FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AP/HMF/2021/0197**
HMCTS code (paper, video, audio)		**V: CVPREMOTE**
Property	:	**Flat 6, 46 Coleridge Road, Takoma House, London N8 8ED**
Applicant	:	**(1) Alexander Butcher** **(2) Charlotte Bungay** **(3) Jazz Haddlesey** **(4) Megan McClymont**
Representative	:	**Ms Arjona Hoxha, Represent Law Ltd**
Respondents	:	**(1) Takoma Estates (UK) Ltd** **(2) Takoma Estates Ltd** **(3) Nofax Enterprises Ltd**
Representative	:	**Mr Nir Shamir (director)**
Type of application	:	**Application for Rent Repayment Order under s.41 Housing and Planning Act 2016**
Tribunal member(s)	:	**Judge N Rushton QC** **Ms F Macleod MCIEH**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of hearing	:	**26 May 2022**
Date of decision	:	**16 June 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because no-one requested this and all issues could be determined in a remote hearing. The documents that the Tribunal were referred to were in a bundle submitted by the Applicant of 739 pages. References in square brackets are to page numbers of that bundle. The tribunal also received a skeleton argument, bundle of authorities and costs schedule from the Applicants' representative. The tribunal has also had regard to public records from Companies House available online, some of which were in the bundle.

Decisions of the tribunal

(1) The tribunal is satisfied beyond reasonable doubt that:

a. Takoma Estates Ltd was the landlord of all 4 of the Applicants for the period from 2 September 2019 to 1 December 2019 and it committed an offence under section 72(1) of the Housing Act 2004 ("**the 2004 Act**") in that it had control of and/or managed a house in multiple occupation ("**HMO**") which was required to be licensed under section 61 of the 2004 Act but was not so licensed, during the whole of the said 3 month period.

b. Takoma Estates (UK) Ltd was the landlord of all 4 of the Applicants for the period from 2 December 2019 to 1 September 2020 and it committed an offence under section 72(1) of the 2004 Act in that it had control of and/or managed an HMO which was required to be licensed under section 61 of the 2004 Act but was not so licensed, during the whole of the said 9 month period.

(2) The tribunal makes rent repayment orders against Takoma Estates (UK) Ltd in favour of each of the Applicants as follows:

a. £3,543.75 in favour of Alexander Butcher;

b. £3,543.75 in favour of Charlotte Bungay;

c. £3,543.75 in favour of Jazz Haddlesey;

d. £3,543.75 in favour of Megan McClymont.

(3) No order for any rent repayment order is made against Takoma Estates Ltd since the application against it was issued more than 12 months after the period when any offence was committed by that company.

(4) The tribunal makes an order on the application of the Applicants under rules 13(1)(b) and (2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("**the FTT Rules**") that Takoma Estates (UK) Ltd shall pay the Applicants' costs of this application because that company has acted unreasonably in defending these proceedings. Costs are summarily assessed in the total sum of £6,500, including VAT and the application fee of £100 and hearing fee of £200, to be paid within 28 days of the date this Decision is received by the parties.

(5) The tribunal makes the further determinations as set out under the various headings in this Decision.

The application

1. The Applicants, Alexander Butcher, Charlotte Bungay, Jazz Haddlesey and Megan McClymont, issued an application on 8 August 2021 for rent repayment orders ("**RROs**") under s.41(1) of the Housing and Planning Act 2016 ("**the 2016 Act**") against 3 Respondents: Takoma Estates (UK) Ltd ("**Takoma**"); Takoma Estates Ltd ("**TEL**") and Nofax Enterprises Ltd ("**NEL**"). The application concerns the property known as Flat 6, 46 Coleridge Road, Takoma House, London N8 8ED ("**the Property**").

2. The application was for RROs for the period 2 September 2019 to 1 September 2020, the Applicants claiming that all 4 of them were tenants in occupation of the Property as their only residence throughout that period. TEL and Takoma agree that Mr Butcher and Mr Haddlesey were tenants for the whole period, but they dispute that Ms Bungay or Ms McClymont were ever tenants, and so that the Property required a licence as an HMO (as a flat occupied by more than 2 people in more than one household).

3. Directions were issued by Judge Hamilton-Farey on 24 September 2021. These have been complied with by the Applicants. Witness statements were filed on behalf of the First and Second Respondents but until the morning of the hearing it was unclear if there would be any attendance on their behalf. An earlier hearing listed for 25 January 2022 was adjourned shortly before the hearing date as Takoma's and TEL's director, Mr Nir Shamir was unavailable. However Mr Shamir did attend the relisted hearing on 26 May 2022, acting for both Takoma and TEL.

The hearing

4. The hearing took place remotely using the CVP platform. In addition to the tribunal it was attended by the four Applicants, by Ms Arjona Hoxha from Represent Law Ltd on behalf of the Applicants, and by Mr Shamir on behalf of Takoma and TEL. NEL was not represented, although Mr Abraham Dodi, who according to Companies House records is a director of all 3 Respondents, did attend in the afternoon to give evidence.

