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

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| **Case references** | : | **LON/00BH/HMF/2021/0211**<br>**LON/00BH/HMF/2021/0214** |
| **Property** | : | **Aston Grange Care Home, 418-512, Forest Road, London E17 4NZ** |
| **Applicants** | : | **(1) Patrick Sterling**<br>**(2) The 26 other persons named in the attached schedule** |
| **Representative** | : | **Flat Justice CIC** |
| **Respondents** | : | **(1) Global Guardians Management Ltd**<br>**(2) Aston Grange Care Ltd**<br>**(3) Acer Investments Ltd**<br>**(4) Yasim Karim**<br>**(5) Global 100 Ltd** |
| **Representative** | : | **Kelly Owen Ltd,solicitors** |
| **Type of application** | : | **Application for a rent repayment order by tenants**<br>Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016 |
| **Tribunal** | : | **(1) Judge Amran Vance**<br>**(2) Rachel Kershaw** |
| **Venue** | : | **10 Alfred Place, London WC1E 7LR** |
| **Date of Hearing** | : | **23 May 2024** |
| **Date of Decision** | : | **11 June 2024** |

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**DECISION**

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## Decisions

1. The tribunal makes Rent Repayment Orders in the sums indicated in the attached schedule which must be paid by the Fifth Respondent, Global 100 Ltd, to the respective Applicants within 28 days of the date of issue of this decision.

2. The Fifth Respondent must also pay to the Applicants, within the same 28 day timescale, the sums they paid for the Tribunal's application fee (£100) and hearing fee (£200).

## Background

3. These two applications concern requests for Rent Repayment Orders ("RROs") made by former occupants of Aston Grange Care Home, 418-512, Forest Road, London E17 4NZ ("the Property"), a three storey former care home that was converted into accommodation for occupation by property guardians. The Applicants each occupied the Property in that capacity for various periods commencing in 2017 and ending in October 2021.

4. It appears from a Property Protection Proposal included in the hearing bundle before us **[1464]** that the freehold owner of the Property is Acer Investments Ltd, ("Acer"), the Third Respondent, which, in December 2016, entered into an agreement with Global Guardians Management Ltd ("GGM"), the First Respondent, whereby GGM would provide property guardian services at the Property. By an agreement dated 9 January 2018, GGM then authorised Global 100 Ltd ("G100") to enter into licence agreements with guardians. Mr Karim, the Fourth Respondent, is the Managing Director of Acer. Although the Applicants initially identified five Respondents in their application form, they now only seek a RRO against the Fifth Respondent, G100.

5. Each of the Applicants entered into written licence agreements with G100 entitling them to occupy the Property for a weekly licence fee, to be collected monthly. They seek a RRO on grounds that the Property was a House in Multiple Occupation ("HMO") that was required to be licensed by London Borough of Waltham Forest ("LBWF"), under the mandatory licensing scheme established by Part 2 of the Housing Act 2004. Alternatively, they assert that the Property is situated in an area designated by LBWF as being subject to Additional Licensing under Part 2 following a designation dated 11 July 2019 **[1430]**, which came into force on 1 April 2020 and which expires on 31 March 2025.

6. As the Property was unlicensed when their occupation commenced, the Applicants contend that G100 thereby committed the offence identified in s.72(1) Housing Act 2004 of being a person in control or management of an unlicensed HMO. They acknowledge that the offence ceased on 15 February 2021, when G100 applied to LBWF for a Temporary Exemption Notice ("TEN") in respect of the Property pursuant to s.62(2) of the 2004 Act, and which was granted on 17 March 2021 **[1517]**.

7. The Applicants' applications for RROs were made to the Tribunal on 18 August 2021, and were therefore made in time for the purposes of s.41(2) Housing and Planning Act 2016 ("the 2016 Act"), which requires the offence complained of to have been committed in the period of 12 months ending with the day on which the application is made.

8. A case management hearing took place on 18 October 2022 at which the Tribunal issued directions **[1421]** and listed the applications for determination at a final hearing on 16 March 2023. At that final hearing, the Tribunal adjourned the applications and stayed them pending the outcome of the decision of the Court of Appeal in *Global 100 Ltd v Jimenez and Global Guardians Management Ltd v LB Hounslow and others* [2023] EWCA Civ 1243. In its subsequent judgment, dated 27 October 2023, the Court of Appeal rejected an argument that premises occupied by property guardians was incapable of meeting the "Standard Test" definition for being a HMO because the guardians' occupation was not "the only use of that accommodation" within the meaning of s.254(2)(d) of the 2004 Act. GGM and G100 had sought to argue that security functions provided by the guardians constituted a second 'use'.

