FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BE/HMF/2021/0080**
HMCTS code (paper, video, audio)		**V: CVPREMOTE**
Property	**:**	**Flat A, 43 – 45 Grosvenor Terrace, London SE6 0NN**
Applicants	**:**	**(1) Ms Gabriella Wilkins** **(2) Mr Thomas Seddon**
Representative	**:**	**Alasdair Mcclenahan, Justice for Tenants**
Respondent	**:**	**Bodel Investments Limited**
Representative	**:**	**Mr Simon Strelitz (counsel)**
Type of application	**:**	**Application for a Rent Repayment Order under s.41 of the Housing and Planning Act 2016**
Tribunal member(s)	**:**	**Judge N Rushton QC;** **Mr C Gowman MCIEH MCMI BSc**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Dates of hearing	**:**	**29 September 2021 & 22 February 2022**
Date of decision	**:**	**24 March 2022**

DECISION

<u>Covid-19 pandemic: description of hearing</u>

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 140 pages, and further extracts of WhatsApp messages forwarded to the tribunal on the first day of the hearing; a bundle of 85 pages submitted by the Respondent; a bundle of 50 pages submitted by the Applicant in reply; and two further witness statements put in by Mr Olubode Akodu on behalf of the Respondent, as detailed below, on the first and second days of the hearing respectively.

Decisions of the tribunal

(1) The tribunal is satisfied beyond reasonable doubt that the Respondent Bodel Investments Limited committed offences on two occasions 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 periods (a) from 19 April to 11 July 2019 inclusive and (b) from 21 July 2019 to 23 March 2020 inclusive.

(2) The tribunal makes a rent repayment order against BIL in favour of each of the Applicants as follows:

   a. In favour of Gabriella Wilkins, in the sum of £3,685;

   b. In favour of Thomas Seddon, in the sum of £1,794.

(3) The tribunal further makes an order under rules 13(2) and (3) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that BIL shall reimburse the application fee of £100 and the hearing fee of £200 paid by the Applicants, within 14 days of the date this Decision is received by the parties.

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

The application

1. The Applicants, Ms Gabriella Wilkins and Mr Thomas Seddon, issued an application on 9 March 2021 for rent repayment orders ("**RRO**") under s.41(1) of the Housing and Planning Act 2016 ("**the 2016 Act**") against the Respondent, Bodel Investments Limited ("**BIL**"). The application concerns the property known as Flat A, 43 – 45 Grosvenor Terrace, London SE6 0NN ("**the Property**").

2. Directions were issued by Judge Hamilton-Farey on 18 May 2021. In the main those directions have been complied with by the parties, except in the respects detailed further below.

3. It was not possible to complete the hearing within the 3 hours originally allowed in the directions, because of the issues which arose as to whether the Applicants had the status of tenants. By the end of that first day, only the Applicants' oral evidence had been heard. It was therefore necessary for the case to be reconvened for a further full day, to hear the oral evidence on behalf of the Respondent, and submissions. This took place on 22 February 2022.

The hearing

4. The hearing took place remotely using the CVP platform. The Applicants both attended, represented by Mr Alasdair Mcclenahan of Justice for Tenants.

5. BIL was represented by counsel, Mr Simon Strelitz. Also attending on behalf of BIL was Mr Olubode Akodu, who is the husband of the sole director and shareholder of BIL, Mrs Bamidele Akodu. It was apparent from the evidence that in practice Mr Akodu was in charge of managing the Property as landlord at all material times.

6. Mr Mcclenahan took issue at the start of the hearing with whether Mr Akodu and Mr Strelitz were authorised to act on behalf of BIL. No written authority had been provided by Mrs Akodu to the tribunal, but Mr Strelitz said that such an authority could be provided that day. The tribunal therefore required Mrs Akodu to file a letter of authority, authorising Mr Akodu to act and give evidence on behalf of BIL. A letter of authority was filed, signed by Mrs Akodu, during the course of the morning of the first day, and has been accepted by the tribunal as authorising Mr Akodu to act and give evidence on behalf of BIL. Mr Akodu is a solicitor, and Mr Strelitz confirmed that he was instructed by the firm for which Mr Akodu works.

7. There is no dispute that Mr Akodu has acted as BIL's agent and that his knowledge and actions can be attributed to BIL for all relevant purposes.

8. In addition to the Respondent's bundle, Mr Strelitz also sought to put in a second witness statement from Mr Akodu, which was only signed and sent to the tribunal and the other side on 28 September 2021, the day before the hearing. The statement was short and essentially for the purpose of exhibiting an email and attachment said to be directly relevant to the case, and which had only been discovered on that day in the course of preparing for the hearing.

9. Mr Mcclenahan opposed the statement going in, because he said it was very late, it was new evidence, Mr Akodu was a solicitor and should have been aware of the importance of complying with the tribunal's directions, and it would cause prejudice to the Applicants because they might have sought to adduce further evidence to respond to the statement, on whether vetting of prospective tenants was in practice required, if they had had more notice. He said in particular that they might have pressed one of their witnesses, Mr Watts, to attend. Mr Strelitz asked that the statement go in, on the basis that the statement was very short and intended to exhibit obviously relevant documents and that while it was an example of Mr Akodu requiring vetting, the Respondent's existing evidence had already made it clear to the Applicants that whether vetting was required was an issue.

10. The tribunal determined that it should allow the statement to go in. Its reasons, which were given to the parties at the hearing, were that this was a short statement that was essentially intended to exhibit certain documents; that the email and exhibits were relevant to the issue of how tenants of the Property were handled by Mr Akodu so far as vetting was concerned, and that there was no real prejudice to the Applicants, since they were aware of the issues and all witnesses should have expected that they would need to attend to give oral evidence in any event.

