the other member of the couple.
>
> (4) For those purposes–
>
> (a) a "couple" means two persons who are married to each other or otherwise fall within subsection (3)(a);
>
> (b) "relative" means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin;
>
> (c) a relationship of the half-blood shall be treated as a relationship of the whole blood; and
>
> (d) the stepchild of a person shall be treated as his child."

40. It was not disputed that BN and CD and JC and AS were not members of the same family, although each pair lived as a "couple" in a close personal relationship. It was not necessary for the Tribunal to consider whether each of BN and CD (on the one hand) and JC and AS (on the other hand) lived "together as husband and wife" for the purpose of section 258(3) of the 2004 Act. The Tribunal is satisfied so that it is sure that there were at least two households sharing one or more basic amenity including a toilet, washing facilities and cooking facilities for the purpose of section 254(2)(f) and 254(8) of the 2004 Act. The evidence of the Applicants and that of the Respondent and Mr A Samuels confirmed these arrangement for sharing the basic amenities in the premises.

41. The statement of the Applicants dated 10th July 2020 asserts that JC and AS left the premises on 19th August 2019 and Jennifer Borrachhero ("JR") and Joel Berrocal ("JL") occupied thereafter until May 2020 and shared one or more of the basic amenities such as cooking washing and toilet. It was not disputed that JR and JL were not part of the same household or family as BN and CD. The Tribunal finds that the effect of this was that more than one household was occupying the living accommodation and sharing basic amenities in this period.

42. The Tribunal explored with the Applicants whether they were occupying the premise as their only or main residence for the purpose of section 254(2)(c) of the 2004 Act (or were to be treated as so doing under section 259 of the 2004 Act. Each of the Applicants appeared to have alternative addresses listed in the documents provided. It transpired than none were students but all were working in employment in the Bristol area and treated the premises as their only residence during the periods in issue.

Did the Respondent have a reasonable excuse for managing or controlling the premises without an HMO licence?

43. It is a defence to the allegation of offence under section 72(1) that a person had reasonable excuse for controlling of or managing premises when an HMO licence was required: see section 72(5) of the 2004 Act.

44. Ms Nicholls for the Applicants drew attention to *Mohamed v London Borough of Waltham Forest* [2020] EWHC 1083, where it was held that it was not necessary to show that the persons who had control of or managing premises which required a licence knew that they were managing or controlling an HMO.

45. Examples of what amount to a reasonable excuse considered in the *Mohammed* case. If the accused did not know that there was an HMO which was required to be licensed, for example because it was let through a respectable letting agency to a respectable tenant with proper references who had then created the HMO behind the accused's back, that might be relevant to the defence.

46. The Tribunal considered with the Respondent whether she might have reasonable excuse within the meaning of section 72(5) of the 2004 Act. The Tribunal accepted her evidence that she was unaware of the need for an HMO licence and that she applied for an HMO licence as soon as it became clear that she was required to obtained one., The Tribunal accepted her evidence about her good character. She was a truthful witness. The Respondent's ignorance of the need for licence cannot in law amount to a defence to the offence of controlling or managing an HMO which required

a licence but did not have such a licence.

47. The Tribunal accepted the Respondent's evidence that she relied upon her letting agents to assist her about the administrative and legal side of the letting of the premises to the Applicants. To her credit however the Respondent did not go so far as to allege that her agents misled her about the number or characteristics of the occupants.

48. The Tribunal is satisfied so that it is that sure that the Respondent committed the offence of controlling or managing the premises as an HMO when licence was required between 8th July 2019 and 22nd April 2020

Discretion to make RRO

49. It is clear that in most case where a relevant housing offence has been found to have been committed by a landlord an RRO will be made. there is very limited scope for exercise of discretion not to make an order: *LB Newham v Harris* [2017] UKUT 0264 under the parallel provisions of section 97 of the 2004 Act.

The amount of the RRO

Conduct of the Respondent as landlord

50. The Tribunal finds the circumstances in which the offence was committed were at the very lowest end of the scale of seriousness. Shortly after the need for licence was pointed out to the Respondent, she took steps to rectify the omission and applied for a licence on 22nd April 2020. The Tribunal accepts her evidence that had she been aware of the need to apply for a licence before April 2020 she would have done so.

