FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	BIR/00CQ/HMK/2023/0002
Property	:	Flat 501, Queens Park House, Queens Road, Coventry CV1 3GX
Applicants	:	(1) Mr Christopher Bridges (2) Mr Morgan Pry (3) Ms Emily Smith (4) Mr Evan Williams
Representative	:	Flat Justice
Respondent	:	Unite Group plc (t/a Liberty Living Investments 1 Limited Partnership)
Representatives	:	Walker Morris, Solicitors Ms Chetna S Parmar, Counsel
Type of Application	:	Application under section 41(1) of the Housing and Planning Act 2016 for a rent repayment order
Tribunal Members	:	Judge David R. Salter Mr A Lavender BSc Hons, CEHP
Date of Hearing	:	19 January 2024
Date of Decision	:	11 June 2024

DECISION

Decision

1 The Tribunal orders Unite Group plc (t/a Liberty Living Investments 1 Limited Partnership) to repay the following amounts of rent:

(a) To Mr Christopher Bridges the sum of £1,489.57
(b) To Mr Morgan Pry the sum of £1,416.99
(c) To Ms Emily Smith the sum of £1,495.80
(d) To Mr Evan Williams the sum of £1,495.80

2 The Tribunal also orders under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, that Unite Group plc (t/a Liberty Living Investments 1 Limited Partnership) reimburse to each of the above-mentioned Applicants a sum of £75.00 (comprising their respective shares of the Tribunal application fee (£100.00) and of the hearing fee (£200.00).

Reasons for Decision

3 By a joint Application received by the Tribunal on 11 May 2023, Mr Christopher Bridges, Mr Morgan Pry, Ms Emily Smith and Mr Evan Williams ('the Applicants') applied for rent repayment orders under section 41(1) of the Housing and Planning Act 2016 ('the 2016 Act'). The orders sought were in respect of rent they had each paid as tenants of the property known as Flat 501, Queens Park House, Queens Road, Coventry CV1 3GX ('the Property').

4 The Property is a four-bedroom flat with a shared kitchen in Queens Park House which is purpose-built student accommodation in Coventry. The Respondent owns the Property. It is a national provider of student accommodation. The Applicants shared the Property. They let individual rooms, all of which are ensuite, under separate assured shorthold tenancies granted by the Respondent beginning on various dates in September 2021. Initially, each of the Applicants, other than Mr Pry, took up occupation under bridging tenancies.

5 The Applicants seek rent repayment orders against the Respondent which vary in amount depending on the duration of their respective occupations of the Property:

Mr Christopher Bridges claims £3,810.15 for his occupation of Flat 501 (Room C) between 13 September 2021 and 3 July 2022.

Mr Morgan Pry claims £3,643.86 for his occupation of Flat 501 (Room A) between 25 September 2021 and 3 July 2022.

Ms Emily Smith claims £3,824.00 for her occupation of Flat 501 (Room D) between 12 September 2021 and 3 July 2022.

Mr Evan Williams claims £3,824.00 for his occupation of Flat 501 (Room B) between 12 September 2021 and 3 July 2022.

These figures do not include a £250.00 discount in rent that was received by each of the Applicants from the Respondent.

6 The Applicants also apply for reimbursement of their respective shares of the Tribunal application and hearing fees.

7 Directions were issued by a Deputy Regional Judge on 13 September 2023. The Directions indicated that the Tribunal is charged with determining whether to make a rent repayment order and, if so, for what amount. In addition, they outlined some of the issues to be considered by the Tribunal in making its determination. Further, the Directions were concerned, otherwise, with matters pertaining to the preparation and submission of statements of case and related evidence by the parties to the Applications. In due course, the parties submitted electronic indexed and paginated bundles of documents as required by the Directions. Finally, the Directions stated that, in accordance with a recent ruling of the Upper Tribunal, the Applications would be determined following an oral hearing.

Inspection

8 The Tribunal did not carry out an inspection of the Property.

Hearing

9 A hearing was held remotely via the HMCTS Video Service (VHS) on 19 January 2024. Each of the Applicants joined the hearing but did not participate. They were represented by Mr Guy Morris, who presented their case. Ms Chetna Parmar of Counsel presented the Respondent's case. Mr Jordon Kellett, an Associate with Walker Morris (Solicitors), and Mr Stuart Lightfoot, the Regional Manager in the West Midlands for Unite Integrated Solutions plc, were also party to the hearing.

Mr Morris and Ms Parmar referred to skeleton arguments and bundles of authorities that were submitted to the Tribunal on 16 January 2024 and on the morning of the hearing respectively.

The Tribunal reconvened remotely through the HMCTS VHS on 15 February 2024.

Relevant Law

10 From 6 April 2017, the 2016 Act amended the provisions relating to rent repayment orders in England. Consequently, under section 43 of that Act the First-tier Tribunal may make a rent repayment order in favour of the (former) occupiers of a property if it is satisfied beyond reasonable doubt that the landlord has committed an offence specified in section 40(3) [section 72(1) of the Housing Act 2004 for the purposes of this Application] whether or not the landlord has been convicted of that offence.

11 The following provisions of the 2016 Act are pertinent to this Application.

12 Section 40 provides that a rent repayment order is an order requiring the landlord under a tenancy of housing in England to repay an amount of rent paid by a tenant. It confers power on the First-tier Tribunal to make a rent repayment order where the landlord has committed an offence to which Chapter 4 of the 2016 Act applies.

13 The relevant offences for the purposes of Chapter 4 are specified in section 40(3) as follows:

	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*

14 Section 41 sets out the application process and provides:

"**41 Application for rent repayment order**

(1) A tenant…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 twelve months ending with the day on which the application is made."

