FIRST-TIER TRIBUNAL

PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BG/HMF/2024/0032**
Property	**:**	**22 Kirkwood Road, London, SE15 3XX**
Applicant	**:**	**Elitsa Kirilova Georgieva**
Representative	**:**	**Mr. Mauricio Fortuna**
Respondent	**:**	**London City Mission**
Representative	**:**	**Mr. Brown - Counsel**
Type of application	**:**	**Application for a rent repayment order by tenant – sections 40, 41, 43, & 44 Housing and Planning Act 2016**
Tribunal members	**:**	**Judge Sarah McKeown** **Mr. S. Mason BSc, FRICS**
Date and Venue of hearing	**:**	**30 August 2024 at** **10 Alfred Place, London, WC1E 7LR**
Date of decision	**:**	**3 October 2024**

DECISION

Decision of the Tribunal

(1) The Tribunal is satisfied beyond reasonable doubt that the Respondent landlord committed an offence under Section 72(1) of the Housing Act 2004.

(2) The Tribunal has determined that it is appropriate to make a rent repayment order.

(3) The Tribunal makes a rent repayment order in favour of the Applicant against the Respondent, in the sum of £2,340, to be paid within 28 days of the date of this decision.

Introduction

1. This is a decision on an application for a rent repayment order under section 41 of the Housing and Planning Act 2016 ("the 2016 Act").

Application and Background

2. The Applicant applied for a Rent Repayment Order ("RRO") in the sum of £24,000.

3. The application (App1) was originally brought against Countrywide House on the ground that the Respondent, as estate agent, had committed an offence of having control or management of an unlicensed House in Multiple Occupation ("HMO") for failing to have an HMO licence ("licence") for **22 Kirkwood Road** ("the Property"), an offence under section 72(1) of the Housing Act 2004 ("the 2004 Act").

4. The Property is a three-bedroom house with a kitchen, bathroom and a living area. The Applicant (and the other two tenants) vacated the Property on 18 October 2023.

5. Within the application, in the section of the form for other people who may be "significantly affected by the application such as other tenants or occupiers in the building" the form gives the details of the other two tenants: Mr. Ralphs with an address given and Mr. Collin, stating that his address is unknown. It is also said that the Property was let unlicensed and not in accordance with the Southwark standards for HMO, including not furnishing the living room, not having locks on the bathroom and bedroom doors, the Respondent did not transfer the responsibility of maintaining the garden to the occupants, contact details were not displayed within the Property and the Property did not have proper fire safety measures (including not having fire doors).

6. An amended application (App13) was brought against the Respondent. It repeats the content of the original application.

7. On 29 February 2024 (App25) the Tribunal issued Directions for the determination of the application – at this time the Respondent was named as Countrywide House. The directions provided for the parties to provide details of their cases and the preparation of a hearing bundle. The order states that it

is asserted that the landlord committed an offence of having control, or managing, a House in Multiple Occupation that was required to be licensed but was not so licensed, or, under s.95, or having control or of managing an unlicensed property. It is said that the Applicant had to confirm the period for which she was claiming in her statement of case. In her "Response", she has confirmed that the "disputed period" is 13 May 2022-4 May 2023.

8. The directions were amended on 19 March 2024 (App32). The Respondent was substituted for Countrywide House.

Documentation

9. The Applicant has provided a bundle of documents (titled "Applicant's Bundle for Determination") comprising a total of 80 pages. It includes: statement (App39), tenancy agreement (App41); declaration for Standing Order (App72); evidence of rent payments (App73); document re title (App76). The documents in this bundle are referred to as (App_).

10. The Respondent has also provided a bundle of documents (titled "Respondent's Bundle for Determination") comprising 219 pages. It includes: Respondent's Statement of Case; evidence of application for a licence (R: B-1) and grant of a licence (R: B-3-R: B-12); correspondence with the agents (R: B-13-R: B-62); witness statement of Ms. Faola (R: C-1); evidence of rent received (R: D-1-R: D-73); Annual Report & Financial Statements (R: E-1-R: E-62). The documents in this bundle are referred to as (R: _).

11. The Tribunal has also seen a document headed "Applicant's Response), which comprises 73 pages. The documents in this bundle are referred to as (AR_). It includes, essentially, submissions made by the Applicant and that document addresses, among other things, the following:

(a) The maximum amount that can be ordered by the Tribunal and whether it should be limited to the rent paid on the Applicant's part alone (paragraph 6-9);
(b) The seriousness of the offence (paragraph 10-17), including: one of the rooms was not considered fit for habitation in a HMO by LB of Southwark; the Property failed to meet several other conditions for a HMO;
(c) The conduct and financial status of the Respondent, as well as reasonable excuse (paragraph 18-22);
(d) The behaviour of the Applicant (paragraph 23-26) – any issues with the tenants' behaviour mentioned by the Respondent are outside the dates 13 May 2022-4 May 2023;

(e) That the Tribunal should consider a maximum rent repayment of £24,000 and leaves it to the Tribunal's discretion as to whether it should be paid to the Applicant to distribute to the other tenants or whether it should be awarded to each tenant separately.

12. It attaches a HMO Standards document (AR5), Inventory and Schedule of condition report (AR18), emails to and from the managing agent (AR67-68), witness statement from Mr. Ralphs (AR69), witness statement from Mr. Collin (AR70), evidence of financial transactions (AR71-73).

13. The Respondent has also provided a Skeleton Argument and a bundle of authorities.

The Respondent's Position

14. The Respondent contends, in summary, as follows:

15. The Property was let to the Applicant and two other tenants under an assured shorthold tenancy dated 17 May 2022 for 12-months, commencing 13 May 2022. The Property is a three-bedroom house with one bathroom, a WC, a kitchen and living area. The Respondent was the landlord at the material times but the letting and property management functions were contracted out to a managing agent (Vanet Property Asset Management Limited), that agent subsequently being acquired by John D. Wood & Co, which is a trading name of Countryside Estate Agents Limited.

16. An application for a HMO licence was submitted in May 2023 and was granted on 6 November 2023.

17. The Respondent has a reasonable excuse for failing to obtain a licence, i.e. that it had delegated the management of the tenancy to the agent and relied on its professional advice. The Respondent was told that the agent was going to speak to the local authority about the licence before the grant of the tenancy and reasonably believed that the managing agent had applied for and obtained all relevant licences. Once the Respondent became aware that it was in breach of the licensing requirements, it applied for a licence (and therefore any liability stops at that time and only rent paid between 13 May 2022 and 4 May 2023 is eligible to be repaid).

18. Reference is made to *Williams v Parmar* [2021] UKUT 244 (LC), *Acheampong v Roman* [2022] UKUT 239.

19. The total rent paid for the property was £2,000 per month. The tenants were jointly and severally liable. As a matter of fact, the tenants split the rent between themselves, and it would not be fair to allow the Applicant to recover the rent paid by the other tenants: *Dowd v Martins & Ors* [2022] UKUT 249 (LC). The transactions relied on by the Applicant are incomplete and do not show contributions paid by other tenants and the maximum amount repayable to the Applicant is one-third of the total rent (i.e. £8,000 over 12 months). Over the material period 12 payments of rent were made (20 May 2022-20 April 2023 inclusive). The Applicant is also asked to show the amount of any Universal Credit or Housing Benefit.

