FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BK/HMF/2024/0156**
Property	**:**	**Flat P, 11 Craven Hill, Westminster, W2 3EN**
Applicant	**:**	**(1) Baptiste Jupet** **(2) Alexis Dupau** **(3) Christian Maschka**
Representative	**:**	**Peter Eliot, Justice for Tenants**
Respondent	**:**	**(1) Jonathan Krogdahl** **(2) Nicky Krogdahl**
Representative	**:**	**Jonathan Krogdahl**
Type of application	**:**	**Tenants' application for a Rent Repayment Order under the Housing and Planning Act 2016**
Tribunal members	**:**	**Judge M Jones** **Ms S Redmond MRICS**
Date and venue of hearing	**:**	**13 February 2025** **remotely by Cloud Video Platform**
Date of decision	**:**	**13 March 2025**

DECISION

Decisions of the tribunal

(1) The Tribunal orders the Respondents to repay to the Applicants the total sum of £25,542.68 by way of Rent Repayment Order, divided between the individual Applicants as follows :

(1.1) Baptiste Jupet - £8,654.69;

(1.2) Alexis Dupau - £7,429.59;

(1.3) Christian Maschka - £9,458.40.

(2) The Tribunal also orders the Respondents to reimburse the Applicants' fees paid on application and in respect of the hearing, in the sum of £420.

(3) The above sums, totalling £25,962.68 must be paid by the Respondents to the Applicants within 28 days after the date of this determination.

Introduction

1. By application dated 11 April 2024, the Applicants applied for a rent repayment order ("***RRO***") against the Respondents under sections 40-44 of the Housing and Planning Act 2016 ("***the 2016 Act***").

2. The basis for the application is that it is alleged that the Respondents committed an offence of having control of, and/or managing, an unlicensed house in multiple occupation ("***HMO***") which was required to be licensed, contrary to Part 2, section 72(1) of the Housing Act 2004 ("***the 2004 Act***"), which is an offence under section 40(3) of the 2016 Act.

3. The Applicants seek rent repayment orders totalling £36,489.54 in the following individual sums, for the following periods:

   (i) Baptiste Jupet - £12,363.84 for the period 16/5/22 – 15/5/23;

   (ii) Alexis Dupau - £10,613.70 for the period 11/9/22 – 15/5/23;

   (iii) Christian Maschka - £13,512.00 for the period 16/5/22 – 15/5/23.

4. The Respondent served a detailed series of Arguments in Defence in response to the application, augmented by a series of requests for dismissal of the application and to strike out various aspects of it, on a variety of bases. Those applications were each refused by a series of decisions of Judge Carr made, *inter alia* on 29 January, 3 and 5 February 2025, and accordingly form no part of our determinations.

5. The parties each filed bundles in advance of the hearing. The Applicants' initial bundle numbered some 172 pages, and the Respondents' some 313 pages. The Applicant then filed a responsive bundle of an additional 102 pages.

6. Whilst the Tribunal makes it clear that it has read each party's bundles, the Tribunal does not refer to every one of the documents in detail in this Decision, it being impractical and unnecessary to do so. Where the Tribunal does not refer to specific documents in this Decision, it should not be mistakenly assumed that the Tribunal has ignored or left them out of account.

7. This Decision seeks to focus solely on the key issues. The omission to refer to or make findings about every statement or document mentioned is not a tacit acknowledgement of the accuracy or truth of statements made or documents received. Not all of the various matters mentioned in the bundles or at the hearing require any finding to be made for the purpose of deciding the relevant issues in this application. The Decision is made on the basis of the evidence and arguments the parties presented, as clarified by the Tribunal in the hearing, and is necessarily limited by the matters to which the Tribunal was referred.

The Hearing

8. The Applicants were represented at the hearing by Mr Peter Eliot, of Justice for Tenants. The First Respondent, Mr Jonathan Krogdahl, appeared on behalf of the Respondents. Each provided a helpful skeleton argument in advance of the hearing, for which we are grateful.

9. Each of the Applicants gave evidence, and was cross-examined by Mr Krogdahl. He then gave evidence, and was cross-examined by Mr Eliot. We are grateful to all witnesses for their evidence, and would add that we make allowance for the fact that giving evidence as he did via video link from Australia, it was very late in the evening for Mr Krogdahl when he came to give his evidence, and after midnight for submissions. For those reasons we sat through the usual luncheon adjournment, allowing just a brief pause of 10 minutes.

Relevant statutory provisions

Housing and Planning Act 2016 (*"the 2016 Act"*)

10. Section 40

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

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

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

	Act	***section***	***general description of offence***
1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house
7	Housing and Planning Act 2016	section 21	breach of banning order

<u>Section 41</u>

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

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

Section 43

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

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

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

Section 44

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

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

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

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

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

Housing Act 2004 (*"the 2004 Act"*)

11. Part 2 of the 2004 Act relates to the designation of areas subject to additional licensing of houses in multiple occupation (HMOs).

12. Section 72 specifies a number of offences in relation to the licencing of houses.

Section 72

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part … but is not so licensed.

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

13. Section 61(1) provides:

(1) Every HMO to which this Part applies must be licensed under this Part unless—

(a) a temporary exemption notice is in force in relation to it under section 62, or

(b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.

14. Section 55 provides for HMOs to be licensed by local authorities in circumstances including, by section 55(2)(b), any HMO in an area designated by the authority under section 56 as subject to additional licensing, by relation to any description of HMO specified in such designation.

15. Other relevant sections of the 2004 Act include:

Section 251

(1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) a director, manager, secretary or other similar officer of the body corporate, or

(b) a person purporting to act in such a capacity,

he as well as the body corporate commits the offence and is liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Section 263

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

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

(3) In this Act "person managing" means, in relation to premises, the person who, being an owner or lessee of the premises – (a) receives … rents or other payments from … persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or (b) would so receive those rents or other payments but for having entered into an arrangement … with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments …

The Property

16. The Property is described as a 3-bedroom self-contained flat with a shared kitchen and bathroom. It is situated within the City of Westminster. The Tribunal noted from the material provided that it is contained within an early 20th Century building converted to provide a

number of flats with accommodation on 5 floors including basement and mansard.

