FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AM/HMF/2021/0110**
HMCTS code (paper, video, audio)		**V: CVPREMOTE**
Property	:	**41 Brooksbank House, Retreat Place E9 6RN**
Applicants	:	**(1)Giordano Fetto,** **(2)Eloi Guix,** **(3)Gianluca Contini,** **(4)Davide Passalacqua**
Representative	:	**Ms Sally Aitchison, General Counsel, LegalRoad Ltd**
Respondents	:	**(1)Emin Dilfir,** **(1)Elif Dilfir,** **(2)Green House Estates Ltd**
Representative	:	**N/A**
Type of application	:	**Application for a Rent Repayment Order under s.41 of the Housing and Planning Act 2016**
Tribunal member(s)	:	**Judge N Rushton KC** **Ms J Mann MCIEH**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of hearing	:	**13 March 2023**
Date of decision	:	**11 April 2023**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to or not objected to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because no-one requested this and all issues could be determined in a remote hearing. The documents that the tribunal were referred to were in a bundle submitted by the Applicants of 387 pages. The tribunal also considered two emails from the First and Second Respondents' daughter Hatice Dilfir, as detailed below.

Decisions of the tribunal

(1) The tribunal had no jurisdiction to hear any oral evidence from the Third Applicant, Mr Contini, as he joined the video hearing from China, and China has given no general consent for evidence to be given from that jurisdiction for hearings in England and Wales. No prior consent had been obtained for him to give evidence in this particular case.

(2) The tribunal is satisfied beyond reasonable doubt that:

a. The Applicants' landlords were the First and Second Respondents, Emin Dilfir and Elif Dilfir;

b. The First and Second Respondents each committed an offence under section 72(1) of the Housing Act 2004 ("**the 2004 Act**") in that they managed a house in multiple occupation ("**HMO**") which was required to be licensed under section 61 of the 2004 Act but was not so licensed, during the period from 7 October 2019 until 18 September 2020 (a period of 11.38 months).

(3) The tribunal makes rent repayment orders against the First and Second Respondents, jointly and severally, in favour of each of the Applicants, as follows:

a. **£2,909** in favour of Mr Giordano Fetto;

b. **£4,523** in favour of Mr Eloi Guix;

c. **£4,438** in favour of Mr Gianluca Contini;

d. **£4,103** in favour of Mr Davide Passalacqua.

(4) The tribunal makes an order on the application of the Applicants under rules 13(2) and (3) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("**the 2013 Rules**") that

the First and Second Respondents shall reimburse the application fee of £100 and the hearing fee of £200 paid by the Applicants, within 14 days of the date this Decision is received by the parties.

(5) The tribunal makes the further determinations set out under the various headings in this Decision.

The application

1. The Applicants, Mr Giordano Fetto, Mr Eloi Guix, Mr Gianluca Contini and Mr Davide Passalacqua, issued an application on 9 April 2021 for rent repayment orders ("**RROs**") under s.41(1) of the Housing and Planning Act 2016 ("**the 2016 Act**"), against the three Respondents, Emin Dilfir, Elif Dilfir and Green House Estates Ltd ("**the Application**"). The Application concerns the property known as 41 Brooksbank House, Retreat Place E9 6RN ("**the Property**"). They have been represented throughout by Ms Sally Aitchison, General Counsel, LegalRoad Ltd.

2. The Property is a four bedroom flat on a council estate. The First and Second Respondents, Emin Dilfir and Elif Dilfir, are the registered owners of the long lease of the Property, according to HM Land Registry entries which were in the bundle.

3. The Third Respondent appears to have been misnamed in the Application and is actually called Green House Estate Agents Limited (company number 08761550 according to Companies House records): the registered address of this company matches the one in the Application and there is no UK company with the name Green House Estates Ltd. However, since for the reasons set out further below, there is no proper claim for a RRO against this company because it was a letting agent and not the Applicants' landlord, the error is academic. In this Decision "**Green House**" refers to the correct company, Green House Estate Agents Limited.

Procedural matters

4. Directions were issued by Judge Hawkes on 26 April 2021. These provided for a final hearing which was originally listed for 6 September 2021. That hearing was adjourned by Judge Flint because no bundles had been received from the Respondents. The Application was ultimately relisted for the present hearing.

5. The only communications on behalf of the First and Second Respondents Emin and Elif Dilfir which have ever been received by the tribunal have been by email from their daughter, Hatice Dilfir. Nothing has formally been received from Emin and Elif Dilfir appointing their daughter to represent them, but the tribunal has nevertheless had

regard to the contents of Hatice Dilfir's 2 emails, which are dated 3 September 2021 and 5 October 2021.

6. In her email of 3 September 2021, Hatice Dilfir said:

"*To whom it concerns,*

In relation to 41 Brooksbank house, retreat place london E9 6RN

I have not rented this property out to any tenants i have given this property to a company on a guaranteed rent.