9. The Court of Appeal also rejected G100's contention that it was not a person 'in control' of premises within the meaning of s.263(1). It had argued that there was insufficient evidence for the FTT to be satisfied to the criminal standard of proof that it was in receipt of the 'rack-rent' of the premises, defined by s.263(2) as "a rent which is not less than two-thirds of the full net annual value of the premises". In dismissing that argument [63] the Court rejected the suggestion that expert valuation evidence was required on the question, and concluded that there was no reason to consider that that higher rents could have been obtained.

## The hearing

10. On 15 March 2024, Judge Vance lifted the stay of these applications which were then subsequently listed for hearing on 23 May 2024. At that hearing, which took place as a 'hybrid' hearing, the Applicants were represented by Mr Penny of Flat Justice and Mr Owen, solicitor, represented G100. Fifteen of the Applicants attended as did Mr Woolgar, the CEO of G100. Two of the Applicants attended by video link. However, on the day of the hearing the factual background described in the Applicants' witness statements was agreed by G100 and Mr Penny decided there was no need to cross-examine Mr Woolgar. As a result, none of the Applicants, nor Mr Woolgar, gave oral evidence at the hearing.

11. At the start of the hearing the Tribunal was informed that there had been a very substantial narrowing of the issues in dispute between the parties. At the request of Mr Penny and Mr Owen the Tribunal delayed the start of the hearing to allow for further negotiations, during which time the issues in dispute were narrowed still further. When the hearing resumed, the following matters had been agreed:

(a) that all Applicants had occupied the Property as their only or main home. Mr Owen stated that Global 100's original position was that as Meseret Beyene and Alex Taylor had omitted to state this in their witness statements, he wanted to cross-examine them on the point. However, following Mr Penny stating that both were present at the hearing and would give oral evidence to that effect if required, Mr Owen said that and there was no need for them to be called and that his client accepted that both occupied the Property as their only or main home;

(b) the relevant period of each Applicants' occupation for which an RRO was sought ("the relevant period");

(c) the amount of rent paid by each Applicant to G100 during each relevant period, including deductions for any universal credit received;

(d) the amount of rent arrears owed by each Applicant, if any;

(e) a reduction of £64 per month, per Applicant, from any RRO made, to account for utility costs paid by G100 (gas, water, electricity and council tax). A schedule explaining how this sum had been calculated had been provided before the start of the hearing;

(f) that G100 accepted that the factual assertions made in the Applicants' witness statements were true, including the allegations made as to the condition of the Property. G100, however placed reliance on the evidence advanced in that respect by Mr Woolgar in his witness statement.

12. What remained in dispute was as follows:

(a) whether the Property constituted a HMO; and

(b) the quantum of the RROs if the Tribunal rejected G100's argument that the Property was not a HMO.

13. In light of the agreement reached, and to assist the Tribunal in quantifying any RROs to be made, we directed that by 28 May 2024 the parties should send to the Tribunal an agreed schedule identifying, for each Applicant, the following matters:

(a) their period of occupation;
(b) their rent liability for the entire period of their occupation;
(c) any rent arrears accrued during the entire period of occupation;
(d) the rent paid by them for the relevant period for which a RRO was being sought;
(e) the actual rent paid during that relevant period; and
(f) both sides proposed percentage reductions from a RRO in respect of rent arrears, in separate columns.

14. The agreed schedule was received on 29 May 2024.

**The Law**

15. Section 72(1) of the Housing Act 2004 ("the 2004 Act") provides as follows:

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

16. Section 263 provides the following definitions of persons having control of, or managing, premises:

> "(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—
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> (a) receives (whether directly or through an agent or trustee) rents or other payments from—
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> (i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises …
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> (b)would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;
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> and includes, where those rents or other payments are received through another person as agent or trustee, that other person.

17. Section 77 defines an "HMO" as a house in multiple occupation as defined by sections 254 to 257. Section 254 provides:

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

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

(b) – (e) .....

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

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

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

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

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

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

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

18. Not all HMOs have to be licensed, but only those to which Parts 2 or 3 of the 2004 Act applies. Section 55(2) provides that Part 2 of the 2004 Act applies to the following HMOs:

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

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

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

19. The Licensing of Houses in Multiple Occupation Order 2018 ("the 2018 Order") makes it mandatory for certain HMOs to be licensed. It will apply, in the case of the Property, if it was occupied by five or more persons, occupied by persons living in two or more separate households; and if the standard test in section 254(2) of the Act was met.

(a) Section 40 Housing and Planning Act 2016 ("the 2016 Act") states as follows:

"(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, or

(b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy."

20. Among the relevant offences is the s.72(1) HMO licencing offence.

21. Section 43 provides that this tribunal may make a rent repayment order if it is satisfied beyond reasonable doubt that the offence has been committed, and that where the application is made by a tenant the amount is to be determined in accordance with section 44 which, in respect of the s.72(1) offence limits the amount of the award to the rent paid during a period "not exceeding 12 months, during which the landlord was committing the offence."

