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

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| **Case Reference** | **:** | **LON/00AU/HMF/2022/0199** |
| **Property** | **:** | **Flat 14 Farriers House, Errol Street, London EC1Y 8TB** |
| **Applicants** | **:** | **James Thomas, Nicholas Hann and Tomyr Warcaba-Wood** |
| **Representative** | **:** | **Cameron Neilson of Justice for Tenants** |
| **Respondent** | **:** | **Jane Brown** |
| **Representative** | **:** | **Not represented** |
| **Type of Application** | **:** | **Application for Rent Repayment Order under the Housing and Planning Act 2016** |
| **Tribunal Members** | **:** | **Judge P Korn**<br>**Mrs L Crane MCIEH** |
| **Date of Hearing** | **:** | **3 May 2024** |
| **Date of Decision** | **:** | **7 May 2024** |

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**DECISION**

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**Description of hearing**

This was a face-to-face hearing.

## Decisions of the tribunal

(1) The tribunal orders the Respondent to repay to the Applicants the following sums by way of rent repayment:
- £4,933.18 to James Thomas
- £4,627.07 to Nicholas Hann
- £4,841.81 to Tomyr Warcaba-Wood.

(2) The tribunal also orders the Respondent to reimburse to the Applicants the application fee of £100.00 and the hearing fee of £200.00.

(3) The above sums must be paid by the Respondent to the Applicants within 28 days after the date of this determination.

## Introduction

1. The Applicants have applied for a rent repayment order against the Respondent under sections 40-44 of the Housing and Planning Act 2016 ("**the 2016 Act**").

2. The basis for the application is that the Respondent committed an offence of having control of and/or managing a house in multiple occupation ("**HMO**") which was required to be licensed but was not licensed, contrary to section 72(1) of the Housing Act 2004 ("**the 2004 Act**").

3. The Applicants seek rent repayment orders in the following sums in respect of rent paid for the period 1 February 2021 to 13 January 2022:

- £6,166.48 for James Thomas
- £5,783.84 for Nicholas Hann
- £6,052.26 for Tomyr Warcaba-Wood.

4. The rent repayment application is dated 8 August 2022. The reasons for the delay before the case reached a final hearing are a matter of record.

## Applicants' case

5. In written submissions the Applicants state that the Property was a 3-bedroom apartment, converted from a two-bedroom apartment, on the first floor of a four-storey purpose-built block building with a shared kitchen and bathroom. The Property was occupied by at least three people at all points during the relevant period of 1 February 2021 and 13 January 2022. Each tenant occupied their own room on a permanent basis, with one tenancy for all tenants. It was a standard HMO arrangement in that there were communal cooking and toilet and

washing facilities, with separate unrelated individuals each paying rent and occupying their rooms as their only place to live.

6. The Applicants were tenants of the Property, which was occupied as follows. James Thomas lived in Bedroom 1 from 13 August 2019 to 13 January 2022. Tomyr Warcaba-Wood lived in Bedroom 2 from 1 August 2019 to 13 January 2022. Nicholas Hann lived in Bedroom 3 from 1 August 2019 to 13 January 2022. The appropriate HMO licence was not held during the relevant period, and no licence application was made at any point by the Respondent during the Applicants' tenancy.

7. The Property was situated within an additional licensing area as designated by London Borough of Islington. The additional licensing scheme came into force on 1 February 2021 and will cease to apply on 1 February 2026. The additional licensing scheme has been implemented borough-wide, and the Property met all the criteria to be licensed under the said designation.

8. The Respondent is believed by the Applicants to be an appropriate respondent to this application because she is listed as the landlord in the tenancy agreement and is the beneficial owner of the Property as shown by the relevant land registry entries. She is therefore in their submission a "person having control" of the Property as she is the person who received or would so receive the rack-rent if the Property was let. The Respondent also received or "would so receive" rent from tenants in an HMO and is therefore also a "person managing" the Property.

9. None of the Applicants were in receipt of a housing element of Universal Credit or Housing Benefit during the relevant period of time.

