



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

Case reference : **CAM/38UC/HMK/2021/0002 and others**

HMCTS Code : **F2F and V: CVP REMOTE (hybrid)**

Property : **Student Castle Oxford, Osney lane, Oxford OX1 1TE**

Applicants : **The applicants named in Schedule 1**

Lead Applicants : **1. Mr Chaitanya Kediya
2. Ms Sheena Rama
3. Mr Chinonyelum Asiegbu
4. Mr Lok Wei Law
5. Mr Sanghun Justin Kim
6. Mr Dennis Milesevic**

Respondent : **SC Osney Lane Management Limited**

Representative : **Bryan Cave Leighton Paisner LLP**

Type of application : **Application for a Rent Repayment Order – section 40 of the Housing and Planning Act 2016**

Tribunal member(s) : **Regional Judge Ruth Wayte
Deputy Regional Judge David Wyatt
Jacqueline Hawkins**

Date of hearing : **20 and 21 July 2022**

Date of decision : **11 August 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a face-to-face and remote video hearing (V: CVP REMOTE) hybrid by agreement due to the location of some of the applicants and one of their representatives. The decision records the document bundles considered and the order made is described below.

Decisions of the tribunal:

- 1. The tribunal orders the respondent to pay to the lead applicants (and, subject to paragraph 4, the other applicants) the amounts set out in the last column of the table at schedule 1 to this decision (being 35% of the rent paid during the periods the offence was being committed, as set out in the second column of that table, less an allowance of £60 for utilities, in each case).**
- 2. The tribunal also orders the respondent to reimburse each application fee of £100 (to the lead applicants and, subject to paragraph 4, the other applicants) and the single hearing fee of £200 paid by Flat Justice.**
- 3. Payment to each lead applicant under paragraphs 1 and 2 shall be made by 9 September 2022.**
- 4. As set out in rule 23 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, this decision will also be binding on the parties to the applications made by the other applicants and stayed pending this decision (the “related cases”) unless they apply to the tribunal (sending a copy of their application to the respondent) for a direction under rule 23(6) within 28 days after the date on which a copy of the decision is sent to them or their representative. In each related case:**
 - a. where no such application has been made, payment to the relevant applicant under paragraphs 1 and 2 shall be made by 14 October 2022; or**
 - b. where such application is made, the tribunal will give directions providing for the disposal of, or further directions in, that related case.**

The applications

- 1. The applicants each seek a rent repayment order (RRO) under section 40 of the Housing and Planning Act 2016 (“the 2016 Act”). The applicants rely on the respondent having committed an offence under section 72 (1) of the Housing Act 2004 (the “2004 Act”), namely being the landlord of a house in multiple occupation (HMO) without the necessary licence. The “house” in question is student accommodation in a large purpose-built development in Oxford, known as Student Castle.**

2. Mr Kediya and four other applicants applied on their own behalf and directions were given on 7 December 2021. Subsequently applications were made by Flat Justice and Justice for Tenants on behalf of a further 38 applicants. Following a telephone case management hearing it was agreed that 6 lead applicants would be chosen in accordance with rule 23 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the 2013 Rules”). Mr Kediya continues to represent himself, Flat Justice represents Ms Rama, Mr Asiegbu and Mr Law and Justice for Tenants represents Mr Kim and Mr Milesevic. Further directions were given on 31 March 2022. A final case management conference was held on 6 July 2022 to confirm arrangements for the hearing.
3. The matter was originally due to be listed for a three day hearing, including an inspection of the property. Due to listing difficulties, the inspection was carried out by the tribunal on 4 July 2022 and the hearing held at Cambridge Magistrates Court on 20 and 21 July 2022. Mr Kediya, Ms Clara Sherratt for Justice for Tenants and the applicants Ms Sheena Rama and Mr Dennis Milesevic attended remotely. Mr George Penny for Flat Justice, Mr Justin Bates for the respondent and his witnesses David Mathewson and Holly Adcroft attended in person.
4. In accordance with the directions, all parties provided a hearing bundle and each representative, including Mr Kediya, provided a skeleton argument. Mr Bates provided a consolidated authorities bundle. The tribunal is grateful for the representatives’ assistance in ensuring the hearing was completed effectively and efficiently.

The law

5. Sections 40-41 and 43-44 of the 2016 Act contain the provisions in respect of RROs. In summary, section 40 provides that the tribunal may make an RRO in favour of a tenant where a landlord has committed a relevant offence – in this instance the offence set out in section 72(1) of the 2004 Act, the control or management of an unlicensed HMO. Section 41 stipulates that an application by a tenant is limited to circumstances where the offence relates to housing that, at the time of the offence, was let to the tenant and was committed in the period of 12 months ending with the day on which the application was made.
6. Section 43 states that the tribunal may make an RRO if satisfied, beyond reasonable doubt, that a landlord has committed the offence. Section 44 states that any RRO must relate to rent paid by the tenant in respect of a period not exceeding 12 months, during which the landlord was committing the offence. Any RRO must not exceed the rent paid in that period and in determining the amount the tribunal must, in particular, take into account:

- the conduct of the landlord and the tenant;
- the financial circumstances of the landlord and
- whether the landlord has at any time been convicted of an offence to which that part of the 2016 Act applies.