11. The tribunal also asked the parties at the start of the hearing if they were aware of the recent decision of HHJ Luba QC in the County Court at Central London in *Sturgiss v. Boddy* (19.7.21), as it might be of assistance given the issues which arose in this case. The tribunal arranged for a copy to be provided to their representatives.

12. Although the Applicants' bundle included a statement from a Mr Lewis Watts, Mr Watts did not attend and give oral evidence on either day of the hearing. Given the contentious nature of his evidence, and the fact that the other witnesses did all attend and were cross examined, the tribunal has placed no weight on Mr Watts' statement, except where its contents are not disputed or are clearly supported by contemporaneous documents.

13. In addition, on 14 February 2022 a third witness statement from Mr Akodu was sent on behalf of the Respondent to the tribunal and to the other side. This again essentially exhibited certain documents, which Mr Akodu said he had found in the course of preparing for a hearing in respect of BIL's claim for possession of the Property against Ms Nafeesa Akhtar (a tenant who was still living there). The documents were emails between Mr Akodu and Mr Watts with attachments. They were plainly relevant and the Applicants did not oppose this statement going in, to produce them. The tribunal allowed in this further statement given the obvious relevance of the exhibited documents and lack of any prejudice.

14. The tribunal heard live evidence from Mr Seddon and Ms Wilkins on the first day, and from Mr Akodu on the second day. All the witnesses were extensively cross-examined and they all also answered a number of questions from the tribunal. The tribunal's observations and conclusions from their evidence are set out further below, where appropriate. Where the oral evidence of the witnesses was not consistent with the contemporaneous documents, the tribunal has preferred the evidence from those documents.

The issues

15. The offence which was alleged by the Applicants to have been committed by BIL was having control of or managing an unlicensed HMO, contrary to section 72(1) of the Housing Act 2004 ("**the 2004 Act**").

16. The period when it was alleged in the Application that the offence was committed, for the purposes of s.44(2) of the 2016 Act and the claims for RROs, was 18 April 2019 to 23 March 2020. In fact, as explained below, the contemporaneous evidence shows that Ms Wilkins moved into the Property on 19 April 2019, so the relevant period for the purpose of this decision will be treated as being **19 April 2019 to 23 March 2020**.

17. This is the period over which it is said by Ms Wilkins that she was in occupation of the Property with two other unrelated persons. Mr Seddon was one of those persons from 10 November 2019 until some time in April 2020, but after Ms Wilkins moved out he was only living there with Ms Akhtar. It was also alleged that the Property had been operated unlawfully as an unlicensed HMO for some years prior to April 2019, from 1 January 2016.

18. There is no dispute that the Property is located within an area which was designated by Southwark Council as additional licensing, pursuant to section 56 of the 2004 Act, from 1 January 2016 to 31 December 2020, and that the additional licensing scheme extended to all privately rented properties within that area occupied by 3 people living in 2 or more separate households. The Applicants' bundle included a copy of the relevant public notice from Southwark with a map of the area covered, which was the whole of Southwark.

19. At the start of the hearing, Mr Strelitz on behalf of BIL disputed that the Property was a house in multiple occupation ("**HMO**") within s.254 of the 2004 Act at all, and whether it required a licence under s.61 of that Act, as well as whether any offence had been committed by BIL under s.72(1). However, by the end of the hearing, it was conceded on behalf of BIL that the Property was an HMO, that it required a licence at all relevant times (if occupied by 3 persons in 2 or more households) and that it was not at any time licensed as an HMO.

20. The tribunal considers that these concessions were rightly made, in that on the evidence, the Property was plainly occupied by 3 individuals who were members of 3 separate households at all relevant times from 19 April 2019 to 23 March 2020, except that as detailed below there was a period in July 2019 when it was only occupied by two. It is also satisfied that the Property did not have an HMO licence but did require one under the additional licensing scheme, and that BIL was a person which had control of and/or managed an HMO.

21. Mr Strelitz did however maintain that BIL had a defence of reasonable excuse under s.72(5) of the 2004 Act, which is considered further below.

22. However, the most substantial basis upon which the claims for RROs were contested by BIL was that it was said Ms Wilkins and Mr Seddon were not tenants of BIL at all, but were sub-tenants of one of the actual tenants of the Property, Ms Nafeesa Akhtar (generally referred to by the witnesses and herself as "Fifi").

23. It was not disputed by the parties that, as determined by the Court of Appeal in *Jepsen v Rakusen* [2021] EWCA Civ 1150; [2022] 1 WLR 324, an RRO under Chapter 4 of the 2016 Act can only be made against a tenant's immediate landlord and not against a superior landlord. Therefore if the Applicants were sub-tenants of one of BIL's tenants, rather than being tenants of BIL themselves, they could have no claim for an RRO against BIL.

24. Accordingly, there were three live issues before the tribunal:

    (i) Whether BIL had a defence of reasonable excuse under s.72(5) of the 2004 Act:

    (ii) Whether (a) Ms Wilkins and/or (b) Mr Seddon were tenants of BIL at all, or whether they were either sub-tenants or had some other non-tenant status;

    (iii) If either or both were tenants of BIL, the quantum of any RRO, under ss. 41 and 44 of the 2016 Act.

25. As to whether an offence was committed, including whether BIL has any defence of reasonable excuse, the tribunal must be satisfied to the criminal standard of proof, that is beyond reasonable doubt.