22. Section 43(4) says as follows:

(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

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

23. Guidance on how this tribunal should approach quantification of the amount of a RRO has been provided by the Upper Tribunal in *Williams v Parmar* [2021] UKUT 244 (LC) and, more recently, in *Acheampong v Roman* [2022] UKUT 239. We refer to that guidance below when deciding how much to order by way of a RRO.

**Was the Property a HMO?**

24. In its statement of case **[1460]** G100 set out four grounds for disputing that the Property was a HMO. The first was that the guardians' residential occupation of the living accommodation in the Property did not constitute

the only use of that Property. Mr Owen confirmed that this ground was no longer being pursued in light of the Court of Appeal decision in *Jiminez*.

25. Grounds two and three, were very similar to those it had advanced in the Court of Appeal in *Jiminez* and were that:

    (a) s.254(2)(c) was not met because the Tribunal could not be satisfied to the criminal standard of proof that *all* the persons occupying the Property were living there as their only or main residence, or that they should be treated as so occupying it; and

    (b) it was not in control of the Property for the purposes of as s.263 because there was insufficient evidence for the FTT to be satisfied to the criminal standard of proof that it was in receipt of the 'rack-rent' of the premises.

26. We record here that Mr Penny confirmed that the Applicants were not contending that G100 was a person managing the Property, and therefore the only issue as far as s.263 is concerned is whether G100 was a person in control of it.

27. In respect of s.254(2)(c), Mr Owen submitted that on the Applicants' own case, there were about another 20 other guardians occupying the Property at various times, and the status of those other persons was unknown. Some, he suggested, may have used their accommodation for work, or may not have lived there as their main residence. As such, he argued that the Tribunal could not be satisfied that s.254(2)(c) was met, which meant that the Standard Test did not apply and the Property was not a HMO.

28. In support of that submission, Mr Owen relied on the Upper Tribunal decision in *Camfield & Ors v Uyiekpen* [2022] UKUT 234 (LC) where the Deputy President upheld a decision of the FTT not to make a RRO on grounds that there was no evidence as to the occupation of a Ms Tseng, one of the five tenants who had entered into an assured shorthold tenancy agreement ("AST") of a house, but who had not applied for a RRO. The Deputy President held that the FTT was entitled to conclude that there was no evidence bearing on the critical question of whether the property was her only or main residence.

29. In response, Mr Penny argued that the reference to "those persons" in subsection 2(c) was not a reference to *all* occupants of the living accommodation. In his submission the Property would be a HMO for the purposes of subsection 2(c) if five or more persons lived there as their main residence.

30. In our determination the Property was a HMO throughout the period of the Applicants' occupation. In *Uyiekpen*, para.27, the Deputy President referred to two decisions of the Upper Tribunal (both decisions of Judge Cooke), *Opara v Olasemo* [2020] UKUT 96 (LC) and *Mortimer v Calcagno* [2020] UKUT 122 (LC) and said as follows;

> "Those establish demonstrate (*sic*) that it is not necessary to have first-hand evidence from all of the occupants of a house to prove its status as an HMO beyond reasonable doubt. Direct evidence from some of the occupants, perhaps supported by collaborating documents, may be sufficient to prove beyond reasonable doubt that the necessary conditions were satisfied. Both cases also demonstrate that it is open to the FTT to draw inferences from facts which it finds to be proven, provided it is satisfied to the criminal standard of proof."

31. In this case, the licence agreements entered into between G100 and the property guardians were a very different type of arrangement to an AST, such as the one entered into by Ms Tsang and her co-tenants. They are identical in form, and paragraph 4.2 required each guardian to sleep at the property for at least five nights out of any seven, unless prior written consent had been granted by G100. The guardians were therefore required under the terms of their licences to occupy the Property as their main residence and G100 has produced no evidence that any of the guardians occupied their accommodation on a contrary basis. The evidence tendered by each of the Applicants was that all of them occupied the Property as their main residence. In light of that, and the requirements as to residence imposed by the licence agreements, we infer that all of the guardians occupying the Property occupied it as their only or main residence. The requirement in subsection 2(c) was therefore met.