15 Sections 43 and 44 provide for the power of the Tribunal to make an order and the amount of that order. In respect of an application by a tenant, they provide:

"**43 Making of rent repayment order**

(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 section 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); …"

"**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 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."

16 The Upper Tribunal has provided guidance on the approach to be adopted by First-tier Tribunals in the application of section 44.

17 In *Williams v Parmar* [2022] UKUT 244 (LC), The Hon. Mr Justice Fancourt made the following observations:

"[25] …The amount of the rent paid during the relevant period is therefore, in one sense, a necessary 'starting point' for determining the amount of the RRO, because the calculation of the amount of the order must relate to the maximum amount in some way. Thus, the amount of the RRO 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 during the period is not a starting point in the sense that there is a presumption that that amount is the amount of the order in any given case, or even the amount of the order subject only to the factors specified in s.44(4)…

[40]…the factors that may be taken into account are not limited to those mentioned in s.44(4), though the factors mentioned in that subsection are the main factors that may be expected to be relevant in the majority of cases.

[41]…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 is relatively low in the scale of seriousness, by reason of mitigating circumstances or otherwise. In determining how much lower the RRO should be, the FTT should take into account the purposes intended to be served by the jurisdiction to make an RRO."

18 The Honorable Mr Justice Fancourt opined that the purposes intended to be served by the jurisdiction to make an RRO are the need to punish offending landlords, deter the particular landlord from committing further offences, dissuade other landlords from breaching the law and to remove from landlords the financial benefit of offending.

19 Insight into the assessment of the level of award that may be determined in each case can be gleaned from the decisions of the Upper Tribunal in *Simpson House 3 Limited v Osserman* [2022] UKUT 164 (LC) and *Hallett v Parker* [2022] UKUT 165 (LC). However, Judge Cooke indicated, subsequently, in a discrete part of her judgment headed 'practical points for decision making' in *Acheampong v Roman* [2022] UKUT 239 (LC) (*'Acheampong')*, that First-tier Tribunals should employ the following approach:

"[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 benefitted 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 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 offence? That figure is then the starting point (in the sense that it 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)."

20 Recently, Martin Rodger KC, Deputy Chamber President, took the opportunity in *LDC (Ferry Lane) GP3 Ltd v Garro* [2024] UKUT 40 (LC) to reaffirm the Upper Tribunal guidance to First-tier Tribunals relating to the deduction of the cost of utilities paid for by the landlord that only benefit the tenant; a matter that had arisen in that case. He stated:

"[78] It is, of course, for individual tribunals guided by appellate decisions which bind them, to determine the appropriate relationship between rent paid and rent to be repaid in the cases which come before them. But in making that determination one of the relevant circumstances which the Tribunal should have regard to, where it arises on the facts, is that the landlord has made payments for utilities consumed by the tenant.

[80]…The statutory direction is that the amount of a rent repayment order must relate to the rent paid; that means it must relate to the whole of the rent. But the statutory direction also necessarily requires that the assessment take account of other relevant circumstances, one of which will often be that the landlord has paid the cost of utilities consumed by the tenant. The decision maker is entitled to take account of that expenditure when determining the amount to be repaid and is encouraged by this Tribunal's guidance to do so. That has now become the settled approach amongst FTT panels."

Submissions

Applicants

21 In their statement of case, the Applicants stated that they were seeking the repayment of rent from the commencement of their respective tenancies in September 2021 to their expiry in July 2022 and repeated the specifics of their individual claims which had been set out in the Application (see above, paragraph 5). In total, the Applicants sought a rent repayment of £15,102.01.

22 The Applicants described the Property as a four bedroom 'cluster' flat with a shared kitchen. It is in a purpose-built student accommodation block, Queens Park House, in Coventry and is a privately let HMO.

23 The Applicants informed the Tribunal that, following a period of consultation, Coventry City Council ('the Council') introduced an Additional Licensing Scheme for Housing in Multiple Occupation ('the Additional Licensing Scheme') on 14 January 2020. In the absence of an exemption, it requires all HMOs with 3 or more occupants in the whole area to which the scheme applies to have an Additional Licence. The Applicants adduced

in evidence a copy of the designation relating to the Additional Licensing Scheme. It came into force on 4 May 2020 and expires on 3 May 2025. The Additional Licensing Scheme makes no exemption for purpose-built student accommodation buildings.

24 The Applicants averred that they were in occupation of the Property during the period specified in the Application under the terms of the terms of the individual tenancies granted to them by the Respondent. Each of the Applicants presented proof of payment of rent during those periods of occupation comprising extracts from either Bank or Building Society accounts.

25 The Applicants contend that the Property was licensable under the Additional Licensing Scheme but was not so licensed during their occupancy. In their submission, this amounts to the commission of an offence under section 72(1) of the Housing Act 2004 which is one of the offences listed in section 40(3) of the 2016 Act.

26 In furtherance of this contention, the Applicants relied upon correspondence between their representative, Flat Justice, and the Council that was adduced in evidence. The Applicants intimated that this correspondence revealed that whilst some paperwork was supplied by the Respondent to the Council at various points from March 2022 apropos an intended application under the Additional Licensing Scheme for an HMO licence by the Respondent. The Applicants adduced in evidence a letter from the Council dated 15 June 2023 to Flat Justice in which the Council stated that the HMO applications for Queens Park House 'were assessed by the Council and marked as valid on 15 March 2023' for the Council's purposes under section 63 of the Housing Act 2004. The Applicants commented that, therefore, it had taken the Respondent in the region of twelve months to make an effective licence application.