17. On 21 April 2021 Westminster City Council in the exercise of its powers under section 56 of the 2004 Act designated the entirety of the district of the City of Westminster for additional licensing, which applied to all HMOs occupied by 3 or more persons comprising 2 or more households. That designation came into force on 30 August 2021 and shall cease to have effect on 31 August 2026.

18. It was common ground between the parties that at all material times the Property met the criteria to be licensed as an HMO within the meaning of s.72(1) of the 2004 Act, and not being subject to any statutory exemption.

19. It was agreed between the parties that during the relevant period of 16 May 2022 to 15 May 2023 the Property was occupied by at least three persons living in two or more separate households, and occupying it as their main residence.

20. The Property was accordingly required to be licensed, but no license was sought or obtained until the Respondents applied on 16 May 2023. The tribunal accordingly has jurisdiction to make an RRO.

The Identity of the Landlord

21. Central to the case is the issue of the identity of the landlord for the purpose of considering the application for an RRO. That requires the Tribunal to consider the circumstances of the letting in some detail.

22. Leasehold title to the Property was acquired on 30 June 2021 by the company Ewan Partners Limited (company no. 06316091) (*"**the Company**"*). The Company's title was registered on 3 August 2021.

23. The Respondents are each directors of the Company, and Mrs Nicoleta Krogdahl is Company Secretary. Each are noted as persons with significant control, and Mr Krogdahl confirmed in evidence that they are the shareholders of the Company. The registered office of the Company is in Cavendish Square, London W1.

24. On 11 September 2021 the Property was let on an assured shorthold tenancy for a term of 24 months, with a 12-month break clause to Baptiste Jupet, Christian Maschka and a gentleman named Come De Germay De Cirfontaine. Notable features of that tenancy agreement include the named landlord as being Mr Jonathan and Mrs Nicky Krogdahl, the landlord's address as being Mr and Mrs Krogdahl's (then) home in Sevenoaks, and clause 1.4, concerning alternative address for the landlord being marked *"N/A"*.

25. The monthly rent of £3,400 after a discounted sum for the first month was by the agreement to be paid into a specified National Westminster Bank account in the name of Ewan Partners Ltd.

26. The tenancy agreement was signed by the Second Respondent, as 'landlord' using her full name, Nicoleta Krogdahl, and bearing the date 01/09/21.

27. Mr De Cirfontaine vacated the Property in September 2022, at which point Mr Alexis Dupau effectively took over the room he had occupied. No new tenancy agreement was created from any particular date in 2022; rather Mr Jupet, Mr Maschka and Mr Dupau each signed (or, in the case of two of them, re-signed) a copy of the earlier 2021 tenancy agreement on various dates in August and early September 2022. But for the new signatures, and the transposition of Mr Dupau's name for Mr De Cirfontaine's, the remaining terms of the agreement signed at that time appear identical to the 2021 agreement.

28. The agreement signed by the tenants in August and September 2022 was again countersigned as landlord by Nicoleta Krogdahl, against the date 11/08/2021. The signature is noticeably different to that on the agreement signed in 2021, so that it would appear to have been re-signed by her, and the 11/08/2021 date to be a typographical error, not least because it pre-dates the agreement signed in 2021.

29. Mr Dupau moved in on 11 September 2022.

30. The Applicants each paid their rent to the Company, in accordance with their contractual obligation, albeit that in consequence of an error Mr Dupau's first rent instalment was transferred by him to Mr Jupet, who then forwarded it on to the Company. We accept Mr Dupau's and Mr Jupet's evidence on this point and reject in their entirety the Respondents' somewhat fanciful assertions of wrongdoing and deliberate falsehood on Mr Dupau's part.

31. The Respondents contend that in consequence of the fact that the Company is the registered proprietor and it was to the Company that the rent was paid, the Company was the Applicants' landlord, and not them. In support of this proposition they produce financial evidence to demonstrate that in the financial year 2022-3 they received salary, benefits and dividends from the Company of £31,714 between them, and assert that none of this was attributable to rental income derived from the Property, where all remained in the Company and was swallowed up by mortgage instalments, maintenance costs and management of the Property.

32. We note that some of the financial evidence provided by the Respondents in fact related to Ewan Partners Consulting Limited, a different company (see e.g. Respondent's bundle pp. 81, 86).

33. The Respondents also contend that the signing of the ASTs by the Second Respondent was a matter of convenience only, and the use of the home address was as a secondary place of work for the Company, where it would not (they say) have been practical or acceptable to stamp an AST for new tenants with a company logo. We wholly fail to understand this submission: companies very frequently let properties to individuals, and can be bound by the simple signature of a director, witnessed where appropriate.

34. At no time was any correspondence from Mr or Mrs Krogdahl said to be sent by them on behalf of the Company, until long after the Applicants had vacated, and this application had been made.

35. Mr and Mrs Krogdahl corresponded with the Applicants using their personal email addresses, not any associated with the Company.

36. Indeed, besides the vehicle for the receipt of rents, the Company was never mentioned during the currency of the tenancy. By way of example, in what proved a pivotal piece of correspondence dated 10 May 2023, Mrs Krogdahl, in explaining that the tenants' request to renew their tenancy would be refused, and purporting to give 2 months' notice, repeatedly used the word *"we"* in explaining that the rules for landlords regarding HMOs required licensing, and various alterations to the Property that *"we"* were not inclined to embark upon. Had the Company been the landlord, as contended for by the Respondents, the Tribunal finds it most odd that the letter was not framed around *'the Company's'*, or *'Ewan Partners'* reluctance to embark on these measures.

37. The Deposit Protection Certificate dated 20 September 2021 named Mrs Nicky Krogdahl as landlord or letting agent.

38. The application for the HMO licence was made by Mr Krogdahl in his own name, not by the Company, nor by him in his capacity as director, and it was issued to him on 16 May 2023 in that name.

39. In cross-examination, Mr Krogdahl conceded that in his capacity as director and shareholder of the Company he would be in receipt of the rents paid by the tenants to the Company if as director he disbursed those funds, which he said he might do depending upon the advice of his accountant.

40. Perhaps most telling of all, on 11 September 2023 two notices were served upon the Applicants. The first, being a landlord's notice proposing a new rent under section 13(2) of the Housing Act 1988

identified the Respondents as landlords, their home address as the address for correspondence, their personal telephone numbers and was signed by each of them, as landlords.