32. Whether Mr Owen was correct to say that subsection (2)(c) requires that *all* occupants of living accommodation do so as their only or main residence, or are to be treated as such, is not immediately clear from the wording of the section as a whole. Nevertheless, in our view, his interpretation is correct. The words "the living accommodation" in subsection 2(c) refer back to the use of those words in subsection 2(a), and subsection 2(a) provides that the first condition for a building, or part of it, to constitute a HMO is that it "consists of one or more units of living accommodation not consisting of a self-contained flat or flats". The use of the phrase "consists of" must be a reference to the "building or part of a building" that is the potential HMO. In this case, that means the Property as a whole because the guardians are licensees who are not entitled to exclusive possession of any part of the building (see *Global 100 Ltd v Laleva* [2021] EWCA Civ 1835) [37-38, 48]. When deciding whether subsection 2(c) is met the living accommodation to be considered is, therefore, the whole of the Property. This construction appears to be consistent with the conclusion reached by the Deputy President in *Uyiekpen*.

33. We do not agree with Mr Penny's submission that the requirements of s.254(2)(c) are met if five or more persons live in a property as there as their main residence. This appears to be a reference to the requirements of the 2018 Order, that Order concerns the criteria for mandatory HMO

licensing and is not the correct test for identifying whether a property is itself a HMO, which is defined by the tests set out in s.254.

34. Nor do we consider that it would be sufficient to establish that all of the Applicants alone lived in the accommodation as their only or main residence. S.254 requires us to be satisfied that the requirement is met in respect of all those occupying the living accommodation at the relevant time.

35. Despite this, for the reasons set out above, we are satisfied, to the criminal standard of proof that all the guardians who entered into licence agreements with G100 lived in the Property as their main residence.

36. Nor do we accept Mr Owen's submission that there was insufficient evidence for us to be satisfied that G100 was in receipt of the 'rack-rent' of the Property. He agreed that all of the guardians paid their rent to G100 and, just as the Deputy President found in *Jiminez* there is no reason to believe that in this case G100 would have advertised and licensed the accommodation it let to the Applicants at significantly less than the market rate given that they were experienced operators in the guardian business and ran their business for a profit and not for charity. We therefore find, to the criminal standard of proof, that G100 was a person in control of the Property.

37. The fourth ground on which G100 sought to argue that the Property was not a HMO was that the Applicants or other residential occupiers may have used the premises to conduct home businesses or formal businesses, thus taking them out of scope of s.254. Mr Owen did not address us on this ground in his oral submissions and we are unclear as to whether it is still being relied upon. If, it is, and the suggestion is that that the requirements of s.254(2)(c) or (d) were not met then we reject it being entirely unevidenced and speculative.

38. We therefor find that the standard test in s.254(2) was met and the Property was a HMO at all material times. We also find that the Property was an HMO that was subject to mandatory licencing during the period of the Applicants' occupation because it was occupied, at all times, by five or more persons. Mr Owen did not dispute that this was correct.

39. We also find that even if the Property was not subject to mandatory licensing it was required to be licensed pursuant to s.55(2)(b) of the 2004 Act, under the Council's additional licensing scheme for HMOs as per its designation. Again, Mr Owen agreed that it fell within in area subject to additional licensing.

40. There was no dispute that the Property was unlicensed during the relevant periods of the Applicants' occupation. G100 has not raised a reasonable excuse defence under s.72(4) and none is evident to us. We are therefore satisfied, beyond reasonable doubt, that G100 committed the s.72(1) offence up until 15 February 2021 when it applied to LBWF for a TEN. We

are also satisfied that in all the circumstances it is appropriate to make RROs in the Applicants favour.

*The amount of the RROs*

41. In *Williams v Parmar* the Chamber President said [50] that when quantifying the amount of a RRO:

> " A tribunal should address specifically what proportion of the maximum amount of rent paid in the relevant period, or reduction from that amount, or a combination of both, is appropriate in all the circumstances, bearing in mind the purpose of the legislative provisions. A tribunal must have particular regard to the conduct of both parties (which includes the seriousness of the offence committed), the financial circumstances of the landlord and whether the landlord has at any time been convicted of a relevant offence. The tribunal should also take into account any other factors that appear to be relevant."

42. In *Acheampong v Roman* Judge Cooke said [15] as follows:

> "*Williams v Parmar* did not say in so many words that the maximum amount will be ordered only when the offence is the most serious of its kind that could be imagined; but it is an obvious inference both from the President's general observations and from the outcome of the appeal that an order in the maximum possible amount would be made only in the most serious cases or where some other compelling and unusual factor justified it. It is beyond question that the seriousness of the offence is a relevant factor – as one would expect from the express statutory provision that the conduct of the landlord is to be taken into consideration. If the tribunal takes as a starting point the proposition that the order will be for the maximum amount unless the section 44(4) factors indicate that a deduction can be made, the FTT will be unable to adjust for the seriousness of the offence (because the commission of an offence is bad conduct and cannot justify a deduction). It will in effect have fettered its discretion. Instead the FTT must look at the conduct of the parties, good and bad, very bad and less bad, and arrive at an order for repayment of an appropriate proportion of the rent."