27 More generally, the Applicants' statement of case revealed that Flat Justice had garnered 'substantial evidence' relating to the Respondent's practice in relation to the licensing of its many properties which provide student accommodation. The Applicants regarded this evidence as material in that it provided a context within which to examine the evidence in the present case and amounted to conduct on the part of the Respondent that the Tribunal might take into account in determining the level of an award should it decide to make rent repayment orders (see further below, paragraphs 30 and 33).

In the former respect, the Applicants drew the following inferences.

First, the Respondent has extensive knowledge of licensing regulations pertaining to mandatory and discretionary licensing schemes, but predominantly the latter many of which are akin to the Additional Licensing Scheme introduced by the Council. In this circumstance, it was difficult to understand why the Respondent had not checked whether a licence was necessary in the instant case and, moreover, purported not to know that one was required until it was made aware by the Council that this was the case. Further, the Applicants pointed out that the Respondent is a party to the National Code of Standards for Larger Developments for student accommodation NOT managed and controlled by educational establishments ('the ANUK National Code') which requires members to be able to demonstrate that they have checked whether they need to license a property and to license properties where mandatory/additional/selective schemes apply (see, paragraphs 4.1 and 4.2 respectively).

Secondly and more broadly, the Applicants inferred from Flat Justice's evidence that the Respondent's pattern of licensing is difficult to explain unless it is assumed that it only acts to license properties when contacted by local authorities or when in receipt of an application for a rent repayment order. Moreover, the Applicants observed that even where the Respondent is aware of the need to license a property there would seem to be

unnecessary delays in securing a licence as indeed occurred in this case (see above, paragraph 26).

28 Further, the Applicants placed reliance on the recent First-tier Tribunal decision in *Valentina Garro, Jack Bedford, Sophie Newman, Callum Haynes, Jinran Wang and Shrodda Goswami v LDC (Ferry Lane) GP3 Ltd* LON/00AP/HMF/2022/0168 and 0183 dated 11 May 2023 and relating to the properties owned by a company within the Unite plc Group, Flats 201 and 601 North Lodge in Haringey (*'North Lodge'*). The Applicants regard this case as relevant to the present case in that it involves the licensing of purpose-built student accommodation owned within Unite Group plc. In that case, the Tribunal found that a licensing offence had been committed and made rent repayment orders in favour of each of the Applicants coupled with an order for reimbursement of the application and hearing fees. The Applicants informed the Tribunal that this decision, a copy of which they provided to the Tribunal, is the subject of an appeal to the Upper Tribunal.

29 As to the broader relevance of this evidence, the Applicants cited, initially, *Williams v Parmar* which established, in their opinion, that a tribunal may consider a 'range of conduct and material, guided by the statutory factors, in determining the sum of any award', and added that, subsequently, *Hallett v Parker* 'has helped to refine what conduct is most relevant and what combination of circumstances may offer mitigation'. However, the Applicants observed that the combination of factors that had influenced the decision in *Hallet v Parker* and led to a discount on the award made by the Tribunal differed in important respects from the present case.

In this case, the Applicants referred the Tribunal to the following combination of factors relating to the Respondent. It is a subsidiary of one of the largest professional student landlords in the United Kingdom, has let countless other buildings to students that are HMOs, it is aware of the requirement to license HMOs and has extensive knowledge of licensing regulations, applied very belatedly for an HMO licence for the Property and for another licensable property (Raglan House) in Coventry, and has been found by the First-tier Tribunal to have committed a licensing offence in the *North Lodge* case. The Applicants submitted that all these factors together with the overall picture of the Respondent's licensing conduct portrayed in the evidence put together by Flat Justice (see above, paragraph 27) were germane to the determination of the level of an award should the Tribunal decide to make rent repayment orders.

30 Subsequently, the Applicants developed some of the above points and responded to matters raised in the Respondent's statement of case by means of the skeleton argument prepared by Mr Morris for the Tribunal and through his representations on their behalf at the hearing. This involved consideration of or revisiting (as the case may be) the following:

Materiality of evidence relating to the Respondent's conduct regarding licensing of other properties

The Applicants reiterated the view expressed in their statement of case (see above, paragraph 27), namely that, first, the Respondent's conduct with regard to licensing of other properties provides a context within which to examine the Respondent's evidence in the present case, particularly, that it was unaware of the licensing requirements for the Property and that its failure to license was not deliberate, and, secondly, that such conduct is a relevant consideration for the purposes of section 44(4).

The Respondent's failure to obtain/delay in obtaining an HMO licence for the Property

The Applicants submitted that the Respondent's only excuse for not licensing the Property when it should have been licensed appears to be that it acquired the Property after the consultation by the Council on the proposed Additional Licensing Scheme and that, thereafter, it was unaware of the Additional Licensing Scheme's introduction. In the Applicants' opinion, this position is difficult to reconcile with the fact that the Respondent must have been aware of licensing requirements having previously licensed some of its properties under other discretionary schemes. It is also inconsistent with its obligation under the ANUK National Code to monitor licensing requirements and to license its properties. In addition, the Applicants contend that, bearing in mind the respective dates of acquisition of the Property by the Respondent and assumption of responsibility for it, the Respondent had ample time to avail itself of information concerning the Additional Licensing Scheme.

The Applicants also averred that there is no substance to the Respondent's claim that its actions were affected by the Covid-19 pandemic. They pointed out that the consultation for the Additional Licensing Scheme took place before the pandemic and added that to suggest that during the pandemic its management team was too focused on the 'management of properties' to make themselves aware of the introduction of the Additional Licensing Scheme is to disregard the fact that 'management of properties' includes licensing them where this is necessary; licensing is not a secondary consideration. The Applicants opined that the Respondent's decision to introduce centralised management of licensing is a tacit admission that it has mismanaged its duty to license.