26. As to the issue of whether Ms Wilkins and/or Mr Seddon were tenants of BIL, the parties agreed and the tribunal considers that the standard of proof is the civil one of balance of probabilities. The tribunal considers that this approach is supported by the Upper Tribunal decision of the Chamber President, Mr Justice Fancourt in *Williams v*

Parmar [2021] UKUT 0244 at [31], where he observed that whilst the FTT had to be satisfied beyond reasonable doubt that a relevant offence had been committed (establishing jurisdiction to make an RRO), it was not required to be satisfied to that standard on the identity of the period in respect of which an RRO was to be made.

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

The Property, its occupation, written agreements and rent paid

28. The Property is a self-contained, converted basement flat in a period, terraced house. It is laid out as a two-bedroom flat with a kitchen, main bathroom and a living room, with an en suite off one of the bedrooms. However, for all of the material time (and substantial periods before that), the living room was in fact used by the third person as their bedroom. Mr Akodu does not dispute that he was aware that it was used in this manner, although he says he was not always aware who was in occupation.

29. HM Land Registry entries in the bundle record that the freehold has been owned by BIL since 9 January 2008.

30. The bundles included previous tenancy agreements of earlier tenants with BIL, which both sides rely on as important to the issue of the status of the Applicants. Mr Akodu commented on these in some detail in his evidence. All of the tenancy agreements were assured shorthold tenancies ("**ASTs**") to three tenants, for a fixed term of 12 months, let on a joint tenancy for a rent which was a single figure for the whole flat. At no time were individual rooms let to individual tenants. The demise was of the whole flat and the tenants were left to decide who occupied which room. There were no common parts within the Property for which BIL was responsible.

31. The first AST was for 12 months from 11 September 2015, to Lily Hurdman, Louis Thompson and Stan Portus at a rent of £1,650 per calendar month. Although produced on a template from the agency OpenRent, Mr Akodu said in evidence that while OpenRent did carry out credit checks on the 3 proposed tenants, a rent guard guarantee was not available because the references were not good enough. This was apparently because they were students, but Mr and Mrs Akodu decided to go ahead in any case, as they were offered rent guarantees by the applicants' parents, and they liked them. Two of the three were in a relationship, so at that point the proposal was to occupy the Property as a two-bedroom flat. Mr Akodu agreed that he did not use OpenRent again after that because replacement tenants were always found. He said they did not use any third party or reference checks after that first letting, but relied on financial information provided by the intended tenants.

32. The second AST was for 12 months from 11 September 2017, to Louis Thompson, Lawrence Morpeth and Nafeesa Akhtar, at the same rent.

33. The third AST was for 12 months from 11 September 2018, to Louis Thompson, Simon Stevnhoved Rasmussen and Nafeesa Akhtar, at the same rent.

34. Both the second and third ASTs had an additional clause 20 which was added in manuscript, Mr Akodu said at the request of Ms Akhtar. This read:

"*20. If at any time a tenant in this Contract wishes to end their tenancy, they are to find a suitable, credible replacement for themselves on the Contract Agreement*."

35. The meaning and effect of this clause 20 is very much disputed. The Applicants' case is that it gave the existing tenants the discretion to find a replacement if one of them wished to leave, so long as the replacement was able to demonstrate an ability to pay their share of the rent, but without requiring the approval of the Respondent. The Respondent's case is that if a tenant wished to end the tenancy early, they (or the other tenants on their behalf) had to put forward a potential replacement to be vetted by the Respondent, and if satisfactory to the Respondent, a new tenancy would be created between the Respondent and the new group of tenants.

36. In his first statement, Mr Akodu said Ms Akhtar had said that she had previously been in difficult situations with shared rented accommodation because one tenant had suddenly left during the term. He said she wanted those remaining to be able to introduce somebody acceptable to the landlord as a joint tenant to replace the outgoing sharer in that situation.

37. One of the matters relied on by BIL is that, BIL says, under all the earlier joint tenancies (until March 2019), each of the three tenants paid their share of the rent direct to BIL (or to Mr Akodu), whereas the Applicants had paid their rent to Ms Akhtar, who then paid this on to BIL together with her own share. BIL says this indicates they were at most sub-tenants. In his statement Mr Akodu said that in all BIL's dealings with the Property, the three tenants were required to individually pay their rents directly to a bank account nominated by BIL.

38. BIL produced in evidence redacted bank statements for the period from 18 September 2018 to 18 March 2019, i.e. just before the period in issue. These showed three separate payments being received each month into an account in Mr Akodu's name: from Ms Akhtar, Mr Rasmussen and a Dr Mark Thompson, who was Louis Thompson's

father. The figures were slightly different in amount, apparently reflecting the benefits of the room each occupied.

39. Mr Mcclenahan complained that BIL had failed to produce bank statements demonstrating that this was the case for earlier periods, nor what payments were actually received from April 2019 to April 2020. He said this was in breach of paragraph 9(e) of the Directions, which required BIL to provide evidence of the amount of rent received in the period in question. Mr Strelitz's riposte was that the Applicants had never complained about inadequate disclosure or requested further documents.

40. It is the case that BIL has failed to comply with the direction to produce evidence of the rent received in the relevant period by disclosing bank statements, and it would have been of assistance if its bundle had included copies of Mr Akodu's bank statements from April 2019 to April 2020 demonstrating what rent was received when and from whom.

