FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/OOAP/HMF/2024/0150**
Property	:	**82 Perth Road, London N22 5QP**
Applicant	:	**1 Mr Manuel De Francisci** **2 Mr Valeria Aloisioo** **3 Mr Vincenzo D'Abbrunzo**
Representative	:	**Mr Jamie McGowan** **Justice for Tenants**
Respondent	:	**Mr Rajesh Prabhakar Shet**
Representative	:	
Type of Application	:	**Application for a rent repayment order by tenant** **Sections 40, 41, 43 & 44 of the Housing and Planning Act 2016**
Tribunal Member(s)	:	**Judge Tildesley OBE** **Miss R Kershaw BSC**
Date and venue of the Hearing	:	**20 November 2024** **10 Alfred Place, London, WC1E 7LR**
Date of Decision	:	**17 December 2024**

DECISION

Senior President of Tribunals Practice Direction: Reasons for Decisions 4 June 2024

1. This Practice Direction states basic and important principles on the giving of written reasons for decisions in the First-tier Tribunal. It is of general application throughout the First-tier Tribunal. It relates to the whole range of substantive and procedural decision-making in the Tribunal, by both judges and non-legal members. Accordingly, it must always be read and applied having regard to the particular nature of the decision in question and the particular circumstances in which that decision is made (paragraph 1).

2. Where reasons are given, they must always be adequate, clear, appropriately concise, and focused upon the principal controversial issues on which the outcome of the case has turned. To be adequate, the reasons for a judicial decision must explain to the parties why they have won and lost. The reasons must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the main issues in dispute. They must always enable an appellate body to understand why the decision was reached, so that it is able to assess whether the decision involved the making of an error on a point of law. These fundamental principles apply to the tribunals as well as to the courts (paragraph 5).

3. Providing adequate reasons does not usually require the First-tier Tribunal to identify all of the evidence relied upon in reaching its findings of fact, to elaborate at length its conclusions on any issue of law, or to express every step of its reasoning. The reasons provided for any decision should be proportionate, not only to the resources of the Tribunal, but to the significance and complexity of the issues that have to be decided. Reasons need refer only to the main issues and evidence in dispute, and explain how those issues essential to the Tribunal's conclusion have been resolved (paragraph 6).

4. Stating reasons at any greater length than is necessary in the particular case is not in the interests of justice. To do so is an inefficient use of judicial time, does not assist either the parties or an appellate court or tribunal, and is therefore inconsistent with the overriding objective. Providing concise reasons is to be encouraged. Adequate reasons for a substantive decision may often be short. In some cases a few succinct paragraphs will suffice. For a procedural decision the reasons required will usually be shorter (Paragraph 7).

Application and Procedural History

5. The Application is for a rent repayment order (RRO) under section 41 of the Housing and Planning Act 2016 ("2016 Act) for the offence of having control of, or managing, an unlicensed HMO, under Part

2 of section 72(1) Housing Act 2004 which is an offence under s40(3) of the 2016 Act. The amount claimed was the sum of £22,200 which represented the rent paid for the period between 22 April 2022 to 21 April 2023.

6. The Tribunal heard the Application on the 20 November 2024. The Applicants who appeared in person were represented by Mr McGowan of Justice for Tenants. The Respondent represented himself and accompanied by his wife.

7. At the commencement of the hearing the Respondent applied to adjourn it because he believed he was attending a mediation session and had he known it was a hearing he would have called his Agent to give evidence. The Applicants opposed the application.

8. The Tribunal refused the application because (1) any request for mediation should have been made in accordance with the directions by 26 June 2024. No such application had been made. (2) The Respondent had been notified of the hearing on 9 August 2024. His response of the same date indicated that he understood the purpose of the hearing. (3) Both parties were in a position to proceed. The Respondent's bundle was to a high standard and clearly set out his case. The Tribunal concluded that the hearing should proceed to further the overriding objective.

9. In reaching its decision the Tribunal had regard to the relevant details in the Application; the directions; the oral testimony of the Applicants and their witness statements; the oral testimony of the Respondent and his witness statement; and the documents in the parties' hearing bundles.