20. Submissions are made (paragraphs 30-36) as to the seriousness of the offence, and it is submitted that the Respondent's culpability is low. It is said that the Respondent has not been prosecuted or convicted of any relevant offence.

21. It is said that the amount of any RRO should be roughly 25% of the rent paid by the Applicant and reliance is placed on the case of *Hallett v Parker* UKUT 165 (LC).

22. Submissions are made (paragraphs 38-49) as to the conduct of the Respondent, including as follows:

(a) The Respondent took care of the Property and complied with its obligations;
(b) No complaints were received;
(c) The deposit was protected, gas and electrical safety checks were in place and all the prescribed information was provided;
(d) The Applicant is required to prove that the standards were not met in respect of the furniture in the living room;
(e) There is no requirement for locks on bedroom doors. The requirement for a lock on the bathroom door is within LB of Southwark's HMO standards and there is a grace period for compliance;
(f) Reliance is placed on the express terms of the tenancy agreement – cl. 4.5, 4.10 – and the Respondents were required to keep the garden tidy;
(g) It is admitted that the contact details were not displayed in the property but the tenants were provided with the details of the managing agent at the beginning of the tenancy and they could contact the Respondent directly;
(h) The Applicant is put to proof that the internal doors did not comply with fire safety standards. Smoke detectors were in place and were checked;
(i) Although the Property has been licensed in respect of two out of three bedrooms, the third bedroom is only 14cm2 smaller than the national minimum size for

single occupancy bedrooms and the Respondent was not aware of this until the licence was granted.

23. Submissions are made (paragraphs 50-52) as to the conduct of the tenants including:

(a) Failure to leave after service of a s.21 notice;
(b) Delays in payment of rent;
(c) Failing to keep the garden in an acceptable standard and filling it with rubbish and furniture. The Respondent incurred cleaning costs that were deducted from the deposit by agreement.

24. Submissions are also made (paragraphs 53-55) as to the Respondent's financial circumstances.

The Hearing

25. The Applicant attended the hearing and was accompanied by Mr. Fortuna, who made representations on her behalf. Ms. Faola, Property Manager, attended from the Respondent. The Respondent was represented by Counsel, Mr. Brown.

26. Mr. Brown opened the case, to which the Applicant had nothing to add save that she confirmed that her share of the rent was £650 pcm, that Mr. Ralph's share was £650 pcm and Mr. Collin's share was £750 pcm.

27. The Applicant gave evidence. She relied on her application, her witness statement, all documents provided, including the Applicant's bundle in response. She confirmed that she had not received Universal Credit and, as far as she was aware, it was not paid to any other tenants. She said that the Respondent did not pay for any utilities. She confirmed that the period of claim was 13 May 2022-04 May 2023, during which time twelve rent payments were made. There was then a discussion with Mr. Brown, who said that as the material period was just under a year, there was a possible reduction to be made, but confirmed that the reduction would be a very little amount.

28. Mr. Brown then asked the Applicant some questions. She was taken to AR16 and she confirmed that the Property was advertised as unfurnished, that it was unfurnished when they moved in and she agreed that the price advertised reflected the fact that the Property was unfurnished.

29. The Applicant said that she occupied Bedroom 2 as shown at AR17.

30. The Applicant was taken to App74 and she confirmed that it showed a series of payments out of £2,000. She confirmed that she received money in from the other two tenants, which was then being paid out as rent, but she did say that the payments to her may not have been in to the Santander account. She confirmed that she would receive money from the other tenants and that she would pay rent on their behalf.

31. The Applicant confirmed that she had made a report of a repair required to some door handles and she said that she thought that the managing agent had arranged for the door handles to be replaced. She also confirmed that a report was made of a leak to the washing machine and that this was resolved.

32. The Applicant was asked if she had a discussion with the other tenants about making a RRO. She said that she had, a little before December 2023 (it had taken her a couple of months to gather everything) and that they knew she was going to make an application.

33. She said that at the end of the fixed-term of the tenancy, they were issued with a s.21 notice. She said that they were hoping to stay at the Property, that the market in London was quite difficult, and that they had understood that the s.21 notice was invalid as there was no licence in place. She said that they had stayed on an extra 3-4 months after the expiry of the notice as they were trying to find another property. She said that they did pay rent during this period.

34. The Applicant said that some money was deducted from the deposit as there were some issues with garden (it was not maintained properly) which they did not contest and there was some scuffing to walls.

35. Ms. Faola then gave evidence. She said that she was a property manager, that her role was varied, but her main role focused on mission housing. The Respondent housed members of staff and retired members of staff. When the Respondent had a property not being used by them, it went on to the open market and it was let privately. When doing so, the Respondent tended to use local agents to advertise and manage the properties. Mr. Faola said that the Respondent also had supported housing units. She told the Tribunal that the Respondent let about 30-33 properties on the open market. The Respondent had had a couple that were managed directly, but they had since been sold.

36. Ms. Faola said that the Respondent used managing agents as its emphasis was on staff housing, supported housing and housing retired member of staff, so that it could focus on those areas – private letting was not its "main bread and butter" and it wanted to have a "middle person" between the Respondent and the tenants, to have agent that was fully up date to and aware of current goings on in terms of the market and industry. This allowed the Respondent to focus on its main roles and responsibilities.

37. Ms. Faola was asked if any of properties the Respondent managed directly were HMO's. She said that they were not: the majority of houses were not let on

assured shorthold tenancies as they were staff housing, the ones the Respondent managed directly came under selective licensing – they had a single tenant.

38. Ms. Faola then told the Tribunal about the Respondent's agreement with the managing agent. She said that the managing agent provided a full letting and managing service – they would find the tenant and fully manage the tenancy, they would look after the day-to-day maintenance, repairs, would take rent from the tenants, and pass it on to the Respondent with a deduction.

39. The Applicant was taken to R: B13 and she was asked if she had other contact with the managing agent about the licence and she confirmed that she had not. She said that her understanding was that the agent would proceed with putting the licence in place as they had done with other properties. She said that she had not taken any further steps in respect of the licence as it was fully managed by the agent.

40. Ms. Faola was asked why the s.21 notice had been served. She said that if the Respondent had a missionary eligible for housing, it would look within its stock and this came up as suitable for this particular missionary. She said that she had spoken to the tenants: whilst it was initially handled by the agents, who served notice, the Respondent needed to arrange access to the Property to view its condition and for the missionary who would live there to view it, so she contacted the tenants about access and for a conversation in person about the Respondent's needs in respect of the Property.

41. Mr. Fortuna then asked Ms. Faola some questions on behalf of the Applicant. Ms. Faola confirmed that the Respondent's primary work was not with private lettings but with missionary housing, and any surplus was then let out, and this was about 30-33 properties.

42. She said that, as far as she was aware, there was no application for a licence made by the letting agency in 2022.

43. She was asked about the email at R: B13 and she confirmed that the agent said he needed to speak to the council and she said that they would normally do that for the Respondent, they would contact the council to find out what was needed and make the application on their behalf.

44. Ms. Faola confirmed that when the Property was handed back, the condition of the Property was fair (the scuffs were what would be expected) but the garden was not maintained.