5. Mr Shamir made it clear at the start of the hearing that he had no authority to represent NEL, of which he is no longer a director (having resigned on 29 January 2020). In any event it was subsequently agreed by Ms Hoxha that NEL was not at any stage the Applicants' landlord and so no application for an RRO could succeed against it (by reason of ss.40 and 43(1) of the 2016 Act). From the evidence as a whole it appears (and did not appear to be disputed) that NEL undertook property management for Takoma and TEL.

6. At the start of the hearing Mr Shamir also told the tribunal that in December 2019, the freehold of Takoma House, where the Property is located, was transferred from TEL to Takoma. This is supported by the HM Land Registry entries in the bundle, which record that Takoma acquired the freehold of the whole block on 2 December 2019 (Title Number MX377539), i.e. 3 months into the relevant period.

7. Mr Shamir explained that TEL is a company registered in the British Virgin Islands (company number FC025923 at UK Companies House) but that about 3 years ago their bank had refused to refinance the lending if the building was owned by a BVI-based entity, so it had become necessary for a UK-registered company to hold the freehold. Takoma, a UK company (number 10993393, incorporated 3 October 2017), was used and the freehold was transferred to it. Mr Shamir agreed with the tribunal that therefore until the date of that transfer, TEL had been the landlord in respect of the Property, but from that date, Takoma had been the landlord.

8. The tribunal heard live evidence from all 4 of the Applicants (all of whom had also put in witness statements), who were cross examined by Mr Shamir and also answered questions from the tribunal. It also heard live evidence from Mr Shamir and Mr Dodi, both of whom had put in witness statements, who were cross examined by Ms Hoxha as well as answering questions from the tribunal.

9. The bundle also included witness statements filed by the Respondents from a number of other witnesses, that is: Mr Sunil Kumar, Ms Iliyana Vidolova, Mr Goncalo Amorim, Ms Kim Shamir (who Mr Shamir confirmed is his daughter), and Ms Marta Jablonska. Those statements were each signed with a statement of truth. However, none of those

other witnesses attended to give oral evidence, even though none of their evidence had been accepted by the Applicants and much of the contents of those statements directly contradicted the witness statements of the Applicants. When asked by the tribunal why none of these witnesses were attending to give live evidence and be cross examined, Mr Shamir said that they were all either abroad (Kim Shamir, Ms Vidolova and Mr Amorim) and/or he had lost touch with them (Mr Kumar and Ms Jablonska).

10. A further unsatisfactory feature of these witness statements, as Ms Hoxha pointed out in submissions, is that their contents appear to have been copied from each other and/or all compiled by the same person, because identical spelling mistakes appear across several of them ("signed" spelt "singed"; "dealt" spelt "delt" and "heard" spelt "herd"). The tribunal's conclusion is that they were probably all drafted by Mr Shamir rather than representing the independent evidence of each witness. It notes that Mr Shamir said during his evidence, "*I was acting like a legal adviser in the drafting of all these statements"* even though he does not in fact have legal qualifications, which in itself strongly suggests that he drafted the statements for the other witnesses.

11. Given the contentious nature of much of the evidence in those witness statements, and Ms Hoxha's submissions as to the reliability of those untested statements, the tribunal has placed little or no reliance on them, except where they are undisputed or are adverse to the Respondents (as the party relying on them).

Tribunal's view of the witnesses

12. The tribunal considered the 4 Applicants were essentially credible and reliable witnesses who were doing their best to assist the tribunal, although sometimes their recollections were rather vague. They gave accounts which were consistent with the available documentary evidence and with each other, and which were inherently likely to be true. The tribunal accepts that they were inexperienced at renting property, not having rented a shared property before, and that their actions could in some respects be described as naïve (in their words). Where contemporaneous documents are available however, the tribunal has placed particular weight on them. Reference is made below to more specific parts of their evidence, where relevant.

13. In particular the tribunal fully accepts their evidence that Ms McClymont and Ms Bungay always intended to become tenants of the Property, along with Mr Butcher and Mr Haddlesey, and that the 4 moved into the Property believing and understanding that they were all tenants, and that they all lived there as tenants and as their primary residence until they moved out on 1 September 2020.

14. To the extent that the untested written statements filed on behalf of the Respondents contradict that evidence, the tribunal rejects those statements as untrue. In particular, the tribunal has concluded that the following parts of those witness statements are false: (a) paragraph 10 of Mr Kumar's statement [459], where he says that on 2 September 2019 Ms McClymont spoke to him and confirmed that she would not live in the Property; (b) paragraph 5 of Ms Shamir's statement where she says that Ms McClymont said to her that she was not living at the Property but was a friend of Alexander and Jazz [539]; (c) paragraph 5 of Mr Amorim's statement where he says that the Property was only occupied by 2 young men and Alex told him that he was living in the flat with one additional friend [537].