10. The Tribunal applied the law as set out in in sections 40 to 47 of the 2016 Act, and took account of the following authorities: *Chan v Bilkhu & Anor* [2020] UKUT 0289 (LC); *Marigold v Ors* [2023] UKUT 33 (LC); *Aytan v Moore* [2022] UKUT 27 (LC) at [52]); *Hancher v David* [2022] UKUT 277 (LC); *Acheampong v Roman and others* [2022] UKUT 239 (LC); *Williams v Parmar* [2021] UKUT 244 (LC); *Daff v Gyulai* [2023] UKUT 134 (LC*); LDC (Ferry Lane) GP3 Ltd v Valentina Garra and others* [2024] UKUT 40(LC); and *Newell v Abbott and other* [2024] UKUT 181 (LC).

Decision

11. **The Tribunal orders the Respondent to pay to the Applicants the sum of £7,400 which represented one third of the total rent paid for the period 22 April 2022 to 21 April 2023 and to reimburse them with 50 per cent of the application and hearing fees in the sum of £160.00 within 28 days from the date of this decision.**

Reasons

12. The Property was a three-bedroom, two storey terraced house with a shared kitchen and bedroom. The property was let on an assured shorthold tenancy for a period of one year from 22 April 2022 to 21 April 2023 for a rent of £1,850 per month.

13. The tenancy agreement (non-managed) named the Respondent as "The Landlord" and Manuel De Francisci and Vincenzo D'Abbrunzo as "The Tenants". The agreement specified that Hobarts were not the managing agent and had no authority to authorise repairs.

14. A third person, Ms Valeria Aloisio, said that she lived at the property throughout the duration of the tenancy. Mr De Francisci paid the monthly rent to the Respondent. Mr D'Abbrunzo and Ms Aloisio made equal contributions to the rent which they paid to Mr De Francisci. Mr De Francisci, Mr D'Abbrunzo and Ms Aloisio were not related to each other and occupied the property as their main residence living as three separate households.

15. The Property was located in the London Borough of Haringey. Since 27 May 2019, the Council have operated a borough-wide additional licensing scheme which ended on 26 May 2024. The scheme applied to all HMOs in the Borough covering all properties occupied by three or more persons who were not related and shared facilities such as the kitchen and bathroom. The property was not licensed as an HMO during the period 22 April 2022 to 21 April 2023.

16. The London Borough of Haringey issued civil penalties against the Respondent and his managing agents for no HMO licence. The Respondent appealed to the Tribunal against the civil penalty which the Tribunal understands was in the sum of £2,500. On the 18 October 2023 the Respondent withdrew his Appeal on the ground that he had agreed to pay a lesser penalty of £2,000. The Respondent said that he had settled the matter because of the legal costs involved in the Appeal.

17. The parties did not include in their evidence details of the civil penalty proceedings against the Respondent and his Agent. The parties simply referred to the fact that civil penalties had been imposed. The Tribunal notified the parties prior to the hearing that it had enquired whether a Tribunal decision had been issued in respect of the Respondent's Appeal and was informed that the Respondent had withdrew the Appeal. The Tribunal emphasised to the parties that he had not seen the Tribunal file in relation to the Appeal.

18. On 17 November 2022 a Selective Licensing Scheme came into force in the London Borough of Haringey. The scheme required a

landlord to licence all privately rented homes let to a single person, two people, or a single household (e.g. a family) within the Selective Licensing zone. On 9 May 2023 the Respondent applied for a licence under the Scheme which was granted on 11 October 2023.

19. The principal issue in this case was whether the Respondent knew that the property had been occupied by three persons. It was common ground that the Respondent knew of the existence of Mr De Francisci and Vincenzo D'Abbrunzo. The Respondent's dispute concerned the status of Ms Aloisio. The Tribunal's findings on this issue are central to its decision on the Application for a RRO.

20. The Applicants contended that Mr De Francisci informed the Agent of their three names prior to them moving into the property. The Applicants argued that the Respondent must have known of their existence at the time of the grant of the tenancy. The Applicants' secondary position was that the Respondent knew of Ms Aloisio's status as a tenant from December 2022. The Applicants relied on their statements and various emails and "WhatsApp" conversations to substantiate their assertions. The Applicants also questioned the credibility of the Respondent's evidence.