10. The Applicants state that as a property manager the Respondent had a number of legal duties as detailed in The Management of Houses in Multiple Occupation (England) Regulations 2006 ("**the 2006 Regulations**"). The main alleged breaches of the 2006 Regulations are set out below.

11. There was no fire door to the kitchen. An inspection on 30 November 2021 by William Wallas, Senior Environmental Health Officer for Islington Council, confirmed that there was no mains wired and interlinked smoke alarm to the hallway, nor to the heat alarm in the kitchen. Bedroom 1 was converted from the living room of the Property, sharing one sliding door with the kitchen. The Respondent also refused the Applicants' request to add a fire door without providing a justification. Also, an exposed live wire was discovered from the newly installed boiler, which was only fitted on 4 October 2021. It posed a significant fire and electrical risk to the Applicants as the live wire was hanging above the kitchen surface where the Applicants

usually prepared food. The Applicants do not recall ever being provided with an electrical certificate.

12. The boiler broke down on multiple occasions throughout the tenancy, the new boiler having only been installed six months after the tenants' initial reporting of problems. No hot water out of the kitchen and bathroom taps was available during the period from 22 March 2021 to 4 October 2021. The shower malfunctioned between 1 September 2021 and 4 October 2021, leaving the Applicants unable to shower during this period. One of the Applicants, James Thomas, suffered from a severe urticarial allergic reaction on 23 September 2021 which required immediate medical attention at hospital. He required access to a shower to relieve the rash but was unable to use the shower due to the disrepair, and he believes that this contributed to the seriousness of the allergy. Also, the shower pump emitted a very loud screeching noise when in use, which caused severe disturbance to the Applicants as they were unable to work and sleep.

13. Between 10 February 2020 and 4 October 2021 the radiators in the Property were only partly functioning, and no remediation work was carried out despite continuous follow up from the Applicants. The tenants also reported an excess cold hazard caused by the hole remaining from the old boiler on 4 October 2021. Remediation work was only carried out on 28 November 2021. The Property was not cleaned properly when the Applicants moved in, and the carpet came away from the treads of four stairs, making the stairs a falling hazard.

14. There was severe mould and dampness on the outer wall of the Property, and again no remediation work was carried out despite continuous follow-up by Applicants. There was also severe mould around all windows and outside walls of the bedrooms and this in turn caused some damage to the tenants' personal belongings. The moulding issue was highlighted before the Applicants moved in. Two of the Applicants suffer from asthma and allergies, and one of them was diagnosed with chronic obstructive pulmonary disease and categorised as 'extremely vulnerable' by NHS. The significant mould and dampness hazard has posed a severe health risk to the Applicants.

15. On 23 November 2021, the Applicants were served with an invalid section 21 eviction notice, despite their informing the Respondent or her agents that the Property had no HMO licence.

16. The Applicants' hearing bundle contains a copy of their tenancy agreement, a copy of the Land Registry title register and a copy of the designation of the relevant geographical area as an additional licensing area. The bundle also contains copy bank statements and a calculation of the maximum amount of rent believed to be repayable.

## Respondent's lack of engagement

17. The Respondent has made no written submissions in her defence and did not attend, and was not represented at, the hearing. The tribunal is satisfied that the Applicants took all reasonable steps to contact the Respondent in connection with this application, and the steps taken are a matter of record.

## Discussion at hearing

18. At the hearing Mr Neilson for the Applicants took the tribunal through the hearing bundle. The tribunal noted that the Respondent was the joint leasehold owner of the Property with a Bazil Bowen Morgan. Mr Neilson accepted this but submitted that nevertheless she was an appropriate respondent for the reasons set out in written submissions.

19. In relation to the bank statements the tribunal pointed out that there was no evidence within those bank statements that the money was being paid to the Respondent. Mr Neilson accepted that but said that (a) the email from Stacey Barnes dated 1 March 2021 on page 90 of the hearing bundle constituted evidence that the money was paid on to the Respondent by the agents (presumably having been paid to the agents by the Applicants) and (b) section 263(3) of the 2004 Act was wide enough to make a landlord liable even where money was paid to an agent without there being proof that the money had been passed on to the landlord.