More generally, the Applicants stated that the Respondent has been unable to explain why when it has its own legal department it has not been able to ensure that all its properties are correctly licensed; a circumstance that, in the Applicants' opinion, is established by the evidence presented by Flat Justice.

Further, the Applicants contended that the Respondent took nearly a year to complete an HMO licence application in this case not least because the Property was not licensable, for example, because of an unsatisfactory Electrical Installation Condition Report (EICR) In this respect, Mr Morris drew the Tribunal's attention to correspondence between the Council and the Respondent which revealed that at various points in 2022 various standard documents e.g. a gas safety certificate which had been requested had not been supplied by the Respondent to the Council and that in December 2022 some requirements had still not been met (see further below, paragraph 32). Mr Morris also suggested that the Respondent's approach throughout the HMO licence application process was generally reactive.

Challenges to the Application by the Respondent

(i) Exclusion of the 'bridging tenancies'

31 The Applicants acknowledged that each of them, other than Mr Pry, occupied the Property, initially, under bridging tenancies. However, they refute the Respondent's suggestion that the periods covered by these tenancies should not be considered in assessing the award of any rent repayment order. Rather, the Applicants maintain that they were in continuous occupation for the periods for which they claim, and it is commonplace for tenancies to change during an occupation of a property. In their opinion, a claim for a rent repayment order is not limited to one tenancy agreement but to the duration of the offence which was ongoing throughout the period applied for.

(ii) Application – 'out of time'

32 The Applicants referred to the Respondent's claim that the Application was 'out of time' as it tendered payment for an HMO licence to the Council in April 2022 and the Application was made more than a year after this i.e. on 11 May 2023.

In this respect, the Applicants stated that the Respondent's application for an HMO licence under the Scheme was not accepted as complete by the Council until 15 March 2023. Prior to that date, it is clear from the correspondence between the Respondent and the Council, which is included in the Respondent's bundle of documents, that the Respondent was slow to progress the application process which began in March 2022. For example, in December 2022, the position was that no gas safety certificate (GSC), no EICR nor test certificates for the fire detection and emergency lighting systems had been supplied to the Council, each of which should already have been completed to ensure the Property's safety. This is documentation that should also be readily available in accordance with the requirements of the ANUK National Code. Further, correspondence subsequent to December 2022 shows that significant matters remained to be resolved before the Council and that it was only prepared to regard the application as complete on 15 March 2023.

Accordingly, the Applicants contended that as the Respondent's application for an HMO licence was not accepted as complete by the Council until 15 March 2023 and that their Application for rent repayment orders on 11 May 2023 is well within time i.e. being before the twelve month anniversary of the determination of their occupation on 3 July 2022 when the offence was ongoing. Therefore, it follows that the Respondent does not have a defence to the Application.

Quantum considerations

33 The Applicants also revisited the question of the level of any awards should rent repayment orders be made.

Regarding costs incurred by the Respondent for utilities only for the benefit of the Applicants, the Applicants submitted that the Respondent had not provided sufficient evidence to support a deduction of any such costs from any rent repayment orders. Accordingly, the Applicants requested the Tribunal to refuse to deduct those costs from any rent repayment orders that may be made. At the hearing, Mr Morris queried whether there was any authority in the 2016 Act for the deduction of utilities from the rent paid and if rent is regarded as the whole sum paid for the occupation of a property he submitted that there is a case for arguing that the cost of utilities should not be deducted.

The Applicants also reiterated that should the Tribunal decide to make rent repayment orders in this case, the award should reflect, *inter alia*, the Respondent's licensing conduct (see above, paragraphs 27 and 30) where, in their opinion, it has 'consistently failed to license many of its properties, including the subject property, despite ample warning and awareness of the issue', and the finding against it by the First-tier Tribunal in *North Lodge*. The Applicants also highlighted that the Upper Tribunal when working within the parameters set by *Acheampong* has regularly recommended higher awards against professional landlords. In this respect, the Applicants cited various brief judicial pronouncements all of which served to confirm that a professional landlord may be expected to know the requirements for licensing an HMO and, equally, to be conversant with and comply fully with their professional and legal responsibilities (see, *Chan v Bilkhu* [2020] UKUT 289 (LC), at paragraph 25, *Williams v Parmar (*para. 52), *Aytan v Moore* [2022] UKUT 27 (LC), at paragraph 42 and *Simpson House 3 Limited v Osserman* (para. 50).

Further, the Applicants rejected any notion that, in the context of the offences listed in section 44(2), licensing offences are not the most serious of those offences. The Applicants acknowledged that licensing offences may generally be regarded as comparatively 'less serious', nevertheless this is not necessarily the case and, as indicated by The Hon. Mr Justice Fancourt in *Williams v Parmar*, the Tribunal retains its discretion to order repayment of the maximum amount if this is justified. Moreover, the Applicants stated that the Tribunal takes due notice where there is a professional landlord responsible for an unlicensed property which has serious deficiencies.

In this regard, the Applicants submitted that in this case correspondence with Coventry City Council showed that, at times, there were serious failings in the management of the Property by the Respondent which prevented the Property from being licensed including no satisfactory EICR, no current PAT certificates and 'serious deficiencies in testing, certification and actual electrical installations at the subject property'; circumstances that also detract, in the Applicants' opinion, from any claim that the Property was managed in accordance with the ANUK National Code. The skeleton argument listed the correspondence in chronological order and included, *inter alia*, a reference in a letter from the Council dated 24 February 2023 to the unsatisfactory condition of the electrical installation and for the need for remedial works. A copy of the EICR certification was not provided to the Tribunal and, therefore, it was unable to establish whether any deficiencies related to the Applicants' accommodation.