15. Furthermore, the tribunal has concluded that the purported pdf email which Mr Kumar has attached to his statement at TAK-2 [463], and which purportedly states: "*Hi Sunil, The students names for the contracts are Jazz Henry Haddlesey and Alex Cruz. They will be the only tenants in the flat. I will not live in the flat*" [underlining added] has obviously been crudely doctored in an attempt to mislead the tribunal, in that the underlined words have been added to the end of the original email. The original email, without those added words, appears in its unaltered form at TAK-1 [462], and is also exhibited to Ms McClymont's second statement at [575]. Mr Shamir nevertheless persisted in seeking to rely on this doctored document, which is one respect in which he unreasonably defended this application on behalf of Takoma. Mr Shamir in fact said in cross examination that he "*helped him [Mr Kumar] to phrase the witness statement*".

16. The tribunal considers that these conclusions also undermine Mr Shamir's credibility more generally, as they demonstrate he is someone who is prepared knowingly to put forward false evidence if he thinks it will assist his cause.

17. Turning to Mr Shamir's oral evidence, regrettably the tribunal's view is that Mr Shamir was a very unsatisfactory witness, who was evasive and self-contradictory in cross examination and when answering questions from the tribunal, and who on a number of occasions appeared to be giving the answer which he thought would most assist the Respondents' case rather than what he believed to be true. For example, when asked why he also offered jobs for "women" to help pay the rent during the pandemic if he did not believe there were any female tenants, he said this was possibly for the tenants' girlfriends; he claimed (without producing any supporting evidence) that he was "sure" Mr Kumar had only sent him ID documents for 2 individuals, although Ms McClymont had sent ID for all 4 to Mr Kumar; he denied that Mr Kumar had any connection with NEL even though Mr Kumar was using a very similar business name and domain name (mgnnx3.co.uk) to it; and when asked why Ms Shamir had given a reference for a woman she was denying was ever a tenant, he said (with no evidence) that maybe the tenants were blackmailing her by saying they would not leave without a reference.

Where his evidence is inconsistent with that of the Applicants, the tribunal has preferred the Applicants' evidence. It has only accepted Mr Shamir's evidence where it is supported by other, undisputed documentary evidence or was not in dispute.

18. The tribunal does however accept Mr Shamir's evidence that he has responsibility (through various businesses with which he is involved), for over 200 properties; that he was aware at all relevant times of the HMO licensing regime and of the Additional Licensing requirements which applied in Haringey; and that he knew at all relevant times that the Property would have required a licence as an HMO if occupied by 3 or more people (in 2 or more households) as their permanent residence.

19. Mr Dodi's evidence was relatively limited. The tribunal has accepted his evidence in general terms that his involvement with properties was on the construction and financial side rather than lettings, but that the letting agent Mr Kumar would have come to him for approval of any offer of rent from potential tenants, including the offer made in this case.

20. However the tribunal has concluded that the assertion of both Mr Shamir and Mr Dodi that there was no business connection between NEL on the one hand and "Nofax Properties", a trading name used by Mr Kumar, on the other, is inherently implausible. This conclusion is supported by the fact that, as pointed out by Ms Hoxha, when one clicks on the "Nofax Ltd" link in Mr Kumar's emails, it takes one to NEL's website. Further, Mr Shamir and Mr Dodi are both directors of Free D Limited, a company which in 2003 was called Nofax Group Ltd. The tribunal has therefore treated Mr Dodi's evidence with caution.

The Property and its occupation

21. The Property is a two bedroom flat over two levels including a mezzanine floor. In answer to the tribunal's questions, Ms McClymont described it as having 2 bedrooms on the left by the entrance and a toilet straight ahead, and then an open plan kitchen to the right with steps up to a living area on the mezzanine level. There was a smoke detector in the entrance but it never went off, so none of the Applicants knew if it worked.

22. The evidence of all the Applicants was that they occupied the Property as two couples, one couple using each bedroom, and they all shared the kitchen and bathroom.

23. Ms McClymont said it was quite dirty when they moved in. Mr Butcher said that they asked Mr Kumar to arrange for it to be professionally

cleaned but Mr Kumar said there would be a charge of £175 if he did that, so the Applicants decided to clean it themselves.

24. Ms McClymont said that mould developed in the flat later in the year but was not there are the start. Mr Haddlesey said in his evidence that the mould was mainly in the mezzanine area at the top, where the roof was, and then spread into other rooms. Mr Butcher (with whom the other Applicants agreed) said that the shower broke and the oven stopped working and neither were properly repaired by the maintenance men organised through Ms Shamir.

25. The bundle included copies of an assured shorthold tenancy ("**AST**") agreement dated 2 September 2019 said to be made between TEL as landlord and Mr Butcher and Mr Haddlesey as tenants, for a 12 month period at a rent of £1,575 per month. The agreement has been electronically signed by Mr Dodi on behalf of TEL, by Mr Butcher and Mr Haddlesey (on 3 and 4 September 2019 respectively) and also on 3 September 2019 by Mark Sean Butcher (as Guarantor), who is understood to be Mr Butcher's father.

26. The AST does not mention and is not signed by either Ms McClymont or Ms Bungay and so clearly creates the impression that the tenancy was made only with the two men. The issue for the tribunal is whether the apparent terms of the AST accurately reflected the actual tenancy arrangements.