21. The Respondent argued that he was unaware of the existence of Ms Aloisio until they exchanged "WhatsApp" messages around December 2022. The Respondent maintained that although he had came into contact with Ms Aloisio he did not know she was living at the property as a tenant, and that as far as he was concerned Ms Aloisio was either a close friend or girl friend of one of the tenants. The Respondent relied on his statement, the tenancy agreement and various emails to substantiate his case.

22. The Tribunal is satisfied that the three Applicants occupied the property from 22 April 2022 to 21 April 2023, and that they contributed equally to the rent. Mr D'Abbrunzo and Ms Aloisio gave their contributions to Mr De Francisci who then paid the rent to the Respondent. The Tribunal was persuaded by the Applicants' evidence on the **fact** of occupation and their arrangements for the rent to which the Respondent made no substantive challenge. The Respondent's case was that he was not aware that the property was occupied by three persons.

23. The Tribunal finds that the Respondent knew that the property was occupied by three persons living as two or more households from December 2022. Further the Respondent knew that a property with three sharers required an HMO licence, and that he decided to take a risk by running out the tenancy which had just over three months left.

24. In order to understand the Tribunal's finding on the Respondent's knowledge it is necessary to breakdown the evidence into two timeframes: the time prior to and immediately after the grant of the

tenancy, and the period from December 2022 when the Respondent began "WhatsApp" conversations with Ms Aloisio.

25. In respect of the first time frame the Applicants relied on various email conversations between Mr De Francisci and Hobarts, the Respondent's agent, starting with the email of Mr De Francisci dated 5 April 2022 at 15:26 where Mr De Francisci said that he liked the property, what next? There then followed a series of emails with the Agent requesting details of the persons moving in. Mr De Francisci said there were "three of us", please would you like a guarantor for each of us. The Agent then asked questions about the three persons: "Are you three sharers"; "Is anyone related". Mr D Francisci replied "We are three friends" and gave details of the Applicants. The last email exhibited in this chain was dated 6 April 2022 from the Agent stating "Morning Guys "Can you provide a guarantor earning £67K per annum". There then is a break in the emails with the Agent exhibited by the Applicants until 19 April 2022 when the Agent informed Mr D Francisci and Mr D'Abbrunzo that their move in date was the 22 April 2022.

26. In the Respondent's bundle the email chain starts on 6 April 2022 with the Agent informing the Respondent that he was awaiting on two offers from yesterday's viewings, the market was very strong at the moment but "**we can only accept a family or two sharers due to the new HMO laws in Haringey now. So it is very specific who we can legally accept as tenants".** The Agent then said that we have two strong offers come in today so we can get them in urgently to minimise the void period. On 12 April 2022 the Respondent enquired about updates on the new rental. On 19 April 2022 the Agent informed the Respondent that the tenants had passed the referencing process and named Mr De Francisci and Mr D'Abbrunzo as the tenants.

27. The tenancy agreement which was initialled by the parties named the Respondent as the landlord and Mr De Francisci and Mr D'Abbrunzo as the tenants. The Agent took no references for Ms Aloisio.

28. Clause 2.18 of the agreement under the heading of Tenant's Obligations stated

> " Not to sublet, take in lodgers or paying guests without the landlord or his agent's prior consent. (*In order to avoid misunderstandings or disputes later, it is strongly recommended that the tenant obtain confirmation in writing of any such consent granted.*). The landlord or his agent reserves the right to withdraw, for reasonable grounds and upon reasonable notice, any such consent previously given".

29. The Tribunal asked Mr De Francisci why he did not insist on the insertion of the three names in the tenancy agreement. Mr De

Francisci's response was that they did not have the time and they needed to move into the property.

30. The final piece of evidence relevant to the first time frame concerned the facts that following the grant of the tenancy the Respondent dealt exclusively with Mr De Francisci until around December 2022, and he received the full rent for the property from Mr De Francisci. The Respondent did not visit the property whilst it was occupied by the Applicants until the 17 December 2022.