Background

7. The property offered accommodation in studio or “cluster” flats, the latter being mainly 6 ensuite bedrooms arranged behind a front door, with a shared kitchen and living area. The respondent accepted that each of its cluster flats were caught by Oxford City Council’s additional licensing schemes. The first such scheme was made on 15 October 2015 and came into force on 31 January 2017.
8. In April 2019 Singapore Press Holdings Ltd (“SPH”) started the process of acquiring the respondent company which was set up to operate and manage the property. At that time the property was under construction with handover planned for July 2020. The purchase was completed in December 2019, followed by a process of integrating the respondent into the SPH business structure.
9. On 23 March 2020 the national lockdown was announced as a result of the coronavirus pandemic. This led to a delay in completion of the building works to December 2020, although the practical completion certificate and final building control sign-off was received in September 2020 and students started to occupy the property from that month. Various restrictions of varying degrees continued in relation to the pandemic throughout the relevant period.
10. On 24 January 2021 Oxford’s first additional licensing scheme expired. A second was made on 10 March 2021 which came into force on 10 June 2021. That second scheme is due to expire on 9 June 2026.
11. On 31 August 2021 Oxford advised they would be inspecting the property. The inspection took place on 2 September 2021, following which the respondent was advised that a licence was required for each cluster flat. Although a licence fee would usually be payable per flat, as the respondent was a member of the ANUK National Code of Standards for larger student developments, only one fee and HMO licence was required for the whole development.
12. On 15 September 2021 the respondent’s application for an HMO licence was confirmed as “duly made”, meaning that any offence in respect of the failure to hold a licence ceased to be committed.
13. Oxford carried out a further inspection of the property on 12 October 2021 and confirmed that a licence would be granted conditional upon

additional cooking facilities (a tabletop combi microwave/oven/grill) being provided to those cluster flats with kitchens serving six people within 3 months. The licence was finally issued on 9 December 2021.

14. Although Oxford agreed not to take any enforcement action against the respondent for their failure to apply for a licence at an earlier date, they did write to each student in occupation during the period of the offence(s) advising them of their ability to apply for a RRO. The email to Mr Kediya was dated 3 November 2021. He made his application on 5 November 2021 and further applications were made subsequently, with the latest application made on 13 May 2022.

The issues

15. Following the final case management hearing, it was agreed that the issues were:
 - a. Was Student Castle as a building required to be licensed as a mandatory HMO?
 - b. Was there a reasonable excuse for the respondent's failure to apply for a licence?
 - c. Can a RRO be made where rent payments were made from accounts of people other than the tenant?
 - d. The amount of any RRO.

The Property

16. The tribunal inspected the property on 4 July 2022 in the presence of Mr Bates, Senior Scheme Manager Holly Adcroft, a representative from the respondent's solicitors and Mr Penny for Flat Justice.
17. Student Castle is a large purpose-built development near the Oxford railway station, off Osney Road. The site runs alongside the railway line to the west and is some 200m long, encompassing 6 blocks of 515 rooms; 242 ensuite rooms arranged as part of a cluster flat and 273 studio rooms. Each block is either 5 or 6 storeys high and is linked by a long main corridor which offers access to the communal areas and facilities as well as the blocks themselves. The residents access the property either through the main reception or a pedestrian gate at the rear of the office at the north end of the development.
18. Having walked through reception, there is a common room on the mezzanine level above the office and reception with study space, informal seating and a TV lounge. At ground level are the students' individual post boxes. Further down the corridor are several private study rooms bookable for student use. The corridor then opens out into a communal area known as the sunken lounge with a pool table, table tennis and further TV. Further along the corridor there is access

to the laundry (with washing machines and dryers) and gym and towards the rear an internal bike store which includes communal yellow bikes provided to the students as part of the facilities offered by Student Castle.

19. Externally, there is a perimeter road to the east, together with some hard and soft landscaping. There are paved courtyard areas between the blocks and a wider paved area on the west of the development which includes bin and bike stores and additional planting. All communal areas, both internally and externally, were immaculately presented on our inspection and had clearly been finished with an emphasis on quality.
20. We were also shown a cluster flat in block D and a studio flat in block B. Each cluster flat has a main door which is only accessible by residents of that flat. That leads to a corridor with doors for each en suite room and the communal kitchen and living area. We saw room D108 which was arranged with a fitted double bed, wardrobe, desk and bookshelves. A chair was also provided. There was an en suite shower room for the exclusive use of the occupant, which was fully tiled. The combined kitchen and living area had a fitted kitchen, with a large American style fridge, hob, oven and an additional microwave combi oven provided at the request of Oxford City Council. A large table and chairs provided seating for all 6 residents and there was also a flat screen TV and sofa. Again, the room was nicely presented with the fittings and decoration all in excellent condition.