45. Mr. Ralph gave evidence. He confirmed that he was aware that an application was being made for a RRO. He confirmed that it had been discussed between him and the Applicant, that he would receive the money. He confirmed that he was aware and involved and was under the impression that he was "part of the process".

46. He was asked some questions by Mr. Brown. He confirmed that he paid £750 each month to the Applicant, which was his share of the rent. He was asked if he had taken any legal advice about the application for an RRO and he said that they all worked on it together, but he did confirm that he was not an applicant. He said that he did have the expectation that if the application was successful, he would share in the repayment.

47. The Respondent made submissions as follows:

48. The Respondent had a defence of reasonable excuse. The legal framework is set out at para. 5 on of the Skeleton Argument: s.41, allowed an application to be made where there was a relevant offence and the offence in this case was under s.72(1) HA 2004. There was a defence under s.72(5)(c) as the Respondent had a reasonable excuse for having an unlicensed HMO. It was not disputed that a licence was required and the Respondent was aware that a licence was required. However, as Ms. Faola explained, her understanding and that of the Respondent was that the licence had been applied for or would be applied for by the managing agent. Ms. Faola gave evidence that all its private rented sector properties (surplus stock let to private tenants) were manged by this managing agent. The agent was part of Countrywide Lettings Group and it was reasonable for Ms. Faola to rely on their professional expertise: they agent had a full let and management contract and the agent accepted responsibility for "A-Z" and only consulted the Respondent on a small number of factors. The Tribunal was referred to the email of 09/05/22 which demonstrated that the agent undertook to contact the council about the licence. Mr. Faola willingness to provide further information showed her intention to ensure the Property was licensed. The failing was of the managing agent in not following that up, despite knowing of the requirement to have a licence and this was the cause of the offence. Upon becoming aware of the breach, the Respondent made arrangements for an application for a licence. It was said that in the Skeleton and the correspondence demonstrated that the Respondent asked the agent to apply for a licence on 20/04/23 when it became aware of the issue, which showed the Respondent intended to comply and, if not for the agent's failure, it would have complied. It was accepted that in most cases reliance on an agent would not amount to a defence of reasonable excuse. The Respondent referred to the case of *Aytan v Moore* [2022] UKUT 027 (LC), para. 40. It was said that in this case, the Respondent was aware of the requirements but there was a contractual obligation on the part of the agent to not just keep the Respondent informed, but to carry out licensing and obtain other certificates. The Respondent did have a good reason to rely on the agent – it was dealing with the associate director of the company and JD Wood was part of Countrywide Estate Agent which is a large, well-established national group. The Respondent did not take any further steps as it had sufficient assurance and belief in the agent's promise to contact the council and it determined it did not need to take further steps. The lack of response from the agent to the Respondent's email didn't indicate that nothing was done, and it was reasonable for Ms. Faola and the Respondent to assume the relevant requirements had been met: the other documents for the Property had been provided. It was accepted that the Respondent owned a large number of properties and it was a professional landlord, but all of the private lettings and HMO's which the Respondent owned were managed by third

parties and it would not ordinarily be the task of Ms. Faola and the Respondent to obtain licences.

49. Submissions were then made as to the whole of the rent for the relevant period (in the alternative to the above). It was said that it was a question of law as to whether the Tribunal has jurisdiction to make an order for £24,000. The maximum amount that could be awarded to any applicant is the amount they paid. The Applicant had given evidence that her share of the rent was £650 and any rent in excess of that was paid by her as an agent of the other tenants: the Applicant received money from them and paid the full rent on their behalf as a matter of practicality. The bank account showed she made monthly payments by Standing Order. Although they were joint tenants and jointly and severally liable, as matter of fact, each only paid their share. The Respondent relied on the case of *Moreira v Morrison* [2023] UKUT 233 (LC) particularly [11]-[13]. It was said that what was relevant was what paid by the tenant and not paid by anyone else. Reliance was also placed on [23]. In this case, the rent actually paid by the Applicant was only £650 per month. The rest was as agent on behalf of the co-tenants.

50. The Respondent also relied on the case of *Dowd v Martins* [2022] UKUT 249 (LC) in which it was said there were five occupants, but only three brought the application for a RRO. There was an agreement between one of the applicants and the landlord and the applicant decided to withdraw from the application. One of the remaining applicants claimed a RRO in respect of rent paid by her for her and her partner. At [24] was authority for the fact that the Applicant could only recover the amount she paid. It was said that in the present case, Mr. Ralphs and Mr. Collin had not brought an application and had not withdrawn from an application but this case was between the Respondent and the Applicant, who was the only applicant. Any agreement apparently made between Mr. Ralphs and the Applicant to share any RRO was not enforceable by the Tribunal and was not something the Tribunal should have regard to when determining the maximum amount. Only the Applicant was entitled to recover rent and then the only amount she had paid, which was 12 x £650.

51. The Respondent's Skeleton Argument (para. 27) set out that the Tribunal did not have jurisdiction to add Mr. Ralph or Mr. Collin as an Applicant or to treat them as an Applicant. It is limited by status and the limitation period for any application to be made had expired. That could not be overridden by the discretion of the Tribunal.

52. As to the amount of any RRO, the Respondent relied on Williams v Parmar [2021] UKUT 244 (LC) – the maximum amount is not a starting point. Only cases of the utmost seriousness should attract an award of 100%. This was not such a serious offence. It was conceded that HMO licensing and additional licensing served an important purpose, but this was a technical offence. This was a case of an additional licence rather than mandatory HMO. It was not as serious as other offences giving rise to a RRO where one might expect to see a high RRO, e.g. eviction or harassment. In this case, there was no evidence that the Applicant had suffered from the lack of licence – she had paid an

appropriate price for the Property, she occupied the second bedroom which met the space standard. Another bedroom was deemed too small to be a bedroom for an adult, which is why the licence was granted for two bedrooms, but the Applicant was in one of larger bedrooms. The rest of the Property included sufficient living space and met the majority of conditions under the additional licence. The licence had no specific conditions but there was one that the Property must, within 18 months, be brought into line with the HMO conditions of LB of Southwark. The licence had conditions which only related to occupancy. There were the standard set of requirements about gas safety, electricity, furniture, fire precautions. There were no specific concerns save as to the level of occupancy. There was reference in the application to a lack of fire safety training but this was not required. In respect of fire safety, smoke alarms were fitted and tested in May 2022 (AR18). The Tribunal was told that the agent would (or should) carry out property inspections in which the fire alarms would be tested. The Applicant and Mr. Ralphs said that they could not recall any alarms being tested. Ms. Faola could only say that they should have been tested. The Applicant and Mr. Ralphs said that they could not remember being given any updated gas safety certificate. Mr. Brown said that if it was not provided, this was a failing of the managing agent.

53. Mr. Brown said that if the reasonable excuse defence did not succeed, the matters were relevant to the seriousness of the offence. Alternatively, it was relevant to the conduct of the Respondent. Otherwise, the Respondent was a landlord without blemish and they relied on agents to do everything. The agents arranged repairs and the Respondent paid for those repairs without issue. The Respondent's culpability or lack thereof should be at the forefront of the Tribunal's mind when it came to the amount of any RRO.