27. Mr Shamir and Mr Dodi rely on behalf of the Respondents on that AST as meaning there were only ever two tenants of the Property, Mr Butcher and Mr Haddlesey, so the Property was not at any relevant time an HMO. Mr Shamir also says that whatever arrangements or discussions the Applicants had with Mr Kumar, Mr Kumar was not the First and Second Respondents' agent for these purposes and he and other employees of the First and/or Second Respondents were not aware of Ms McClymont and/or Ms Bungay as being tenants at any time. He said that whether the two men chose to have their girlfriends staying with them was a private matter for them, and they as landlords were relaxed about this, but this did not mean the two women were tenants. The Tenancy Deposit Protection Certificate was also issued only in the names of Mr Butcher and Mr Haddlesey.

28. The Applicants' position is that there was ample evidence that all 4 of them were always intended in truth to be the tenants of the Property, that the First and Second Respondents' representatives were aware of this at all relevant times, but that Mr Kumar in effect engineered a situation where only two of the tenants' names actually appeared on the AST. Their case was that he did this by saying to Ms McClymont that because the two men were students, they would be exempt from paying Council Tax, and so it would be preferable if their names alone were on the AST. The Applicants said they accepted this because they were

inexperienced in renting and did not think that it mattered whose names were on the AST. Ms Bungay's evidence was that when they mentioned to Mr Kumar that her and Ms McClymont's names were not on the tenancy, he told them it did not matter.

29. Ms McClymont gave the following account of how the tenancy was arranged and how the AST came to be only in the names of the two men. Her evidence in her second statement was that she originally contacted Mr Kumar to express interest in the flat and to arrange the viewing – this is supported by a copy of her initial text message enquiry of 1 August 2019 at [133]. She said she attended the viewing with Mr Butcher and Mr Haddesley (and Mr Kumar's statement that only the two men attended was untrue). Mr Kumar then asked in a message how many people were going to move in [133] and she replied on 1 August 2019 "*4 people are looking to move in, 2 couples.*" After the viewing (on 2 August 2019) Mr Kumar emailed Ms McClymont [578] saying "*I spoke to the landlord he asked me if there are 4 people will be living [sic] in the flat then he will require a rent of £1550.00 and also, he will provide the furniture such as dining table + 4 chairs + double bed for both rooms…*"

30. She says that Mr Kumar then asked for the names of the two men because they were students and that he mentioned they would be exempt from Council Tax. She says this is why there is an email from her of 2 August 2019 stating: "*The students names for the contracts are Jazz Henry Haddlesey and Alex Cruz Butcher*" [575] (this is the email of which there is a doctored version elsewhere in the bundle, as described above). Mr Kumar then asked for the contact number and ID "*of both applicants*". On 2 August 2019 Ms McClymont paid the deposit. She then emailed passport details and bank statements (as identity documents) for all 4 of the Applicants to Mr Kumar on 3 August 2019 [580 – 718]. Mr Kumar's contact email address for these exchanges was info@nofaxproperties.com

31. Mr Dodi said in evidence that Mr Kumar would have come to him with any offer from potential tenants as to the rental, and that he presumed that Mr Kumar did so in this case. He said this was because at that time he dealt with accepting offers of rent based on the financials and then, if the tenants passed credit checks, he would say yes go ahead and the would-be tenants would then be passed to Marta at the landlord's office. Mr Kumar does in fact say in his statement that he passed on the offer on the rent to Mr Dodi [459].

32. On the basis of this evidence, the tribunal is satisfied that Mr Dodi (a director of TEL) was told that there would be 4 tenants and that Mr Dodi said the rent would be £1,550 if there were 4 tenants. The tribunal considers that it is far more likely that the email of 2 August 2019 from Mr Kumar reflects an actual conversation which took place between Mr

Kumar and Mr Dodi than (as Mr Shamir claims) that Mr Kumar invented this conversation as part of his sales patter.

33. The conclusion that Mr Shamir, Mr Dodi and TEL/Takoma's employees were well aware at all relevant times that there were in fact four tenants is further supported by the following matters:

(i) All of the rental payments were paid from Ms McClymont's bank account. Bank statements from her account were included in the bundle at [107 – 120]. These showed that the payments were initially paid to "Handelsbanken"; then from October 2019 to "Takoma Estates", then one payment in January 2020 to "Oaknorth Bank Plc" and then from February 2020 until their departure to "Nurit Ltd". There is no dispute that all of the rent has been properly paid to the relevant landlord. (The evidence of the Applicants was that the rent and utilities costs were divided equally between the four of them.) Mr Shamir said that it was not uncommon for rent to be paid by a different individual from the tenant (for example by a parent or employer). However in this case the rent was coming from an individual who had been introduced to Mr Kumar as a potential tenant, so it seems far less likely that the landlords would have believed Ms McClymont was paying on behalf of someone else rather than being a tenant herself.

(ii) Ms Bungay contacted Slawek (an employee of the landlord) shortly after moving in to ask advice about connecting the utilities, which he gave. Mr Shamir's explanation, that Slawek was simply giving general guidance to someone who was not a tenant, is not credible.