The licensable unit

21. Flat Justice maintained on behalf of their clients that the whole development was licensable as a mandatory HMO, meeting the “standard test” under section 254(2) of the 2004 Act and having many more occupiers than the five prescribed by the relevant regulations for mandatory licensing of HMOs. They argued that the communal laundry room was a “personal washing facility” and therefore fell within the definition of “basic amenities” in section 254(8) of the 2004 Act, satisfying the condition that occupiers share one or more basic amenities or the living accommodation is lacking in one or basic amenities (s.254(2)(f)). In particular, they submitted that laundering of clothes was an essential part of modern life and an expected facility in any residential property, rather than a luxury. Such facilities were particularly important for students who are unlikely to have easy access to alternative clothes washing facilities.
22. The tribunal pointed out that the standard test had other requirements, including that the building does not consist of self-contained flats (s.254(2)(a)). On the face of it, all the accommodation was arranged as a self-contained flat, both studios and cluster flats. Mr Penny’s answer was that as he submitted the communal laundry room was a basic amenity, the flats did not meet the statutory definition in s.254(8) of a

self-contained flat which required all three basic amenities to be available for the exclusive use of its occupants.

23. In response, Mr Bates submitted that the phrase “personal washing facilities” was clearly aimed at shared showers or baths, both integral to modern life, as opposed to a laundry room which was very much an optional extra. If that was wrong, he submitted that the respondent would clearly have a reasonable excuse defence as Oxford City Council had not taken that stance in respect of their requirement for a licence, which was based on their additional licensing scheme for the cluster flats.

The tribunal’s decision

24. The point of this argument was that if Flat Justice succeeded, the period of the offence would be continuous, as Oxford’s additional licensing scheme had lapsed between 24 January and 10 June 2021. While we can therefore see the attraction for the applicants, we cannot agree with the argument. No authority was drawn to our attention but relying on our expertise and experience in relation to disputes involving HMOs and the context for the 2004 legislation, we determine that “personal washing facilities” clearly refers to washing the person rather than clothing. Otherwise, there seems no real need for the word “personal”. Further support for this conclusion is taken from the fact that “personal washing facilities” is described in the 2004 Act as one of three “basic amenities”, alongside “a toilet” and “cooking facilities”. We do not agree that a laundry room can be described as a basic amenity; it is an additional facility provided by the respondent, alongside the gym and bicycles, as part of their offer of premium accommodation. All the accommodation (cluster flats or studio flats) therefore provided basic amenities for the exclusive use of the occupants and therefore did not meet the “standard test” for HMOs.
25. In the circumstances, the only potential offence relates to the cluster flats for the periods where a licence was required by the additional licensing designations.

Reasonable excuse

26. Although the respondent admitted that if they did not have a reasonable excuse an offence would have been committed during those periods, due to the failure to apply for an HMO licence prior to the flats being occupied from September 2020, they argued that the impact of the pandemic on this particular site led to that requirement being missed.
27. Further details were provided by the respondent’s witnesses. In his witness statement, David Mathewson, a former Director of the respondent company, set out the background to the purchase of Student Castle Oxford in 2019 and the impact of the pandemic on the operations of the company up to and including late 2021. During that

period he was in charge of UK operations for SPH, including all student accommodation operating under the Student Castle or Capitol Student brands. By early 2019, 19 properties operated under the Capitol Student brand in the UK, run by a small London based head office with much of the support and operational functions outsourced to third party providers, including property agents. Student Castle had 7 sites, five operational and 2 in development, including Oxford. This brand, at the luxury end of the market, was attractive to SPH as they were keen to adopt their systems and processes, which included managing their properties in house.

28. The process of acquisition began around April 2019 and completed in late December 2019. The plan was then to combine the support functions and resources for both brands and bring previously outsourced functions back in-house. The London-based team of some 45 people would work with the on-site support for each Student Castle building (which today consists of 11 people in Oxford). In reality, the integration process was only fully completed by October 2021, delayed because of the pandemic.
29. Mr Mathewson was aware of HMO licensing from his work with the Capitol Student brand. In particular, three properties in Bristol and Bath had HMO licences due to the additional licensing schemes operated by the relevant local authority, a requirement which had been picked up by an outsourced management company. As far as he was aware, no Student Castle properties had previously required a licence, either due to their design (all studios) or the policy of the particular local authority which exempted ANUK accredited accommodation from their additional licensing scheme.
30. In his experience, the need for a licence would be caught at the planning or inspection stage of a property in development or the inspection carried out as part of the ANUK accreditation. However, none of these stages identified the issue in relation to Student Castle Oxford.
31. His witness statement confirmed that when the Government's working from home rules came into effect, the model of the larger head office working with specific sites came under severe strain. 32 people within the Student Castle brand were furloughed and head office was closed from March 2020 through to July 2021. It took time to ensure those working from home were provided with the necessary equipment and the company's typical way of working – through face to face meetings – was not achievable. Staff also focused on dealing with the massive impact of the Covid restrictions on the student sector, processing over 5,000 refunds of rent to students who returned home in 2020. As the pandemic developed, a number of employees had their roles repurposed to deliver food, supplies or Covid tests to and remove rubbish for the students who remained. Mr Mathewson was adamant that had it not been for the pandemic, the need for an HMO licence for Oxford would have been identified prior to the site opening in

September 2020: “*It was a human error in a very difficult environment*”.