54. In respect of the Respondent's conduct, there were no complaints about the Property. The Property was supplied unfurnished in accordance with the tenancy agreement – whether or not furniture was required as part of licensing requirements, unfurnished was agreed between the parties and the price reflected that. The s.21 notice was served to further the Respondent's charitable purposes, but as there was a delay, it was no longer relevant and the Respondent decided to sell the property, to fund its other activities. The Respondent dealt appropriately with the tenants and with understanding, allowing further time (see AR67).

55. It was said that the "primary charge' against the Respondent was the issue of the third bedroom, that a licence would not have been granted for that bedroom for the Property to be used as a HMO. It was said that the landlord was unaware of this, having appointed a managing agent to market and let the Property. There was no discussion between the agent and the Respondent as to whether or not this bedroom was appropriate for use as a bedroom. It was said that the Respondent played no part in choosing tenants. All of this, it was submitted was a relevant factor and did not demonstrate poor conduct on the part of the Respondent.

56. In respect of the conduct of the tenants, it was conceded by Ms. Faola that generally the Property was well-maintained and that, in terms of the issue with the garden, it was not a major element of the Respondent's case that the tenants had behaved badly. It was noted that there was an allegation in the Respondent's Statement of Case that there was a delay in the paying of rent after the expiry of s.21 but it was admitted that that had been explained by the Applicant as being a problem with bank details and that it was put right, so the Respondent did not pursue this issue. It did take issue with the fact that the tenants did not leave on the expiry of the s.21 notice, although it was conceded that this was not a "serious" allegation and that the Applicant had explained that they needed to find somewhere else to live.

57. In terms of the financial circumstances of the Respondent, it was said that the Respondent was a charity whose only purpose was to carry out missions promoting the work of churches in London and build connections with the least-reached communities. It did not make a profit. It used its properties to support missions by housing missionary workers and retired staff. It was admitted that it does have a portfolio of properties which were used as investments, and which were let on the open market but, it was also said, as was clear from this case, on some occasions, those properties went in and out of the private market. Reference was made to the Respondent's Annual Report (E24, para. 2G) in which it was said that during the period of 2022, the Respondent had a significant cash shortfall of £4m per year. It was said that this explained the sale of of certain properties. Although looking at balance sheet, there was no overall loss, it was said that this was due to the sales. Reference was also made to E43 and the increase in the total funds was explained at para. 2G and para. 3C in terms of the sale of properties. Although it was conceded that the Respondent was a large organisation with significant funds, it was said that it is (and was in 2022) going through difficulties in maintaining those funds and it had been required to sell properties to fund its usual activities. Although it could be said that a RRO would only make a "small dent" in the Respondent's overall finances, it was not the case that it could simply afford to use money for matters other than charitable purposes.

58. It was also said that the Respondent paid an agent's fee on the rent is received. It was accepted that the Tribunal was not calculating a profit, but it was said that this remained relevant to the appropriate level of any RRO as, if it was a penalty, the Tribunal should take account of this. The agent's fee was slightly higher in the first month, but the rest was paid at £220 per month plus VAT (i.e. £264 per month).

59. The Applicant (via Mr. Fortuna) made submissions as follows:

60. In terms of the total rent paid and the issue in respect of the other tenants, reference was made to the original application (and it was said that the amended application was in the same terms), that the form asked for the details of the parties and those affected by the application and the names of the other tenants had been included. It was accepted that they were listed as tenants rather than as parties, but it was said that they had been made aware of the

application and the Applicant intended to distribute the money. It was accepted that the correct thing to do would have been to list them as parties to the application, but it was said that this came down to a couple of administrative questions and would be a matter of law. It was submitted that the issue did seem to come down to a minor administrative question, i.e. whether the other tenants were parties to the application. It was said that the Applicant applied for the "full" rent as she made the rent payments and the distribution of rent between the tenants was a private matter. The Applicant was paying the rent as a matter of practicality, and she thought she could get a RRO and then redistribute it. Once the issue had been brought to her attention, she attempted to amend this, but it only came to her brought attention after the deadline (i.e. after the year's limitation period) and so the other tenant's had submitted witness statements.

61. Reference was made to the case of *Moreira* and it was said that here, unlike in that case, the Applicant did not seek the whole amount for herself but would distribute it. It was a matter of technicality who was an applicant and who was a witness, rather than a question of liability. In *Moreira*, the Judge's concern was that each tenant could apply alone and get a RRO with reference to the whole rent. Here, as all the tenants were involved, that was not really a concern here, and there was no concern of double-charges, particularly as the deadline had passed. It was said that *Dowd* was a different case concerning the withdrawal of an applicant and that it had been the decision of that tenant not to continue with the application - in this case, all parties were interested in pursuing the application.

62. It was said that it was appropriate for the full rent to be paid and the distributed as per the private agreement between the tenants.

63. Turning to what percentage should be awarded, it was said that the Tribunal had to have regard to the point of the legislation and the RRO process. It was said that HMO's, due to the nature of multiple households, were going to require different standards of safety and living standards compared to single households, particularly in terms of fire safety and training, minimum room sizes, as shared space was treated differently. It was said that the Respondent had failed to provide all of this and had caused a lower standard of living. The Applicant wished to highlight three things:

64. The Property was unfurnished, was whilst this was agreed by the tenants when they signed the tenant agreement, the HMO requirements required that living rooms were fully furnished – reference was made to the HMO Standards document at AR5.

65. Secondly, one of the bedrooms was significantly smaller than the minimum size - it was very slightly smaller than minimum required by national standards (which was 6.54m2) but standard set by LB of Southwark was 8m2 for a single room for one person. Even if the Respondent was not aware that the bedroom did not meet this standard, it was said that the purpose of the legislation was not to allow properties to be let out which did not meet the standards.

66. Reference was also made to AR12 and the requirement for a responsible person to carry out and review fire risk assessments and it was said that this did not happen.

67. It was said that it was not correct to say that this was just a technical breach, particularly as the Property was not appropriate to let in the condition it was let in to three people living as three households. The listing showed that the third bedroom was meant to be used as a bedroom.

68. The percentage should be decided by the seriousness of the offence. The Applicant relied on the case of *Chan v Bikhhu* (2020) UKUT 0289 and it was said that the award should be 100% - in *Chan*, the landlord had several other properties, and was a commercial landlord, as here. It was said that there was a more pertinent case, that of *Williams v Parmar*, in which it was said that where unlicensed house has a seriousness deficiency, and the landlord was a professional landlord, reductions more substantial than 20% would be inappropriate even for a first-time offender.

69. With respect to the nature of the landlord, it was said that it is a large commercial landlord with over thirty properties privately let. They are a charity but its relationship to the Applicant was not charitable, but was one of a private landlord. The reliance on the managing agent was not appropriate mitigation where a landlord has a significant number of properties, as such a landlord should be held to higher standard – to do otherwise would allow responsibility to be shirked. It was said that it was the responsibility of the Respondent to follow-up with the agent and ensure that a licence was in place. In terms of the financial situation of the Respondent, the Annual Report (RE27-28) showed that the Respondent had an income of £8.8m in 2022 plus income from properties and sales. As a percentage of its annual income, a RRO would be minimal. The Respondent's contention that it was a charity and therefore in a different position was difficult to justify.