20. Regarding utilities, Mr Neilson referred the tribunal to clause 8.9.2 of the tenancy agreement and said that it showed that the Applicants were responsible for payment of utilities and therefore that no deduction from the rent repayment sum should be made to reflect any liability that the Respondent had in respect of utilities.

21. Regarding the seriousness of the offence, Mr Neilson accepted that it was not as serious as unlawful eviction or using violence to gain entry but submitted that it was still fairly serious. He also submitted that the fire safety issues, the lack of a working boiler for periods of time, the lack of a working shower for periods of time, the failure to deal with damp and mould and the excess cold caused by a hole in the wall were all aggravating factors.

22. Mr Neilson conceded that there should be no 'double counting' for any poor conduct on the part of the Respondent if this has already been taken into account in assessing the seriousness of the particular offence on the facts of the case. He noted that there was no evidence of the Respondent having previously been convicted of a relevant criminal offence but submitted that the case law showed that this should not be used as a credit to reduce the amount of the award. The Applicants had

no evidence of the Respondent's financial circumstances and had not investigated them. He invited the tribunal to make a rent repayment order for 80% to 85% of the maximum amount payable.

23. Mr Neilson also requested reimbursement by the Respondent of the application and hearing fees.

## Witness evidence

24. All three of the Applicants have provided witness statements, which the tribunal has considered. Mr Thomas and Mr Warcaba-Wood attended the hearing and were available to be cross-examined. During that cross-examination both of them came across as good and credible witnesses.

## Relevant statutory provisions

25. Housing and Planning Act 2016

Section 40

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

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

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

| | ***Act*** | ***section*** | ***general description of offence*** |
|---|---|---|---|
| 1 | Criminal Law Act 1977 | section 6(1) | violence for securing entry |
| 2 | Protection from Eviction Act 1977 | section 1(2), (3) or (3A) | eviction or harassment of occupiers |

| | | | |
|---|---|---|---|
| 3 | Housing Act 2004 | section 30(1) | failure to comply with improvement notice |
| 4 | | section 32(1) | failure to comply with prohibition order etc |
| 5 | | section 72(1) | control or management of unlicensed HMO |
| 6 | | section 95(1) | control or management of unlicensed house |
| 7 | This Act | section 21 | breach of banning order |

Section 41

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

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

Section 43

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

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

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

Section 44

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

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

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

(3) The amount that the landlord may be required to repay in respect of a period must not exceed – (a) the rent paid in respect of that period, less (b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

(4) In determining the amount the tribunal must, in particular, take into account – (a) the conduct of the landlord and the tenant, (b) the financial circumstances of the landlord, and (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

Housing Act 2004

Section 72

(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 … but is not so licensed.

(5) In proceedings against a person for an offence under subsection (1) … it is a defence that he had a reasonable excuse … for having control of or managing the house in the circumstances mentioned in subsection (1) … .

Section 263

(1) In this Act "person having control", in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

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

(3) In this Act "person managing" means, in relation to premises, the person who, being an owner or lessee of the premises – (a) receives … rents or other payments from … persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or (b) would so receive those rents or other payments but for having entered into an arrangement … 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 …

**Tribunal's analysis**

26. The Applicants' uncontested evidence is that the Property was an HMO which was required to be licensed but was not licensed at any point during the period of the claim. Having considered that uncontested evidence we are satisfied beyond reasonable doubt that for the whole period of claim the Property required a licence and it was not licensed.

27. It is also clear that the Respondent was the landlord for the purposes of section 43(1) of the 2016 Act, as she was named as landlord in the tenancy agreement and was the registered freehold owner of the Property. Whilst it is true that she was joint owner with another person, that itself does not negate the fact that she was the (or a) landlord for the purposes of the 2016 Act.

28. The next question is whether the Respondent was a "person having control of or managing" the Property within the meaning of section 263 of the 2004 Act. The Respondent has not made any written or oral submissions on this (or any other) point, and we accept – for the reasons advanced by the Applicants – that the Respondent was both a "person having control" and a "person managing" in respect of the Property at the relevant time.