32. The tribunal asked Mr Mathewson to identify the individual responsible for HMO licensing. His answer was that it was the Operations Directorate as a whole, with the local Scheme Manager liaising with head office. In cross-examination by Mr Kediya, he admitted that the issue had “*fallen through the cracks*” with this development, the company’s first. This was also the first time the company had actually applied for an HMO licence itself, with the key period being July to September 2020 once the interior of the property had been completed and the necessary documents were to hand to support the application. He confirmed that the company’s Standard Operating Procedures now mention the need to consider HMO licensing, with responsibility falling to the specific operations directorate for the particular brand and the sign off process for each building prior to occupation also includes consideration of licensing. Neither existed at the time.
33. The Scheme Manager for Student Castle Oxford, Holly Adcroft, also gave evidence on behalf of the respondent. Although her statement mainly deals with the issues raised by the applicants in terms of the condition of the property, she confirmed that she had applied for the HMO licence once the council had inspected the property and stated that she held herself accountable for the failure to do so earlier. She was aware of HMO licensing but it had never come up during discussions with the council and the issue had “*slipped through the net*”.
34. The applicants’ representatives all pointed out that as a serious investor in student property, the respondent had to take ownership of their legal obligations as landlord. Various Upper Tribunal authorities supported the argument that professional landlords would be unlikely to succeed with a reasonable excuse defence when in reality it was based on omission. Mr Penny pointed to the guidance in the ANUK/Unipol National Code of Standards for Larger Developments for student accommodation not managed or controlled by educational establishments which flags up the need for members to consider whether any licence is required. Ms Sherratt observed that no argument was raised in respect of any failure by Oxford to properly publicise their additional licensing schemes and in those circumstances the respondent is deemed to have been notified of them. Mr Kediya accepted that the pandemic had been a terrible time for everyone but pointed out that the Government decided not to suspend private sector regulation on housing standards during 2020 and 2021, in direct contrast to its restrictions on possession proceedings. He also pointed out that in June to September 2020, the period identified by Mr Mathewson as the time to apply for a licence, restrictions had been temporarily eased, and during the time of the second additional licensing designation from June 2021 society had begun to open up. He submitted that the real reason for the failure to consider the need

for a licence was the lack of adequate Standard Operating Procedures and/or a clear line of responsibility for licensing issues within the company.

Tribunal's decision

35. The tribunal does not find that the respondent had a reasonable excuse for having control of or managing the cluster flats while they were required to be licensed but were not (s.72(5)(a)). While we accept that the pandemic interrupted normal ways of doing business, put substantial other demands on staff and led to personal tragedy for at least one employee, the respondent is a professional landlord who should have ensured there were systems in place to identify whether a licence was required in good time before students went into occupation, particularly given the previous experience of licensing properties under the Capitol Student brand. As Mr Kediya identified in his submissions, the root cause was the failure of the company's Standard Operating Procedures to identify the need to consider licensing and the failure to make personal accountability clear.
36. That failure was likely to be due to the relative inexperience of the staff employed to take management in house, compared to the third-party property managers who had previously identified the need for licensing other student accommodation. The decision to furlough a large number of Student Castle staff must also have had an adverse impact on the ability of the remaining staff to cope with the work required to launch the Oxford site. As pointed out by Mr Penny, the ANUK/Unipol National Code flags up the need for its members to consider whether any licence is required. Given the respondent's emphasis on their ANUK membership, it would have been reasonable to expect them to be fully familiar with that code.
37. The respondent referred to various "*fail safes*" or "*touch points*" with others during the development process which they said would normally have helped to identify the licensing issue. In any event, as the respondent acknowledges, it is not reasonable for them to rely on others to remind them of their legal responsibilities; this was their responsibility.

Rent paid by the tenant?

38. The Licence Agreements provided by the respondent required payment of the licence fee for the whole period in advance, unless the occupier could provide a UK-based guarantor. In those circumstances, the licence fee was payable in three instalments. Payment could be made through the Student Castle portal, online or by bank transfer. The respondent confirmed that any credit card could be used to pay rent through the portal and several applicants, including Mr Kediya and Mr Asiegbu had payments made using cards for accounts in the name of their parents. Mr Milesevic's parents had paid his whole rent by bank transfer. Payments made through the portal were automatically

allocated to the relevant tenants and the respondent had allocated the bank transfers to the specific tenants themselves.