Finally, in the context of the statutory factors that may affect the setting of the level of any award, the Applicants stated that it should be borne in mind that a failure to license properties distorts the market, there is no relevant conduct on the part of the Applicants in relation to the offence and rent was paid on time and in full, and any plea from the Respondent for mitigation due to financial circumstances must be public and open to challenge by the Applicants (although, it accepted that no such plea had been made by the Respondent).

Conclusion

34 The Applicants said that nothing less than an award by the Tribunal of 100% of the rent applied for together with reimbursement of all tribunal fees paid would send a clear signal to the Respondent that it is not above the law and that it should ensure that its properties are correctly licensed and safe for students to occupy. Such an award would also be consistent with the purpose of rent repayment orders and Parliamentary intent which is not to ensure that a tenant recoups a particular amount but to incentivise landlords to comply with licensing requirements (see, *Kowalek v Hassanein Limited* [2022] EWCA Civ 1041 and *Rakusen v Jepsen* [2020] UKUT 298 (LC)).

Respondent

35 The Respondent confirmed that the Property is located in purpose-built student accommodation, namely Queens Park House and added that Queens Park House provides accommodation for 464 students arranged in cluster flats. The Respondent also acknowledged that it is a subsidiary of the Unite Group plc which is a group of companies that provides purpose-built student accommodation.

36 The Respondent indicated that it acquired Liberty Living Group, which included Queens Park House (formerly known as Liberty Park), in or about November 2019.

37 The Respondent acknowledged that it is a member of Accreditation Network/Unipol Code of Management ('ANUK'). Queens Park House is managed in accordance with the ANUK National Code.

38 The Respondent stated that Queens Park House has never been subject to mandatory HMO licensing.

39 The Respondent acknowledged the introduction of the Additional Licensing Scheme by the Council through an Additional Licensing Designation on 14 January 2020 and concurred, with the Applicants, that it came into force on 4 May 2020. However, the Respondent added that the consultation, which preceded this scheme's introduction, took place between 9 January 2019 and 20 March 2019 and, hence, it was conducted prior to its acquisition of Queens Park House. Consequently, the Respondent was not party to that consultation.

40 As to the licensing of Queens Park House under the Additional Licensing Scheme, the Respondent said:

· It did not become aware of the Additional Licensing Designation during the acquisition of the Liberty Living Group;

· The Additional Licensing Designation came into force during the Covid-19 lockdown, when the Respondent's management functions were understandably limited because of a reduction in staff numbers and when it was focused on the management of its properties;

· The local management team did not become aware of the Additional Licensing Designation and of the need for Queens Park House until it received a misdirected notification from the Council on 13 December 2021; some two months after it had been sent. Thereafter, there was regular communication between the Respondent and the Council about the position pertaining to an HMO licence and the making of an application;

· The Respondent has now removed the licensing responsibility from local management teams and centralised the licensing function at head office (with oversight by the in-house legal department) with a view to ensuring that licensing obligations are not overlooked in the future;

· The failure to secure licences was a regrettable oversight and there was no intent to avoid licensing whatever the Applicants may allege;

· As indicated above, as soon as the Respondent became aware of the Additional Licensing Designation, it sought to clarify the position and began the process of making applications for all the flats in Queens Park House. The Respondent tendered payment to the Council by raising a purchase order dated 6 April 2022. This was for the sum of £56,960.00. A copy of this purchase order (a copy of which the Respondent adduced in evidence) was sent automatically to the Council when it was raised in order that payment could be requested;

· In response to the purchase order, the Council raised an invoice dated 6 July 2022 which was paid on 22 July 2022;

· The Council requested extensive additional information for the self-certification of the licensed properties; requests with which the Respondent co-operated throughout. Consequently, the application process was not formally completed until 28 February 2023. The Respondent adduced in evidence an e-mail dated 28 February 2023 from the Council showing, in its submission, that the information required for the applications was complete and a further e-mail from the Council dated 24 April 2023 indicating, in its submission, that the applications were complete; and

· The Council has yet to process the applications and issue the licences.

At the hearing, Counsel said that the Respondent had adopted a pro-active approach once it was aware of the Additional Licensing Designation and co-operated, willingly, with the Council.

41 The Respondent objected to the Application on the following two counts.

42 First, the Respondent related that the Application was made on 11 May 2023 and reiterated that it had made HMO licence applications and tendered the requisite payment to the Council on 6 April 2022 (see above, paragraph 40). Accordingly, the Respondent submitted that it has a defence under section 41(2)(b) of the 2016 Act to the offence relied upon by the Applicants (initially, reference was made to section 95(3) of the Housing Act 2004). Under this provision an application for a rent repayment order must be made to the Tribunal within a period of twelve months in which the offence is being committed. The Respondent contended that it was evident that the Application was made outside that twelve-month period because the offence was no longer being committed after 6 April 2022 following the steps taken in April 2022. Thus, the Application was not made to the Tribunal within a period of twelve months in which the offence was being committed with the result that the Tribunal does not have jurisdiction to make a rent repayment order(s) and, therefore, the Tribunal should dismiss the Application.

43 Secondly and in the alternative, the Respondent stated that Mr Bridges, Ms Smith and Mr Williams were each granted short 'bridging' tenancies for the period prior to 25 September 2021. Those tenancies were extinguished upon the grant of the full-term tenancies. Accordingly, the Respondent averred that for the purpose of section 41(2) of the 2016 Act the Applicants cannot seek rent repayment orders for rents paid the short tenancies because the relevant offence was not committed within the period of twelve months ending on the date of the Application.