41. The second notice, in Form 6A, seeking possession of the Property under Section 21 of the 1988 Act, was again signed by each of the Respondents, who gave their names, home address and telephone numbers. One or other of them (or both) entered a cross in the appropriate box to assert themselves as being *"joint landlords"*.

42. In neither notice did any mention of the Company appear.

43. The Respondents refer to the reported cases of ***Rakusen v Jepson & Ors*** **[2023] UKSC 9** as authority for the proposition that an RRO cannot be made against a 'superior landlord', and ***Kaszowska v White*** **[2022] UKUT 11 (LC)** as authority for the proposition that an RRO cannot be made against the director of a company landlord.

44. ***Rakusen*** was concerned with circumstances where the superior landlord had granted a 36-month tenancy to a company, which then entered into separate sub-letting agreements with the applicants. It was held that the statutory framework did not permit RROs to be made against superior landlords in such circumstances.

45. ***Kaszowska*** may be readily distinguished from the present case, where it was concerned with letting agreements granted by a company, and where the Respondent was a director of that company, against whom they sought an RRO after the company itself went into liquidation.

46. Here, by contrast to both, the tenancy agreements bear no mention of the Company as a contracting party, are clearly in the names of the Respondents as landlords, and were signed by the Second Respondent, as we find, in her personal capacity, giving no hint of the existence of the Company as anything other than the recipient account for the rent.

47. The Applicants draw our attention to the recent case of ***Shah v McLaughlin*** **[2024] UKUT 69 (LC)**, where the facts were that the respondent to the FTT claim was the sole director and shareholder of a company which owned the subject property, as with the Respondents (save that they are two) in the present case. The tenancy agreement relied upon by the FTT in reaching its decision named the respondent, not the company as landlord, as in the present case. The tenants initially paid their rent to a third-party letting agent, but later to the company. The latter state of affairs mirrors the present case. The FTT found that the respondent was the landlord, and made an order for an RRO against him. On appeal to the Upper Tribunal, it upheld the decision of the FTT.

48. The respondent in ***Shah*** had not himself signed the tenancy agreement, but it was signed on his behalf by an agent. That, the Applicants contend, makes the present case an even clearer example, where rather than a tenancy agreement having been signed by an agent on the respondent's behalf, as in ***Shah***, the tenancy agreements in the present case were twice signed by the Second Respondent.

49. The parallels of the facts of this case with those in Shah, measured against the material differences to the cases of ***Rakusen*** and ***Kaszowska***, allied to the specific matters set out in §§34-42 of this decision, leads the Tribunal to conclude that the rents in the present case were directed to be paid to the Company, of which the Respondents are the only directors and shareholders, as their agent.

The Tribunal's Determination – Identity of the Landlord

50. The landlords named on the tenancy agreements are the Respondents, they acted in that capacity through the duration of the tenancies, and at their conclusion, in serving the notices in September 2023. Consequently, we hold that they are the relevant landlords for the purposes of the rent repayment order.

Tribunal's analysis

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

52. As we have found, the Respondents were the landlord for the purposes of section 43(1) of the 2016 Act, as explained in the paragraphs preceding, and as summarised in §50 of this decision.

53. The next question is whether the Respondents were, each *"person having control of or managing"* the Property within the meaning of section 263 of the 2004 Act. The evidence shows that the rent was paid to the Company, where Mr Krogdahl conceded that in his capacity as director and shareholder of the Company, he would be in receipt of the rents paid by the tenants to the Company if as director he disbursed those funds, which he might do depending upon the advice of his accountant.

54. We have already found that the Respondents were the landlords of the Property, and that they managed it, in the manner defined by section 263(2) of the 2004 Act.

55. Where the Respondents seek to contend that they are not liable for any offence committed by the Company (of which they are the two officers,

and the two persons having significant control), section 251 of the 2004 Act operates to hold them personally liable if the offence is committed with their connivance, consent or is attributable to their negligence. The Respondents were quite clearly the guiding and directing minds of the Company.

56. We are, accordingly, satisfied that the Respondents both had control of and managed the Property, and are liable in their personal capacities.

The defence of "reasonable excuse"

57. Under section 72(5) of the 2004 Act, it is a defence that a person who would otherwise be guilty of the offence of controlling or managing a house which is licensable under Part 3 of the 2004 Act had a reasonable excuse for the failure to obtain a licence. The burden of proof is on the person relying on the defence.

58. In this case, Mr Krogdahl for the Respondents has provided detailed evidence of a succession of family bereavements between 2021 and 2023, against what he characterises as HMO licensing law changes. He points out that the Respondents did not act with bad faith or wilful neglect, and that once the oversight was realised the Respondents took immediate steps to apply for the requisite licence.

59. We accept that the explanation is credible. Nevertheless, it was the Respondents' responsibility to obtain a licence and there is nothing in the explanation provided which in our view is sufficient to amount to a complete defence. In particular, there is nothing to suggest that the matter was wholly outside the Respondents' control or that they were relying on somebody else to take appropriate steps in circumstances where it was reasonable to do so.

60. The purpose of the licensing regime is to try to ensure – insofar as is reasonably possible – that properties which are rented out are safe and of an acceptable standard, and it would frustrate that purpose if landlords could be excused compliance simply because their personal circumstances caused them to neglect to apply for a licence.

61. The Tribunal therefore concludes, beyond reasonable doubt, that the Respondents had no reasonable excuse for failing to seek the necessary licence.

The offence

62. Section 40 of the 2016 Act confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence listed in the table in sub-section 40(3), subject to certain conditions

being satisfied. An offence under section 72(1) of the 2004 Act is one of the offences listed in that table.

63. Section 72(1) states that *"A person commits an offence if he is a person having control of or managing a HMO which is required to be licensed under this Part … but is not so licensed"*, and for the reasons given above we are satisfied (a) that the Respondents were, together, "person(s) managing" the Property for the purposes of section 263 of the 2004 Act, (b) that the Property was required to be licensed throughout the period of claim and (c) that it was not licensed at any point during the period of claim.

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

65. We accordingly find that the Respondents each committed the offence under s.72(1) of the 2004 Act.

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

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

67. The amount of rent to be ordered to be repaid is governed by section 44 of the 2016 Act. Under sub-section 44(2), the amount must relate to rent paid by the tenants in respect of a period, not exceeding 12 months, during which the landlords were committing the offence. Under sub-section 44(3), the amount that the landlords may be required to repay in respect of a period must not exceed the rent paid in respect of that period less any relevant award of housing benefit or universal credit paid in respect of rent under the tenancy during that period.