39. Despite accepting the payments as rent, the respondent sought to argue that monies paid by third parties could not be the subject of a RRO as that rent had not been paid by the tenant. They relied on section 40(2) of the 2016 Act which states that “A *rent repayment order* is an order requiring the landlord under a tenancy of housing in England to – (a) repay an amount of rent paid by a tenant, or (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of the rent under the tenancy...”. The phrase “rent paid by the tenant” also appears in the table in section 44(2) which states that for licensing offences, “the amount must relate to rent paid by the tenant in respect of ... a period, not exceeding 12 months, during which the landlord was committing the offence”.
40. Mr Bates argued that this wording created a condition precedent that the rent must have been paid by the tenant. He also relied on *Rakusen v Jepsen* [2021] EWCA Civ 1150 which he submitted held that there must be privity of contract and of estate between the landlord and the tenant. He said that understanding was consistent with the description of that decision in the judgment of the Deputy President in *Kaszowska v White* [2022] UKUT 11 (LC) at [21]: “In *Rakusen* the Court of Appeal decided that a rent repayment order could only be made against the immediate landlord of the tenant who had made the application and who had paid the rent which was sought to be recovered.”
41. Mr Bates argued that “*repay*” and “*rent paid by a/the tenant*” should be read literally as Parliament was well aware that third parties often make payments in respect of the occupation of land. He pointed to two examples where express provision had been made for that scenario: the rights of a “*relevant person*” in respect of the tenancy deposit protection provisions of the Housing Act 2004 and the use of that same descriptor in the Tenant Fees Act 2019. In the former case the relevant person was defined as someone who in accordance with arrangements made with the tenant had paid the deposit or rent “...on behalf of...” the tenant. In the latter, the definition expressly included a person acting on behalf of a tenant. If Parliament had wanted RROs to apply to payments made by third parties it would have been simple to use the same or similar wording. In any event, he also relied on the principle of dubious penalisation: that a person should not be penalised except under clear law. This was accepted by the Court of Appeal in *Rakusen*.
42. In response, Mr Penny for Flat Justice pointed out that both *Rakusen* and *Kaszowska* were dealing with very different situations: respectively, the liability of a superior landlord, or director of a landlord company, to pay a RRO. Neither was in direct receipt of the rent. The other statutes mentioned by the respondent also had a different purpose. He submitted that the facts in this case showed that this was rent paid on the direction of the tenant and suggested that the broad reference to rent paid in section 44(2) should be read in the light of

section 52(2) of the 2016 Act which states: “*For the purposes of this Chapter an amount that a tenant does not pay as rent but which is offset against rent is to be treated as having been paid as rent.*”

43. The question of whether the parents could be said to have been acting as agents for the tenants was raised at the case management conference before the hearing. Mr Bates argued that was not how families worked and in any event no evidence had been provided to state that the parents had been acting in that capacity: in particular, he argued that an agent would expect to be repaid. Mr Penny denied that repayment was an essential factor, particularly when dealing with family matters. He pointed out that if the parents had paid the rent into their child’s account for them to make the payment themselves, the respondent’s argument would fall away. Parliament could not possibly have intended to draw a distinction in those circumstances where there was no dispute that the rent had been paid.
44. Ms Sherratt from Justice for Tenants argued that an agent is simply someone authorised to act on behalf of another. In circumstances where the respondent required payment of the rent in one lump sum and accepted payments made by a third party as rent, she submitted that the rent was paid by the tenant for the purposes of a RRO. She also submitted that the wording in section 40(2) was clearly intended to distinguish payments made by or on behalf of the tenant from rent paid by the state as housing benefit, as in the latter circumstance the RRO is paid to the local housing authority.
45. Mr Kediya pointed out that there could be no privity of estate under a licence. As to privity of contract, he submitted that the evidence was that payment was accepted as if it was paid by the tenant – the portal required the tenant to sign in and state their room number and reference so that the payment could be correctly allocated to their room. The respondent had allocated payments received by bank transfer themselves. Since payment had been made there should be no concern as to dubious penalisation. In *Rakusen* at [43], the Court of Appeal felt that, if there were any doubt as to whether an RRO could be made against a superior landlord, the doubt should be resolved in favour of Mr Rakusen (the landlord) particularly “*given that the effect of the respondents’ interpretation is that superior landlords can be ordered to repay tenants sums of money which the superior landlords have never received*”.

The tribunal’s decision

46. We consider that the evidence shows that the payments made in this case were by the tenant, regardless of whether the credit or debit card used on the portal was in a parent’s name or the bank transfer was from the parents’ bank account. This is particularly clear when looking at the transaction through the portal, which required the student to log into the system with their name and details from their licence agreement and then use card details to pay the rent. Bank transfers

were allocated to the appropriate tenant by the respondent and the details logged on the system in the same way.

47. We do not consider it is necessary to make a finding that the parents were acting as agent but if we are wrong in that we also consider that there is sufficient evidence that they were. There are no formal requirements to establish an agent's authority, which can be implied from the capacity of the parties involved or by the nature of the act. It is obvious that payment of rent was at the request of the student and made on their behalf. All the payments were from cards or accounts in the name of the tenant or people with the same last names as the tenant. We do not agree that there is any requirement of evidence as to repayment: this is a family relationship. The payments were made by the tenant for the purpose of Chapter 4 and an RRO can be made to repay them to the tenant.
48. Finally, we also agree with the applicants that "*repay*" and "*paid by a tenant*" in the RRO definition in section 40(2) should not be read too narrowly or in isolation. This wording is clearly there to concisely distinguish private payment from payments made from public funds, as Ms Sherratt submitted. Section 44(2), referring to rent paid by the tenant, follows on from this. We agree with Mr Penny that the lack of specific provision for rent paid by third parties for the tenant does not indicate that Parliament intended to exclude such rent from "protection". The tenancy deposit protection provisions and the Tenant Fees Act are different statutes and, in contrast to Chapter 4 (which, as noted below, is mainly aimed at deterrence of rogue landlords rather than compensation of tenants or anyone else), create various prescribed information and other rights and protective provisions for various "relevant persons", so it follows that specific provision would be needed for them. Section 52(2), while clearly aimed at deposits or the like, is sufficiently widely drafted to indicate that Parliament intended even monies not paid by the tenant as rent but treated as rent by the landlord ("*...offset against rent...*") to be treated as having been paid as rent for the purposes of a RRO. We regard the language of Chapter 4 of Part 2 of the 2016 Act as unambiguous for the purposes of the facts we have found; there is nothing unclear about the penalty which could be imposed. In contrast to *Rakusen*, the respondent landlord had the direct contractual relationship with the applicants and received and accepted from the applicants all the rent which they are being asked to repay as the penalty for the relevant offence(s).