31. The Tribunal's assessment of the evidence relating to the first period was that there was no documentation supporting the Applicants' assertion that the Agent knew that the property was to be occupied by three persons. Although there were initial emails from Mr De Francisci stating there were "three of us", the subsequent emails from the Agent demonstrated that the Agent knew of the legal requirements for HMO licensing in Haringey and that the Agent was exploring with Mr De Francisci the status of the three potential tenants to see whether a licence was required for the property. The fact that the agreement was in the names of just two of the Applicants was persuasive evidence that the Agent had not acceded to the three tenants moving in. Mr De Francisci's explanation for signing the agreement in two names was not convincing.

32. Of more significance was the evidence that showed that the Respondent knew of the legal requirements of licensing HMOs in Haringey, that he had agreed to two tenants moving into the property and until around December 2022 he had no grounds to suspect that there were more than two persons occupying the property.

33. Turning now to the period of the second time frame starting in December 2022. On 16 December 2022 at around 5pm the gas boiler stopped. The Respondent arranged an emergency visit by a plumber who came that night and got the boiler working. On 17 December 2022 the boiler broke down again which generated "WhatsApp" message from Mr D'Abbrunzo, and a separate one from Ms Aloisio.

34. The Respondent did not exhibit the "WhatsApp" communications with Ms Alosio of 17 December 2022 in his bundle. Ms Alosio no longer had copies of "WhatsApp" messages received in December 2022. Her record of the "WhatsApp" communications commenced on 7 January 2023.

35. Whilst giving evidence the Respondent offered to read out the 17 December 2022 "WhatsApp" message from his mobile phone. Mr McGowan for the Applicants asked to see it first before the message was admitted into evidence. The Respondent did not object and handed the mobile phone to Mr McGowan who then scrolled in the

Applicants' presence through the various "WhatsApp" messages with Ms Aloisio which were not restricted to the one on 17 December 2022. Mr McGowan then made an application for disclosure of all the "WhatsApp" messages. The Respondent opposed the Application on the ground that Mr McGowan had no permission to look at other conversations with Ms Aloisio. There followed further representations from the parties. The upshot was that the Respondent agreed to read out the "WhatsApp" conversations with Ms Aloisio. The Tribunal accepted the Respondent's offer and refused Mr McGowan's request for hard copies of the conversations, and in the alternative, to permit him to stand-over the Respondent while he read them out from his phone.

36. These "WhatsApp" messages between Ms Aloisi0 and the Respondent took place from 17 December 2022 to 19 December 2022. Ms Aloisio identified herself as the flatmate of Mr De Francisci, and that they wanted the Respondent to reduce the rent because of the condition of the property.

37. The exhibited "WhatsApp" messages between Ms Aloisio and the Respondent started on the 7 January 2023 and finished on the 14 January 2023. This time the Respondent initiated the conversation on 7 January 2023 saying that it might be easier to speak to her about the issues in the property because he was having problems with Mr De Francisci. Ms Aloisio responded by confirming that Mr De Francisci was speaking for "all three of us", and she described the property as unliveable with lots of problems. In this line of "WhatsApp" messages Ms Aloisi said that she and Mr D'Abbrunzo wanted to speak to the Respondent before the next payment because they had found the Energy Certificate for the house. Ms Aloisio added that they had done everything asked of them by the Respondent. The messages ended with the Respondent informing Ms Aloisio that he had instructed Hobarts, the Agent, to take over the management of the property and that the rent and all enquiries about the property should now be directed to Hobarts.

38. The Respondent visited the property on 17 December 2022 with his daughter aged 14 to meet Mr De Francisci and Mr D'Abbrunzo. The Respondent said Mr De Francisci told him to leave the house, and that he felt uncomfortable because of Mr De Francisci's accusations of lying and cheating. Mr D'Abbrunzo gave a different account of the visit. Mr D'Abbrunzo said he did most of the talking from the Applicants. Mr D'Abbrunzo stated that the visit lasted about 30 to 40 minutes and the Respondent was given a tour of the property where the Applicants pointed out the problems to him. Mr D'Abbrunzo considered that the Respondent gave vague answers to their concerns and that he kept insisting that the structure of the house was good. Mr D'Abbrunzo considered it inappropriate that the Respondent brought his 14 year old daughter to the meeting.