44 Further, the Respondent contended that, subject to the above defence and the proposed limitation, any rent repayment orders that the Tribunal may be minded to make should be awarded in line with the principles set down in *Acheampong* (see above, paragraph 19).

45 With regard to the ascertainment of the whole rent for the relevant period, the Respondent stated, initially in its statement of case, that the total rent paid by the Applicants was as follows:

First Applicant (Mr Bridges) £4,060.15;

Second Applicant (Mr Pry) £3,893.86;

Third Applicant (Ms Smith) £4,074.00;

Fourth Applicant (Mr Williams) £4,074.00.

However, Counsel acknowledged at the hearing that these figures did not take account of the £250.00 rent discount which each of the Applicants had received from the Respondent (see above, paragraph 5); discounts which had been deducted from the amounts claimed by way of rent repayment orders by the Applicants in the Application.

46 Notwithstanding this acceptance that the total rent paid was as represented by the Applicants, Counsel maintained the Respondent's position that the cost of utilities incurred for the benefit of the Applicants should be deducted from that total rent. In this respect, the Respondent stated, with particular reference to the witness statement of Mr Stuart Lightfoot, that the average cost of utilities (electricity, heating, water, and internet

access) per tenant in Queens Park House for the 2021-2022 academic year was £438.00 plus £2.97 for contents insurance giving a total of £440.97 and indicated that those sums had been included in the total rent payable. These sums were calculated using the Respondent's annual bills.

47 The Respondent explained the rationale for the above deduction of the cost of utilities incurred for the benefit of the Applicants from the total rent paid as reflective of the fact that utility charges are not rent in the legal sense. They may be payable with the rent, but they are not recompense for the use and occupation of land, and do not issue out of the land. The Respondent endorsed the statement by Judge Cooke in *Acheampong* that utility costs do not fall within the definition of rent for the purposes of the 2016 Act and should be deducted from the gross sum paid to arrive at the rent that constitutes the starting point for the award of a rent repayment order.

48 As to the seriousness of the offence, the Respondent opined that each case must be decided on its own facts.

49 In this case, the Respondent submitted that the offence was one of omission rather than commission. It arose because the proposed Additional Licensing Designation was overlooked during the acquisition of Queens Park House and the implementation of the Additional Licensing Scheme occurred during the Covid-19 pandemic. When the Additional Licensing Designation came to the Respondent's attention the Council was contacted immediately, the requisite licences were applied for, immediately, and payment tendered. The Respondent added that it had not sought to make any gain by evading or avoiding this licensing obligation.

50 In its statement of case, the Respondent contended that the degree of seriousness to be attributed to its failure to license Queens Park House should be as follows:

'[48] Given the scope of the offences within s.40 of the 2016 Act, the failure to license is intrinsically at the lower end of the scale of seriousness.

[49] In this case, the Applicants suffered no harm or prejudice and were not exposed to any potential harm by reason of the failure to licence. At all material times the Property was managed in accordance with a code of practice given statutory approval by the Secretary of State and Parliament.

[50] Accordingly, the Respondent submits that in the scale of licensing offences, this case again lies at the lower end of the scale.'

51 In furtherance of this contention, Counsel alluded in her skeleton argument to differences in the severity of the offences that may be committed and contrasted *Simpson House 3 v Osserman* in which a landlord deliberately failed to license a property and *Hallett v Parker* in which a landlord took insufficient steps to inform himself of the regulatory requirements which led to the award of rent repayment orders that were reflective of those differing degrees of severity, namely 80% and 25% respectively. Counsel opined that, in the latter case, both harm and culpability were clearly at the lower end of the scale as in this case and concluded that *Hallett v Parker* 'has a considerable factual similarity to this case in that it was an inadvertent licensing breach with no other aggravating or mitigating factors' and, therefore, provides a realistic starting point for the Tribunal. Counsel also accepted that the Respondent's status as a commercial landlord could be a potential 'aggravating factor', but it was not one which should have a dramatic effect on the level of an award (*Daff v Gyalui* [2023] UKUT 134 (LC) *per* Martin Rodger KC, Deputy Chamber President at paragraph 52).

52 Thereafter, within the context of section 44(4) of the 2016 Act, the Respondent commented on the following factors, namely relevant conduct of the Respondent and Applicants, the financial circumstances of the Respondent and any relevant previous conviction(s) of the Respondent.

53 As to relevant conduct, the Respondent accepted that there was conduct on its part that is relevant to the tenancies in question. However, in its statement of case, the Respondent strongly rejected the Applicants' allegation that its licensing of premises elsewhere in England constitutes relevant 'conduct' for the purposes of the present case in the following terms:

'[68]…the question of whether other properties elsewhere in England may or may not have been subject to licensing and may or may not have been subject to licensing and may or may not have been licensed is wholly irrelevant to the making of an RRO for the Applicants' tenancies of the Property. Specifically:

(i) It does not speak to any element of the offence and is not probative of any other issue;

(ii) It is not conduct relevant to any of the tenancies in question;

(iii) It has not resulted in any relevant conviction.

[69] Even if the matters alleged might be said to have some tangential relevance to the matter before the Tribunal, the inquiry into the catalogue of allegations advanced by the Applicants would be wholly disproportionate use of the Tribunal's time and wholly disproportionate in terms of the burden imposed on the Respondent in meeting the allegations.'

At the hearing, Counsel added that not only were these 'other' instances of licensing premises by the Respondent not before the Tribunal nor were the full details of those instances available to the Tribunal and submitted, therefore, that the evidence relating to them should be disregarded by the Tribunal. Moreover, any reliance placed on the decision in *North Lodge* by the Applicants was premature.