The amount of any RRO

49. The final question is therefore whether the tribunal should make a RRO and if so, in what amount. Helpfully, the respondent had agreed with the lead applicants a schedule of total potential RRO liability in respect of each applicant (giving us the figures we have reproduced in the second column of the table at schedule 1 to this decision) and the amount which falls to be deducted in terms of the utility bills paid by the respondent – £58.86 per person.

50. The respondent submitted that the tribunal should make either no or a low award. Both in his skeleton argument and during the hearing, Mr Bates spent some time setting out the context for and purpose of HMO regulation – essentially to deal with the public health problems that arise from cramped housing converted from its original purpose. Those problems simply did not arise in relation to Student Castle, which was high quality purpose-built accommodation. Although students in the cluster flats shared kitchen facilities, the respondent had furnished those facilities to a high standard, far removed from the typical picture of an HMO. There were extensive communal facilities and the rent included heating, hot water and electricity, WiFi and contents insurance. There had been 24-hour staffing on site, with managers and an administrator, a maintenance technician, housekeepers, security, an evening concierge and others.
51. RROs, he submitted, exist to support the legislative purpose of HMO regulation. They are aimed at “rogue” landlords with their main object deterrence rather than compensation (*Rakusen v Jepsen* [2020] UKUT 298 (LC) at [64]). He quoted the President of the Upper Tribunal in *Williams v Parmar* [2021] UKUT 244 (LC) at [41] and [43] who said: “...*the FTT should take into account the purposes intended to be served by the jurisdiction to make an RRO...*”; and referred (based on the government guidance given to local authorities on whether to apply for RROs) to: “*the need to: punish offending landlords; deter the particular landlord from further offences; dissuade other landlords from breaching the law; and remove from landlords the financial benefit of offending.*”
52. The respondent was not who Parliament had in mind when devising RROs. It provides high quality, purpose-built student accommodation. It does not need to be deterred from acting unlawfully, by contrast to “rogue landlords” renting badly converted properties on the Cowley Road (in Oxford). They are unlikely to be dissuaded from breaking the law by the imposition of a RRO on the respondent.
53. In terms of the factors set out in section 44 of the 2016 Act, the only relevant one was the conduct of the landlord. Mr Bates submitted that it must mean conduct in relation to the offence as opposed to conduct more broadly as a landlord. This was an offence by omission and the only requirement of the council was the provision of additional cooking facilities in the shared kitchen. None of the applicants were able to give evidence as to how the lack of an HMO licence had affected them. In all the circumstances, the tribunal should exercise its discretion to make a nil order.
54. If the tribunal was minded to make an order, Mr Bates submitted that the recent case of *Hallett v Parker* [2022] UKUT 165 (LC) where the Deputy President listed a range of factors before making an order of approximately 25% of rent paid during the period of the offence,

illustrated similar circumstances but with poorer accommodation. Any order made here should therefore be a lower amount.

55. Both Flat Justice and Justice for Tenants had raised a number of issues in relation to the condition of the property. It was common ground that the external building works were not completed until December 2020, causing noise and dust, but both Ms Rama and Mr Milesevic gave evidence about problems with the interior of their flats. Ms Rama had amongst other things suffered from noise from the external works and a leaking shower, which had led to damage to her possessions. That damage had largely been compensated by the contents insurance provided by the respondent who had also offered private study rooms or even a move to a different flat in response to her complaints about noise and other concerns about her room. Mr Milesevic had been concerned that the fire alarm system was not properly interlinked. He had also accidentally damaged the hob in his communal kitchen (pulling at the extractor unit which seemed to him to be a cupboard and causing it to fall onto the hob) and complained that the replacement would turn itself off, possibly when overused. They both described several other matters they had been unhappy about, such as time taken to replace blinds supplied with holes in them (Ms Rama) and a cupboard door which did not shut neatly and a toilet which needed unblocking (Mr Milesevic). Mr Asiebgü, Mr Law and Mr Kim described other concerns in their written statements, but these related less to the condition of the accommodation and more to allegations about such matters as students not following restrictions during the pandemic and use of facilities and parties by non-students staying in studio flats during the summer break under short-let arrangements made by the respondent.
56. Mr Penny argued that the failure to complete the building works until December 2020 should be taken into account in determining quantum. The bargain was for high quality accommodation and the student experience of those first few months was marred by the continuing construction works. He pointed out that the Deputy President in *Hallett v Parker* at [29] described conduct as “including” the conduct constituting the offence, an indication that other conduct was relevant too. Several Upper Tribunal cases also considered the condition of the property as a relevant factor.
57. Mr Penny pointed out that in *Hallett*, the landlord let his own house while working abroad, had never let to a group of tenants before and was unaware of licensing altogether. The Deputy President accepted that in those circumstances it might have been reasonable to expect his agents to alert him to the need to obtain a licence and took that into account in coming to his figure, observing that small landlords ought to be encouraged to use reputable agents to help them ensure they comply with housing requirements. Other cases involving professional landlords indicate a much harsher line, for example in *Simpson House 3 Limited v Osserman and others* [2022] UKUT 164 (LC), an award of 85% was made to take into account the fact that the landlord was a