39. The next piece of evidence was a series of emails between the Respondent and the Agent. The first was dated 14 January 2023 in which he described the Tenants becoming very aggressive and unreasonable, and trying to force him to accept a reduction in rent. The Respondent told the Agent that he believed that the Tenants were subletting the property as he had seen more people at the property than what the contract stated. The Respondent expressed his view that as the contract ended in April it would be best to see this through without any issues. Finally he asked the agent to take over the management of the property and that he was willing to fix any issues.

40. On 16 January 2023 the Respondent sent another email to the Agent asking for his help to sort out a particular problem. The Respondent then added: "One other thing to note. There is a **tenant** called Valeria (*Ms Aloisio*) who communicated with me and she is not on the contract? Not sure whether there was some agreement that she would be living there. I also saw one other gentleman living there so there at least four maybe five tenants but only two on the contract".

41. On 16 January 2023 the Agent informed Mr Francisci that the Respondent had agreed for Hobarts to take over the management of the property and asked to view the property so that the Agent could go through the problems with the tenants. There followed several emails between the Respondent and the Agent about repairs to the property. At the hearing the Respondent said that he had also discussed the issues including the possibility of subletting with the agent on the phone. The Respondent was not forthcoming about the specifics of the telephone conversations.

42. On 11 March 2023 the Applicants gave notice to the Agent that they were terminating the Tenancy on 21 April 2023. The Agent responded on 21 March 2023 confirming that they had given the necessary notice to leave the property and that the Agent was sorry they were leaving and if they required a reference to ask the Agent.

43. Finally there was an exchange of emails between the Agent and the Respondent about the state of the property following the departure of the Applicants. On 3 May 2023 the Agent reported that the property had undergone quite "a bit of wear and tear, with the tenants also not treating the property as they should". On the 5 May 2023 the Respondent informed the Agent that he had obtained a quotation of £6,900 from the builders to bring the property up to the required standard and that he had suspected subletting was done on the property. The Respondent ended the email by requesting advice on the DPS scheme (Deposit Protection Scheme). On 22 May 2023 the Respondent informed the Agent to release the deposit in full to the tenants, and adding that "although there are serious issues with the tenancy like subletting and damages I would

like to close this without any further disputes as its very time consuming and stressful".

44. The Tribunal is satisfied from the evidence relating to the second time frame, that the Applicant knew from his inspection of the property on 17 December 2022 and his "WhatsApp" conversations with Ms Aloisio that there were more than two persons occupying the property and Ms Aloisio was one of the people living there in addition to Mr De Francini and Mr D'Abbrunzo. The Tribunal placed weight on the Respondent's description of Ms Aloisio as a tenant in his email to the Agent.

45. The Respondent's assertion at the hearing that he did not know the true status of Ms Aloisio and that she could have been a girlfriend just popping in to help Mr De Francini was not supported by the documentation evidenced in the parties' bundles. Further on 17 December 2022 the Respondent was showed around the house by Mr D'Abbrunzo, and, in the Tribunal's view, it must have been obvious to the Respondent that there were more than two persons living in the property. The Tribunal's view is supported by the Respondent's comment to the Agent that he believed that four or five persons were at the property.

46. Mr McGowan argued that the Respondent's credibility was damaged by his reluctance to disclose all the "WhatsApp" conversations with Ms Aloisio, and that the Tribunal was entitled to infer from his reluctance that the Respondent must have known of the existence of Ms Aloisio from the beginning of the tenancy in April 2022. Leaving aside the question of how Mr McGowan became aware of the non-disclosure, his proposition was not supported by the evidence on the Respondent's knowledge at the time of entering into the tenancy. Also the evidence revealed by the "WhatsApp" conversations in December 2022 did not add anything new to what was revealed by the later conversations with Ms Aloisio in January 2023.

47. The Tribunal's conclusion that the Respondent knew that the property was occupied by three persons at some stage in the tenancy was supported by the Civil Penalty imposed by the London Borough of Haringey on the Respondent for having no HMO licence. The Tribunal is entitled to infer from the imposition of the penalty that the Respondent accepted that he had committed the offence. The Tribunal was not persuaded by the Respondent's explanation for not proceeding with his Appeal against the penalty. The Respondent said that he had accepted a reduced penalty because he had achieved a minimum level of penalty by negotiation. Further that the legal costs of fighting the appeal through the courts was prohibitive and that the toll on his work and personal life was intolerable. In the Tribunal's view the Respondent still accepted a substantial fine of £2,000, and the legal

costs of pursuing an Appeal through the Tribunal were not the same as the courts.