I have not Signed any contract with anyone.

The agency who rented this property had the right to sublet under their own terms and conditions with no legal responsibility to the landlord.

I hope that this clearly states my position in all of this.

Kind regards

Emin Dilfir

Elif Dilfir"

7. Hatice Dilfir sent a similarly worded email on 5 October 2021 which said:

"*To whom it concerns,*

In relation to 41 Brooksbank House, Retreat Place, London E9 6RN - Ref DB/LON/00AM/HMF/2021/0110

In terms of the trial for the 6 September 2021 my parents will not be able to access the video as they are 70 years old, and they don't have access to internet as they are abroad, they won't be able to attend this.

My parents have not rented this property out to any tenants I have given this property to a company on a guaranteed rent.

They also have not signed any contract with anyone.

The agency who rented this property had the right to sublet under their own terms and conditions with no legal responsibility to the landlord.

I hope that this clearly states my position in all of this.

Kind regards,

Hatice Dilfir"

8. No further communication has been received by the tribunal since 5 October 2021 from Hatice Dilfir, and the Dilfirs have taken no other part in the Application. No witness statements or documents have been submitted by the Dilfirs, whether in accordance with the Directions or otherwise.

9. Immediately prior to this hearing, Ms Aitchison emailed the tribunal on behalf of the Applicants stating that they would seek to debar the Respondents from filing any late evidence. In the event, the Respondents have not sought to do so and did not attend the hearing or communicate with the tribunal about it, so it was unnecessary to rule on this application.

10. The tribunal is satisfied that reasonable steps have been taken to bring the Application and hearing details to the attention of the Respondents. The tribunal's case officer emailed Hatice Dilfir on behalf of her parents on 6 January 2023 with full details of the hearing, and separately emailed Green House at their contact address. No bounce backs were received. This followed a number of earlier emails from the tribunal enquiring after their statements, listing questionnaires etc, to which there was no response and no bounce backs. Companies House still shows Green House as an active company.

11. In those circumstances, the tribunal decided that it was fair and appropriate to proceed in the absence of the Respondents.

12. On 6 January 2023 the tribunal's case officer also emailed the Applicants' representative with the hearing details. This letter included a section "Guidance for Giving Evidence from Abroad" which said "*Please see the attached leaflet which provides guidance on what you need to do if a party is providing evidence from Abroad. Please note, it is critical that this is actioned with some immediacy to enable permissions to be sought*." Enclosed was the "*Guidance Note for Parties: Giving Evidence from Abroad*" ("**the Guidance**"), which provides that where it is intended that a witness will give evidence by video from abroad, that party must notify the tribunal within 5 days of this fact, specifying the country, and saying that they would follow the procedure in the Guidance. This will include the tribunal establishing

whether that country has given a general permission for evidence to be given for a hearing in England, or whether an application for special permission will be required, by contacting the Taking of Evidence Unit of the Foreign, Commonwealth and Development Office.

13. All four Applicants attended the hearing, which was held remotely by video. During the oral evidence of the Third Respondent, Mr Contini, it became apparent that he was giving evidence from China. No notice in accordance with the Guidance had been given by the Applicants that he would be doing so. The tribunal therefore warned Mr Contini and Ms Aitchison that the tribunal would not be able to have regard to any of Mr Contini's oral evidence if China had not given a general permission.

14. Subsequently the tribunal has established that China is not a country which has given any general permission for evidence to be given from that jurisdiction for hearings in England. Accordingly, this tribunal is unable as a matter of jurisdiction to consider any of the oral evidence of Mr Contini, and may consider only his written statement.

15. In other respects, the Applicants had essentially complied with the Directions, and in particular had provided an electronic bundle containing relevant documents and evidence.

The hearing

16. The hearing took place remotely using the CVP platform. In addition to the tribunal, it was attended by the 4 Applicants and their representative Ms Aitchison. The hearing began at 10.00am.

17. The tribunal made it clear it had read the documents in the bundle. It then heard live evidence from Mr Fetto, Mr Guix and Mr Passalacqua, who each confirmed the contents of their witness statement, each of which was signed with a statement of truth. Mr Contini's statement was also signed with a statement of truth and the tribunal accepted that as his evidence for the reasons set out above. The application form was signed with a statement of truth by all 4 Applicants.

18. Mr Fetto, Mr Guix and Mr Passalacqua answered orally a number of questions from the tribunal about the Property, its condition, the occupation of others at the Property, and the utility costs. Reference will be made to their answers, where relevant, in the course of this decision (references in this Decision to the oral evidence of the Applicants means these 3). They and Ms Aitchison also made submissions as to the seriousness of the offence alleged against the Respondents and the conduct of all parties.

19. The tribunal accepts the evidence of the Applicants as set out in their witness statements and (where applicable) given orally. The Applicants

were straightforward in answering the tribunal's questions, appeared simply to be doing their best to assist the tribunal, and their evidence was consistent with the available documents.