major investor in property. He submitted that the minimum award should be 70% as he conceded that there was no complaint of poor conduct in terms of the respondent's behaviour.

58. Ms Sherratt pointed out that despite the emotive term, "rogue" landlords were defined by Government as landlords who fail to comply with their obligations, like the respondent. The Upper Tribunal in *Hallett* at [37] was also clear "*that proper enforcement of licensing requirements against all landlords, good and bad, is necessary to ensure the general effectiveness of licencing requirements and to deter evasion..*". She pointed out that SPH own 26 properties across the UK and therefore to have an effect an award at the top of the range would be required. She argued that a range of 80-100% was appropriate taking into account the fact that the property was not ready when the students moved in and those Upper Tribunal cases involving professional landlords such as *Aytan v Moore* [2022] UKUT 27 (LC) (85% for one property and 90% for another) and *Simpson House* (85%).
59. Mr Kediya pointed out that the factors to be taken into account under section 44 were not exhaustive (it refers only to matters which the tribunal must "*in particular*" take into account) and therefore even if the conduct of the landlord was limited to conduct relevant to the offence, other factors such as the condition of the property could be taken into account by the tribunal. He gave three reasons why the tribunal should make a higher RRO than the 25% ordered in *Hallett*: the landlord was an individual vs serious property investor; with a single property vs about 25 and 250 HMOs and 3 tenants vs 242 in the cluster flats. Finally, Mr Hallett had never needed an HMO licence before, again contrasted with Capitol Student's three properties. In those circumstances he submitted the range should be 25-85% and closer to the higher percentage.

The tribunal's decision

60. There was no substantial need to punish the respondent or deter it from further offending. We accept its evidence that it has learned from this experience and changed its procedures to ensure local licensing requirements will not be missed in future. There was no significant financial benefit from the offending (inadvertently avoiding payment of the application fees for a single licence, or the like). However, we bear in mind the observation in *Hallett* at [37], as noted above, and the observations in *Simpson* at [49] in relation to additional licensing. We therefore do not consider that this is a case where a nil award is appropriate. Given the respondent's position in the market we think this is exactly the type of case where an award may act as a deterrent to others, one of the prime reasons for the RRO jurisdiction. That said, we acknowledge that the pandemic had a significant effect on the respondent's operations during the crucial period and that the accommodation provided, once completed, was to a very high standard. In those circumstances, we have also taken into account the decision of

the Deputy President in *Hallett* at [25] and [30], which notes that it appears the power to make RROs should be exercised with the objective of deterring those who rent out substandard, overcrowded or dangerous accommodation, observes the differential treatment of licensing offences in section 46 and makes it clear that a 100% order is likely to be the exception (reserved for the most serious cases) rather than the rule in licensing cases.

61. In terms of the particular factors set out in section 44, there was no suggestion that the conduct of the tenants had not been good and no evidence of financial circumstances to suggest that the respondent could not satisfy any RROs we might make. The parties agreed that only the landlord's conduct was in issue. There was some dispute as to how widely that should be interpreted but it is clear from the Upper Tribunal authorities that the condition of the property must be a relevant factor, particularly given the context and purpose of HMO regulation. Behaviour towards the occupants has also been held to be relevant – for example in *Simpson House 3 Limited*.
62. In this case, we accept that the “scale of seriousness” of this offence is towards the lower end: it was by omission rather than deliberate and the impact of the pandemic, while not providing an excuse for the commission of the offence, does provide mitigating circumstances for the offence(s) and, to an extent, their duration. That said, the property was not finished when the students moved in (with some internal work to communal areas and extensive external work left to be done, including hard and soft landscaping and the paving of the courtyard area, work to complete the exterior and so on). That is a relevant factor to take into account, particularly given the bargain of high quality accommodation at a concomitant price. While we accept that the pandemic affected the duration of the works, this does not change the impact on the students.
63. The respondent endeavoured to mitigate that impact, as noted above, but the applicants probably still suffered noise, dust and unavailability of the outdoor space for a significant part of the first relevant period (September 2020 to January 2021), particularly in September and October 2020. The failure to identify the HMO licensing requirement for the second relevant period, of June to September 2021, was despite the earlier failure and the less restrictive working conditions at that time, when students had been in occupation since September 2020. As it happened, the applicants had all left before (or just before) the licence application was duly made on 15 September 2021. The additional cooking facilities required by the council (provided after the periods we are concerned with) will also have improved the ability of current occupants to cook at the same time.
64. In all of the circumstances we consider that an appropriate order in this case is 35% of the total potential RRO liability agreed by the parties, less £60 as an appropriate allowance for utilities. We accept the respondent's evidence that the fire alarm system meets the relevant