70. In terms of the conduct of the landlord and the tenants, it was said that there were some discussions about the tenants staying after service of the s.21 notice, but all of this was after the material period. Even then, it was an appropriate response, particularly as there was no licence and therefore the s.21 not valid. The Respondent would not have got a licence for the Property as it was let. The tenants acted in good faith and told the Respondent they were seeking new place to live and that they would move out as soon as they could. They continued to pay rent on time and when they found a new place, they moved out. There were minor issues over the deposit. I t was said that the Respondent only applied for a licence to be able to serve a s.21 notice.

71. The Respondent then replied on a few matters: it was said that the issue of who was an applicant was a matter of law and a question of jurisdiction of the Tribunal: the Respondent was entitled to know who it was responding to, and it was not sufficient to simply include as the other tenants as people impacted. That was not the same as joining them as applicants. The other tenants were aware of the application and could have taken legal advice. The Tribunal did

not have jurisdiction to join them or treat them as applicants, or to proceed as if their "share" of the rent counted.

72. In respect of *Moreira*, it was true that the Judge's concern was that each tenant could apply separately, but those considerations went to a matter of law, not fact. It was not open to the Tribunal to say that just because there had not been another application, one tenant could obtain an order based on the full amount – it was a question of statutory interpretation. *Moreira* decided that the order limited to prevent the possibility of several applications or other arrangements being made and to prevent a windfall for an individual – the Tribunal had no jurisdiction to say what would happen with the RRO once it was paid out. The Respondent had not reason to doubt what the Applicant said and was not impugning her, but Mr. Ralphs said only that "ideally" he would receive the money.

73. In respect *Williams v Parmar*, Mr. Brown referred to [52] and said that the Upper Tribunal was not saying that 20% at least had to be awarded, it depended on a consideration of the full circumstances. In that case, the failure to apply for a licence was unexplained save that the landlord had overlooked, whereas in the instant case there is an explanation. Reference was made to *Hallett v Parker* [2022] UKUT 165 (LC) in which an award of 25% was made. Reference was made to *Dowd*, [33], and it was said that a starting point of below 50% should be taken to leave space in other cases for full awards to be made to create an appropriate penalty.

74. It was disputed that the only reason that a application for a licence was made was to serve a s.21 notice – the intention to serve a s.21 notice was the reason that it became apparent that the Property did not have a licence.

Law

75. The statutory regime is set out in Chapter 4 of Part 2 of the 2016 Act.

76. Rent repayment orders are one of a number of measures introduced with the aim of discouraging rouge landlords and agents and to assist with achieving and maintaining acceptable standards in the rented property market. The relevant provisions relating to rent repayment orders are set out in sections 40-46 Housing and Planning Act 2016 ("the 2016") Act, not all of which relate to the circumstances of this case.

77. Part 2 of the Housing Act 2004 ("the 2004 Act") introduced licensing for certain HMO's. Licensing is mandatory for all HMO's which have three or more storeys and are occupied by five or more persons forming two or more households. "House in Multiple Occupation" is defined by s.254 Housing Act 2004. The Licensing of Houses in Multiple Occupation Order 2006 details the criteria under which HMOs must be licensed. The criteria were adjusted and renewed

by the Licensing of Houses in Multiple Occupation Order 2018 which came in force on 1 October 2018 and since 1 October 2018 the requirements that the property must have three or more storeys no longer applies. The Local Authority may designate an area to be subject to additional licencing where other categories of HMO's occupied by three or more persons forming two or more households are required to be licenced (this is applicable here).

78. So far as is relevant to the present application, the Act provides as follows:

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

	Act	Section	General description of offence
…			
5	Housing Act 2004	Section 72(1)	Control or Management of an unlicensed HMO
…			

79. Section 40 gives the Tribunal power to make a rent repayment order where a landlord has committed a relevant offence. Section 40(2) explains 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 (or where relevant to pay a sum to a local authority).

80. Section 72(1) provides that a person commits an offence if he is a person having control or of managing an HMO which is required to be licensed under this Part (see section 6(1)) but is not so licensed. Section 72(5) provides that there is a defence of "reasonable excuse".

41 Application for a rent repayment order
(1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.
(2) A tenant may apply for a rent repayment order only if-
(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and
(b) the offence was committed in the period of 12 months ending with the day on which the application is made

...

81. Section 41 permits a tenant to apply to the First-tier Tribunal for a rent repayment order against a person who has committed a specified offence, if the offence relates to housing rented by the tenant(s) and the offence was committed in the period of 12 months ending with the day on which the application is made.

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);
...

82. Under section 43, the Tribunal may only make a rent repayment order if satisfied, beyond reasonable doubt in relation to matters of fact, that the landlord has committed a specified offence (whether or not the landlord has been convicted). Where reference is made below to the Tribunal being satisfied of a given matter in relation to the commission of an offence, the Tribunal is satisfied beyond reasonable doubt, whether stated specifically or not.

83. It has been confirmed by case authorities that a lack of reasonable doubt, which may be expressed as the Tribunal being sure, does not mean proof beyond any doubt whatsoever. Neither does it preclude the Tribunal drawing appropriate inferences from evidence received and accepted. The standard of proof relates to matters of fact. The Tribunal will separately determine the relevant law in the usual manner.

84. Where the application is made by a tenant, and the landlord has not been convicted of a relevant offence, s.44 applies in relation to the amount of a rent repayment order, setting out the maximum amount that may be ordered and matters to be considered. If the offence relates to HMO licensing, the amount must relate to rent paid by the Applicants in a period, not exceeding 12 months, during which the Respondents were committing the offence. This aspect is discussed rather more fully below.

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 repaid by the tenant in respect of
…	
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 repaid 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.

Determination of the Tribunal

85. The Tribunal has considered the application in four stages-

(i) whether the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence under section 72(1) of the 2004 Act in that at the relevant time the Respondent was a person who controlled or managed an HMO that was required to be licensed under Part 2 of the 2004 Act but was not so licensed.
(ii) whether the Applicant was entitled to apply to the Tribunal for a rent repayment order.
(iii) Whether the Tribunal should exercise its discretion to make a rent repayment order.
(iv) Determination of the amount of any order.

Was the Respondent the Applicants' landlord at the time of the alleged offence?

86. The Tribunal has seen a tenancy agreement dated 17 May 2022 (App40) between London City Mission and the Applicant, as well as the two other tenants, which lets the Property from 13 May 2022 at a rent of £2,000 per month.

87. The Office Copy Entry (App77) shows that the Respondent holds the title absolute in respect of the Property and has done since 2 May 2014.

88. The Tribunal finds as a fact, that the Respondent was the landlord of the Applicant, as the Property was let to the Applicant from 13 May 2022, i.e. at the time of the alleged offence.

Was a relevant HMO licensing offence committed during the period 13 May 2023 to 4 May 2023 and by whom?

89. The Tribunal applies, as it must, the criminal standard of proof (s.43(1)).

90. The Tribunal has seen an email dated 1 June 2023 (App75) from the London Borough of Southwark, confirming that there was no valid licence for the Property, but an application was submitted on 4 May 2023, which was being processed.