68. In this case, the Applicants' claims relate to a period not exceeding 12 months: Mr Jupet and Mr Maschka each claim for the 12-month period 16/5/22 – 15/5/23, while Mr Dupau claims for the shorter period 11/9/22 – 15/5/23.

69. The Applicants' bundle contains copy bank statements showing the payment of rent to the Company, and three helpful short spreadsheets

containing calculations of the maximum amount of rent asserted to be repayable. These total £36,489.54.

70. In their skeleton argument, for the first time the Respondents raised an allegation of unpaid rent in the sum of £1,300. This transpired to have been rent paid by Mr Dupau to Mr Jupet, which was then transferred to the Company, so that the allegation of unpaid rent is unjustifiable.

71. We are satisfied on the basis of the evidence that the Applicants were in occupation for the whole of the period to which each of their separate rent repayment applications relate and that the Property required a licence for the whole of that period. Therefore, the maximum sum that can be awarded by way of rent repayment is the sum of £36,489.54, this being the amount paid by the Applicants by way of rent in respect of the period of claim.

72. Under sub-section 44(4), in determining the amount of any rent repayment order the tribunal must, in particular, take into account (a) the conduct of the landlord and the tenant, (b) the financial circumstances of the landlord, and (c) whether the landlord has at any time been convicted of an offence to which the relevant part of the 2016 Act applies.

73. The Upper Tribunal decision in ***Vadamalayan v Stewart (2020) UKUT 0183 (LC)*** is one of the authorities on how a tribunal should approach the question of the amount that it should order to be repaid under a rent repayment order if satisfied that an order should be made. In her analysis in ***Vadamalayan***, Judge Cooke states that the rent (i.e. the maximum amount of rent recoverable) is the obvious starting point, and she effectively states that having established the starting point one should then work out what sums if any should be deducted.

74. In Judge Cooke's judgment, the only basis for deduction is section 44 of the 2016 Act itself, and she goes on to state that there will be cases where the landlord's good conduct or financial hardship will justify an order less than the maximum.

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

treated as the last word on the exercise of discretion required by section 44.

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

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

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

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

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

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

    (b) subtract any element of that sum that represents payment by the landlord for utilities that only benefited the tenant;

    (c) consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made and compared to other examples of the same type of offence; and

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

81. Adopting the ***Acheampong*** approach, the whole of the rent in this case means the whole of the rent paid by the Applicants, being £36,489.54.

Utilities

82. In relation to utilities, the tenancy agreement provides that the tenants are responsible for paying for water supply, gas, television license, broadband, electricity and so on.

83. In their skeleton argument, the Respondents assert that during the period of their occupation the Applicants were responsible for paying the Building Utilities Service Charge, in the sum of £5,177.70, which should be deducted from any calculation of liability. We disagree. Albeit that there is no evidence of the sums paid, these will be in the manner of service charges payable under the head lease of the Property to the freeholder for services including, *inter alia*, repairs and maintenance of the building, thereby preserving the asset. They are not charges that solely benefitted the Applicants and are not, therefore, recoverable.

84. Accordingly, nothing falls to be deducted under this head.

Seriousness

85. In ***Acheampong v Roman*** at §20(c), Judge Cooke held that the Tribunal must consider how serious the housing offence forming the basis of the application is, 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 offence. As the issue was put in §21 of the judgment, this *"…is an assessment of the conduct of the landlord specifically in the context of the offence itself; how badly has this landlord behaved in committing the offence?"*

86. Failure to license leads – or can lead – to significant health and safety risks for often vulnerable tenants, and sanctions for failure to license have an important deterrent effect on future offending as well as encouraging law-abiding landlords to continue to take the licensing system seriously and to inspire general public confidence in the licensing system. In addition, there has been much publicity about licensing of privately rented property, and there is an argument that good landlords who apply for and obtain a licence promptly may feel that those who fail to obtain a licence gain an unfair benefit thereby and therefore need to be heavily incentivised not to let out licensable properties without first obtaining a licence. Furthermore, even if it could be argued that the Applicants did not suffer direct loss through the Respondents' failure to obtain a licence, it is clear that a large part of the purpose of the rent repayment legislation is deterrence. If landlords can successfully argue that the commission by them of a criminal offence to which section 43 of the 2016 Act applies should only have consequences if tenants can show

that they have suffered actual loss, this will significantly undermine the deterrence value of the legislation.

87. Against that expression of policy concerns, it is nevertheless the case that the offence under s.72(1) of the 2004 Act is significantly less serious than those in rows 1, 2 and 7 in the table in section 40 of the 2016 Act, and we take that into account, following the guidance the Upper Tribunal in ***Dowd v Martins* [2023] HLR 7**, where offences of failing to licence in accordance with section 72(1) of the 2004 Act were expressed as being "*…generally less serious than others for which a rent repayment order can be made.*"

88. The nature of a landlord has been held to be relevant to the seriousness of the offence. In some cases, it has been argued that there is a distinction to be drawn between "professional" and "non-professional" landlords, seriousness being aggravated in the case of the former. The proper approach is as set out by the Deputy President in ***Daff v Gyalui* [2023] UKUT 134 (LC)**, at paragraph 52:

"The circumstances in which a landlord lets property and the scale on which they do so, are relevant considerations when determining the amount of a rent repayment order but the temptation to classify or caricature a landlord as "professional" or "amateur" should be resisted, particularly if that classification is taken to be a threshold to an entirely different level of penalty. … The penalty appropriate to a particular offence must take account of all of the relevant circumstances."

89. As to the condition of the Property, we consider that it has been refurbished, decorated and maintained to a high standard. We reject the case advanced on behalf of the Applicants that it suffered disrepair and maintenance issues to any significant degree. We shall address the issue of a defective light switch below.

90. The Applicants also raise issues with the fire safety in the Property, albeit that these appear to have been brought up only at the end of their occupation. They allege that none of the bedrooms contained smoke detectors. The internal doors within the Property were not fire compliant, and the fire exit, leading from the kitchen, was adjacent to the gas stove. No fire extinguisher, fire blanket, fire escape labelling or fire safety certificates were provided.

91. The Respondent, by contrast, demonstrates that the front door was brought up to applicable fire standards during June 2023, at the request of the building manager.