requirements (having been accepted by the local authority). It only sounds immediately in a given compartment, giving a short period for investigation by the on-site staff before a general alarm would be sounded if a false alarm was not confirmed. When we inspected, we noted the detection units in the rooms, kitchens, communal areas, laundry, gym, bike store and so on. We do not consider that the circumstances of Ms Rama or Mr Milesevic (or the other applicants) warrant an additional award. Snagging issues with new build properties are not uncommon and the conduct of the respondent in dealing with any complaints was good. We accept the respondent's evidence that they did all they reasonably could to ensure compliance by students with the Covid restrictions and provided a range of support for those isolating. Similarly, we accept their evidence that non-students staying in the studio flats during the summer break were unlikely to attempt to have parties and the on-site staff intervened to stop any attempted parties, by students or otherwise, so that residents were not disturbed.

65. We do not propose to summarise each and every complaint made by the applicants; we read the papers in advance and heard about the complaints in detail on the first day of the hearing. We are not satisfied that any of the matters complained of amount to a significant negative factor. Further, again, the respondent appears to have dealt promptly and properly with any reasonable matters raised with it, whether about anything needing maintenance in the cluster flats, replacement of equipment left behind in alternative accommodation or otherwise. In any event, a RRO is not intended to be compensatory. The main reasons for the increase over and above the 25% ordered in the case of *Hallett* are as outlined by Mr Kediya, with the addition of the other factors summarised above. Conversely, in coming to a much lower amount than *Aytan* and *Simpson House 3 Limited*, we have also taken into account the fact that the respondent's conduct in terms of its behaviour as a landlord was good and the standard of the accommodation, once completed, excellent.

Reimbursement of tribunal fees

66. Finally, the applicants sought repayment of the application fees and hearing fee by exercise of the tribunal's discretion in rule 13(2) of the 2013 Rules. Mr Bates conceded that if the tribunal made a RRO, that discretion was bound to be exercised in the applicants' favour and we agree. Each applicant had paid £100 but just one hearing fee was paid by Flat Justice. In the circumstances, the respondent must add £100 to each RRO and pay the additional £200 to Flat Justice with the payments due to them in relation to their lead applicants.
67. As stated above, the tribunal will now send a copy of this decision to each party in each of the related cases. In practice, it is only the other 4 directly represented applicants who will require separate notification. Unless an application is made within 28 days for a direction that the decision is not binding on any particular related case, this decision will

be binding in respect of the award of 35% of the rent paid during the commission of the offence, less £60 for utilities and adding £100 in respect of the application fee.

Name: Judge Ruth Wayte

Date: 11 August 2022

Schedule 1

Applicant	Rent paid in respect of the period(s) of the offence(s) (£)	RRO - amount to be repaid to applicant (£)
Dennis Milesevic	7,071.43	2,415
Michael Warrenger	5,975.71	2,031.50
James Baker	5,975.71	2,031.50
Vlad Lungu	7,071.43	2,415
Amarda Mema	5,975.71	2,031.50
Samuel Huang	6,600	2,250
Andriana Bournazou	6,600	2,250
Frederick Faulkner	7,318.57	2,501.50
Sili Qiu	6,600	2,250
Sebastian Kopp	7,071.43	2,415
Thomas Newman	5,975.71	2,031.50
Xuhui Jin	6,600	2,250
David Rees	7,071.43	2,415
Annabella Wheatley	6,600	2,250
Nicholas Elliot	5,975.71	2,031.50
Eloise Shirburne Davies	5,975.71	2,031.50
Hannah Folz	6,600	2,250
Weihan Sun	5,975.71	2,031.50

John McCarthy	1,564.10	487.44
Sanjida Karim	5,800.55	1,970.19
Harry Hollingworth	6,600	2,250
Preetish Ramasawmy	6,600	2,250
Henry Annan	7,071.43	2,415
Ophelia Coutts	5,975.71	2,031.50
Jeevun Grewal	6,600	2,250
Chinonyelum Asiegbu	6,143.57	2,090.25
Lok Wei Law	7,071.43	2,415
Sheila Nyayieka	6,311.43	2,149
Thomas Orton	6,600	2,250
Sheena Rama	7,071.43	2,415
Gerald Chik	7,071.43	2,415
Milo Honegger	7,071.43	2,415
Victoria Oliha	5,975.71	2,031.50
Matthias Hefele	7,071.43	2,415
Han Zhang	2,217.86	716.25
Nils Fitzian	4,839.35	1,633.77
Ishaan Sharma Bhardwaj	5,975.71	2,031.50
Boon Lim	1,050	307.50
Tayyaba Iqbal	6,600	2,250
Sanghun Kim	6,600	2,250
Chaitanya Kediya	5,975.71	2,031.50
Atsushi Shibata	6,600	2,250

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).