The Property and its occupation

20. Mr Fetto explained orally and in his statement that the Property was a single-storey flat on the fourth, top floor of a block in a council estate, with four bedrooms in the corners, a living room, kitchen, bathroom and separate toilet. All the occupants shared the kitchen and bathroom facilities. All the Applicants made it clear in their evidence that the Property was their main residence. They also confirmed that they were not related to each other and none was in a relationship with any of the others.

21. Mr Guix confirmed that he moved into the Property on 4 October 2019 but the other three moved in on 7 October 2019. Three of them moved out on 18 September 2020 (before the end of the tenancy), when they moved together into another property.

22. Accordingly, for the period from 7 October 2019 until 18 September 2020 the Property was occupied at all times by 4 people, who were in 4 separate households, within the meaning of section 258 of the 2004 Act. This was a period of 11.38 months.

23. The bundle included a copy of the Applicants' written assured shorthold tenancy of the Property, for 12 months from 4 October 2019 ("**the Tenancy**"). Green House was named at the front as being the "Landlord Agent". The identity of the Landlord was left blank on the first page of the agreement.

24. At the end of the agreement there is a handwritten signature in the name "Dilfir", which has been dated 1 October 2019, above the words "*Signed by the above named Landlord*". A Mansur Duzgun has also signed the agreement on 1 October 2019, above the words "*Green House Estate Agents Ltd – Signed by the above-named Landlord Agents*"

25. All four of the Applicants were named as the tenants in the Tenancy and the (total) rent was stated as £2,250 per month.

26. The Applicants also confirmed, in answer to the tribunal's questions, that they did not pay separately themselves for water, electricity or Council Tax because these utilities were included in the rent. However, they did pay for gas, using a top-up meter. None of the Applicants had any idea what amount from the rent was used for the utilities.

27. Mr Fetto and Mr Passalacqua both confirmed, in their statements and in oral evidence, that they had received Universal Credit ("**UC**") for part of their period of occupation, because the Covid lockdown had prevented them from working. Mr Fetto received this from May until September 2020 and Mr Passalacqua from June until September 2020. Exact figures for the amounts each had received were in UC statements in the bundle, which set out how the payments were split between Standard allowance and Housing. In most months they had also received some income from working, which reduced the amount of the UC payable to them.

28. The tribunal has calculated the proportion of the UC paid to them which related to housing costs using the Guidance for Local Housing Authorities in relation to RROs issued to Local Authorities in April 2017, and in particular the formula at paragraph 6.2 which is as follows:

"*6.2 How is the amount of rent to be repaid to the tenant calculated where the tenant is in receipt of Universal Credit?*

The following formula should be used to calculate the amount of rent that should be repaid to the tenant and the amount paid to the local housing authority. The key information should be available from the tenant's benefit statement:

*a/c*d=x(y=x-b)*

where

a = rent liability

b = rent allowance

c = maximum Universal Credit award

d = net Universal Credit award

x = amount to be retained by local housing authority

y = amount to be paid to tenant (x – b)"

29. The tribunal indicated during the hearing that it proposed to take such an approach to calculating the pro rata proportion of UC to be deducted, to which Ms Aitchison agreed (the Applicants not having undertaken this calculation but only provided estimates of the amounts of UC to be deducted in their statements).

30. Applying this formula, the tribunal has calculated that the total amount of UC to be deducted from total rent figure was £1,355.95 in the case of Mr Fetto and £1,129.41 for Mr Passalacqua.

31. Bank statements in the bundle evidenced the rent which was paid during the tenancy. These showed that for the months to the end of March 2020, the rent was paid on behalf of all of them from a single account in Mr Guix's name, to which they all contributed. In October 2019 a reduced sum of £1,985 for the month was paid, which the Applicants said, and the tribunal accepts, was agreed with Green House to reflect a cockroach infestation at the beginning of the tenancy. In the period to March 2020 the rent was paid on time and in accordance with the tenancy.

32. From the start of the pandemic and consequent national lockdown in March 2020, the Applicants had (varying) difficulties with being able to work, and their payment of rent became more irregular. However, as Mr Guix explained in oral evidence, "*arrears were built up but we paid them back before we moved out*". In his case, he said he had to borrow money from his parents to repay the arrears.

33. The bundle also included two emails from Gemma Reilly of Green House relating to the rent: the first, dated 11 September 2020, said that there was still "*a large balance of rent that is owed. You will all be liable for this even if some of you have been making the effort to pay what is due…*", going on to say that this would result in them having County Court Judgments registered against them, which would affect their credit ratings and ability to rent in the future. The second, dated 5 October 2020 (the last day of the tenancy) and addressed to them all, confirmed receipt of all the keys and said "*I can also confirm that the outstanding balance is now paid in full. Thank you for you all looking after the property and I wish you all the best.*"

34. The tribunal accepts on the basis of the Applicants' evidence, corroborated by this second email, that all of the rent which forms the basis of the RRO application was paid during the period of the Applicants' occupation, for the purposes of s.44(2) of the 2016 Act, applying the Court of Appeal decision in *Kowalek v Hassanein Ltd* [2022] EWCA Civ 1041 at [26].