92. The Applicants raise what appears to the Tribunal to be relatively a minor complaint concerning damp and an accumulation of mould in the sitting room, to which the Respondents provided a dehumidifier, which

appears to the Tribunal to have been a perfectly reasonable response, albeit that the Applicants suggest it may have been somewhat inadequate at times.

93. We cannot ignore the fact that the Respondents, through their various business interests, managed a number of properties: although he appeared reluctant to answer the questions posed, in cross examination Mr Krogdahl conceded that, at the time, the Company let out 5 properties, all HMOs. We take account of the Respondents' failure to keep abreast of their legal obligations, and the duration of the offence.

94. In order to assess the starting point at stage (c), we take account of the now substantial guidance in case law from the Upper Tribunal, including cases in which the Upper Tribunal has substituted its own assessments. In particular, we have considered **Acheampong** itself, ***Williams v Parmar and Others* [2021] UKUT 244 (UT), [2022] H.L.R. 8**; ***Aytan v Moore* [2022] UKUT 27 (LC)**; ***Hallett v Parker* [2022] UKUT 239 (LC)**; ***Hancher v David and Others* [2022] UKUT 277 (LC)**; and ***Dowd v Martins and Others* [2022] UKUT 249 (LC)**. The range of percentage of the maximum possible RRO awarded range from 25% to 90% (i.e. at stage (d) – most of the cases precede ***Acheampong***).

95. The Applicants highlight the case of ***Newell v Abbott* [2024] UKUT 181**, where the Upper Tribunal awarded 60% of the rent received to the tenants from a landlord of a single property based upon a lack of licensing due to a lack of attention or inadvertence, where the accommodation was generally of a good standard.

96. In the light of the very good condition of the Property, and general responsiveness of the Respondent landlords, against the fire safety concerns raised, we consider that the starting point for this offence at stage (c) should be 50% of the maximum rent payable.

Section 44(4) – Conduct

97. At stage (d), we must consider what effect the matters set out in Section 44(4) of the 2016 Act have on our conclusions thus far. Section 44(4) provides that in determining the amount of an RRO, within the maximum, the Tribunal should, in particular, take into account the conduct of the landlord and the tenant, and the financial circumstances of the landlord.

98. As Judge Cooke noted in ***Acheampong,*** there is a close relationship in terms of conduct, at least of the landlord, between stages (c) and (d). Insofar as we have already made findings in relation to stage (c) which may also be said to relate to the conduct of the Respondent, we do not double-count them in considering the section 44(4) issues.

99. The Applicants appear to have lived in the Property perfectly happily for around 18 months, enjoying a cordial relationship with the Respondents, until the events of and after April 2023.

100. In July 2023, Mr Jupet noticed that a light switch in the kitchen was not functioning as it should, being stuck halfway between the on and off position, so that the kitchen lights were more or less permanently illuminated, occasionally flickering, turning off and then on again. He immediately contacted the Second Respondent who proposed leaving the faulty switch in place for the time being. Later in the evening Mr Maschka came home, and immediately recognised that the switch was arcing, which he perceived to present a hazard, informed to substantial degree by his qualifications including a Master's degree in electrical engineering. Rather than wait for an electrician, he took what appears to the Tribunal to have been the very sensible step of deactivating and removing the faulty switch, connecting the wires inside in a junction box, insulated with electrical tape, before replacing the now deactivated switch on the wall. This eliminated the immediate risk, albeit leaving he kitchen poorly lit as a result.

101. Mr Jupet then corresponded with the Second Respondent concerning the issue, who agreed to and did send a new light switch, which Mr Maschka installed following delivery, enabling the kitchen lighting to be used as before. The Tribunal has seen correspondence sent by the Respondent after the agreement to obtain a new switch, asking the Applicants not to effect an installation. The Respondents did not however state that they were arranging for an electrician, and none in fact attended. Indeed, the changed light switch functioned perfectly and was not mentioned as an issue during later discussions regarding the Applicants' deposit following their vacation of the property.

102. The other key allegation levelled against the Applicants is that they failed to vacate the Property upon expiry of their tenancy, on 10 September 2023, and remained in occupation until 17 October of that year. The Tribunal notes that they were lawfully entitled to do so, as periodic tenants holding over at the end of their tenancy, until determined by service by the Respondents of the appropriate notice under the Housing Act 1988. It is clear to the Tribunal that they kept the Respondents informed of their attempts to find alternative housing, and we discern nothing to criticise in them remaining *in situ* for one month and one week after the end of the contractual tenancy.

103. It follows that despite Mr Krogdahl's strident observations and series of allegations, discussed in more detail below, we do not consider that the conduct of the Applicants can be seriously impugned.

104. This took place against the background of mounting unpleasantness directed at the Applicants by Mr Krogdahl, whose behaviour became, we find, quite extraordinary. This had its genesis in correspondence raised

by the Applicants in April 2023 seeking to engage in negotiations for a new tenancy of the Property upon expiry of the subsisting agreement on 10 September 2023. This led a series of proposals and counter-proposals as to the level of rent that might be charged. There was nothing unusual in all this.

105. On 10 May 2023 the Second Respondent wrote to the Applicants advising that due to the HMO requirements, which by then the Respondents had become aware of, they were no longer willing to extend the tenancy agreement, and indeed sought to terminate it as at 10 July 2023. The attempt at giving 2 months' notice was of no legal effect, as it was not supported by the appropriate Housing Act notice (and, indeed, the later tenancy agreement contained no provision for early termination that we can discern) but it served to cause concern to the Applicants as to their housing status.

106. Mr Jupet wrote back on 15 May expressing surprise that the Property was not compliant with HMO regulations, articulating the Applicants' desire to remain in occupation, referring to the situation as being *"tricky to navigate for both parties"*, and inviting the Respondents to discuss the situation by telephone.

107. In his evidence Mr Krogdahl sought to characterise that email and the request for a telephone call as being threatening on the part of the Applicants. In response to questions from the Tribunal he agreed that he perceived the request for a call as intimidating, as he perceived that the Applicants might put things verbally that they would not be prepared to commit to writing.