41. In any event, it was the evidence of Ms Wilkins and Mr Seddon (supported by copies of their bank statements) that they paid their contributions to the rent to Ms Akhtar, who they understood then paid that on to BIL together with her own contribution. Mr Akodu agreed in cross examination that he had noticed that Ms Akhtar had started paying rent in respect of more than one occupant. When asked what he then did, he replied that he did not do anything; that he was not obliged to do anything. He said that they could have taken issue with this on the basis that she was subletting, which they suspected was why the additional rent was coming from her, but they went along with it because they were receiving the rent and Ms Akhtar was difficult to deal with. When asked in re-examination whether it was acceptable for Ms Akhtar to pay the full rent by sub-letting, Mr Akodu replied that it was technically a breach of the tenancy but it was one which they were prepared to overlook.

42. Accordingly it is clear from the available evidence that throughout the period in question, Ms Wilkins and later Mr Seddon paid their rent contributions to Ms Akhtar, and that Ms Akhtar did indeed pay this on to Mr Akodu for BIL together with her own rental contribution. In the absence of BIL having disclosed any bank statements showing the contrary, the tribunal has concluded that the full rent was paid (via Ms Akhtar) for the period with which we are concerned.

43. As to the occupancy of the Property from April 2019 to March/April 2020, the evidence of Mr Akodu was that he did not know when Ms Wilkins or Mr Seddon were in occupation of the Property, because he did not agree to their occupation.

44. On the basis of the available documentary evidence, including contemporaneous emails and WhatsApp and Facebook messages where available, and the evidence of Ms Wilkins and Mr Seddon where it is supported by that material, the tribunal has concluded that the actual occupation of the Property over the period from April 2019 to April 2020, and payments made in respect of rent, were as follows:

(i) Mr Rasmussen had abandoned his occupation of the Property by March 2019 and did not make any rent payments for any months after March. According to a WhatsApp message from Ms Akhtar to Ms Wilkins of 17 April 2019 at 12:54, the rent was overdue by a week, and Ms Akhtar pressed Ms Wilkins to confirm she would be able to move in quickly.

(ii) Ms Wilkins moved into the Property on 19 April 2019 (not 18 April 2019 as claimed). It is clear from the contemporaneous WhatsApp messages on 17 and 18 April 2019 that she arranged to move in on the Friday, which was the 19th, and arranged a van to move for that date. However, she paid £1,174.68 to Ms Akhtar's account, at the latter's request and for which Ms Akhtar provided her own bank details, on the 18th, in order to secure the room. This sum was said to be calculated as rent from the 19th plus £750 deposit and £46.33 council tax (messages dated 17 April 2019).

(iii) From 19 April 2019 the Property was therefore occupied by Ms Akhtar, Ms Wilkins and Mr Thompson. It is apparent from WhatsApp messages between the three of them in their "house group" that Mr Thompson moved out on 11 July 2019 – he said on 5 July 2019 that he would arrange an end of tenancy cleaner for the 11th, and it was also arranged that on 12 July 2019 Ms Wilkins would move into the room he had previously occupied (and she would then pay more of the rent). There is also a text message from Ms Wilkins to Mr Thompson dated 16 July 2019 asking him to remove his old bed frame if he was at the house, which shows he had moved out. The occupation by **Ms Wilkins, Ms Akhtar and Mr Thompson** was therefore from **19 April 2019 to 11 July 2019.**

(iv) During this period Ms Wilkins' bank statements show she paid Ms Akhtar £556.33 per month. However it is clear from the WhatsApp messages that this included £46.33 for council tax, so the payment for rent was only £510. £510 pcm is also what had been paid by Mr Rasmussen based on occupation of the same room. Insofar as Ms Wilkins' claim for an RRO is based on rent of £556.33 per month to July 2019, it is therefore over-stated and should be £510 pcm.

(v) The contemporaneous evidence indicates that Lewis Watts then moved into the Property on 21 July 2019, which was a Sunday (not 18 July 2019 as stated in his statement). Exhibited to Mr Akodu's third statement is an email from Mr Watts dated 9 July 2019 which states "*This is Lewis Watts, I plan to move in on the 21st of July this year, and have attached the proof of employment letter as requested*." In addition, the messages from the WhatsApp house group between Ms Wilkins, Ms Akhtar and Mr Watts (exhibit C3), state that that group was created on 22 July 2019, and the initial messages read as if Mr Watts has only just moved in.

(vi) The evidence is therefore that the Property was only occupied by two persons, Ms Akhtar and Ms Wilkins, between 12 and 20 July 2019 inclusive. This means no offence could have been committed and no RRO could be payable in respect of that period. BIL has not disclosed Mr Akodu's bank statements for July 2019, so it is unclear what amounts of rent he received in July 2019 and from whom. However, Ms Wilkins' bank statements show she paid an increased sum of £616.33 to Ms Akhtar on 11 July 2019, before paying £593.33 in August 2019 and then £594.04 pcm from 10 September 2019 onwards. This is consistent with her paying a slightly higher sum for rent for July 2019 because there were only two occupants for part of that month.

(vii) In any event Mr Thompson had been paying £567.50 pcm for his room, and it is apparent from the house group messages between Ms Wilkins, Ms Akhtar and Mr Watts that the payments from Ms Wilkins to Ms Akhtar included a netted-off element for bills. Accordingly, the tribunal has concluded that the sum which Ms Wilkins was paying Ms Akhtar in respect of rent alone after Mr Watts moved in was £567.50 pcm and not £593.33 or £594.04 pcm as claimed at Exhibit D to the Application.

(viii) On 13 September 2019, Mr Akodu emailed a draft tenancy agreement to Ms Akhtar and Mr Watts. This is an important exchange which is considered further below.