35. The Property was located within an area designated as "Additional Licensing" by the London Borough of Hackney, for the purposes of s.55(2) of the 2004 Act. Extracts from Hackney's website within the bundle confirmed that the additional licensing requirements applied to all privately rented properties in Hackney occupied by 3 or 4 people making up 2 or more households. The Property fell within this extended definition at all material times.

The law

36. Extracts from relevant legislation are set out in an Appendix to this Decision.

37. The definition of HMO is set out in section 254 of the 2004 Act. Section 254(1)(b) provides that a property is an HMO if it meets the "self-contained flat test", set out in s.254(3). The tribunal is satisfied on all the evidence, that the Property clearly met this test in that:

(a) it was a self-contained flat;

(b) the living accommodation was occupied by persons who did not form a single household;

(c) each of the 4 tenants occupied the Property as their only or main residence, for the whole relevant period;

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

(e) rent was payable in respect of at least one of those persons' occupation of the living accommodation;

(f) the occupants shared the use of at least one (and in fact all) the basic amenities as defined in s.254(8), that is a toilet, personal washing facilities and cooking facilities.

38. By section 61(1) of the 2004 Act, every HMO to which Part 2 of the Act applies must be licensed unless it is covered by one of the exceptions in that section (none of which apply here). By section 55(2), Part 2 applies to (a) any HMO which falls within any "prescribed description" of an HMO and also to (b) any HMO which falls within an area designated as subject to additional licensing.

39. As set out above, the whole of Hackney, including the Property, was designated as subject to "additional licensing" during the relevant period and the Property fell within Hackney's definition of properties covered.

Was the Property licensed as an HMO?

40. In the statements, the Applicants confirmed that they had checked Hackney's comprehensive list of all properties licensed under Hackney's HMO licensing scheme and the Property was not on that register at any relevant time.

41. In addition, the bundle included an email from Sunna Begum at Hackney's private sector housing department, dated 14 October 2020,

confirming that the Property was not licensed. This email was sent in response to an email from Mike Boulton, the Applicants' then representative, which set out the Applicants' dates of occupation and sought confirmation that the Property was not registered for an HMO licence under the HMO Additional Licensing scheme at those times.

42. On the basis of this evidence, the tribunal is satisfied that the Property did not have an HMO licence at any time during the relevant period 7 October 2019 to 18 September 2020.

Who were the Applicants' landlords?

43. The Supreme Court has recently confirmed in the case of *Rakusen v Jepsen* [2023] UKSC 9 that an RRO can only be made against a tenant's immediate landlord (even if other parties might have committed relevant offences). It is therefore necessary to determine which if any of the Respondents were the Applicants' immediate landlords.

44. Green House were clearly described in the Tenancy as the landlords' agents, and signed the Tenancy as such. Although Hatice Dilfir refers in her emails to having given the Property to the agents on a guaranteed rent, and to the agency having the right to sub-let the Property under their own terms and conditions, no evidence of any such agreement has ever been produced by her or her parents, despite them being given ample opportunity to do so if such evidence existed.

45. Furthermore, her emails are inconsistent with the face of the Tenancy itself, which has been signed by hand on 1 October 2019 in the name "Dilfir" above the words "*Signed by the above named Landlord*".

46. In his oral evidence, Mr Guix referred to having met a woman who he described as "the owner". He said that she showed up in her car one day when they were moving out, to collect some letters. (Mr Fetto said they received letters in the name Dilfir, which they were instructed to keep and then hand over if they were in the landlord's name.) Mr Guix said the woman was in her 40's. He said he told her that they had had problems with the agency and she said she had already had concerns and problems with the agency. The tribunal considers it most likely that this woman was Hatice Dilfir, given her apparent age.

47. The tribunal also notes that while Hatice Dilfir says in her two emails that her parents did not sign the Tenancy, she does not say that she herself did not do so (the first email being sent in the names of her parents, and the second in her own name).

48. Given the evidence of the signature on the Tenancy, and in the absence of any contrary documentary evidence, the tribunal has concluded that the Tenancy was most probably signed by Hatice Dilfir, acting as the

agent of Emin Dilfir and Elif Dilfir and with their consent, and that Emin Dilfir and Elif Dilfir were accordingly the Applicants' immediate landlord. Other than the emails from Hatice Dilfir, the contents of which have not been supported by any witness statement or documentary evidence, all of the other evidence is consistent with that conclusion.