(iii) After moving out, Ms Bungay requested and was given a reference as being a satisfactory tenant by Kim Shamir [396]. This is totally inconsistent with Ms Shamir never having regarded her as a tenant – or indeed with her never having heard Ms Bungay's name mentioned (as her untested witness statement asserts [539]).

(iv) There is good evidence that both Ms Bungay and Ms McClymont made complaints about the condition of the Property which TEL/Takoma/NEL's employees responded to as if the women were indeed tenants.

34. The tribunal has considered whether the fact the two women's names did not appear on the AST reflected a deliberate decision by them to try to avoid paying Council Tax by representing that the two men (who were students) were the only tenants. However it has concluded that this is not a credible explanation because shortly after moving in, Ms Bungay took steps to contact Haringey Council to explain that she and

Ms McClymont were tenants and should be liable for Council Tax. The fact that only the two men were named on the AST led to a delay in the position being resolved but on 18 November 2019 a Mrs Chapman from Haringey Council confirmed that the two men were entitled to student exemptions but since there were still two working people in residence, this would not affect the total payable. Ms Bungay has produced copies of her bank statements showing that the Council Tax was paid in full.

35. On the basis of this evidence, the tribunal is satisfied beyond reasonable doubt that TEL and Takoma (through their directors Mr Shamir and/or Mr Dodi) were at all material times aware that there were in reality four tenants of the Property throughout, so that the AST did not reflect the true position. Although it is not strictly necessary to determine this, it considers the most likely explanation for the fact that only the two men's names appear on the AST is that this was a deliberate attempt by Mr Kumar to create a false impression that the Property was only occupied by two people, with the agreement of TEL's (and later Takoma's) directors, because they were all well aware that if the Property was occupied by more than two tenants, it would require licensing as an HMO, and it did not have such a licence.

36. Accordingly, the tribunal is satisfied to the criminal standard of proof that the Property was occupied by the four Applicants, as tenants of TEL and then Takoma, in two households, for the whole of the 12 month period from 2 September 2019 to 1 September 2020.

The law

37. Extracts from relevant legislation are set out in an Appendix to this Decision.

38. The definition of HMO is set out in section 254 of the 2004 Act. In particular, s.254(1)(b) provides that a property is an HMO if it meets the "self-contained flat test", set out in s.254(3). The tribunal is satisfied on all the evidence, that the Property clearly met this test in that:

(a) it was a self-contained flat;

(b) the living accommodation was occupied by persons who did not form a single household;

(c) each of the 4 tenants occupied the Property as their only or main residence, for the whole relevant period;

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

(e) rent was payable in respect of at least one of those persons' occupation of the living accommodation;

(f) the occupants shared the use of at least one (and in fact all) the basic amenities as defined in s.254(8), that is a toilet, personal washing facilities and cooking facilities.

39. By section 61(1) of the 2004 Act, every HMO to which Part 2 of the Act applies must be licensed unless it is covered by one of the exceptions in that section (none of which apply here). By section 55(2), Part 2 of the Act applies to (b) any HMO which falls within an area designated as subject to additional licensing. It is agreed by the Respondents that the location of the Property was covered at all material times by an additional licensing regime which extended the requirement for licensing to HMOs occupied by 3 or 4 people in at least 2 households.

40. As already noted, there is no dispute that the Property has never been licensed as an HMO.

The tribunal's determination

41. On the basis of the evidence set out above, the tribunal is satisfied that:

(i) The Property was at all times from 2 September 2019 to 1 September 2020 occupied by the 4 Applicants, as tenants, living in 2 households;

(ii) The Property met the "self-contained flat test" set out above;

(iii) Rent was paid by Ms McClymont on behalf of all 4 of them, throughout that period;

(iv) The Property was therefore an HMO within the terms of the 2004 Act;

(v) The Property was therefore required by section 61(1) of the 2004 Act to be licensed as an HMO, for that 12 month period;

(vi) At no material time was the Property licensed as an HMO;

(vii) TEL was the 4 Applicants' landlord from 2 September 2019 until 1 December 2019; and Takoma was the 4 Applicants' landlord from 2 December 2019 until 1 September 2020. For those respective periods therefore, TEL and then

Takoma was a person having control and/or management of an HMO which was required to be licensed under Part 2 of the 2004 Act, but which was not so licensed, within the meaning of section 72(1) of the 2004 Act.

42. TEL and Takoma, through Mr Shamir, have sought to raise a defence of reasonable excuse under section 72(5) of the 2004 Act, for controlling or managing the Property when it should have been licensed as an HMO but was not. This was raised on the basis that none of himself, Mr Dodi or the employees of TEL/Takoma were aware that the two women were living at the Property. For the reasons set out above, the tribunal has rejected that evidence.

43. The tribunal is accordingly satisfied beyond reasonable doubt that:

(i) TEL committed the offence of being a person having control of and/or managing an HMO which was required to be licensed but was not so licensed, for the 3 month period from 2 September August 2019 to 1 December 2019, contrary to section 72(1) of the 2004 Act; and,

(ii) Takoma committed the offence of being a person having control of and/or managing an HMO which was required to be licensed but was not so licensed, for the 9 month period from 2 December 2019 September August 2019 to 1 September 2020, contrary to section 72(1) of the 2004 Act.