(ix) On 4 October 2019 Mr Watts emailed Mr Akodu (this email was only discovered and disclosed by Mr Akodu with his third statement, in February 2022). He said he was emailing to let Mr Akodu know he could no longer afford to live in the flat and would be moving out. He said he was giving Mr Akodu 5 weeks' notice and "*also that I will not be signing the contract*". He said his last date would be 10 November. He asked to deal with Mr Akodu direct over October's rent and the return of his deposit as he said Ms Akhtar was being difficult. He also said: "*I*

have spoken to the girls and from what I understand Fifi would like to find the next tenant to take my place." Mr Akodu said in evidence that he did not recall receiving this email, and there is no reply to it in evidence, but he obviously did receive it when it was sent because he has produced it.

(x) Therefore the Property was occupied by **Ms Wilkins, Ms Akhtar and Mr Watts from 21 July 2019 to 10 November 2019**.

(xi) Mr Seddon says that he moved in on 10 November 2019. This was a Sunday. His bank statements show that he made a payment of £1,306.33 to Ms Akhtar's account on 2 November 2019. Mr Seddon said in evidence, and the tribunal accepts as patently correct, that this comprised a month's rent of £510, deposit of £750 and council tax of £46.33. Given that the occupants all consistently treated the start date for each month's rent as the 11th (in line with all the earlier written agreements), and Mr Watts had paid rent up to 10 November 2019, the tribunal has concluded that Mr Seddon was paying for occupation from 11 November 2019 even if he moved in on the 10th. The Property was then occupied by Ms Wilkins, Ms Akhtar and Mr Seddon.

(xii) On 23 March 2020 the Prime Minister announced the Covid 19 lockdown. Ms Wilkins' evidence, which the tribunal accepts, is that she panicked at the news, and went immediately to live at her partner's house, and thereafter only came back to the Property to collect her belongings. Her occupation of the Property therefore ceased on that date, although her bank statements show she had made a payment of £594.04 in respect of rent (plus bills) to Ms Akhtar on 10 March 2020, and she made a further payment of the same amount to Ms Akhtar on 10 April 2020.

(xiii) Therefore the Property was occupied by **Ms Wilkins, Ms Akhtar and Mr Seddon from 11 November 2019 to 23 March 2020**, considering only the period for which Mr Seddon paid rent. For the November changeover the evidence is that there was no break in the occupation by 3 people.

(xiv) Mr Seddon's evidence in his written statement and orally is that he moved out on 3 April 2020 and went to live with his parents, because of the lockdown. The tribunal accepts that evidence, which is supported by a WhatsApp message of 2 April 2020, where he says he will be moving out the following day. The copies of Mr Seddon's bank statements show that he made a payment of £485 to Ms Akhtar's account on 10 March 2020 labelled "rent", having made payments to her of £510 in each of

December, January and February. He made a further payment to her on 2 April 2020 of £543.64 which is labelled "rent + tax". It is unclear from Mr Seddon's evidence or the WhatsApp messages why his March payment was less than £510, but in the Application he has limited the amount of rent he says he paid for that month to £485 and the tribunal accepts this.

(xv) In his first statement Mr Akodu states that Ms Akhtar stopped paying the rent in or about April 2020, citing financial difficulties related to the pandemic. Given the payments made by Ms Wilkins and Mr Seddon to Ms Akhtar in April 2020, and in the absence of BIL having disclosed bank statements for that or any relevant rental month, it seems more likely than not that Ms Akhtar in fact made a payment to Mr Akodu in respect of rent on about 11 April 2020, but made no payments thereafter. However this is not material as no RRO is claimed for the period after 23 March 2020.

45. Ms Akhtar at all times occupied what was known as bedroom 2, with the en suite. Ms Wilkins occupied bedroom 3, the smallest room, until 12 July 2019, when she moved into bedroom 1, which was the old living room, previously occupied by Mr Thompson. Mr Watts and then Mr Seddon occupied bedroom 3.

46. In their oral evidence Ms Wilkins and Mr Seddon said that they with Ms Akhtar had a group telephone conversation with Mr and Mrs Akodu at the end of March/start of April 2020 to discuss the situation with the Property given the pandemic and lockdown. They said they were worried whether their landlord would still require them to pay 100% of the rent even if one of them became redundant or sick.

47. Mr Seddon's oral evidence was that they took the initiative to set up the call. He said it began calmly and business-like, with them enquiring as to their position. He said the response from Mr Akodu was that while he would accept a delay in payment in such circumstances, his expectation was that 100% of the rent would still be paid. Mr Seddon said it was clear throughout the call that Mr Akodu was addressing all three of them. He said Ms Akhtar then became upset, that it appeared there was longstanding resentment between her and Mr Akodu, and the call had to be halted. He said the call resumed about half an hour later and at this point the house-mates asked specifically what would happen if one of them moved out. Surely, they said, the landlord would be understanding given the pandemic and would only require them to pay 66% if they were unable to fill the room because of Covid, but he said Mr Akodu replied no, in the fullness of time he would expect 100% to be paid. He said Mr Akodu said he did not care, they were all responsible and whoever remained would have to meet 100% of the rent.

48. Mr Seddon said that it was after this call that he and Ms Wilkins concluded that the situation was unsustainable and this led to them moving out. He said they "*gave a month's notice*", although it is noted there is no evidence that either gave any notice in writing. The evidence of both Mr Seddon and Ms Wilkins was that they did not have an email address or telephone number for Mr Akodu because Ms Akhtar wanted to be the point of contact with him.

49. Ms Wilkins' oral evidence was that this conversation included all 3 of the house-mates and Mr and Mrs Akodu, and that it was about rent reduction as everyone was panicking slightly. She said Mr Akodu said they could have an extension to pay but it would always be 100% that was required. She said there was then an argument between Ms Akhtar and Mr Akodu, which became quite heated and so the call had to be cut short.