49. Applying the decision of the Upper Tribunal in *Cabo v. Dezotti* [2022] UKUT 240 (LC), Emin Dilfir and Elif Dilfir, through their daughter and agent Hatice Dilfir, were not the persons who had control of the Property, for the purposes of s.263(1) of the 2004 Act, but they were the persons who "managed" the Property, within section 263(3) of the same Act. That sub-section defines "managing" as follows (so far as relevant):

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

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

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

(ii) …; or

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

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

50. Emin Dilfir and Elif Dilfir were the owners of the Property. It is apparent from the bank statements that the Applicants paid their rent to Green House. Therefore this is a case falling within sub-section (b) because Emin Dilfir and Elif Dilfir would have received the rents for the Property but for their daughter having entered into an arrangement with Green House on their behalf by virtue of which Green House received those rents. It is directly comparable to the *Cabo* case at [53] – [59], which confirmed that a person in the position of Emin Dilfir and Elif Dilfir would therefore be "managing" the property within s.263(b). Hatice Dilfir's emails also confirm that sums for rent were received by her.

51. This conclusion also means no RRO could properly be made against Green House because it was a letting agent which received the rent, and not the Applicants' landlord.

The tribunal's determination

52. The tribunal is satisfied beyond reasonable doubt, on the basis of the documentary evidence that it has seen, the witness statements of the 4 Applicants and the oral evidence of the 3 Applicants who were able to give such evidence, of the following matters:

(i) The Property was at all times from 7 October 2019 to 18 September 2020 occupied by the 4 Applicants, as tenants, living in 4 households;

(ii) The Property met the "self-contained flat test" set out above;

(iii) Rent was paid by all 4 of them, throughout that period (and any arrears which arose during their period of occupation had been discharged by the date on which they moved out);

(iv) The Property was therefore an HMO within the terms of the 2004 Act;

(v) The Property was therefore required by section 61(1) of the 2004 Act to be licensed as an HMO, for that 11.38 month period;

(vi) At no material time was the Property licensed as an HMO;

(vii) Emin Dilfir and Elif Dilfir were the 4 Applicants' landlords from 4 October 2019 until 3 October 2020;

(viii) For the period 7 October 2019 until 18 September 2020 Emin Dilfir and Elif Dilfir were therefore persons who had management of an HMO which was required to be licensed under Part 2 of the 2004 Act, but which was not so licensed, within the meaning of section 72(1) of the 2004 Act.

53. The tribunal has considered whether the 2 emails from Hatice Dilfir raise an argument that her parents have any defence of reasonable excuse under section 72(5) of the 2004 Act for managing the Property when it was not licensed as an HMO (or any other defence). It has concluded that in circumstances where it is satisfied from all the

evidence, despite that she says in that email, that Emin Dilfir and Elif Dilfir were the Applicants' immediate landlord, her emails do not raise any other arguable defence to the offence under s.72. In particular it is not alleged that there were any reasons or excuses for their failure to obtain an HMO licence.

54. The tribunal is accordingly satisfied beyond reasonable doubt that Emin Dilfir and Elif Dilfir have committed the offence of being persons managing an HMO which was required to be licensed but was not so licensed, for the period from 7 October 2019 until 18 September 2020, contrary to section 72(1) of the 2004 Act.

55. The Applicants have satisfied the requirements for making a tenant's application for an RRO, as set out in section 41(2) of the 2016 Act, in that (a) the offence relates to housing which at the time of the offence was let to them, and (b) the offence (which continued until 18 September 2020) was committed during the period of 12 months ending with the day on which their application was made, which was 9 April 2021.

56. The tribunal considers that this is a case in which it should exercise its discretion under s.43 of the 2016 Act to make an RRO against Emin Dilfir and Elif Dilfir in favour of the Applicants, there being no proper basis on which it could refuse to do so.

57. Section 44 of the 2016 Act provides that where the tribunal decides to make an RRO against a landlord in favour of a tenant, the amount is to be determined in accordance with that section. Sub-paragraph 44(2) provides that in a case concerning an offence under s.72(1) of the 2004 Act, the amount must relate to rent paid during a period, not exceeding 12 months, during which the landlord was committing the offence. (There is no requirement that this was all within the 12 months immediately before the application was issued.)

58. The period for which the applicants each seek an RRO is for the 12 month period from 4 October 2019. However, for the reasons set out above, the tribunal has concluded that Emin Dilfir and Elif Dilfir were committing an offence under s.72(1) only for the period when at least 3 of the Applicants were in occupation of the Property, which was 7 October 2019 until 18 September 2020, a period of 11.38 months.

59. The evidence from the Applicants, supported by copies of their bank statements, is that they did pay all of the rent due during that period, and that any arrears which had arisen had been discharged by the date when they moved out. The tribunal accepts that evidence.

60. Mr Fetto was paid UC of which £1,355.95 falls to be deducted from the relevant total rent for him, and Mr Passalacqua was paid £1,129.41 which similarly falls to be deducted from the total for him.