54 The Respondent acknowledged that there is no conduct on the part of the Applicants that amounts to relevant conduct and recorded that the Applicants had not made any allegations impugning the quality or the management of the Property in any way.

55 The Respondent concluded that there is no 'relevant conduct' within the meaning of section 44(4) to be brought into account.

56 The Respondent added that there are no relevant financial circumstances to be brought into account.

57 Finally, the Respondent stated that it has no previous convictions for any of the offences within section 40(3) of the 2016 Act. The matter referred to by the Applicants (*North Lodge*) was an application for rent repayment orders in the First-tier Tribunal and not a prosecution leading to conviction. This matter is subject to appeal to the Upper Tribunal.

58 In summary, the Respondent denied that the Applicants are entitled to rent repayment orders and to reimbursement of the tribunal fees. Alternatively, Respondent submitted that, should the Tribunal find that the Applicants are entitled to an award, the award should be assessed in accordance with the principles laid down in *Acheampong*. In this regard, this is an offence that was not deliberate, it is at the lower end of the scale of possible offences and also at the lower end of the scale of licensing offences, and there was no prejudice or potential harm to the Applicants by reason of the offence. There is no

relevant conduct that either aggravates or mitigates the quantum of any rent repayment orders and no relevant financial circumstances or previous convictions to be brought into account. Any award should be limited to 25%-35%.

Decision

Rent repayment

59 In reaching its determination, the Tribunal considered the relevant law together with all the evidence submitted by the parties which is summarised in paragraphs 21-58 above.

Challenges by the Respondent to the Application

60 The Respondent challenged the Application on two grounds. First, the Respondent submitted, by way of defence, that the Application was 'out of time' and, therefore, should be dismissed, and, secondly, in the alternative, that, should the Tribunal be minded to make rent repayment orders, the days falling within the 'bridging tenancies' should not be included in the computation of the level of those awards and that this limitation on the Application be adopted.

61 The essence of the Respondent's 'out of time' defence is that the Respondent made HMO licence applications and tendered the requisite payment for the Queens Park House licences to the Council in April 2022 and that this provides a defence to the offence relied upon by the Applicants, because the Application, which was made on 11 May 2023, was not, therefore, made to the Tribunal within a period of twelve months within which the offence was being committed (see, section 41(2)(b) of the 2016 Act) as the commission of the offence ceased in April 2022.

In light of the evidence presented to the Tribunal, it is clear that, notwithstanding the steps taken by the Respondent in April 2022, these were insufficient to constitute a fully determinable HMO application as, thereafter, the Council engaged in further correspondence with the Respondent and required further documentation (such as a gas certificate, a fire detection and emergency lighting certificate and an EICR) at various points and did not confirm that there was an 'effective licence application', that is, one that it could fully determine, until 15 March 2023. It follows that the offence was on-going in April 2022 as it continued to be at the time of the conclusion of the Applicants' occupation on 3 July 2022 (within twelve months of which the Application was made on 11 May 2023). Accordingly, the Tribunal declines the Respondent's plea to dismiss the Application.

62 Similarly, the Tribunal is not persuaded that the scope of the Application should be limited by the omission of the days falling within the bridging tenancies from the computation of the amounts of any rent repayment orders it may award. There is no evidence to show that the Applicants were otherwise than in continuous occupation of the Property throughout the period cited in the Application and the Tribunal's focus in considering the award or otherwise of a rent repayment order(s) is not on the tenancy or tenancies that govern that occupation, but on the commission and duration of any offence committed by the Respondent during that occupation.

Pre-requisites to making a rent repayment order

63 In considering the Application and prior to making a rent repayment order, the Tribunal must be satisfied *'beyond reasonable doubt'* under section 43 of the 2016 Act that the Respondent has committed one or more of the offences specified in section 40(3) of that Act (see above, paragraph 13).

64 Neither party disputed that the Property was subject to additional licensing during the Applicants' occupancy nor that the Property was unlicensed at the commencement of that period on whichever date that fell for each of the Applicants.

65 Accordingly, the Tribunal is satisfied, on the evidence, that the Respondent committed an offence under section 72(1) of the Housing Act 2004, as the Respondent was managing an HMO that was required to be licensed but was not so licensed.

Reasonable excuse for failure to licence

66 In its evidence, the Respondent has explained that it was not party to the consultation that preceded the Additional Licensing Designation and accepted that the initial failure on its part to license the Property was an oversight. However, there was no intent to avoid the licensing of the Property. The Respondent also stressed that once it became aware of the need to license the Property, albeit belatedly because of a misdirected communication from the Council, it co-operated fully with the Council throughout the HMO application process with HMO applications relating to Queens Park House and payment tendered to the Council in April 2022. However, the Additional Licensing Scheme was introduced during the Covid-19 lockdown when its management functions were limited, staff numbers were reduced, and the primary focus was on the management of properties. Efforts were also directed, particularly, towards complying with the Council's requests for extensive additional information relating to self-certification for Queens Park House.

Notwithstanding this evidence, the Tribunal cannot ignore the fact that the Respondent failed to license the Property in circumstances when as a member of a group of companies that specialises in providing student accommodation and with considerable experience nationwide of licensing such property it did not know about the Additional Licensing Scheme until alerted to it by the Council. Due diligence on its part should have disclosed the existence of the Scheme. Further, the subsequent prolonged HMO application process suggests that the Respondent did not have anything approaching 'all its ducks in a row' when it embarked on that process.

Accordingly, the Tribunal finds that there is no reasonable excuse defence for the offence committed.