50. Mr Akodu said very little about this call in his oral evidence or written statements. He agreed it took place but said he did not believe Ms Wilkins was present as he said she did not say a word. He said he and his wife were informed during the call that Ms Wilkins had moved out two weeks earlier. He also said that Ms Wilkins and Mr Seddon did not give notice at any time and he did not believe that it was suggested that they had ever given notice.

51. There is no dispute therefore that this call took place. The tribunal accepts the evidence of Mr Seddon and Ms Wilkins that Ms Wilkins was present and that it took place on an occasion when she had walked over to the Property to collect her belongings, this being supported by the contemporaneous WhatsApp messages between them.

52. As to the date, the tribunal has concluded from the WhatsApp messages that it most likely took place on 1 April 2020, because on 30 March 2020 the house-mates discussed that they should set up such a call, and Ms Wilkins messaged that she would be walking over on the Wednesday, which was 1 April. Since Mr Seddon moved out on 3 April, it is very unlikely to have been after that. The tribunal considers that Mr Akodu's recollection that the call took place later, on 10 or 11 April, and that Ms Wilkins was not present is mistaken.

53. As to the content of what was discussed in that call, the tribunal accepts the detailed oral evidence of Mr Seddon. More generally, Mr Seddon came across as an honest and straightforward witness who was doing his best to provide an accurate account of events, who stood up well to cross-examination and whose evidence was supported by such contemporaneous evidence (in the form of WhatsApp messages and bank statements) as was available.

54. Ms Wilkins' evidence was somewhat more vague and she appeared to be guessing the answers to some questions when she did not really

know. When asked why WhatsApp messages were missing from the bundle for the last week of March 2020, she gave an answer (that there had been no discussions then) which was unlikely to be correct, and which was then demonstrated to be wrong when she found and produced copies of the missing messages. The tribunal has therefore treated her oral evidence somewhat more cautiously, although it has accepted her evidence where it is supported by other evidence or is inherently likely to be true.

55. In his first statement Mr Akodu asserts that the Applicants' application is "*fundamentally deceitful*" and accuses the Applicants of having concocted an application which is based on a "*fundamental dishonesty*" because they well knew that their property was being sublet to them by Ms Akhtar. The tribunal rejects the assertion that the Applicants have been dishonest in this application or in their evidence. It is an assertion which should not have been made and, to Mr Akodu's credit, he did not pursue this line in his oral evidence.

56. It was also apparent from Mr Akodu's evidence that they now have a serious problem in that Ms Akhtar has remained living in the Property without, they say, paying any rent since at least May 2020 so that BIL is now engaged in protracted possession proceedings against her.

Issue 1: whether an offence under s.72 of the 2004 Act has been committed and defence of reasonable excuse

57. The definition of an 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). It is now conceded, and the tribunal is satisfied on all the evidence, that the Property 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, in that Ms Akhtar, Mr Thompson, Ms Wilkins, Mr Watts and Mr Seddon were all separate households;

(c) each of them occupied the Property as their only or main residence, for any relevant periods between 19 April 2019 and 23 March 2020;

(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.

58. There is no dispute, and the tribunal is satisfied on the available evidence that the Property was located in an area which had been designated by Southwark Council as subject to additional licensing under s.55(2)(b) of the 2004 Act, at all times from 1 January 2016 until 31 December 2020. There is also no dispute, and the tribunal accepts, that at no time was the Property licensed and that BIL did not at any time apply for a temporary exemption notice ("**TEN**") under s.62, as Mr Akodu admitted.

59. Finally, there is now no dispute, and the tribunal is satisfied, that Southwark's additional licensing scheme extended the requirement for a licence to any HMO which was occupied by at least 3 people in at least 2 separate households. Accordingly, by section 61(1) the Property was required to be licensed at those times when it was occupied by 3 people who were in at least 2 separate households, which was true of this Property for all the times from 1 January 2016 until at least 23 March 2020 that it was occupied by 3 people. However, this did not include the period from 12 to 20 July 2019.

60. Accordingly, the tribunal is satisfied that the Property required a licence as an HMO for the two periods (a) from **19 April 2019 to 11 July 2019** inclusive and (b) **21 July 2019 to 23 March 2020** inclusive. However, it did not require a licence for the period from 12 to 20 July 2019 inclusive, when the evidence is that it was only occupied by two people.

61. On any view BIL let out the Property, and Ms Akhtar at least was one of its tenants. The tribunal is therefore satisfied beyond reasonable doubt that BIL was a person which had control and/or management of an HMO which was required to be licensed under Part 2 of the 2004 Act, for the periods stated in the previous paragraph, but which was not so licensed, within the meaning of section 72(1) of the 2004 Act.

62. BIL through Mr Akodu has sought to raise a defence of reasonable excuse, under section 72(5) of the 2004 Act, for controlling or managing the Property when it was required to be licensed as an HMO but was not so licensed.

63. The matters relied upon by Mr Strelitz in support of the defence of reasonable excuse were:

(i) BIL simply did not know about the additional (or any selective) licensing scheme;

(ii) BIL had not granted tenancies to Ms Wilkins or Mr Seddon and it cannot therefore be shown that it, through Mr or Mrs Akodu, knew that there were 3 unrelated individuals living at the Property;

(iii) Mr Akodu did not enter into a written tenancy agreement with Ms Akhtar, Ms Wilkins and Mr Watts in September 2019 because by then he had become aware that the Property required a licence as an HMO and he did not do so because he wanted to avoid BIL committing a criminal offence.

64. Mr Strelitz did however accept that Mr Akodu, a qualified solicitor, and Mrs Akodu, a conveyancing executive, had not taken all the steps that they might reasonably have done to check whether this was a property which required licensing as an HMO and/or to check what their obligations in this respect might be as private landlords.