61. The rent included discharge by the landlords of the utilities in respect of Council Tax, electricity and water. These sums fall to be deducted from the amount on which any RRO is based, because the Applicants have had the benefit of those utilities. The Applicants were unable to give any evidence as to the actual costs of these utilities for the Property. In the absence of any other evidence, and applying its expert knowledge, the tribunal has concluded that a reasonable deduction would be: (a) £25 per person per month for Council Tax; (b) £10 per person per month for electricity and (c) £5 per person per month for water, or a total of £40 per person per month for the included utilities. It notes that the Applicants paid for gas separately.

62. The individual Applicants paid slightly different amounts towards the rent, which they explained was by reference to the size of the room each occupied. Therefore the tribunal has concluded that the net rent, after deduction of utilities, paid by each of the Applicants per month was as follows:

(i) Mr Fetto: £500 less £40 = £460 pm;

(ii) Mr Guix: £570 less £40 = £530 pm;

(iii) Mr Contini: £560 less £40 = £520 pm;

(iv) Mr Passalacqua: £620 less £40 = £580 pm.

63. Accordingly, the amount of the rent, after deduction of utilities, which was paid by the Applicants during the relevant 11.38 month period was as follows (ignoring pence). For Mr Fetto and Mr Passalacqua, the relevant amount of UC then falls to be deducted from that total. This is then the maximum amount which the tribunal could order by way of a RRO, in each case.

(i) Mr Fetto: £5,234.80 - £1,355.94 = £3,878;

(ii) Mr Guix: £6,031;

(iii) Mr Contini: £5,917

(iv) Mr Passalacqua: £6,600.40 - £1,129.41 = £5,470

64. Sub-section 44(4) provides that in determining the amount of the RRO, the tribunal must, in particular, take into account (a) the conduct of the

landlord and the tenant; (b) the financial circumstances of the landlord and (c) whether the landlord has at any time been convicted of an offence to which Chapter 4 of the 2016 Act applied.

65. The Dilfirs have not been convicted of any such offence, so (c) does not apply. Nor, so far as the tribunal is aware, has the local authority imposed any financial penalty on them under s.249A of the 2004 Act.

66. In his decision in *Williams v. Parmar* [2021] UKUT 0244 (LC), the then Chamber President of the Upper Tribunal, Mr Justice Fancourt gave guidance as to the approach which the FTT should take to assessing the amount of an RRO awarded under s.44 (not being an order following conviction under s.46). In summary, the guidance in that case was as follows (with reference to paragraph numbers of that decision):

(i) The terms of s.46 show that in cases where that section does not apply, there is no presumption that the amount ordered is to be the maximum that the tribunal could order under s.44 [23];

(ii) S.44(3) specifies that the total amount of rent paid is the maximum amount of an RRO, and s.44(4) requires the FTT in determining the amount of the RRO to have particular regard to the three factors specified in that sub-section. However the words of that sub-section leave open the possibility of there being other factors that, in a particular case, may be taken into account and affect the amount of the order [24];

(iii) The RRO must always "relate" to the amount of the rent paid in the period in question. It cannot be based on extraneous considerations or tariffs. It may be a proportion of the rent paid, or the rent paid less certain sums, or a combination of both. But the amount of the rent paid is not a starting point in the sense that there is any presumption that that sum is to be the amount of the order in any given case nor even the amount of the order subject only to the factors specified in s.44(4) [25].

67. Subsequently in the Upper Tribunal case of *Acheampong v Roman* [2022] UKUT 239 (LC), Judge Elizabeth Cooke gave further guidance as to the approach which the tribunal should take to assessing the quantum of a RRO:

"20. The following approach will ensure consistency with the authorities:

a. Ascertain the whole of the rent for the relevant period;

b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate.

c. Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step:

d. Consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4).

21. I would add that step (c) above is part of what is required under section 44(4)(a). It is an assessment of the conduct of the landlord specifically in the context of the offence itself; how badly has this landlord behaved in committing the offence? I have set it out as a separate step because it is the matter that has most frequently been overlooked."

68. The Upper Tribunal has subsequently affirmed the approach set out in *Acheampong* including in *Fashade v. Albustin* [2023] UKUT 40 (LT) and *Hancher v. David* [2022] UKUT 277 (LC).

69. Applying the approach in *Acheampong*, the total rent under (a), after making the deductions under (b), is as set out in paragraph 63 above, for each of the 4 Applicants.

70. As to (c), the seriousness of the offence in this case, the tribunal has reached the following conclusions:

(i) The condition of the Property was relatively poor. The evidence of the Applicants was that there was no smoke alarm or gas certificate, that there was a problem with mould, and there was a persistent problem with bad smells from the kitchen waste pipe. There was also a cockroach infestation when the tenants first arrived, although since the Applicants received a rent deduction for the period when that was a problem, the tribunal does not take this into account as recompense has already been given for this. There was also a problem with access

through the front door as a result of scaffolding erected by the Council, although this arose after the Applicants had moved in.