108. Having heard all four witness of fact we find that by no objective token could the request for a verbal discussion be construed as threatening by any person of reasonable firmness, as we find Mr Krogdahl to be. It was an entirely understandable desire to discuss whether a way through the identified problem could be found, where the Applicants wished to continue living at the Property. Indeed, Mr Krogdahl confirmed in his evidence that at no time was a threat actually made to him and his wife by the Applicants. At its highest, it seemed, he believed that the Applicants were attempting to use the HMO licensing difficulty to seek to negotiate a lower rent, a somewhat hopeless task where it was clear from May 2023 that the Respondents refused to consider granting any new tenancy to them in any event.

109. In the interim, Mr Krogdahl made application for an HMO licence on 16 May 2023, albeit that this was not disclosed to the Applicants at the time.

110. Mr Krogdahl took over the business of corresponding with the Applicants, and by email dated 17 May 2023 suggested altering the 2 months' notice purportedly given on 10 May by reverting to the contractual term expiring on 10 September 2023.

111. The Applicants state that they found difficulty in finding alternative accommodation, and it appears that one or more telephone calls took place between one or more of the Applicants and the Second Respondent, prompting Mr Krogdahl to write again to Mr Jupet on 31 August 2023, regarding the perceived implication that they intended to stay in occupation later than 10 September 2023. That email threatened to withhold any landlord's reference, and included the following:

"...given that you have probably never been in this situation in the UK before, it is worth me highlighting to you the likely steps that will be taken should you choose to stay beyond this contractually agreed end date, on the 11th September we will:

1. Begin the process of having you formally evicted from the property (Section 8). When we have been forced to run this process in the past, we have been required to prepare a case to present to a county court judge (should it get this far). ***In doing so, we will collate all documented exchanges and will be requesting character references from your employers in support of our case****.*

2. Serve you the required one-months' notice of our intention to increase the rent to a market-based rental amount. To set this figure, we will conduct both desk-based research and local agency interviews but given the information currently to hand, expect this to be in the region of £5,500 to £6,000 per month..." (emphasis added).

112. We find the mention of requests to seek references from the Applicants' employers to be both objectively absurd in the context of an intimated application for possession, but to have been – and to have been intended to have been understood to have been – deliberately intimidating, by threatening to involve the Applicants' employers in a private landlord and tenant dispute between the Applicants and Respondent.

113. Mr Krogdahl warmed to his theme. Upon being requested by the Applicants to serve notice in the correct form under the Housing Act 1988 to terminate the tenancy, he wrote on 3 September 2023 including the following:

"We will begin the process for eviction and will record all of our costs for doing so, which we intend to claim from you even if this process doesn't proceed to court. ***Can you each please share the name of your manager to help with character references as we prepare for this eviction process? This will avoid the need for me to call your company's reception and potentially speak to the wrong people in trying to find out who you report to.****"*

114. In cross-examination Mr Krogdahl repeatedly refused to accept that the intimation that he would speak to the Applicants' managers could in any

way be deemed a threat. He continued to hold to the – as we find – ridiculously unsupportable position that such was an entirely normal incidence of possession proceedings generally. When pressed, Mr Krogdahl's evidence was that he reacted strongly and these were *"ill-judged"* comments, stating *"when attacked I defend myself aggressively."*

115. Mr Krogdahl had not been attacked. At its highest, the Applicants were transparently explaining their difficulties in finding alternative accommodation, anticipating that they would be holding over for a limited period as we have found they were lawfully entitled to do.

116. There was no justification for such correspondence. It was entirely unfounded. We find that its purpose was to intimidate.

117. In September notices were served both seeking possession under s.21 of the Housing Act 1988 and seeking to increase the rent. The Applicants agreed to and did pay the increased rent for the last few days of their tenancy, rather than seek to dispute the sums claimed on application to the Tribunal.

118. On 13 September 2023 Mr Krogdahl wrote accusing the Applicants of blackmail, and entirely indefensibly threatening to report Mr Dupau to the Crown Prosecution Service for fraud, in relation to the banking anomaly at the outset of his tenancy where his first rental payment had been transferred to his flatmate first, and then to the Company. Insofar as is relevant, the Tribunal finds that this was a consequence of Mr Dupau being provided with Mr Jupet's bank account and sort code details, with which he was able to 'force' through the transaction, notwithstanding that these did not match the Company's own account. Quite why this has exercised Mr Krogdahl to such a degree is unfathomable: the result was that the Company was paid Mr Dupau's rent contribution, albeit a single day later than anticipated.

119. Subsequently, a report of fraud was made by Mr Krogdahl to Mr Dupau's bankers and an investigation followed that caused considerable difficulty to Mr Dupau in operating his banking facilities for a period, ultimately resolved in his favour by a determination that he had engaged in nothing untoward. Remarkably, Mr Krogdahl has exhibited a slew of correspondence relating to the matter in the apparent belief that this assists the Respondents' case. It does not. It adds to the picture of his response to the Applicants as being maliciously vindictive, for reasons best known to himself.

120. The Applicant tenants found alternative accommodation and wrote to Mr Krogdahl advising him that they would be able to leave on 17 October 2023. That prompted another remarkable series of exchanges where, finding it inconceivable that three young professional men in good, well-paid employment would be able to find alternative accommodation in

the absence of a reference from the Respondents, Mr Krogdahl sought to imply in correspondence his suspicion that the Applicants might have sought to falsely provide a reference he had not given. Upon being assured that this had not transpired, and having been provided with the Applicants' forwarding address, he took it upon himself to investigate the identity of the landlord of those premises, a name he had not been provided with by the Applicants. He then wrote on 24 October *"On the reference front – thank you for confirming and I am sure Mr Yousef will confirm the same."* Mr Yousef was the Applicants' new landlord: Mr Krogdahl had no justified business in seeking his identity, and we find that his purpose was, again, to intimidate by intimating that he was in a position to create difficulty for the Applicants in their relations with their new landlord.

121. Upon examination of rent paid, the Applicants discovered that they had inadvertently overpaid in sums totalling £830.62. Upon raising this with the Respondents, Mr Krogdahl initially refused to refund it, asserting that it might be viewed as a *"gratuity for us being fantastic landlords"*. After some emails back and forth Mr Krogdahl agreed to refund £633.54 of the overpayment, before unilaterally declaring that he would only refund £337.92, and finally on 7 November 2023 notifying the Applicants by email that the Respondents were no longer willing to refund any monies derived from the overpayment. The Applicants' uncontested evidence is that no sum has been repaid. We find that the Respondents had no right to withhold payment of sums to which they were not contractually entitled, a further example of the egregious conduct of Mr Krogdahl in particular.