65. As to the first point, it is well established that the offence under s.72(1) is a strict liability offence, and that it is not an element of the offence that the defendant knew that the property was an HMO and was required to be licensed – *R (Mohamed) v. Waltham Forest* LBC [2020] EWHC 1083 (Admin); [2020] 1 W.L.R. 2929 at [40] – [48] and *Palmview Estates Ltd v. Thurrock Council* [2021] EWCA Civ 1871 at [33].

66. Therefore the fact Mr and Mrs Akodu were not aware, at least on Mr Akodu's evidence until September 2019, that the Property required a licence does not assist them. Furthermore, there is no suggestion that the reason they did not know the Property required a licence was that they were misled or were reasonably relying on some other information or factor. On the contrary, the position, as Mr Akodu admitted in cross examination, was that despite being a solicitor, he made no effort to undertake any enquiries or researches into whether a licence was required and did not seek advice from any landlord organisation or from the Council. He simply assumed there was no licence requirement. The tribunal is perfectly satisfied that that cannot amount to a reasonable excuse for controlling or managing the Property without a licence.

67. As to the second point, it is important to bear in mind that for the purposes of the offence, it is unnecessary for the landlord to be aware precisely who is living in the Property, merely that there are three people in at least two households, and the landlord is at the very least going along with this. Here BIL had entered into a written tenancy agreement on 11 September 2018 with three individuals whom Mr Akodu was very well aware did not form a single household, and BIL had entered into similar agreements previously. He and Mrs Akodu also agreed to the inclusion of a clause 20 permitting the substitution of other tenants.

68. The normal arrangement for the Property was therefore that it was occupied by 3 persons who were not part of a single household, and Mr Akodu expected that to continue and to be continuing at all times. Most importantly, Mr Akodu was well aware that he received the full rent each month throughout the period from 19 April 2019 to 23 March 2020, which he understood to be the rent for three people. At the very least he on behalf of BIL was accepting sub-letting and so occupation by 3 people. He also said in cross examination that he knew that the only way the tenants could afford the rent was if there were 3 of them, and that was why it was let to 3 people. The tribunal therefore rejects Mr Strelitz's second point as providing any defence.

69. As to the third point, the tribunal does not consider that a failure or refusal to enter into a written tenancy agreement can amount to a reasonable excuse in circumstances where Mr Akodu was well aware that three people (Ms Wilkins, Mr Watts and Ms Akhtar) were already occupying the Property and he and BIL took no steps to try to recover possession of the Property but simply acquiesced in the continued occupation of it by three individuals between July 2019 and March 2020. This is particularly so since there is no evidence whatever, and the tribunal does not accept, that Mr Akodu ever communicated to the occupants of the Property at any time from September 2019 that he had become aware that the Property in fact required a licence as an HMO.

70. The tribunal is therefore satisfied beyond reasonable doubt that BIL does not have a defence of reasonable excuse in this case.

71. Since there are in fact two separate periods between April 2019 and March 2020 when the Property required a licence but did not have one, the question is whether an offence has been committed for each of these periods.

72. The tribunal is accordingly satisfied beyond reasonable doubt that BIL has 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, on two specific occasions: **(a) one in the period 19 April to 11 July 2019** inclusive and **(b) one in the period 21 July 2019 to 23 March 2020** inclusive, contrary to section 72(1) of the 2004 Act.

Issue 2: tenancy status of the Applicants

73. The requirements for making a tenant's application for an RRO are set out in s.41(2) of the 2016 Act. In addition to the requirement that the applicant was a direct tenant of the housing to which the offence relates (s.41(2)(a)), it is also necessary that the offence was committed in the 12 months ending on the day the application was made – s.41(2)(b).

74. The Application in the present case is dated 9 March 2021. Accordingly, while the second offence was committed during the period of 12 months ending with that date, the first offence was not, because it came to an end on 11 July 2019.

75. Accordingly, the tribunal has concluded that even if they do have the status of tenants, the Applicants may only pursue an application for an RRO in respect of the period **21 July 2019 to 23 March 2020**.

76. As to the status of the Applicants, their position is that there was a series of surrenders and regrants of a joint tenancy each time the combination of housemates changed, analysed in a similar fashion to the *Sturgiss* case noted above. The Applicants rely on clause 20 of the tenancy agreement of 11 September 2018 as permitting them to do this without each new tenant needing to be expressly approved and accepted by BIL.

77. BIL's case is that Ms Wilkins, Mr Watts and Mr Seddon were each sub-tenants of Ms Akhtar rather than being joint tenants of BIL; that Ms Akhtar developed a pattern of sub-letting without BIL's knowledge or consent, and that even if BIL acquiesced in unlawful sub-letting by Ms Akhtar, that does not make the Applicants tenants of BIL and so entitled to make a claim for an RRO.

78. Both the Applicants and BIL say there is no distinction between the position of Ms Wilkins and that of Mr Seddon.

79. In *Sturgiss* HHJ Luba QC summarised at [63] – [69] the principles of surrender and regrant, as determined by the Court of Appeal in *Sable v. QFS Scaffolding Ltd* [2010] EWCA Civ 682 and *Tower Hamlets v. Ayinde* (1994) 26 H.L.R. 631. Surrender by operation of law occurs where there is an unequivocal act which is inconsistent with the continuance of the tenancy, and acceptance of the surrender by the landlord. It can occur without a deed or notice having been given in accordance with the tenancy. As HHJ Luba QC said at [69] the authorities on surrender are infused with the concept of estoppel, i.e. that where a landlord has acted consistently with the termination of one tenancy and the acceptance of a new tenancy he cannot later resile from that.