The defence of "reasonable excuse"

29. Under section 72(5) of the 2004 Act, it is a defence that a person who would otherwise be guilty of the offence of controlling or managing an HMO which is licensable under Part 2 of the 2004 Act had a reasonable

excuse for the failure to obtain a licence. The burden of proof is on the person relying on the defence.

30. In this case, the Respondent has not made any submissions in her defence. In principle it still remains open to the tribunal to decide that she did have a reasonable excuse, but on the facts of this case there is no basis on which the tribunal could reasonably reach that conclusion.

The offence

31. Section 40 of the 2016 Act confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence listed in the table in sub-section 40(3), subject to certain conditions being satisfied. An offence under section 72(1) of the 2004 Act is one of the offences listed in that table. Section 72(1) states that *"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 … but is not so licensed"*, and for the reasons given above we are satisfied beyond reasonable doubt (a) that the Respondent was a "person having control" of and a "person managing" the Property for the purposes of section 263 of the 2004 Act, (b) that the Property was required to be licensed throughout the period of claim and (c) that it was not licensed at any point during the period of claim.

32. Under section 41(2), a tenant may apply for a rent repayment order only if the offence relates to housing that, at the time of the offence, was let to the tenant and the offence was committed in the period of 12 months ending with the day on which the application is made. On the basis of the Applicants' uncontested evidence on these points we are satisfied beyond reasonable doubt that the Property was let to the Applicants at the time of commission of the offence and that the offence was committed in the period of 12 months ending with the day on which their application was made.

Process for ascertaining the amount of rent to be ordered to be repaid

33. Based on the above findings, we have the power to make a rent repayment order against the Respondent.

34. The amount of rent to be ordered to be repaid is governed by section 44 of the 2016 Act. Under sub-section 44(2), 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. Under sub-section 44(3), the amount that the landlord may be required to repay in respect of a period must not exceed the rent paid in respect of that period less any relevant award of housing benefit or universal credit paid in respect of rent under the tenancy during that period.

35. In this case, the Applicants' claim relates to a period not exceeding 12 months. The evidence before us indicates that no part of the rent was covered by the payment of housing benefit, and the Respondent has not disputed that the rental amounts claimed were in fact paid by the Applicants.

36. We are satisfied on the basis of their uncontested evidence that the Applicants were in occupation for the whole of the period to which their rent repayment application relates and that the Property required a licence for the whole of that period. Therefore, the maximum sums that can be awarded by way of rent repayment are the sums referred to in paragraph 3 above, these being the amounts paid by each Applicant respectively by way of rent in respect of the period of claim.

37. Under sub-section 44(4), in determining the amount of any rent repayment order 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 the relevant part of the 2016 Act applies.

38. The Upper Tribunal decision in *Vadamalayan v Stewart (2020) UKUT 0183 (LC)* is one of the authorities on how a tribunal should approach the question of the amount that it should order to be repaid under a rent repayment order if satisfied that an order should be made. Importantly, it was decided after the coming into force of the 2016 Act and takes into account the different approach envisaged by the 2016 Act.

39. In her analysis in *Vadamalayan*, Judge Cooke states that the rent (i.e. the maximum amount of rent recoverable) is the obvious starting point, and she effectively states that having established the starting point one should then work out what sums if any should be deducted. She departs from the approach of the Upper Tribunal in *Parker v Waller (2012) UKUT 301*, in part because of the different approach envisaged by the 2016 Act, *Parker v Waller* having been decided in the context of the 2004 Act. Judge Cooke notes that the 2016 Act contains no requirement that a payment in favour of a tenant should be reasonable. More specifically, she does not consider it appropriate to deduct everything that the landlord has spent on the property during the relevant period, not least because much of that expenditure will have repaired or enhanced the landlord's own property and/or been incurred in meeting the landlord's obligations under the tenancy agreement. There is a case for deducting utilities, but otherwise in her view the practice of deducting all of the landlord's costs in calculating the amount of the rent repayment should cease.