44. In relation to Takoma, the Applicants have satisfied the requirements for making a tenant's application for an RRO, as set out in section 41(2) of the 2016 Act, in that (a) the offence relates to housing which at the time of the offence was let to them, and (b) the offence was committed in the period of 12 months ending with the day on which their application was made, 8 August 2021. However, the offence by TEL was committed more than 12 months before the issue of the application. Therefore the tribunal has no jurisdiction to make an RRO against TEL.

45. As regards Takoma, the tribunal considers that this is a case in which it should exercise its discretion under s.43 of the 2016 Act to make an RRO in favour of each of the 4 Applicants, there being no proper basis on which it could refuse to do so.

46. Section 44 of the 2016 Act provides that where the tribunal decides to make an RRO against a landlord in favour of a tenant, the amount is to be determined in accordance with that section. Sub-paragraph 44(2) provides that in a case concerning an offence under s.72(1) of the 2004 Act, the amount must relate to rent paid during a period, not exceeding 12 months, during which the landlord was committing the offence. The

relevant period here is the 9 month period from 2 December 2019 to 1 September 2020.

47. The evidence from Ms McClymont, which is supported by copies of her bank records and which has not been disputed, is that a total monthly rent of £1,575 was paid by the four Applicants. They divided this between themselves in equal shares. The total rent paid for that 9 month period was therefore £14,175, or £3,543.75 each.

48. No universal credit was paid to any of the Applicants which needs to be deducted pursuant to s.44(3)(b).

49. Accordingly, the maximum RRO which could be ordered in favour of each of the Applicants is £3,543.75.

50. Sub-section 44(4) provides that in determining the amount of the RRO, 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 Chapter of the 2016 Act applied.

51. Takoma has not been convicted of any such offence, so (c) does not apply. Nor, so far as the tribunal is aware, has the local authority imposed any financial penalty on it under s.249A of the 2004 Act.

52. In his recent decision in *Williams v. Parmar* [2021] UKUT 0244 (LC), Mr Justice Fancourt gave guidance as to the approach which the FTT should take to assessing the amount of an RRO awarded under s.44 (not being a case of an order following conviction under s.46). As stated by the tribunal during the hearing (and accepted by Ms Hoxha in submissions), the tribunal considers that this decision should now be treated as the leading authority on quantification of RROs in cases under s.44. In summary, the guidance in that case was as follows (with reference to paragraph numbers of that decision):

    (i) The terms of s.46 show that in cases where that section does not apply, there is no presumption that the amount ordered is to be the maximum that the tribunal could order under s.44 [23];

    (ii) S.44(3) specifies that the total amount of rent paid is the maximum amount of an RRO, and s.44(4) requires the FTT in determining the amount of the RRO to have particular regard to the three factors specified in that sub-section. However the words of that sub-section leave open the possibility of there being other factors that, in a particular case, may be taken into account and affect the amount of the order [24];

(iii) The RRO must always "relate" to the amount of the rent paid in the period in question. It cannot be based on extraneous considerations or tariffs. It may be a proportion of the rent paid, or the rent paid less certain sums, or a combination of both. But the amount of the rent paid is not a starting point in the sense that there is any presumption that that sum is to be the amount of the order in any given case nor even the amount of the order subject only to the factors specified in s.44(4) [25].

53. No evidence as to its financial situation was put before the tribunal by Takoma. The tribunal does not consider therefore that there are any relevant matters for it to take into account in relation to Takoma's financial circumstances.

54. The tribunal has reached the following conclusions on the other specific matters it is to take into account under s.44(4), and as to any other matters it considers relevant:

(i) It is significant that it appears unlikely that the Property would have been able to obtain an HMO licence (especially for occupation by 4 tenants) if one had been applied for. That this is to be treated as a significant factor is apparent from one of the cases in *Williams*, where Mr Justice Fancourt said: "*Where the unlicensed house has serious deficiencies and the landlord is a professional landlord, more substantial reductions would be inappropriate, even for a first-time offender*." [55];

(ii) Takoma is a professional landlord operated solely for that purpose, with a large number of properties, and its directors Mr Shamir and Mr Dodi are responsible for at least 200 rental properties;

(iii) There were significant issues with a defective oven and a shower which, on the evidence of the Applicants, were not resolved in a satisfactory manner. In the absence of any evidence as to the cause of the mould, the tribunal does not place any reliance on this;

(iv) The tribunal does not consider there is any evidence of any poor conduct on the part of the Applicants and Mr Shamir did not press any case that there was;

(v) The tribunal has concluded that Mr Shamir has sought to mislead the tribunal by putting before it documentary evidence which had been tampered with, witness statements from witnesses who did not attend but which he must have known were untrue in significant respects, and that he has given

untruthful evidence as to his knowledge of the number of tenants in the Property. It considers this is relevant poor conduct of the landlord in relation to this application.