Quantum – level of award

67 In determining the level of the award, the Tribunal applied the approach advocated in *Acheampong* set out above (see, paragraph 19) and paid due regard to the observations of the Upper Tribunal in *LDC (Ferry Lane) GP3 Limited v Garro* (see above, paragraph 20) when it was concerned with the deduction of the costs of utilities incurred by a landlord only for the benefit of tenants. The Tribunal's findings are as follows.

68 The rent claimed by each of the Applicants was

Mr C Bridges	£3,810.15
Mr M Pry	£3,643.86
Ms E Smith	£3,824.00
Mr E Williams	£3,824.00

The Respondent accepted that these sums were correct after acknowledging that each of the Applicants had received a £250.00 discount on the total rent that was payable.

The Respondent also accepted that these sums had been paid in full by the Applicants.

69 The Respondent indicated that the average cost of utilities per tenant in Queens Park House in the academic year 2021/2022 was £438.00 and that a further average cost per tenant of £2.97 was incurred for contents insurance and submitted that, in accordance with the guidance in *Acheampong*, these costs should be deducted from the rent paid. However, the Respondent did not provide any supporting evidence for either of these figures, but simply stated that they were based on the Respondent's annual bills. Significantly, therefore, it was not possible to establish any direct correlation between the cited figure for the average cost of utilities and insurance per tenant in the stated academic year and the actual usage of the provided utilities by the Applicants during their occupancy.

In this circumstance, the Tribunal observed the Upper Tribunal's stated position on the deductibility of the cost of utilities incurred by a landlord only for the benefit of the tenant (exemplified by the above pronouncement of Martin Rodger KC in *LDC (Ferry Lane) GP3 Limited v Garro*, see paragraph 20) and followed the guidance given on deductibility by Judge Cooke in *Acheampong* (and, in so doing, rejected the generic stance adopted by Mr Morris on this matter). This involved the use of the limited information provided by the Respondent and the Tribunal's knowledge and experience to make an informed estimate of the specified costs for the duration of their occupancy. Accordingly, the Tribunal in employing a broad-brush calculation estimates that the cost is £50.00 per month for Mr Bridges, Ms Smith and Mr Williams (say, £500.00) and £49.50 per month for Mr Pry (say, £495.00) in recognition of the fact that he was not granted a bridging tenancy.

The adjusted rent figures are therefore:

Mr C Bridges	£3,310.15
Mr M Pry	£3,148.86
Ms E Smith	£3,324.00
Mr E Williams	£3,324.00

70 Further, the Tribunal finds that the offence committed by the Respondent is not at the serious end of the scale either when comparing the offence to other offences or other cases of the same offence. However, the Respondent is a professional landlord (operating within a group of companies) and it should have been aware of the need to license the Property not least because of the property portfolio with it is involved, its provision of specialist provision of student accommodation and the related experience of mandatory and discretionary licensing schemes; matters which the Respondent's licensing history as portrayed by the Applicants serves to illustrate, but which, otherwise, involves subject matter that is not before the Tribunal and in respect of which, therefore, the Tribunal makes no assumptions and draws no inferences as to the Respondent's conduct in any of the instances alluded to. By way of contrast, however, the Tribunal regards the decision by the Upper Tribunal in *LDC (Ferry Lane) GP3 Limited v Garro* (see above, paragraph 20) to dismiss the Respondent's appeal in *North Lodge* and, thereby, uphold the determination of the First-tier Tribunal (see above, paragraph 28) as material to its determination in that it is evidence of the commission of a licensing offence by a company within the Unite Group plc of which the Respondent is an affiliate.

There is no evidence to suggest in this case, however, that this was a deliberate breach, but rather it was attributable, initially, to an oversight that was then compounded over time by a somewhat protracted HMO licence application process during which the Council sought, on several occasions, documentation relating to safety that was needed for the Property to be licensable (see further above, paragraph 61 for factors that impacted upon that process). Whilst the absence of such documentation is not necessarily indicative of a safety concern that relates to and affects individual tenants the

Tribunal notes that the EICR electrical installation was found to be unsatisfactory in February 2023 and that remedial work was required (see further above, paragraph 33).

Ultimately, however, the inescapable fact remains that the Respondent is a professional landlord and as case law in the Upper Tribunal, including *Chan v Bilkhu, Williams v Parmar* and *Simpson House 3 Limited v Osserman,* shows it is expected to be fully aware of and to comply with its professional and legal responsibilities including, for example, in the former respect, its commitments under the ANUK National Code such as the provision of necessary safety certificates and reports.

In these circumstances, the Tribunal considers that a 45% penalty is appropriate.

It is to be hoped that the Respondent's decision to centralise the licensing function at its head office (with oversight by its legal department) will lead to a prospective level of compliance with licensing requirements that denies any further recourse by its tenants to the Tribunal for rent repayment orders.

71 In accordance with the above finding, the Tribunal determines that the Respondent should pay rent repayment orders of the following amounts:

Mr C Bridges	£1,489.57
Mr M Pry	£1,416.99
Ms E Smith	£1,495.80
Mr E Williams	£1,495.80

Order under Rule 13

72 The Applicants also sought reimbursement of their application fees and of their respective contributions to the joint hearing fee under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. In this matter, the Applicants paid an application fee of £100.00 and a hearing fee of £200.00.

73 Rule 13(2) provides:

"The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party…"

74 Having found that the Respondent had committed an offence and had no reasonable excuse to do so, the Tribunal finds it appropriate to make an order under Rule 13(2) and orders the Respondent to reimburse each of the Applicants the sum of £75.00 being their respective shares of the application fee (£100.00) and of the hearing fee (£200.00).

Judge David R. Salter

Date:

Appeal Provisions

75 If any party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such appeal must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

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

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