51. There is no evidence of previous convictions, cautions or misconduct.

52. BN in his oral evidence referred to repeated complaint about a faulty boiler pilot light and difficulty with obtaining hot water. That allegation was not advanced in his witness statement. It was not suggested by the Applicants that the condition of the property was substandard or that the tenants suffered any prejudice by reason of the omission to apply for an HMO licence earlier. The RRO application form alleged the property did not have fire doors, firefighting devices or emergency lighting. The Applicants did not pursue that part of their complaints at the hearing in any evidence, except to repeat them in the Applicants' skeleton argument.

53. The Applicants were each articulate intelligent individuals who were in various forms of employment which entailed regular communication with others. Had there been significant prejudice or harm associated with the Respondent's omission to obtain an HMO licence the Tribunal would have expected to have seen some contemporaneous confirmation of this in the form of an e-mail or text.

54. The Tribunal was impressed by the Respondent's calm and polite demeanour and her politeness in the face of the Applicants' claims to recover very significant sums from her which according to her would give rise to significant financial hardship. She was a credible witness who resisted the temptation to embellish or add to her recollection to support

her case.

55. The Respondent suggested to Joseph Cessford he had previously indicated that he had enjoyed living at the premises and she was a "fantastic" landlord. His response was he "could not recall" the conversation. The Tribunal found that a weak and unconvincing answer. According to the case which the Applicants wished to advance in their skeleton argument, the Respondent was a poor landlord who repeatedly failed to carry out her repairing and other obligations during the period in which he was in occupation until August 2019. If the Respondent had fallen down to such an extent in her obligations as landlord, Mr Cessford would be expected to recall conversations of this kind or at least to point to something which suggested that the Respondent was mistaken or incorrect. This conclusion is consistent with the reasons he gave for leaving the premises. He and his partner Amy Still wished to have larger accommodation. No mention was made of poor condition in his evidence. The Tribunal concludes that the Respondent's conduct as a landlord was perfectly satisfactory and Mr Cessford and his partner had not been dissatisfied with the accommodation.

56. The Respondent drew attention to the fact that the initial tenancy was for a term of 12 months with all applicants as parties: see [04-08]. The 2 couples who were Applicants had not known each other before the commencement of the tenancy, according to their evidence. She properly put to Barney Necus that if he had been unhappy with the premises he could have terminated the contract in October 2019. He and his partner Charlotte Dickerson but decided to remain at the end of the 12 month term His response in evidence was that his unhappiness with the premises only arose in the last few months of the tenancy before he and Charlotte Dickerson left in in May 2020. The Tribunal found his evidence about that difficult to accept. Many of the allegations of disrepair which featured in the skeleton argument at paragraph 14(iii) related to events in 2018 or early 2019.

57. The Respondent has not been convicted of an offence. This is not a case where the Tribunal considers the issue of deterrence arises as the offence was not committed intentionally or recklessly.

58. Joseph Cessford and Amy Still did however leave the premises with the Respondent's agreement on 19th August 2019 some 2/3 weeks before the termination of the tenancy. They did so with the agreement of the Respondent on the understanding that Barney Necus and Charlotte Dickerson would send some of the funds to the Respondent. The Respondent effectively agreed to release them from the final two weeks of their contract. She did so out of a sense of co-operation and trust. She would not have done so if relationships had been strained.

59. The Tribunal found the allegations made by the Applicants about the Respondent's conduct as landlord canvassed were unsubstantiated or of very little relevance to the issue of the amount of a Rent Repayment Order. The Tribunal proceeds on the basis that the allegations of the Respondent's poor conduct as landlord were of no relevance to the assessment of the amount of the RRO.

60. The Tribunal found the Applicants' suggestion that the Respondent was a "professional landlord" of no assistance or weight in this context.

Conduct of the tenants

61. To her credit the Respondent did not seek to raise allegations of misconduct against the Applicants.

Financial circumstances of the Respondent

62. The Respondent offered evidence about her financial circumstances. The Tribunal found her evidence that she was a full time carer for her 92 year old father credible and consistent with the documents produced.