55. The tribunal also bears in mind, in its capacity as an expert tribunal, that HMO licensing was introduced with the aim of improving the quality and safety of private rented accommodation occupied by multiple households. It notes the legislation is intended to assist local authorities to locate and monitor HMOs and also improve the standard and management of this sector. Multi-occupied property has historically contained the most unsatisfactory and hazardous living accommodation with particular concerns about inadequate fire safety provision and poor management. Against this background the failure to licence is potentially extremely serious - hence the significant associated penalties and forfeit of rents sanctioned by the legislation. In addition, good landlords who licence promptly may otherwise feel that those failing to licence would gain unfair benefit by dodging licensing costs and associated improvement expenditure if licensing were not heavily incentivised. There are therefore sound public policy reasons for the provisions.

56. The tribunal takes into account this punitive purpose of this jurisdiction, and the importance of the aim of enforcing a licensing regime which is intended to raise the standards of privately rented HMOs.

57. In view of the above matters, the tribunal has concluded that this is a case in which it would be most appropriate to make an award of 100% of the amount of the rent for the relevant 9-month period. It therefore makes an award of **£3,543.75** in favour of each of the four Applicants.

58. The Applicants also made an application under rule 13(1)(b) of the FTT Rules for payment of their costs, on the basis that the Respondents acted unreasonably in defending this application. This can only apply to Takoma, since for the reasons set out above, no RRO has been made against either TEL or NEL.

59. At the end of the hearing, the tribunal invited submissions from both parties on all potential costs issues, including the Applicants' application under rule 13(1)(b). Ms Hoxha submitted that Takoma had acted unreasonably because there was ample evidence that an offence had been committed; the evidence submitted included a doctored email and highly inconsistent evidence, and also an earlier hearing had to be adjourned because Mr Shamir was unable to attend, and the Applicants had incurred the cost of counsel attending.

60. The tribunal has concluded that in putting evidence before the tribunal which had been tampered with; in submitting written statements to the tribunal which he must have known contained falsehoods and in

presenting a case which the tribunal has concluded he knew was untrue, Mr Shamir has behaved unreasonably in conducting Takoma's defence. Accordingly the tribunal considers that this is a case in which an order should be made under rule 13(1)(b).

61. In relation to the amount of that costs order, the tribunal has considered the Statement of Costs submitted on behalf of the Applicants. It does not consider that any costs award should include the cost of attendance by counsel for the previous hearing given it was adjourned a few days before. Nor should any claim for attendance by the Applicants' solicitors be included for that previous hearing. The other costs appear generally reasonable.

62. In any event, given that the Applicants could not have obtained relief without pursuing this application, the tribunal considers that the Applicants would be entitled to an order under rule 13(2) of the FTT Rules that Takoma reimburse them for the application fee of £100 and the hearing fee of £200 paid by them.

63. Taking a fairly broad brush approach to the remaining costs, the tribunal has summarily assessed the costs to be paid by Takoma at £6,500 including VAT and including the application and hearing fees, to be paid within 28 days. The costs order is made by the tribunal on the application of the Applicants, under rule 13(3).

Name: Judge Nicola Rushton QC **Date:** 16 June 2022

Rights of appeal

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

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

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

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

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

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

Appendix of relevant legislation

Housing Act 2004

55 Licensing of HMOs to which this Part applies

(1) This Part provides for HMOs to be licensed by local housing authorities where–

(a) they are HMOs to which this Part applies (see subsection (2)), and

(b) they are required to be licensed under this Part (see section 61(1)).

(2) This Part applies to the following HMOs in the case of each local housing authority–

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

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

(3) The appropriate national authority may by order prescribe descriptions of HMOs for the purposes of subsection (2)(a).

(4) The power conferred by subsection (3) may be exercised in such a way that this Part applies to all HMOs in the district of a local housing authority....

61 Requirement for HMOs to be licensed

(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.

(2) A licence under this Part is a licence authorising occupation of the house concerned by not more than a maximum number of households or persons specified in the licence.

(3) Sections 63 to 67 deal with applications for licences, the granting or refusal of licences and the imposition of licence conditions.

(4) The local housing authority must take all reasonable steps to secure that applications for licences are made to them in respect of HMOs in their area which are required to be licensed under this Part but are not.

(5) The appropriate national authority may by regulations provide for–

(a) any provision of this Part, or

(b) section 263 (in its operation for the purposes of any such provision),

to have effect in relation to a section 257 HMO with such modifications as are prescribed by the regulations. A "section 257 HMO" is an HMO which is a converted block of flats to which section 257 applies.

(6) In this Part (unless the context otherwise requires)–

(a) references to a licence are to a licence under this Part,

(b) references to a licence holder are to be read accordingly, and

(c) references to an HMO being (or not being) licensed under this Part are to its being (or not being) an HMO in respect of which a licence is in force under this Part.

72 Offences in relation to licensing of HMOs

(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 (see section 61(1)) but is not so licensed.

(2) A person commits an offence if—

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3)A person commits an offence if—

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

(b) he fails to comply with any condition of the licence.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine .

(7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England). 12

(7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(8) For the purposes of subsection (4) a notification or application is "effective" at a particular time if at that time it has not been withdrawn, and either—

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(9) The conditions are—

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or

(b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(10) In subsection (9) "relevant decision" means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

254 Meaning of "house in multiple occupation"

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

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

(b) it meets the conditions in subsection (3) ("the self-contained flat test");

(c) it meets the conditions in subsection (4) ("the converted building test");

(d) an HMO declaration is in force in respect of it under section 255; or

(e) it is a converted block of flats to which section 257 applies.

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

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

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

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

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

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

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

(3) A part of a building meets the self-contained flat test if–

(a) it consists of a self-contained flat; and

(b) paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).

(4) A building or a part of a building meets the converted building test if–

(a) it is a converted building;

(b) it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);

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

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

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

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

(5) But for any purposes of this Act (other than those of Part 1) a building or part of a building within subsection (1) is not a house in multiple occupation if it is listed in Schedule 14.

(6) The appropriate national authority may by regulations–

(a) make such amendments of this section and sections 255 to 259 as the authority considers appropriate with a view to securing that any building or

part of a building of a description specified in the regulations is or is not to be a house in multiple occupation for any specified purposes of this Act;

(b) provide for such amendments to have effect also for the purposes of definitions in other enactments that operate by reference to this Act;

(c) make such consequential amendments of any provision of this Act, or any other enactment, as the authority considers appropriate.

(7) Regulations under subsection (6) may frame any description by reference to any matters or circumstances whatever.

(8) In this section–

"basic amenities" means–

(a) a toilet,

(b) personal washing facilities, or

(c) cooking facilities;

"converted building" means a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed;

"enactment" includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30);

"self-contained flat" means a separate set of premises (whether or not on the same floor)–

(a) which forms part of a building;

(b) either the whole or a material part of which lies above or below some other part of the building; and

(c) in which all three basic amenities are available for the exclusive use of its occupants.

258 HMOs: persons not forming a single household

(1) This section sets out when persons are to be regarded as not forming a single household for the purposes of section 254.

(2) Persons are to be regarded as not forming a single household unless–

(a) they are all members of the same family, or

(b) their circumstances are circumstances of a description specified for the purposes of this section in regulations made by the appropriate national authority.

(3) For the purposes of subsection (2)(a) a person is a member of the same family as another person if–

(a) those persons are married to [, or civil partners of, each other or live together as if they were a married couple or civil partners]1 ;

(b) one of them is a relative of the other; or

(c) one of them is, or is a relative of, one member of a couple and the other is a relative of the other member of the couple.

(4) For those purposes–

(a) a "couple" means two persons who [...]2 fall within subsection (3)(a) ;

(b) "relative" means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin;

(c) a relationship of the half-blood shall be treated as a relationship of the whole blood; and

(d) the stepchild of a person shall be treated as his child.

(5) Regulations under subsection (2)(b) may, in particular, secure that a group of persons are to be regarded as forming a single household only where (as the regulations may require) each member of the group has a prescribed relationship, or at least one of a number of prescribed relationships, to any one or more of the others.

(6) In subsection (5) "prescribed relationship" means any relationship of a description specified in the regulations.

Housing and Planning Act 2016, Chapter 4

41 Application for rent repayment order

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

(2) A tenant may apply for a rent repayment order only if —

(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and

(b) the offence was committed in the period of 12 months ending with the day on which the application is made.

(3) A local housing authority may apply for a rent repayment order only if—

(a) the offence relates to housing in the authority's area, and

(b) the authority has complied with section 42. 13

(4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

44 Amount of order: tenants

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

(2) The amount must relate to the 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.

46 Amount of order following conviction

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 and both of the following conditions are met, the amount is to be the maximum that the tribunal has power to order in accordance with section 44 or 45 (but disregarding subsection (4) of those sections).

(2) Condition 1 is that the order—

(a) is made against a landlord who has been convicted of the offence, or

(b) is made against a landlord who has received a financial penalty in respect of the offence and is made at a time when there is no prospect of appeal against that penalty.

(3) Condition 2 is that the order is made—

(a) in favour of a tenant on the ground that the landlord has committed an offence mentioned in row 1, 2, 3, 4 or 7 of the table in section 40(3), or

(b) in favour of a local housing authority.

(4) For the purposes of subsection (2)(b) there is *"no prospect of appeal"* , in relation to a penalty, when the period for appealing the penalty has expired and any appeal has been finally determined or withdrawn.

(5) Nothing in this section requires the payment of any amount that, by reason of exceptional circumstances, the tribunal considers it would be unreasonable to require the landlord to pay.

Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018/221

4. Description of HMOs prescribed by the Secretary of State

An HMO is of a prescribed description for the purpose of section 55(2)(a) of the Act if it—

(a) is occupied by five or more persons;

(b) is occupied by persons living in two or more separate households; and

(c) meets—

(i) the standard test under section 254(2) of the Act;

(ii) the self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or

(iii) the converted building test under section 254(4) of the Act.