122. On 1 August 2024, after issue of the RRO application and, as the Tribunal finds, plainly reactive to it, the First Respondent sent to the Applicants an invoice in the name of the Company the total sum of £10,620.90 relating to what was by then alleged to have been defective installation of the switch, comprising the (perfectly reasonable, on its face) sum of £150 for an electrician to inspect, £54.94 for the Respondent's alleged travel expenses, £1,411.04 for the Respondent's time, at a rate of £156.25 per hour, and £9,004.90 said to be a *"Contract Breach Penalty Fee – equivalent to rent loss potential from the time of the breach (3rd Aug '23) to arrival of new tenants (28th Oct '23)"*.

123. As Mr Krogdahl conceded in cross-examination, there was in fact no documentary evidence whatsoever that the light switch installation was in any way faulty. An installation certificate he had himself exhibited suggested that the electrical installations appeared to be in good condition.

124. Even were the installation faulty (of which there is no evidence) there was no contractual obligation to reimburse the Respondents for travel expenses or their time, and the "*Contract Breach Penalty Fee"* can be no more than an assertion of some manner of claim for damages, suffering

from the fact that no discernible breach of contract was committed by the Applicants on 3 August 2023, and any claim for loss of rent is palpable nonsense where the Applicants remained lawfully in occupation, holding over under the terms of the contractual tenancy until they vacated the Property on 17 October 2023. The Tribunal also notes from the terms of the document that the Property was apparently re-let within 11 days of the Applicants' departure.

125. Not content with his unwarranted demand for £10,620.90, Mr Krogdahl then, by email dated 9 August 2024, asserted what appears to the Tribunal to be another wholly unjustifiable claim based upon the alleged frustration of a previously uncommunicated desire to sell the Property in 2023, meaning that capital had been unable to be applied to more lucrative projects. The (as we find) wholly unjustified sums sought in relation to the light switch, as augmented by this novel concept, never before articulated, led to a demand from the First Respondent for payment of the total sum of £28,303.87 to the Company.

126. Insofar as is necessary for the purposes of considering conduct within the meaning of s.44(4), we find that not a penny of the sums demanded was, in fact, payable as a consequence of the Applicants' tenancy conditions, or the circumstances of their departure. The purpose was, characteristically, to intimidate, against the ongoing RRO application.

127. This has, apparently, led to County Court proceedings by which the Company seeks the sums alleged. What view that Court takes of these issues is of course a matter for it, but we must take the evidence as we find it, and articulate our own conclusions.

128. The purpose of these unwarranted demands for large sums was, we find, was to seek to coerce the Applicants to withdraw their RRO application, which Mr Krogdahl then proposed, in characteristically threatening fashion, stating that irrespective of the outcome of the present case, the Respondents are so incensed at the alleged injustice of the tenants' actions that they propose to use this decision as an example to share with the media, UK real estate agencies and industry bodies to establish a *"rogue tenants register"*.

129. In a particularly deplorable piece of correspondence sent to all three Applicants on 14 September 2024, against the background of both this application and the County Court proceedings, Mr Krogdahl referred to the ongoing County Court matter, and reverted to type with still further threats directed against the Applicants' employment, referring to his previous experience of employment in senior positions in the financial sector, and alleging that a registered County Court judgment would lead automatically to ***"…a flat 'don't hire' for any FCA/PRA regulated positions. Given that you all work in financial and professional services, I just want to make sure that your 'lawyer' has advised you accordingly."***

130. We find that Mr Krogdahl, once more, was deliberately seeking to intimidate the Applicants in relation to their continued prosecution of the RRO application, *as was entirely their right*, by threatening their future employment prospects.

131. We are also informed that Mr Krogdahl had made a criminal complaint of blackmail against the Applicants, based upon the *"tricky to navigate"* email, and a related conversation concerning the unlicensed nature of the Property. Entirely predictably, the police confirmed in January 2025 that the allegation revealed no criminal conduct. Equally predictably, the allegation and investigative process cased great anxiety and distress to the Applicants, flowing from the relationship of landlord and tenant. It doubtless also wasted a good deal of police time.

132. Mr Krogdahl's ill-judged onslaughts continued to this Tribunal. In the Respondents' written presentation of their case they unjustifiably alleged fraud against Mr Dupau, in seeking to strike out his claim, and his evidence. They repeatedly, and again entirely unjustifiably alleged blackmail against all Applicants. They variously allege the Applicants to be *"devious"*, *"manipulative"*, *"falsely pious"* (this perhaps alleged with a nod to Judge Jones' written decision in ***Davies & Arwas v Popischek,*** **LON/00AE/HMF/2023/0285**, a readily distinguishable case based on what was found to be deliberately exaggerated allegations by the tenants, in marked contrast to the commendable restraint shown by the Applicants in the present case). They allege contempt of court against the Applicants, again, unjustifiably.

133. Against all this, Mr Eliot submits that we should take account of the Respondents' conduct of these proceedings. He argues that *"the conduct of the landlord and the tenant"* in section 44(4) was not limited to conduct during the relevant period in respect of which the RRO was claimed.

134. Mr Eliot points to a variety of issues in relation to the procedural aspects of the case, including the Respondents' apparent efforts to frustrate service in August 2024 by announcing that they were moving to Australia and deleting their email addresses, addressed by Judge Carr in her response of 23 August 2024.

135. The Respondents then applied in October 2024 for various directions including an order for third party disclosure to *"expose the Applicants' lies"*, prompting Judge Nicol to observe on 18 October that this appeared to be a disproportionate fishing expedition to seek a basis to make further allegations against the Applicants.

136. Nothing daunted, the Respondents persisted in making further unwarranted applications for disclosure, rejected by Judge Martyński on 12 November 2024.

137. In December 2024 the Respondents applied for the Applicants' case to be struck out, rejected by Judge Carr on 27 January 2025.

138. In January 2025 the Respondents made a further application to strike out the Applicants' case on the basis that papers from the Applicants had been sent to them by email, where previous directions had specified post and email, in circumstances where the Respondents had, however, provided no postal address to which paper copies of documents could conceivably be sent. This was rejected by Judge Carr on 29 January 2025.

139. Mr Eliot, for the Applicants, suggests that this conduct goes far beyond the enthusiastic approach of a lay person misunderstanding the Tribunal's processes, submitting that taken together it amounts to vexatious conduct showing disregard for the Tribunal's time and resources.