63. The Tribunal accepted the Respondent's evidence about her very limited income of £113.55 per week. She also gave evidence about the continued need to make loan repayments which was consistent with the evidence of mortgage liability recorded on the official copy of the land register at page [34] of the Applicants' bundle. The Respondent's evidence that she did not have a pension, she was no longer working and her mortgage loan repayments were in the region of £500 per month with a further 10 years or so to run, was entirely credible.

64. The Respondent's evidence to the effect that she had applied for additional state benefits but had been refused was credible.

65. The suggestion by the Applicant's representative that the Respondent had acted in some way imprudently by not seeking a higher rent was of no assistance. The Tribunal accepts without reservation the Respondent's account of her financial situation. Her reluctance to provide more details of her apparently limited savings to the Applicants was entirely understandable given their approach to this litigation and unwillingness to seek compromise or negotiate. The Tribunal found her to be an honourable witness and drew no adverse conclusions from her desire to retain some privacy. The Tribunal explored with her the possible effect of an order that she would be required to meet a RRO in the region of £5,000. The Tribunal found he response that the effect would be "devastating" and she would need time to pay entirely convincing and credible against the background of her other evidence.

66. The Tribunal proceeds on the footing that the Respondent's financial circumstances are very limited and the income from renting the premises was in effect being used to subsidise the care of her elderly father with significant needs.

67. The Applicants sought to argue that the landlord's financial circumstances must be proved by the landlord to the same standard as that required of the Applicants when proving that an offence has been committed, namely "beyond reasonable doubt" (paragraph 26 skeleton argument). No authority or other support for that contention was offered. That contention is inconsistent with the plain wording of section 44 of the 2016 Act and contrasts markedly with the express imposition of the higher standard of

proof and express placing of the burden of proof upon the landlord in section 43 of the 2016 Act. Had the legislature wished to impose such a burden upon the landlord it could have used the language of section 43

Assessment of amount of the RRO

68. The upper limit for an RRO in this case is the amounts paid by the tenant for a period not exceeding 12 months during which the Respondent was committing the offence: section 44 of the 2016 Act.

69. Francesca Nicholls for the Applicants drew attention to the recent decision in *Vadamalayan v Stewart* [2020] UKUT 0183 which indicates that the rent paid during that period is the starting point for that assessment. However, at paragraph 19 of that decision Upper Tribunal Judge Cooke noted as follows:

> "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."

70. The Tribunal is satisfied that an order for the full amount of rent paid during the periods of claim will cause the Respondent and her wider family financial hardship. In the worst possible scenario such an order might require sale of the premises which she is providing. The Tribunal is also of the view that the Respondent cannot be described as a professional landlord in the sense of having the expertise or business acumen of larger landlord in a way of business. A discount is appropriate on that account and for the immediate application for an HMO licence. Taking all these factors into account (including the findings elsewhere in these Reasons), the Tribunal decides that 50% of the rent paid by the Applicants for the 12-month period is the appropriate method of assessing the RRO.

71. Taking the figures in the application form (which were not seriously challenged) this means:

i. the RRO in favour of Barney Necus and Charlotte Dickerson in total (that is to the both of them and not to each of them) is £2349.83.

ii. the RRO in favour of Joseph Cessford and Amy Still in total (that is to the both of them and not to each of them) is £261.69.

Reimbursement of fees

72. The possibility of resolving the request for an RRO by consent (that is by negotiation or agreement with the Respondent) does not appear to have been considered by the Applicants. Francesca Nicholls when asked whether there was a letter of claim before the RRO was issued was unable to point to such a letter or communication seeking a consensual resolution before the application was issued. Nor was there any evidence that the Applicants responded to let alone negotiated about the offer of settlement made by the Respondent (whilst not agreeing with the claim).

73. The Tribunal encourages alternative dispute resolution as it can in some

cases minimise the use of resources by the parties and the Tribunal. As this was a case where the Applicant was unable to demonstrate that a Tribunal hearing was required to obtain an RRO, and no attempt appears to have be made to pursue negotiation the Tribunal does not consider it appropriate to order the Respondent to reimburse the Applicant for the application fee or hearing fee.

H Lederman

Tribunal Judge

30 09 2020

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 Tribunal 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 for 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.