40. In Judge Cooke's judgment, the only basis for deduction is section 44 of the 2016 Act itself, and she goes on to state that there will be cases

where the landlord's good conduct or financial hardship will justify an order less than the maximum.

41. Since the decision in *Vadamalayan*, there have been other Upper Tribunal decisions in this area, notably those in *Ficcara and others v James* (2021) UKUT 0038 (LC) and *Awad v Hooley (2021) UKUT 0055 (LC)*. In *Ficcara v James*, in making his decision Martin Rodger QC stressed that whilst the maximum amount of rent was indeed the starting point the First-tier Tribunal (FTT) still had discretion to make deductions to reflect the various factors referred to in section 44(4) of the 2016 Act. In addition, he stated that neither party was represented in *Vadamalayan*, that the Upper Tribunal's focus in that case was on the relevance of the amount of the landlord's profit to the amount of rent repayment and that *Vadamalayan* should not be treated as the last word on the exercise of discretion required by section 44.

42. In *Awad v Hooley*, Judge Cooke agreed with the analysis in *Ficcara v James* and said that it will be unusual for there to be absolutely nothing for the FTT to take into account under section 44(4).

43. In *Williams v Parmar & Ors [2021] UKUT 244 (LC)*, Mr Justice Fancourt stated that the FTT had in that case taken too narrow a view of its powers under section 44 to fix the amount of the rent repayment order. There is no presumption in favour of the maximum amount of rent paid during the relevant period, and the factors that may be taken into account are not limited to those mentioned in section 44(4), although the factors in that subsection are the main factors that may be expected to be relevant in the majority of cases.

44. Mr Justice Fancourt went on to state in *Williams* that the FTT should not have concluded that only meritorious conduct of the landlord, if proved, could reduce the starting point of the (adjusted) maximum rent. The circumstances and seriousness of the offending conduct of the landlord are comprised in the "conduct of the landlord", and so the FTT may, in an appropriate case, order a lower than maximum amount of rent repayment if what a landlord did or failed to do in committing the offence was relatively low in the scale of seriousness, by reason of mitigating circumstances or otherwise.

45. In *Hallett v Parker and others [2022] UKUT 165 (LC)*, the Upper Tribunal did not accept a submission that the fact that the local authority has decided not to prosecute the landlord should be treated as a "credit factor" which should reduce the amount to be repaid.

46. In its decision in *Acheampong v Roman and others [2022] UKUT 239 (LC)*, the Upper Tribunal recommended a four-stage approach to determining the amount to be repaid, which is paraphrased below:-

(a) ascertain the whole of the rent for the relevant period;
(b) subtract any element of that sum that represents payment by the landlord for utilities that only benefited the tenant;
(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 compared to other examples of the same type of offence; and
(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).

47. Adopting the *Acheampong* approach, the whole of the rent means the whole of the rent paid by the Applicants out of their own resources, which is the whole of the rent in this case as no part of the rent was funded by housing benefit.

48. In relation to utilities, we are satisfied on the evidence before us that the Applicants were obliged under their tenancy agreement to pay for utilities themselves and therefore that it would not be appropriate to make a deduction from the rent repayment sum for utilities.

49. As regards the seriousness of the type of offence, whilst it could be argued based on the maximum criminal penalty available that there are offences covered by section 40(3) of the 2016 Act which can give rise to a greater criminal sanction, a failure to license is still a serious offence. Failure to license leads – or can lead – to significant health and safety risks for often vulnerable tenants, and sanctions for failure to license have an important deterrent effect on future offending as well as encouraging law-abiding landlords to continue to take the licensing system seriously and inspiring general public confidence in the licensing system. In addition, there has been much publicity about licensing of privately rented property, and there is an argument that good landlords who apply for and obtain a licence promptly may feel that those who fail to obtain a licence gain an unfair benefit thereby and therefore need to be heavily incentivised not to let out licensable properties without first obtaining a licence. Furthermore, even if it could be argued that the Applicants did not suffer direct loss through the Respondent's failure to obtain a licence, it is clear that a large part of the purpose of the rent repayment legislation is deterrence. If landlords can successfully argue that the commission by them of a criminal offence to which section 43 of the 2016 Act applies should only have consequences if tenants can show that they have suffered actual loss, this will significantly undermine the deterrence value of the legislation.