140. In considering this issue, we direct ourselves in accordance with the decision of the Upper Tribunal in ***Kowalek v Hassanein Ltd*** **[2021] UKUT 143 (LC),** where, at paragraph [38], the Deputy President said that in the subsection,

"[n]o limit is imposed on the type of conduct that may be considered, and no more detailed guidance is given about the significance or weight to be attributed to different types of conduct in the determination. Those questions have been left to the FTT to resolve."

141. ***Kowalek*** concerned the tenants' conduct in failing to pay the rent. It appears that the arrears of rent that were in issue as conduct did in fact occur during the relevant period (although it is not altogether clear whether they continued after it as well, and if so, whether that was taken into account by the FTT). However, in the appeal of that decision, reported at **[2022] EWCA Civ 1041, [2022] 1 W.L.R. 4558**, the Court of Appeal quoted with approval the Upper Tribunal in ***Awad v Hooley*** **[2021] UKUT 55 (LC)**, at §36:

""The circumstances of the present case are a good example of why conduct within the landlord and tenant relationship is relevant; it would offend any sense of justice for a tenant to be in persistent arrears of rent over an extended period and then to choose the one period where she did make some regular payments—albeit never actually clearing the arrears—and be awarded a repayment of all or most of what she paid in that period."

142. Thus in ***Awad***, it was exactly the conduct of the tenant at times other than the relevant period that justified a reduction in the RRO. The conduct (in this context) of the tenant in both cases was a failure to pay rent, but as is evident from the broad statement made by the Deputy

President in ***Kowalek*** quoted above, there is no limit to the conduct to which we should have regard, and there is no suggestion that non-payment of rent falls into a special category of conduct that may be taken into account outside the relevant period.

143. Neither do we think that the conduct of proceedings should fall into a special category that *may not* be taken into account. To do so would be to read the words in section 44(4) to mean "the conduct of the landlord *other than in conducting the proceedings*" (cf paragraph [29] of ***Kowalek*** in the Court of Appeal).

144. No doubt there could be no question of taking into account the conduct of a landlord who failed in his or her argument that the criminal offence was not committed, or in submissions as to the amount of the RRO. We do not think it would be right, either, to take into account the conduct of a landlord where the Tribunal found the landlord to be an unsatisfactory witness, or where the Tribunal preferred the evidence of the tenant to that of the landlord in relation to a factual matter.

145. But neither of those are this case. In this case, the very foundation of the Respondents' defence, once the issue of them being the landlord was determined, was their slew of allegations of fraud, blackmail, dishonesty and malice against the Applicants. This went further than simple allegations in the present proceedings, to threats to jeopardise their employment, as we find, to unwarranted allegations to Mr Dupau's bank, engendering a deeply uncomfortable investigation, and at worst a criminal allegation of blackmail made to the police. All of these matters arose from the landlord and tenant relationship between the Applicants and Respondents. These allegations would, if true, constitute serious criminal offences.

146. On the evidence before us, we have found Mr Krogdahl's accusations to be false. In these extreme circumstances, we think it would – in Judge Cooke's words – offend any sense of justice if we did not take this appalling behaviour into account.

147. We also accept Mr Eliot's submission that the campaign of unwarranted applications made by the Respondents, *every one of which was rejected upon judicial consideration*, was indeed a vexatious campaign forming part of Mr Krogdahl's personal vendetta against the Applicants, but also contemptuous of the Tribunal's resources and time.

148. In consequence of this egregious behaviour we find it appropriate to add 20% to the starting point identified, meaning that the final proportion will be 70% of the maximum potential RRO in each case.

Financial Circumstances of the Landlord

149. We are also required to consider the financial circumstances of the landlord under section 44(4).

150. There was limited documentary evidence before the Tribunal of the Respondents' financial circumstances, based upon accounts of the Company and what appeared to be an associated corporate entity.

151. We conclude that the Respondents provided no evidence of financial hardship, or any other circumstances that would lead the Tribunal to conclude that they would or might find it difficult to meet any financial order that this Tribunal might make. Therefore, there is nothing to take into account in relation to their financial circumstances that would require any adjustment to the appropriate percentage.

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

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

Other Factors

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

Amount to be Repaid

154. The four-stage approach recommended in *Acheampong* has been set out above. The amount arrived at by considering the first stage is £36,489.54.

155. No sums are required to be deducted by stage (b) in this case.

156. Considering the further matters required by stages (c) and (d), the Tribunal's conclusion is that the appropriate amount is reduced to 70% of that sum, and there is nothing further to add or subtract for any of the other s.44(4) factors.

157. Accordingly, taking all of the factors together , the rent repayment order should be for 70% of the maximum amount of rent payable. The amount of rent repayable is, therefore, £36,489.54 x 70% = £25,542.68.

158. Apportioned between the Applicants, the sums due to each are as follows:

(i) Baptiste Jupet - £8,654.69;

(ii) Alexis Dupau - £7,429.59;

(iii) Christian Maschka - £9,458.40.

Reimbursement of Tribunal Fees

159. The Applicants applied for the reimbursement of the application and hearing fees paid by them, under Rule 13(2) of the Rules. In the light of our findings, we consider it just and equitable to allow that application.

Postscript

160. Following the hearing, Mr Krogdahl wrote directly to Judge Jones, by letter dated 15 February 2025. We are satisfied that that letter was forwarded to the Applicants' representatives.

161. The contents of the letter have formed no part of the Tribunal's decision on the issues, set out above. It would not be right to take it into consideration where, having been sent after the hearing, the Applicants' representatives have not had the opportunity to address us as to its terms. It in any event adds nothing to the evidence upon which our decision is predicated.

162. The Tribunal would however add this: in respect of Mr Krogdahl's suggestion that the Tribunal should direct that the Applicants pay any monies received from the Respondents to the charity *Shelter*, there exists no jurisdiction to order any such thing. The Tribunal applies the law as it is, not as Mr Krogdahl might wish it to be, and the state of the law is that an RRO requires repayment of rent to the tenant, not a third party. What the Applicants may choose to do with such sums is entirely their own affair.

Name: Judge M Jones **Date: 13 March 2025**

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.

(A) 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.

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

(C) If the application is not made within the 28-day time limit, such application must include a request for 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.

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

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