91. The Tribunal finds that, during the relevant period(s), the Property was a "HMO" (s.254-259) and the Property required a licence in order to be occupiable by three or more people living in two or more separate households. The Tribunal finds that the Property was, at the material time, occupied by three people living in more than two separate households.

92. On the evidence, the Tribunal finds (applying the criminal standard) that no licence was in place during the material time. The Tribunal had regard to the email from the London Borough of Southwark (AR76). It was not contested by the Respondent that (a) the Property needed to be licensed and (b) it did not have a licence during the period May 2023-4 May 2023.

93. Where the Respondent would otherwise have committed an offence under section 72(1) of the 2004 Act, there is a defence if the Tribunal finds that there was a reasonable excuse pursuant to section 72(4). The standard of proof in relation to that is the balance of probabilities.

94. The offence is strict liability (unless the Respondent had a reasonable excuse) as held in *Mohamed v London Borough of Waltham Forest* [2020] EWHC 1083. The intention or otherwise of the Respondent to commit the offence is not the question at this stage, albeit there is potential relevance to the amount of any award. In of *Sutton v Norwich City Council* [2020] UKUT 90 (LC) it was held that the failure of the company, as it was in that case, to inform itself of its responsibilities did not amount to reasonable excuse. The point applies just the same to individuals.

95. The Upper Tribunal gave guidance on what amounts to reasonable excuse defence was given in *Marigold & Ors v Wells* [2023] UKUT 33 (LC), *D'Costa v D'Andrea & Ors* [2021] UKUT 144 (LC) and in *Aytan v Moore* [2022] UKUT 027 (LC):

(a) the Tribunal should consider whether the facts raised could give rise to a reasonable excuse defence, even if the defence has not been specifically raised by the Respondent;
(b) when considering reasonable excuse defences, the offence is managing or being in control of an HMO without a licence;
(c) it is for the Respondent to make out the defence of reasonable excuse to the civil standard of proof;
(d) a landlord's reliance upon an agent will rarely give rise to a defence of reasonable excuse. At the very least, the landlord would need to show that there was a contractual obligation on the part of the agent to keep the landlord informed of licensing requirements; there would need to be evidence that the landlord had good reason to rely on the competence and experience of the agent; and in addition, there would generally be a need to show that there was a reason why the landlord could not inform him/herself of the licensing requirements without relying upon an agent (e.g. because the landlord lived abroad).

96. The Respondent did use a managing agent and there is evidence that the agent said that it would going to speak to the local authority about a licence, but the Respondent then just "assumed" that it had been taken care of. There was no assurance that the agent was going to make an application. Further, there is no evidence of a reason why the Respondent could not inform itself of the licensing requirements without relying upon an agent – it let out various properties itself (even if not on assured shorthold tenancies) and in fact it was clearly aware of the need for a licence to be obtained. Taking everything into account, there is nothing which the Tribunal found to demonstrate a reasonable excuse.

97. Therefore, the Tribunal determines that the circumstances of the Respondent's failure to hold an HMO licence at the time of the material tenancy do not objectively amount to a reasonable excuse and so do not provide a defence to the HMO licensing offence, which the Tribunal finds beyond reasonable doubt to have been committed.

98. The Tribunal finds that the offence was committed for the entirety of the period contended, i.e. from 13 May 2022 to 4 May 2023.

99. The next question is by whom the offence was committed. The Tribunal determined that the offence was committed by the Respondent, being a person within the meaning of s.72(1) Housing Act 2004, being the person who had control or was managing the Property during the material time.

Should the Tribunal make a RRO?

100. Given that the Tribunal is satisfied, beyond reasonable doubt, that the Respondent committed an offence under section 72(1) of the 2004 Act, a ground for making a RRO has been made out.

101. A RRO "may" be made if the Tribunal finds that a relevant offence was committed. Whilst the Tribunal could determine that a ground for a rent repayment order is made out but not make such an order, Judge McGrath, President of this Tribunal, said whilst sitting in the Upper Tribunal in the *London Borough of Newham v John Francis Harris* [2017] UKUT 264 (LC) as follows:

"I should add that it will be a rare case where a Tribunal does exercise its discretion not to make an order. If a person has committed a criminal offence and the consequences of doing so are prescribed by legislation to include an obligation to repay rent or housing benefit then the Tribunal should be reluctant to refuse an application for rent repayment order".

102. The very clear purpose of the 2016 Act is that the imposition of a RRO is penal, to discourage landlords from breaking the law, and not to compensate a tenant, who may or may not have other rights to compensation. That must, the Tribunal considers, weigh especially heavily in favour of an order being made if a ground for one is made out.

103. The Tribunal is given a wide discretion and considers that it is entitled to look at all of the circumstances in order to decide whether or not its discretion should be exercised in favour of making a RRO. The Tribunal determines that it is entitled to therefore consider the nature and circumstances of the offence and any relevant conduct found of the parties, together with any other matters that the Tribunal finds to properly be relevant in answering the question of how its discretion ought to be exercised.

104. Taking account of all factors, including the purpose of the 2004 Act, the Tribunal exercises its discretion to make a RRO in favour of the Applicant.

The amount of rent to be repaid

105. Having exercised its discretion to make a RRO, the next decision was how much should the Tribunal order?

106. In *Acheampong v Roman* [2022] UKUT 239 (LC) at [20] the Upper Tribunal established a four-stage approach for the Tribunal to adopt when assessing the amount of any order:

(a) ascertain the whole of the rent for the relevant period;

(b) subtract any element that represents payment for utilities;
(c) consider the seriousness of the offence, both compared to other types of offences in respect of which a rent repayment order may be made and compared to other examples of the same type of offence. What proportion of the rent is a fair reflection of the seriousness of this offence? That percentage of the total amount applies for is the starting point; it is the default penalty in the absence of other factors, but it may be higher or lower in light of the final step;
(d) consider whether any deductions from, or addition to, that figure should be made in light of the other factors set out in section 44(4)".

107. In the absence of a conviction, the relevant provision is section 44(3) of the 2016 Act. Therefore, the amount ordered to be repaid must "relate to" rent paid in the period identified as relevant in section 44(2), the subsection which deals with the period identified as relevant in section 44(2), the subsection which deals with the period of rent repayments relevant. The period is different for two different sets of offences. The first is for offences which may be committed on a one-off occasion, albeit they may also be committed repeatedly. The second is for offences committed over a period of time, such as a licensing offence.

108. At [31] of *Williams v Parmar* [2021] UKUT 244 (LC) it was said:

"… [the Tribunal] is not required to be satisfied to the criminal standard on the identity of the period specified in s.44(2). Identifying that period is an aspect of quantifying the amount of the RRO, even though the period is defined in relation to certain offences as being the period during which the landlord was committing the offence".

109. The Tribunal is mindful of the various decisions of the Upper Tribunal in relation to RRO cases. Section 44 of the 2016 Act does not, when referring to the amount, include the word "reasonable" in the way that the previous provisions in the 2004 Act did. Judge Cooke stated clearly in her judgement in *Vadamalayan v Stewart and others* (2020) UKUT 0183 (LC) that there is no longer a requirement of reasonableness. Judge Cooke noted (paragraph 19) that the rent repayment regime was intended to be harsh on landlords and to operate as a fierce deterrent. The judgment held in clear terms, and perhaps most significantly, that the Tribunal must consider the actual rent paid and not simply any profit element which the landlord derives from the property, to which no reference is made in the 2016 Act. The Upper Tribunal additionally made it clear that the benefit obtained by the tenant in having had the accommodation is not a material consideration in relation to the amount of the repayment to order. However, the Tribunal could take account of the rent including the utilities where it did so. In those instances, the rent should be adjusted for that reason.