48. The Tribunal has shown in the emails at the commencement of the tenancy that the Agent told the Respondent about the licensing requirements of the London Borough of Haringey. The Tribunal is satisfied that the Respondent knew that he was taking a risk of being found out of being in control of an HMO without a licence when he informed the Agent in January 2023 that he wished to run out the tenancy without further issues as it was due to come to an end in April 2023. In the same vein the Respondent decided to return the deposit so as to avoid further confrontation with the Applicants.

49. Having explained its reasons the Tribunal applies its findings on the number of occupiers and on the Respondent's knowledge of the living arrangements to the question of whether the Respondent has committed the offence of having control of or managing an HMO which is not licensed.

50. The Applicants have established that (1) the property met the standard test for defining an HMO in section 254 of the 2004 Act; (2) the Respondent received the market rent for the property and that he managed it until the Agent took over the management in January 2023: (3) the property was within the additional designation scheme for the London Borough of Haringey which required the licensing of all HMOs with three persons occupying them living in two or more households; (4) the property did not have an HMO licence during the currency of the Applicants' tenancy from 22 April 2022 to 21 April 2023 .

51. The Respondent's challenge to whether the property was an HMO was restricted to the fact that there were only two people named on the tenancy agreement. Under paragraph 7 of schedule 14 of the 2004 Act "any building which is occupied by only two persons who form two households is not an HMO for the purposes of the Act". The operative words of paragraph 7 "are **occupied** by only two persons". The fact that there were just two persons named on the tenancy agreement is not decisive of the issue of occupation. At paragraph 22 the Tribunal has found that the property was occupied by three persons throughout the tenancy.

52. The Tribunal is satisfied that all the elements of the offence of having no HMO licence contrary to section 72(1) of the 2004 Act are present in the case for the period of 22 April 2022 to 21 April 2023. The Respondent's knowledge of the living arrangements at the property is not an element making up the offence under section 72(1) which is a strict liability offence requiring no mens rea on the part of the Respondent.

53. The Respondent's knowledge, however, is relevant to whether he had a defence of reasonable excuse to the offence of having no HMO licence. The Tribunal accepts that the Respondent may have a reasonable excuse if he did not know of the breach of the tenancy agreement of by having more than the two persons named on the tenancy agreement occupying the property.

54. In order to establish a defence of reasonable excuse the Respondent must prove on the balance of probabilities that the facts constituting the reasonable excuse were present throughout the whole period of the offence (*Marigold v Ors* [2023] UKUT 33 (LC) at para 40). An offence under section 72(1) is a continuing offence which means in this case that the Respondent would have to show his lack of knowledge of the levels of occupation at the property was present throughout the period from 22 April 2022 to 21 April 2023. The Tribunal has found that the Respondent learnt about the existence of the three occupants at the property in December 2022 and that he decided to take the risk of not being found out by allowing the tenancy to run its course until April 2023.

55. The Respondent suggested in his statement of case that he took the risk on the advice of his Agent. The Tribunal accepts that the Agent may have been complicit which is demonstrated by the fact that the Council imposed a civil penalty on the Agent as well as the Respondent for having no HMO licence. The Tribunal, however, has found that the Respondent made the decision to take the risk of not being found out in respect of the commission of the offence which was demonstrated by the contents of his email to the agent on 14 January 2023.

56. The Tribunal is satisfied beyond reasonable doubt from the findings and admissions above that the Respondent had committed the specified offence of control or management of an unlicensed HMO contrary to section 72(1) of the 2004 Act from 22 April 2022 to 21 April 2023 in respect of the Property and that he did not have a defence of reasonable excuse.

Should the Tribunal make a RRO?

57. In view of its finding that the Respondent has committed the offence of no HMO licence the Tribunal decides to exercise its discretion to make an RRO.

What is the Amount of the RRO?