43. She then said at [20] that the following approach would ensure consistency with previous legal authorities:

> " a. Ascertain the whole of the rent for the relevant period;
>
> b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas,

electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate.

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

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

44. In respect of the s.72(1) licensing offence committed by G100, the amount of an RRO this tribunal can award is limited to the amount of rent paid during a period "not exceeding 12 months, during which the landlord was committing the offence."

45. Starting with the first and second stages of the guidance in *Acheampong*, the parties have agreed the amounts of the rent paid by the Applicants for the entirety of the relevant periods as well as an amount to be deducted for utilities paid for by G100. These sums are shown in the annexed schedule to this decision.

46. As to the third stage, both Mr Penny and Mr Owen agreed that the offence is towards the lower end of the scale of seriousness given that it is not one of the imprisonable offences than can give rise to a RRO. Mr Penny suggested that RROs should be made in the sum of not less than 80% of the rent paid during the relevant period. Mr Owen suggested that a figure of around 50% would be appropriate, arguing that the background to this case was similar to that in *LDC (Ferry Lane) GP3 Ltd v Garro & Ors* [2024] UKUT 40 (LC). In *Garro* a provider of purpose-built student accommodation failed to apply for a HMO licence for several years after lettings commenced, asserting that it had previously been unaware of the additional licensing scheme designation made by the local authority. The FTT decided that an offence had been committed and made a RRO in favour of the Applicants of 50% of rent (net of the costs of utilities paid by the landlord). The landlord's appeal and the tenants' cross-appeal on the amount of the RRO were both dismissed by Deputy President in the Upper Tribunal.

47. We do not consider that a 50% starting point would be a fair reflection of the seriousness of the offence committed by G100. We agree that its failure to license is a less serious offence than other types of offences in respect of which a RRO may be made. However, it nevertheless remains a serious offence. We agree that there are similarities between this case and *Garro,* but each case has to be decided on its facts. Mr Penny, who appeared for the tenants in that case, told us that the accommodation in *Garro* was of a particularly high standard, with only minor repair issues when compared to this case. Mr Owen stressed that the accommodation provided to the Applicants was low-cost accommodation and that as such their expectations regarding general condition of the Property should have been realistic.

48. We agree that it would have been unrealistic for the guardians to expect the condition of the Property to be of the same standard as is expected in a commercially marketed AST. However, they were entitled to expect it to be free from the defects and deficiencies we identify below and for it to meet the standards required of a licensed HMO. We take into consideration that in licensing low-cost accommodation to property guardians G100 is likely to be entering into arrangements with some of the more vulnerable members of our society. We further bear in mind that proper enforcement of licensing requirements is, in our view, crucial to ensure the effectiveness of the system as a whole and to deter evasion.

49. Mr Owen said that said at the time of the offence G100 did not believe that this type of property arrangement required a licence. Although his submission was not supported by any witness evidence the in litigation in the courts, all the way up to the Court of Appeal, is indicative of considerable previous uncertainty over the status of property guardians. Weighing against that is the fact that G100 was a corporate landlord letting properties for residential use by a large number of occupants. As such, G100 should, in our view, have made enquiries of local authorities to clarify whether a property guardian arrangement might be subject to mandatory or additional licensing before entering into licences. In all the circumstances, our view as to the seriousness of the failure to licence warrants the making of RROs of 55% of the rent paid, subject to the remaining s.44(4) factors.

50. Turning to those factors, and G100's conduct, we attach some limited relevance to the fact that it was a large landlord operating this business model over multiple properties. Of greater significance are the Applicants' complaints regarding the condition of the Property. We have read the Applicants' witness statements. Their complaints are numerous and it is neither necessary nor proportionate to address each of them. We find, on the balance of probabilities, that two overarching issues warrant a s.44 adjustment in respect of G100's conduct: (a) the excessive numbers of residents using bathroom and kitchen facilities; and (b) the presence of significant electrical and fire hazards. The Applicants' evidence on both these matters was not challenged by G100.

51. On the first point, several Applicants state in their witness statements that the kitchen and bathroom/shower room facilities they used had to be shared with up to 12 other occupants (e.g. Aisha Malik **[33]**, para 8 and Patrick Sterling **[645]** para 8**).** The lack of space afforded to the Applicants is also indicated by the Enforcement Notice served by LBWF dated 1 April 2021 **[1356]** in which the fourth reason for issuing the notice is said to be that use of the Property as a "large unauthorised HMO" had failed "to provide an acceptable standard of accommodation, due to the lack of sufficient private external amenity space for existing and future occupiers".