110. In *Vadamalayan*, there were also comments about how much rent should be awarded and some confusion later arose. Given the apparent misunderstanding of the judgment in that case, on 6th October 2021, the judgment of The

President of the Lands Chamber, Fancourt J, in *Williams v Parmar* [2021] UKUT 0244 (LC) was handed down. *Williams* has been applied in more recent decisions of the Upper Tribunal, as well as repeatedly by this Tribunal. The judgment explains at paragraph 50 that: "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."

111. The judgment goes on to state that the award should be that which the Tribunal considers appropriate applying the provisions of section 44(4). There are matters which the Tribunal "must, in particular take into account". The Tribunal is compelled to consider those and to refer to them. The phrase "in particular" suggests those factors should be given greater weight than other factors. In *Williams*, they are described as "the main factors that may be expected to be relevant in the majority of cases"- and such other ones as it has determined to be relevant, giving them the weight that it considers each should receive. Fancourt J in *Williams* says this: "A tribunal must have particular regard to the conduct of both parties includes the seriousness of the offences committed), the financial circumstances of the landlord and whether the landlord has been convicted of a relevant offence, The Tribunal should also take into account any other factors that appear to be relevant."

112. The Tribunal must not order more to be repaid than was actually paid out by the Applicants to the Respondent during that period, less any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period (s.44(3) 2016 Act). That is entirely consistent with the order being one for repayment. The provision refers to the rent paid during the period rather than rent for the period.

113. It was said, in *Williams v Parmar*, by Sir Timothy Fancourt [43] that the *Rent Repayment Orders* under the Housing and Planning Act 2016: Guidance for Local Authorities identifies the factors that a local authority should take into account in deciding whether to seek a RRO as being the need to: punish offending landlords; deter the particular landlord from further offences; dissuade other landlords from breaching the law; and remove from landlords the financial benefit of offending. It was indicated [51] that the factors identified in the Guidance will generally justify an order for repayment of at least a substantial part of the rent. It was also said that a full award of 100% of the rent should be reserved for the most serious of cases (see also *Hallett v Parker* [2022] UKUT 165).

114. The Tribunal has carefully considered the amount of the rent for the relevant period of the licencing offence that should be awarded.

<u>Ascertain the whole of the rent for the relevant period</u>

115. The relevant rent to consider is that paid during "a period, not exceeding twelve months, during which the landlord was committing the offence".

116. As stated above, the Tribunal has found that the Respondent committed the offence from 13 May 2022 to 4 May 2023. The Tenancy Agreement confirms that the rent was £2,000 per month. The Tribunal has seen evidence of payments:

10/06/22	£2,000
11/07/22	£2,000
09/08/22	£2,000
12/09/22	£2,000
10/10/22	£2,000
10/11/22	£2,000
13/12/22	£2,000
13/01/23	£2,000
09/02/23	£2,000
13/03/23	£2,000
14/05/23	£2,000
12/06/23	£2,000
11/07/23	£2,000
21/07/23	£2,000
13/08/23	£2,000
11/09/23	£2,000

117. An issue has arisen as to whether the "whole of the rent" for the relevant period is calculated on the rent of £2,000 or whether the calculation should be based on the Applicant's "share" of that amount. There is no issue that the Applicant was jointly and severally liable for the whole rent of £2,000, nor that the payments of rent were made from the Applicant to the Respondent (with the

other two tenants paying their "share" to the Applicant. The other two tenants have confirmed in their witness statements that they are aware that they were named as a person significantly affected by the application and that they give their consent for the Applicant to seek an order for the full amount of rent paid, including any contributions that they made.

118. The Applicant is the only applicant. The other two tenants were named in the application as people affected by the application,but were not joined as applicants. This is not just a technical issue – the Respondent is entitled to know who the applicants are, and being an applicant in a case is different to being a witness. Further, the Tribunal cannot ignore that the time period for any application to be made by the other two tenants has expired. As was set out in the Respondent's Skeleton Argument (para. 27) in *Gurusinghe & Ors v Drumlin* Ltd [2021] UKUT 268 (LC), the Upper Tribunal held that s.41(2)(b) prescribes a 12 months' limitation period for applications for RRO's and the Tribunal has no power to extend that limitation period. The application as it stands, of course, was brought within time but even if there is an argument that this means that the other tenants could apply to be joined there is no such application.

119. The Tribunal, therefore, can only make an order in favour of the Applicant. There is, however, still an issue as to what rent (£2,000 or £650 pcm) the Tribunal should use to ascertain the whole of the rent for the relevant period.

120. The Tribunal accepts the Respondent's submission that the Applicant was paying the rent as an agent.

121. In *Moreira v Morrison* [2023] UKUT 233 (LC) one tenant paid the rent on behalf of all of the tenants, but the tenant's own "share" was one fifth. It was noted that, at first instance, the Tribunal had rejected the argument that the RRO should be calculated by reference to the whole of the rent on the basis that each tenant was jointly and severally liable. This was an issue on appeal and the Upper Tribunal said:

> "11. At paragraph 25 of its decision the FTT said this:
>
> 'Section 44 of the 2016 Act deals with the calculation of an RRO.
>
> By section 44(2), '[t]he 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…'. As the terminology of the section (and indeed, this Part of the Act as a whole) makes clear, a rent repayment order is made in respect of an individual tenant. The part does not refer to a tenant's liability to pay rent, but rather to what rent he or she has actually paid. That concrete payment is in issue is reinforced by the reference to the landlord being obliged (i.e. by an order) to 'repay'. That implies (as does the title of the order itself) that the order is limited to that which was

paid in the first place. If an order could amount to more than what was paid by an individual tenant, if would not be a repayment'.

12. I believe that the intention was to refer to section 44(3), since that is the provision quoted. I respectfully agree with the FTT's analysis; the word 'repayment' is crucial. An order that the landlord pay to the tenant a sum that he or she might have had to pay but had not in fact paid, that would not be a repayment.

13. Moreover, the tenants' arguments ignores the wording of section 44(2), which says that the amount of the rent repayment order 'must relate to the rent paid during the period mentioned in the table' and sets out a table with two columns. The left hand column lists the offences and the right hand column is headed 'the amount must relate to rent paid by the tenant in respect of' (emphasis added) and then lists the relevant periods for the different offences, the period for a section 72(1) offence being a period not exceeding twelve months during which the landlord was committing the offence. So what is relevant is payment by the tenant, not liability to pay, and not payment by anyone else".

122. The Judge also said:

"23. A rent repayment order must be an order for repayment of what an applicant has paid and not of what they might have to pay in circumstances that did not arise, for example where one of their fellow tenants had failed to pay their contribution. That is obviously correct as a matter of language, and I do not see that fairness to the tenants requires any other construction; I do not agree that their joint and several liability for the rent makes it fair that a rent repayment order should be calculated by reference to rent they have not paid.