(ii) It is appears that the Property probably would not therefore have been granted an HMO Licence without these problems having been addressed. *Williams* indicates that this is a relevant factor.

(iii) This is therefore in the tribunal's view a case which was of moderate seriousness.

71. As to step (d), considering the other factors in section 44(4), especially 44(4)(d), the tribunal has concluded as follows:

(i) Since the Dilfirs have taken no active part in this Application, the tribunal has no evidence before it as to their financial circumstances.

(ii) As to the conduct of the Applicants, the evidence is that they have been good tenants. They paid their rent promptly until the pandemic caused them significant financial stress. Two of them applied for UC and all of the arrears of rent had been discharged by the time they moved out of the Property (despite the condition of the Property). When they left the Property, Green House's agent thanked them for looking after the Property and there has been no complaint as to the condition in which they left the Property.

(iii) As to evidence of conduct by Emin Dilfir and Elif Dilfir, as noted above, there was evidence that the Property was in some respects in poor condition. While the tribunal does not consider that they can be held responsible for the various failures in management which are alleged against Green House, nevertheless they are in the tribunal's view responsible for whether the Property was let in a reasonable condition. In addition, the Dilfirs failed to take any part in these proceedings. Given that there is good evidence that significant efforts have been made to draw the attention of the Dilfirs and their daughter, to the Application, and Hatice Dilfir did initially respond, the tribunal considers that it is most likely that she, on behalf of her parents, has decided to ignore this Application and not to take an active part in it.

72. The tribunal also bears in mind, in its capacity as an expert tribunal, that HMO licensing was introduced with the aim of improving the quality and safety of private rented accommodation occupied by multiple households. It notes the legislation is intended to assist local authorities to locate and monitor HMOs and also improve the standard

and management of this sector. Multi-occupied property has historically contained the most unsatisfactory and hazardous living accommodation with particular concerns about inadequate fire safety provision and poor management. Against this background the failure to license is potentially extremely serious - hence the significant associated penalties and forfeit of rents sanctioned by the legislation. In addition, good landlords who license promptly may otherwise feel that those failing to license would gain unfair benefit by dodging licensing costs and associated improvement expenditure if licensing were not heavily incentivised. There are therefore sound public policy reasons for the provisions.

73. The tribunal takes into account this punitive purpose of this jurisdiction, and the importance of the aim of enforcing a licensing regime which is intended to raise the standards of privately rented HMOs.

74. Given its conclusion that this case is of moderate seriousness, and in the absence of any evidence or submissions from the landlords as to factors said to point to reducing the award, and taking into account all of the factors referred to above, the tribunal has concluded that the appropriate award in this case is 75% of the relevant amount of the rent, for the 11.38 month period.

75. The tribunal accordingly awards an RRO to each of the Applicants in the following sums, being 75% of the maximum:

(i)	Mr Fetto:	£2,909
(ii)	Mr Guix:	£4,523
(iii)	Mr Contini:	£4,438
(iv)	Mr Passalacqua:	£4,103

76. In view of its findings, and the fact the Applicants could not have obtained relief without pursuing this application, the tribunal further makes an order under rule 13(2) of the 2013 Rules, that Emin Dilfir and Elif Dilfir shall within 14 days reimburse the application fee of £100 and the hearing fee of £200 paid by the Applicants. The order is made by the tribunal on the application of the Applicants.

Name: Judge Nicola Rushton KC **Date:** 11 April 2023

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).

Appendix of relevant legislation

Housing Act 2004

55 Licensing of HMOs to which this Part applies

(1) This Part provides for HMOs to be licensed by local housing authorities where–

(a) they are HMOs to which this Part applies (see subsection (2)), and

(b) they are required to be licensed under this Part (see section 61(1)).

(2) This Part applies to the following HMOs in the case of each local housing authority–

(a) any HMO in the authority's district which falls within any prescribed description of HMO, and

(b) if an area is for the time being designated by the authority under section 56 as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in the designation.

(3) The appropriate national authority may by order prescribe descriptions of HMOs for the purposes of subsection (2)(a).

(4) The power conferred by subsection (3) may be exercised in such a way that this Part applies to all HMOs in the district of a local housing authority....

61 Requirement for HMOs to be licensed

(1) 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.

(2) A licence under this Part is a licence authorising occupation of the house concerned by not more than a maximum number of households or persons specified in the licence.

(3) Sections 63 to 67 deal with applications for licences, the granting or refusal of licences and the imposition of licence conditions.

(4) The local housing authority must take all reasonable steps to secure that applications for licences are made to them in respect of HMOs in their area which are required to be licensed under this Part but are not.