What is the whole of the rent for the Relevant Period?

58. The Tenancy agreement required the tenants to pay a rent of £1,850 per calendar month. The Tenancy started on 22 April 2022 and ended on 21 April 2023.

59. The Tribunal decides that the total amount of rent paid during the relevant period was £22,200.

Should there be any deduction for any element of the rent that represents payment for utilities?

60. The Tribunal finds that the Applicants were liable to pay all charges in relation to the supply and use of utilities at the Property. The Tribunal decides that there should be no deduction from the total amount of rent paid during the relevant period.

What is the Seriousness of the Offence?

61. The offence of no HMO licence falls in the less serious category of offences covered by section 40(3) of the 2016 Act.

62. The Tribunal finds the following in relation to the spectrum of seriousness for no HMO licences

a) The Respondent was not a professional landlord and only rented out this property which was the former matrimonial home. The Respondent had let the property since 2010 which had always been tenanted by families or two persons. The Council had rented the property in the past. The Tribunal accepted the Respondent's evidence that his primary purpose for letting the property was to receive income to maintain the property and to pay the mortgage. The Respondent pointed out that there were potentially five liveable rooms in the property which he could have been let if his intention was to maximise the profit from renting.

b) When the Respondent discovered that there were three persons living in the property in December 2022, he made a conscious decision to continue with the tenancy despite the fact that he knew that he should have an HMO licence for the property. Further the Respondent took no action to ameliorate the situation. One option open to him was to apply to the Council for a Temporary Exemption Notice from licensing the property.

c) The Applicants contended that the Tribunal should take into account the Respondent's failure to licence the property under the Selective Licensing Scheme when it came into force on the 17 November 2022. The Applicants argued that the Respondent's explanation that he immediately applied for a licence on 9 May 2023 when he first learnt about the Scheme lacked credibility. The Applicants pointed to the fact that the Agent reminded him about the need for a licence on 3 May

2023. The Tribunal is not convinced of the relevance of the Respondent's failure to apply for a licence under the Selective Licensing Scheme to the assessment of the seriousness of the no HMO licence offence. The Tribunal observes that the Applicants have presented their case on the basis that the Respondent committed an offence under section 72(1), and not under section 95 (1) of the 2004 Act. The Tribunal also considers it unlikely that the Council would have accepted an application for a licence under Selective Licensing Scheme if the property required an HMO licence under the Additional Scheme. The Tribunal acknowledges that the Respondent's failure to apply earlier under the Selective Licensing Scheme may have cast doubt on his assertion that he believed that only two people were living at the property. The Tribunal, however, had already decided that shortly after the Selective Licensing Scheme came into force, the Respondent discovered that at least three persons were occupying the property.

d) The Applicants argued that the property was in poor condition and that the Respondent was not prepared to spend money to improve the state of the property. The Applicants identified specific issues of disrepair and their principal complaint was that the property was cold and suffered from mould. The Tribunal concluded on the evidence that the Respondent's response to the specific issues (leakage in kitchen, shower unit, washing machine, and toilet sink) was adequate. The Tribunal acknowledges the genuineness of the Applicants' claims about the property being draughty and cold which led to mould, and recognises that the boiler breakdown was a cause of concern. The Tribunal, however, was not convinced that the state of the property presented a serious hazard to health and safety. The Tribunal found that (1) the Energy Performance Rating for the property was "D" which was above the minimum rating of E for the letting of property. (2) The Kenwood Report commissioned by the Agent in February 2023 highlighted mould growth in bedroom, study, kitchen and bathroom which the Report attributed to inadequate ventilation of the property. (3) The gas boiler was relatively new, three years old according to the Respondent, and the breakdown was a result of a severe weather event causing the overflow pipe to freeze. The Respondent rectified the problem within a reasonable period of time.