52. As to the presence of electrical and fire hazards, of particular concern is the evidence from the Applicants that there were so many false fire alarms that the occupants started to ignore them (for example, Aisha Malik **[33]**, para. 19). Their evidence strongly suggests that there was a defect with the fire alarm system. In addition, several of the Applicants state that because of the shortage of electrical wall sockets extension cables were daisy-chained together, with five fridges plugged into one daisy chained extension cable in the first floor kitchen (e.g. Benjamin Longley **[180]**, para 18, David Flower **[243]**, para 34-35 and William Dube **[1122]**, para 18.

53. This problem appears to have been exacerbated by inadequate heating provision in the Property. Mr Kaluznijs' evidence **[851]**, paras. 10-14 is that when he moved into the Property in August 2018 there was a working central heating system but that this broke down in January 2019. He says that after happened, Global 100 provided some residents, but not all, with portable heaters. He therefore purchased his own heater which he plugged into an extension socket. On 6 January 2020, a fire started in Mr Kaluznijs' room which resulted in the attendance of the fire brigade which he believes may have been caused by the fan heater that was plugged into an extension lead and then the wall socket. He recalls the fire brigade officer telling him that his "socket may have been overloaded because of all of the devices plugged in around the house."

54. Also relevant, in terms of fire safety is G100's failure to provide a fire safety pack for several of the Applicants despite them having paid for one at a cost of £70, for example Aisha Malik **[33]**, para. 34, Anthony Marchant **[73]**, para 15.

55. Several of the Applicants' including Bentley Evins **[151]**, Liviu Frunza **[492]** Radchani Varatharajasarma **[692]** describe how water would drip from the ceiling of the ground floor bathroom and that eventually the ceiling collapsed whilst a guardian was using it. However, none of the Applicants appear to state in their witness statements that they raised this issue with G100 and several, including Ms Frunza confirmed that G100 subsequently repaired the ceiling. Given the lack of evidence that water penetration into the bathroom was drawn to G100's attention before the ceiling collapsed, we do not consider this to be a relevant s.44 conduct issue. Even if we are wrong about their evidence, we do not consider it

would merit an increase in the percentage uplift we make below in respect of G100's conduct.

56. Nor is there evidence to satisfy us, on the balance of probabilities, that the two flooding incidents complained about at para. 57 of the Applicants' statement of case, resulted from any neglect by Global 100. As to one of the residents, Christina, getting stuck in a lift for 30 minutes, this appears to have been an isolated incident and there is no evidence of regular breakdowns. The pest infestation problem at the Property was undoubtedly a nuisance but not in our view so serious as to be a relevant factor to take into account when assessing G100's conduct.

57. G100's position with regard to the Applicants' complaints about the condition of the Property are set out in para. 12 of Mr Owen's skeleton argument and . He states that "there clearly were issues at the property but not for the duration of the occupation, rather certain oft repeated problems at certain times." He also points out that there is no evidence of any action by LBWF's Environmental Health department or Private Sector lettings team, a point echoed by Mr Woolgar at para. 6 of his witness statement.

58. In our view the Applicants evidence regarding the lack of sufficient kitchen and bathroom facilities at the Property and the electrical and fire hazards present is compelling and we find that it demonstrates conduct by G100 that was contrary to the behaviour to be expected by a responsible landlord. The lack of any enforcement action by LBWF does not diminish the seriousness of these issues. We consider that the matters we identify above warrant a 10% s.44 adjustment in favour of the Applicants.

59. Turning to the Applicants' conduct, both Mr Penny and Mr Owen agreed that only relevant issue in respect of some of the Applicants was that several of them accrued rent arrears during the period of their occupation. The amount of those arrears over the lifetime of each licence agreement is agreed. It is also agreed that the existence of those rent arrears is conduct that the Tribunal should consider under s.44.

60. In *Kowalek v Hassanein Ltd* [2021] UKUT 143 (LC) the Deputy President said as follows:

> " Section 44(4)(a) requires the FTT to take into account the conduct of the tenant when determining the amount of an order. No limit is imposed on the type of conduct that may be considered, and no more detailed guidance is given about the significance or weight to be attributed to different types of conduct in the determination. Those questions have been left to the FTT to resolve. I can think of no reason why relevant conduct should not include the conduct of a tenant in relation to the obligations of the tenancy. Failing to pay rent without explanation (and none was offered to the FTT or on the appeal) is a serious breach of a tenant's obligations. Parliament intended

that the behaviour of the parties to the tenancy towards each other should be one factor to be taken into account."

61. In Mr Penny's submission the way in which the Tribunal should take account of those arrears was to apply a percentage deduction at stage four of the *Acheampong* guidance and Mr Owen did not demur from that proposition. Where the parties disagreed was in respect of the percentage discount to be applied. In Mr Owen's submission it should be calculated having regard to the total rent liability for the duration of the licence and the arrears accumulated during that period. Mr Penny's submission was that a sliding scale should apply, namely, if less than £100 was owed the percentage discount should be 5%; if less than £500, 1%; if less than £1,000, 3% and if greater than £1,000, 5%.