(5) The appropriate national authority may by regulations provide for–

(a) any provision of this Part, or

(b) section 263 (in its operation for the purposes of any such provision),

to have effect in relation to a section 257 HMO with such modifications as are prescribed by the regulations. A "section 257 HMO" is an HMO which is a converted block of flats to which section 257 applies.

(6) In this Part (unless the context otherwise requires)–

(a) references to a licence are to a licence under this Part,

(b) references to a licence holder are to be read accordingly, and

(c) references to an HMO being (or not being) licensed under this Part are to its being (or not being) an HMO in respect of which a licence is in force under this Part.

72 Offences in relation to licensing of HMOs

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

(2) A person commits an offence if—

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3)A person commits an offence if—

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

(b) he fails to comply with any condition of the licence.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine .

(7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England). 12

(7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(8) For the purposes of subsection (4) a notification or application is "effective" at a particular time if at that time it has not been withdrawn, and either—

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(9) The conditions are—

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or

(b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(10) In subsection (9) "relevant decision" means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

254 Meaning of "house in multiple occupation"

(1) For the purposes of this Act a building or a part of a building is a "house in multiple occupation" if–

(a) it meets the conditions in subsection (2) ("the standard test");

(b) it meets the conditions in subsection (3) ("the self-contained flat test");

(c) it meets the conditions in subsection (4) ("the converted building test");

(d) an HMO declaration is in force in respect of it under section 255; or

(e) it is a converted block of flats to which section 257 applies.

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

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

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

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

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

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

(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

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

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

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

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

(a) it is a converted building;

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

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

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

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

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

(5) But for any purposes of this Act (other than those of Part 1) a building or part of a building within subsection (1) is not a house in multiple occupation if it is listed in Schedule 14.

(6) The appropriate national authority may by regulations–

(a) make such amendments of this section and sections 255 to 259 as the authority considers appropriate with a view to securing that any building or

part of a building of a description specified in the regulations is or is not to be a house in multiple occupation for any specified purposes of this Act;

(b) provide for such amendments to have effect also for the purposes of definitions in other enactments that operate by reference to this Act;

(c) make such consequential amendments of any provision of this Act, or any other enactment, as the authority considers appropriate.

(7) Regulations under subsection (6) may frame any description by reference to any matters or circumstances whatever.

(8) In this section–

"basic amenities" means–

(a) a toilet,

(b) personal washing facilities, or

(c) cooking facilities;

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

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

"self-contained flat" means a separate set of premises (whether or not on the same floor)–

(a) which forms part of a building;

(b) either the whole or a material part of which lies above or below some other part of the building; and

(c) in which all three basic amenities are available for the exclusive use of its occupants.

258 HMOs: persons not forming a single household

(1) This section sets out when persons are to be regarded as not forming a single household for the purposes of section 254.

(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 [, or civil partners of, each other or live together as if they were a married couple or civil partners]1 ;

(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 [...]2 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.

(5) Regulations under subsection (2)(b) may, in particular, secure that a group of persons are to be regarded as forming a single household only where (as the regulations may require) each member of the group has a prescribed relationship, or at least one of a number of prescribed relationships, to any one or more of the others.

(6) In subsection (5) "prescribed relationship" means any relationship of a description specified in the regulations.

Housing and Planning Act 2016, Chapter 4

41 Application for rent repayment order

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

(2) A tenant may apply for a rent repayment order only if —

(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and

(b) the offence was committed in the period of 12 months ending with the day on which the application is made.

(3) A local housing authority may apply for a rent repayment order only if—

(a) the offence relates to housing in the authority's area, and

(b) the authority has complied with section 42. 13

(4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

44 Amount of order: tenants

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

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

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

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

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

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

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

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

(b) the financial circumstances of the landlord, and

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

46 Amount of order following conviction

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 and both of the following conditions are met, the amount is to be the maximum that the tribunal has power to order in accordance with section 44 or 45 (but disregarding subsection (4) of those sections).

(2) Condition 1 is that the order—

(a) is made against a landlord who has been convicted of the offence, or

(b) is made against a landlord who has received a financial penalty in respect of the offence and is made at a time when there is no prospect of appeal against that penalty.

(3) Condition 2 is that the order is made—

(a) in favour of a tenant on the ground that the landlord has committed an offence mentioned in row 1, 2, 3, 4 or 7 of the table in section 40(3), or

(b) in favour of a local housing authority.

(4) For the purposes of subsection (2)(b) there is *"no prospect of appeal"* , in relation to a penalty, when the period for appealing the penalty has expired and any appeal has been finally determined or withdrawn.

(5) Nothing in this section requires the payment of any amount that, by reason of exceptional circumstances, the tribunal considers it would be unreasonable to require the landlord to pay.

Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018/221

4. Description of HMOs prescribed by the Secretary of State

An HMO is of a prescribed description for the purpose of section 55(2)(a) of the Act if it—

(a) is occupied by five or more persons;

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

(c) meets—

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

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

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