63. The Tribunal turns to its assessment of the seriousness of the no HMO licence offence. In the Upper Tribunal decision of *Newell v Abbott and Okrojek* [2024] UKUT 181 (LC) at paragraph 57, Martin

Rodger KC, Deputy Chamber President, summarised the principles governing the level of RROs in licensing offences:

> "This brief review of recent decisions of this Tribunal in appeals involving licensing offences illustrates that the level of rent repayment orders varies widely depending on the circumstances of the case. Awards of up to 85% or 90% of the rent paid (net of services). are not unknown but are not the norm. Factors which have tended to result in higher penalties include that the offence was committed deliberately, or by a commercial landlord or an individual with a larger property portfolio, or where tenants have been exposed to poor or dangerous conditions which have been prolonged by the failure to licence. Factors tending to justify lower penalties include inadvertence on the part of a smaller landlord, property in good condition such that a licence would have been granted without additional work being required, and mitigating factors which go some way to explaining the offence, without excusing it, such as the failure of a letting agent to warn of the need for a licence, or personal incapacity due to poor health".

64. The Applicants relied on paragraph 66 of the decision of the Deputy President in *Newell* in which he said that order of 60 per cent of net rent was appropriate for an offence committed by *" a landlord of a single property and was the result of inadvertence, or lack of attention, rather than being deliberate, and that the accommodation provided was generally of a good standard which attracted long term residents and which the respondents were disappointed to leave"*. The Applicants submitted that the circumstances of their case were more serious from those in *Newell* and that an order of more than 60 per cent was merited.

65. The Tribunal is concerned at this stage with the ballpark figure to reflect the seriousness of the offence. The Tribunal takes into account that the offence under section 72(1) of the Housing Act 2004 is not one of the more serious types of the offences for which a rent repayment order can be made. The Tribunal's findings that the Respondent was not a professional landlord and that the condition of the property did not present a serious risk to the health and safety of the occupants would put this offence in the less serious category of no HMO license offences. The Tribunal's finding that the Respondent made a conscious decision to continue with the tenancy despite the fact that he knew that he should have an HMO licence for the property, and the Council's decision to impose a Civil Penalty were aggravating factors. The Tribunal having regard to its findings, and the deterrent effect of RROs considers that an order in the range of 50 to 60 per cent would reflect the seriousness of the offence in this case.

Whether Adjustments should be made in the light of the factors identified in Section 44(4) of the 2016 Act?

66. The Respondent argued that the Applicants' conduct as tenants was a material consideration in determining the amount of any order. The Respondent stated that the Applicants left the property in an unacceptable condition and that the costs of repairing the damage caused by the Applicants was £4,100 which was less than the quotation of £6,700 from the builder. The Respondent supplied photographs of the condition of the property before and after the tenancy to substantiate his allegations against the Applicants. Mr McGowan submitted that the allegation the Applicants caused damage to the Property was plainly untrue. Mr McGowan relied on the fact that the Respondent authorised the full return of the Applicants' deposit and that the Agent was willing to provide a reference to the Applicants in respect of their future searches for living accommodation. On balance the Tribunal concluded that the Respondent's return of the full deposit undermined his allegation that the Applicants caused significant damage to the property.

67. The Respondent contended that the breach of the tenancy agreement by Mr D Francisci and Mr D'Abbrunzo in subletting a room to Ms Aloisio was a relevant consideration. The Respondent's allegation that Mr D Francisci and Mr D'Abbrunzo broke the terms of the tenancy agreement was substantiated by the Tribunal's finding that the Respondent did not know of the existence of a third occupier at the property until December 2022, and that there was no documentary evidence which showed that the Respondent or his Agent had agreed to a third occupier. The Respondent suffered material consequences from this breach. The Tribunal is satisfied that this aspect of the Applicants' conduct justifies a significant reduction in the ballpark figure of 50 to 60 per cent of the rent.

68. The Respondent supplied no evidence of his financial position. The Tribunal is entitled to assume that he has the financial wherewithal to pay a RRO.

69. The Tribunal decides that the amount of the RRO should be one third of the total rent paid, namely £7,400.

Reimbursement of Fees

70. Under rule 13(1) of the Tribunal Procedure Rules 2013 the Tribunal has a discretion to make an order requiring a party to reimburse the other party the whole or part of the fees. The Tribunal considers that its decision to order one third of the total rent paid justifies an Order that the parties should share the costs of the Tribunal fees. The Tribunal decides that the Respondent should reimburse the Applicants with £160 which is 50 per cent of the application and hearing fee totalling £320 paid by the Applicants.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

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

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