62. In our determination, Mr Owen's approach is to be preferred. As stated in *Kowalek*, failing to pay rent without explanation is a serious breach of a tenant's obligations. We have been provided with no explanation for the arrears, and in our view the fairest way to reflect the seriousness of that breach is to have regard to the entirety of the Applicants' occupation and the rent arrears accumulated during it. In contrast, Mr Penny's suggested tariff appears arbitrary and would be over-generous to a guardian who lived in the Property for a relatively short period but who accumulated substantial rent arrears during that time.

63. The only other conduct issue raised by Mr Owen in his skeleton argument was that "several of the Applicants overstayed their license causing problems for Global 100 who had to return the property under its own agreement and therefore issued possession proceedings against several as indicated in the schedule provided". At the hearing he decided to not pursue this point when we pointed out that a residential tenant or licensee is entitled to remain in a property until such time as a warrant for eviction is obtained. We do not consider this to be a conduct matter. As to the remaining s.44 factors, G100 has no relevant convictions and we have been presented with no evidence as to its financial circumstances.

64. We therefore make RROs for each Applicant in the amount of 65% of the rent paid, subject to an adjustment for rent arrears. The final RRO is shown in the final of the annexed schedule column and is calculated by starting with the whole rent figure in the sixth column, deducting the agreed amount for utilities, applying the 65% award, and then deducting the appropriate percentage discount for rent arrears.

65. Given the extent of the Applicants' success, we make an order for reimbursement of the Tribunal fees paid in respect of the applications.

Amran Vance
11 June 2024

## RIGHTS OF APPEAL

*Appealing against the tribunal's decisions*

1. A written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties.

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

4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking.

# ANNEX – RENT REPAYMENT ORDER CALCULATION SCHEDULE

**Patrick Sterling and 26 others v Global 100 Ltd LON/00BH/HMF/2021/0211,0214**
**Address: ASTON GRANGE CARE HOME FOREST ROAD, LONDON E17 4NZ**