50. In the light of the above factors, we consider that the starting point for this offence should be 70% of the maximum amount of rent payable.

51. As for the seriousness of the offence in this particular case compared to others of the same type, in our view there are some aggravating factors

which increase the level of seriousness in this case. Whilst we do not accept, based on the evidence in the hearing bundle, that the position in relation to damp and mould was quite as serious as suggested by the Applicants, it was a legitimate source of concern and therefore an aggravating factor. In addition, the fire safety issues (including the live wire) were serious issues, and the quality of the Applicants' occupation of the Property will have been further diminished by the problems with the boiler, the shower and the hole in the wall.

52. In addition, there is much evidence that the Respondent and/or her agents took seriously inadequate steps to alleviate the problems and at times seemed to ignore the problems altogether. Whilst it could be argued that the Applicants' main problems were with the Respondent's agents, that is not a valid excuse for the Respondent as she should have been actively managing her own property and checking up periodically on her agents and the satisfaction levels of her tenants from whom she was receiving rent.

53. On the basis of the above aggravating circumstances in this particular case, we consider that the starting point of 70% should be increased to 80%.

54. As regards the specific matters listed in section 44, the tribunal is particularly required to take into account (a) the conduct of the parties, (b) the financial circumstances of the landlord, and (c) whether the landlord has at any time been convicted of a relevant offence. We will take these in turn.

Conduct of the parties

55. There is no evidence before us that the Applicants' conduct has been anything other than satisfactory. The Respondent's own conduct has already been referred to above in the context of the seriousness of the offence, and as Mr Neilson rightly concedes it would not be appropriate to increase the amount of the rent repayment further to reflect her poor conduct as this would constitute double counting.

Financial circumstances of the landlord

56. The tribunal is required to take the Respondent's financial circumstances into account when making its decision. However, in this case the Applicants have no evidence of the Respondent's financial circumstances and the Respondent has not engaged with this process. She did not attend the hearing and the tribunal was therefore unable to cross-examine her on her financial circumstances. In this case, therefore, no adjustment to the amount of the award can be made either upwards or downwards to reflect her financial circumstances as they are unknown.

Whether the landlord has at any time been convicted of a relevant offence

57. The Respondent has not been convicted of a relevant offence, but it is clear from the Upper Tribunal decision in *Hallett v Parker* (see above) that this by itself should not be treated as a credit factor.

Other factors

58. It is apparent from the wording of sub-section 44(4) itself that the specific matters listed in sub-section 44(4) are not intended to be exhaustive, as sub-section 44(4) states that the tribunal "must, in particular, take into account" the specified factors. However, in this case we are not aware of any other specific factors which should be taken into account in determining the amount of rent to be ordered to be repaid.

Amount to be repaid

59. The four-stage approach recommended in *Acheampong* has already been set out above. The amounts arrived at by going through the first three of those stages is to reduce them to 80% of the maximum amount payable to each Applicant, subject to any adjustment for the section 44(4) factors referred to above.

60. As noted above, in part to avoid double-counting, there is nothing to add or subtract for any of the other section 44(4) factors.

61. Therefore, taking all of the factors together, the rent repayment order should be for 80% of the maximum amount payable to each Applicant, namely the following amounts:

- £4,933.18 to James Thomas
- £4,627.07 to Nicholas Hann
- £4,841.81 to Tomyr Warcaba-Wood.

## Cost applications

62. The Applicants have applied under paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for an order that the Respondent reimburse their application fee of £100.00 and the hearing fee of £200.00.

63. As the Applicants' claims have been successful, albeit that there has been a deduction from the maximum payable, we are satisfied that it is appropriate in the circumstances to order the Respondent to reimburse these fees.

**Name:** Judge P Korn **Date:** 7 May 2024

## RIGHTS OF APPEAL

A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.

B. 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.

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

D. 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.