24. Moreover to do so would be very unfair to the landlord. It would mean that each tenant could apply alone for a rent repayment order and each could receive a rent repayment order calculated by reference to the whole rent, with draconian consequences for the landlord. A rent repayment order is itself a penalty; to multiply it in that way cannot be right and is not an available construction of the statutory language".

123. The appeal failed. This is consistent with the approach taken in *Dowd* (see Ground 4 in that appeal).

124. These seem to be clear on the issue – the whole of the rent for the relevant period is to be calculated with reference to the Applicant's "share" rather than the whole of the rent due from all of the tenants.

125. The Applicant did not claim the Housing Element of Universal Credit.

126. The whole of the rent for the relevant period is therefore £7,800 (i.e. 12 x £650).

Deductions for utilities?

127. The Applicant (and her fellow tenants) were liable for all charges in respect of supply and use of utilities, and so no deduction for utilities is made.

Seriousness of the offence

128. In *Williams v Parmar* [2021] UKUT 244 (LC) it was said that "the circumstances and seriousness of the offending conduct of the landlord are comprised in the 'conduct of the landlord', so the First Tier Tribunal 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 of mitigating circumstances or otherwise".

129. As the Upper Tribunal has made clear, the conduct of the Respondent also embraces the culpability of the Respondent in relation to the offence that is the pre-condition for the making of the RRO. The offence of controlling or managing an unlicensed HMO is a serious offence, although it is clear from the scheme and detailed provisions of the 2016 Act that it is not regarded as the most serious of the offences listed in section 40(3).

130. In *Daff v Gyalui* [2023] UKUT 134 (LC) it was highlighted that there will be more and less serious examples within the category of offence: [49].

131. The Tribunal determines that the relatively less serious offence committed by the Respondent should be reflected in a deduction from the maximum amount in respect of which a RRO could be made. It is noted that a failure to have a additional licence is less serious than a failure to have a mandatory licence.

132. The Tribunal also notes, that the Respondent was aware of the need to have a licence and had a managing agent who was supposed to make such an application. It is a large organisation, but it does not directly manage the "privately let" properties – in respect of this, it chooses to use, and pays for, the services of a managing agent. The properties that the Respondent did maintain responsibility for are those used to house members of staff and retired members of staff.

133. The case of *Chan* was decided prior to *Acheampong* and so was decided before the Upper Tribunal clarified the approach that the Tribunal was to take in deciding the amount of an RRO. Further, in the case of *Chan*, the landlord had

direct responsibility for the properties and was a professional landlord who had assumed direct responsibility for complying with the necessary requirements.

134. The starting point for the Tribunal, taking account of this, is that a RRO should be made, reflecting 40% of the total rent paid for the relevant period.

Conduct

135. The Tribunal has had regard to the allegations made by the Applicant. It is noted that the Property would not have been licensed as it was let, as when a licence was granted, it was on the basis of maximum occupation by two households each of two people. The "third" bedroom was not to be used as a bedroom due to its size. It is the case, however, that this was not the room occupied by the Applicant.

136. In terms of the Property (and particularly the living room) being unfurnished, the Applicant agreed that the price reflected this and that it was on this basis that the Property was advertised, and the tenancy agreement was entered into.

137. The Tribunal does take the view that, in forming a view of the Respondent's conduct, whilst not sufficient to establish a defence of reasonable excuse, it is relevant that it did have sufficient knowledge of the legislative and licensing requirements, did know that a licence was required, had employed an agent to deal with such matters and worked on the assumption that the managing agent would and did obtain the necessary licence. Ms. Faola offered to assist in providing any further information required to process the licence, but the managing agent did not revert to her on this or raise any issue with her about the obtaining of a licence. As soon as it was appreciated that no licence had been obtained, an application was made. There was an issue about the "third" bedroom when the licence was granted, but there was no other issue in terms of the condition of the Property (the requirement for compliance with LB of Southwark's standards for HMO's were to be complied with within 18 months of the date of the grant of the licence).

138. It is also noted that only two issues were raised about the condition of the Property (door handles and a leak from the washing machine) and both were dealt with by the agent on behalf of the Respondent.

139. In terms of fire safety, it is not a requirement that fire training is given. It does appear that the fire alarms were not checked beyond that done when the check-in inventory was done and it also appears that after service of the initial gas safety certificate, no additional certificate was provided. Again, these were matters which, on the evidence seen by the Tribunal, fell under the managing agent's responsibility and the Respondent paid the agent to ensure that matters such as these were taken care of. In that respect, the Respondent had procedures in place to ensure that all such requirements were met and it was, it

appears, failings on the part of the agent that led to any default. In terms of contact details, it is clear that the Applicant and her fellow tenants did have contact details for the Respondent (through the managing agent) and did in fact contact the agent in some instances. The deposit was protected, and the prescribed information was provided.

140. The Tribunal is satisfied that there were no failings on the part of the Respondent which warrant an increase in the amount of the RRO and, overall, the conduct of the Respondent was good.

141. There were some criticisms of the Applicant. The Tribunal takes the view that it would not be appropriate to reduce the amount of the RRO: the conditions of the Property when it was handed back was generally good; the issue with garden (which did fall within the tenants' responsibilities, having regard to the tenancy agreement) was resolved by way of a deduction from the deposit. In terms of the fact that the Applicant and her fellow tenants did not leave after being served with the s.21 notice, this is after the period for which the RRO is sought, they informed the Respondent that they needed some time to find another property before they could move out and the Respondent acknowledged the issues with the London rental market.

142. In summary, the Tribunal made no adjustment of the amount of the RRO, for either the Applicant's or the Respondent's conduct.

Whether the landlord has been convicted of an offence?

143. Section 44(4)(c) of the 2016 Act requires the Tribunal to take into account whether the Respondent has at any time been convicted of any of the offences listed in section 40(3). The Respondent has no such convictions.

Financial circumstances of the Respondent

144. The Tribunal notes that the Respondent is a charity, promoting the work of churches in London and building connections with the last-reached communities. The Respondent does have a large number of assets, but it had a cash shortfall of around £4m per year in the annual report for 2022.

145. It is true that, in terms of its relationship with the Applicant, it was a commercial relationship, but the Respondent is not an individual seeking to make a profit for itself in the renting out of the Property – it seeks to use any

free properties to generate income which is then used in accordance with its charitable purposes. The Property was in fact sold to fund the Respondent's charitable activities.

146. The Tribunal makes a deduction of 10% in respect of the financial circumstances of the Respondent.

The amount of the repayment

147. The Tribunal determines that the maximum repayment amount identified in paragraph 76 above should be discounted by 70% (i.e. the RRO is 30% of the rent paid in the material period). The Tribunal therefore orders under s.43(1) of the 2016 Act that the Respondent repay the Applicant the sum of £2,340.

148. The Tribunal has had regard to all the circumstances in setting a time for payment, including the amount of the RRO. The Tribunal orders repayment in 28 days from the date of this decision.

Application for refund of fees

149. Mr. Fortuna, when asked, said that the Applicant was not seeking any such refund of fees, so no such order is made.

Judge Sarah McKeown
3 October 2024

Rights of appeal

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

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

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

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

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

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