| Applicant | Move in date | Move out Date | Rent Liablitity for the duration of the stay | Relevant Period for RRO | Rent Paid during the relevant period | Rent arrears for duration of stay | Agreed Reduction for Utilities | 65% award | Respondent suggested conduct discount - % of Arreas compared to the rent liablity for the duration of the stay | RRO |
|---|---|---|---|---|---|---|---|---|---|---|
| Aishah Malik | 20/05/2017 | 28/05/2021 | £19,944.11 | 01/05/2019 - 30/04/2020 | £5,240.00 | -£1,980.00 | -£773.00 | £2,903.55 | 9.9% | **£2,615.29** |
| Tony (Anthony) Merchant | 28/07/2017 | 24/10/2021 | £21,183.15 | 01/01/2020- | £5,400.00 | -£2,917.15 | -£773.00 | £3,007.55 | 13.8% | **£2,593.38** |
| Alex Taylor | 17/07/2017 | 03/02/2021 | £17,757.26 | 01/11/2019 - 31/10/2020 | £5,280.00 | -£40.00 | -£773.00 | £2,929.55 | 0.2% | **£2,922.95** |
| Bentley Evins | 31/05/2020 | 27/05/2021 | £15,813.15 | 01/07/2019 - 30/06/2020 | £5,280.00 | £0.00 | -£773.00 | £2,929.55 | 0.0% | **£2,929.55** |
| Daniel Kostanev | 21/03/2017 | 05/08/2021 | £19,317.95 | 01/01/2020 - 31/12/2020 | £2,970.00 | -£1,485.00 | -£773.00 | £1,428.05 | 7.7% | **£1,318.27** |
| David Flower | 26/09/2019 | 04/03/2021 | £35,137.93 | 01/10/2019 - 30/09/2020 | £3,985.77 | -£350.00 | -£773.00 | £2,088.30 | 1.0% | **£2,067.50** |
| Dimitrina Kostaneva | 21/03/2017 | 05/08/2021 | £19,317.95 | 01/01/2020 - 31/12/2020 | £2,970.00 | -£1,485.00 | -£773.00 | £1,428.05 | 7.7% | **£1,318.27** |
| Delyan Nedelchev | 04/04/2017 | 12/02/2021 | £22,204.45 | 01/06/2019 - 31/07/2020 | £5,940.00 | £0.00 | -£773.00 | £3,358.55 | 0.0% | **£3,358.55** |
| Duncan Lynch | 14/02/2017 | 05/08/2021 | £21,671.51 | 01/01/2020 - 31/12/2020 | £5,940.00 | -£1,485.00 | -£773.00 | £3,358.55 | 6.9% | **£3,128.41** |
| Emerson Tancioni | 01/02/2019 | 27/01/2021 | £9,863.01 | 01/04/2019 - 31/03/2020 | £5,200.00 | £0.00 | -£773.00 | £2,877.55 | 0.0% | **£2,877.55** |
| Georgios Geralis | 24/04/2017 | 15/06/2021 | £22,011.78 | 01/02/2020 - 31/01/2021 | £5,616.00 | -£230.79 | -£773.00 | £3,147.95 | 1.0% | **£3,114.94** |
| John Okororie | 16/07/2019 | 04/10/2021 | £12,150.00 | 01/10/2019 - 30/09/2020 | £5,400.00 | -£4,050.00 | -£773.00 | £3,007.55 | 33.3% | **£2,005.03** |
| Liviu Frunza | 07/11/2019 | 03/08/2021 | £9,115.07 | 01/02/2020 - 31/01/2021 | £4,800.00 | £0.00 | -£773.00 | £2,617.55 | 0.0% | **£2,617.55** |
| Marcelo Paul De Souza | 11/05/2017 | 12/02/2021 | £19,293.15 | 01/03/2019 - 29/02/2020 | £5,160.00 | £0.00 | -£773.00 | £2,851.55 | 0.0% | **£2,851.55** |
| Marie Christine Schuh | 18/08/2021 | 22/10/2021 | £6,750.00 | 18/08/2020 - 14/02/2021 | £2,664.25 | -£2,700.00 | -£773.00 | £1,229.31 | 40.0% | **£737.59** |
| Meseret Beyene | 08/05/2017 | 20/09/2021 | £21,595.62 | 01/12/2019 - 30/11/2020 | £5,280.00 | -£440.00 | -£773.00 | £2,929.55 | 2.0% | **£2,869.86** |
| Patrick Sterling | 31/01/2018 | 15/10/2021 | £18,812.60 | 01/02/2020 - 31/01/2021 | £5,400.00 | £0.00 | -£773.00 | £3,007.55 | 0.0% | **£3,007.55** |
| Radchani Varatharajasarn | 24/07/2017 | 15/10/2021 | £21,745.21 | 01/12/2019 - 30/11/2020 | £5,280.00 | £0.00 | -£773.00 | £2,929.55 | 0.0% | **£2,929.55** |
| Shelley Wilson | 14/05/2017 | 05/05/2021 | £19,028.77 | 01/06/2017 - 31/05/2018 | £4,800.00 | £0.00 | -£773.00 | £2,617.55 | 0.0% | **£2,617.55** |
| Thambu Mohanathas | 20/05/2019 | 01/11/2021 | £13,662.72 | 01/01/2020 - 31/12/2020 | £5,400.00 | -£2,500.00 | -£773.00 | £3,007.55 | 18.3% | **£2,457.23** |
| Verity Lane | 15/07/2020 | 27/01/2021 | £4,000.00 | 12/07/2020 - 15/01/2021 | £1,916.41 | £0.00 | -£773.00 | £743.22 | 0.0% | **£743.22** |
| Victor Uche Okoro | 20/05/2019 | 08/10/2021 | £11,600.00 | 01/01/2020 - 31/12/2020 | £4,800.00 | -£1,200.00 | -£773.00 | £2,617.55 | 10.3% | **£2,346.77** |
| Victor Wollo | 07/12/2017 | 04/01/2021 | £27,731.10 | 01/10/2019 - 30/09/2020 | £5,940.00 | -£282.33 | -£773.00 | £3,358.55 | 1.0% | **£3,324.36** |
| Victoria Russell | 09/02/2018 | 21/11/2020 | £16,997.77 | 01/03/2019 - 29/02/2020 | £1,118.40 | -£5,905.13 | -£773.00 | £224.51 | 34.7% | **£146.51** |
| Vladan Simanek | 22/06/2017 | 30/06/2021 | £19,807.68 | 01/03/2019 - 29/02/2020 | £5,200.00 | -£920.00 | -£773.00 | £2,877.55 | 4.6% | **£2,743.90** |
| Vladimirs Kaluznijs | 08/08/2018 | 05/08/2021 | £14,884.38 | 01/01/2020 - 31/12/2020 | £5,280.00 | -£410.00 | -£773.00 | £2,929.55 | 2.8% | **£2,848.85** |
| William Dube | 02/03/2020 | 24/02/2021 | £4,591.01 | 02/03/2020 - 06/02/2021 | £4,605.61 | £0.00 | -£773.00 | £2,491.20 | 0.0% | **£2,491.20** |
| | | | | | | | | | **TOTAL** | **£64,982.94** |