80. In *Ayinde* the landlord was treated as having accepted the surrender and acceded to a regrant by operation of law even where it did not know of the replacement of one occupier with another until after it had happened, because by its conduct it had accepted the new arrangement.

81. On the Applicants' case there must have been a series of surrenders and regrants in this case:

(i) On 19 April 2019 from Ms Akhtar, Mr Thompson and Mr Rasmussen to Ms Akhtar, Mr Thompson and Ms Wilkins;

(ii) On 21 July 2019 from Ms Akhtar, Mr Thompson and Ms Wilkins to Ms Akhtar, Ms Wilkins and Mr Watts;

(iii) On 11 November 2019 from Ms Akhtar, Ms Wilkins and Mr Watts to Ms Akhtar, Ms Wilkins and Mr Seddon. Alternatively that Mr Watts validly gave notice terminating that tenancy and it was replaced by a new one.

(iv) It is unclear whether the Applicants' case is that in March/April 2020, Ms Wilkins and/or Mr Seddon gave notice terminating the tenancy then in existence, or surrendered it, or whether (as Mr Strelitz posited on the Applicants' case) it must be continuing.

82. In *Sturgiss* the court was faced with a situation, common with modern day renters and factually similar in many respects to the present case, where there had been a whole series of "churns" of individual occupiers of (there) a three-bedroom flat occupied under a (or a series of) joint tenancies at a single rent, where the occupiers agreed between themselves who occupied which room and how the rent would be divided between them.

83. The judge held that the landlord in that case had agreed to a prior arrangement where at the departure of one or more individuals, the property would be re-let to the remaining occupiers and the new arrival(s), without the landlord participating in that choice or even being informed who had moved in. HHJ Luba QC concluded at [68]: "*Given that this was a structure of the landlord's own making he can hardly be heard to complain if the law gives effect to what has been agreed through the medium of surrender and re-grant*." Two of those former tenants were therefore held to be entitled to remedies against the landlord for breaches of tenancy deposit protection legislation.

84. Mr Strelitz says that the key difference from *Sturgiss* in the present case is that BIL and Mr and Mrs Akodu did not agree to such a churn, or specifically to Ms Wilkins and/or Mr Seddon becoming BIL's tenants, whether by being party to a general arrangement similar to *Sturgiss* or by agreeing to them in particular. On the contrary, says Mr Strelitz, the previous practice of Mr and Mrs Akodu and BIL was to let the Property on fixed term 12 month ASTs and to approve the new tenants each time.

85. It is true that this Property was let on 3 fixed term 12-month AST's, each beginning on 11 September of the relevant year (with a holding over in 2016), in each case to 3 tenants for a total rent of £1,650.

However what happened in April 2019 was that, apparently for the first time, one of those tenants (Mr Rasmussen) disappeared mid-term and stopped paying his share of the rent. So by 17 April 2019, the remaining tenants, Ms Akhtar and Mr Thompson, had a problem in that they had not been able to pay the rent which was due on 11 April 2019. And if the rent was not paid, this was also a problem for BIL and Mr Akodu. It is apparent that the situation had arisen which clause 20 had been added to address.

86. As to vetting, while there is evidence that Mr Rasmussen sent Mr Akodu an email which said he was a self-employed sound designer and attached a "statement of work" which stated a "salary" of €4,500 per month, it is apparent from the evidence as a whole that Mr Akodu took a relaxed approach to assessing the evidence of prospective tenants' income. He accepted their first tenants in 2015 even though they did not pass OpenRent's credit check references, because he liked them and he said their parents offered rent guarantees. The Statement of Work attached to Mr Rasmussen's email said that his contract only extended until 31 December 2018, which was only 3 months into the tenancy. Although Mr Rasmussen said he was drafting a Statement to cover 2019, there is no evidence of this and Mr Akodu said he did not reply to this email except by meeting Mr Rasmussen. He also said that he would have been happy to accept Mr Thompson's girlfriend as a third tenant (which he said was suggested in about April 2019) without being provided with any further financial information about her, because Mr Thompson had been "*an absolute gentleman*". This is not to be critical of Mr Akodu, but his own evidence was that they saw themselves as "*easy-going no hassle landlords*". He agreed that he did approve Mr Watts as a tenant having seen a copy of a letter from his employers, Rolex, stating his salary of £24,687 p.a..

87. Overall the tribunal's conclusion is that Mr Akodu's priority was the pragmatic one of trying to make sure the rent was fully covered by having three tenants, rather than the detail of their financial standing.

88. The Facebook messages show that Ms Wilkins first responded on 7 March 2019 to an advert posted to a Facebook group by Ms Akhtar about a room being available. Her viewing was initially cancelled on 13 March 2019 when Ms Akhtar told her Mr Thompson had filled the room, but the advert was then reposted by Mr Thompson. Ms Wilkins says in her statement that she viewed the Property on 28 March 2019.

89. There was then a lull, but the Facebook messages in the Applicants' second bundle show that on 17 April 2019 Ms Wilkins was contacted again by Ms Akhtar, asking if she was still looking for a place. Ms Wilkins said she was and Ms Akhtar asked when she would be able to move in. When Ms Wilkins said that weekend, Ms Akhtar replied "*… we're looking for someone this week… Just as the rents are over due by a week so ASAP would be great*". Ms Wilkins replied that she could

do that Friday (i.e. 19 April). Ms Akhtar then asked if she had all the "financials info" and when Ms Wilkins asked for this, Ms Akhtar replied that it was £610 per month including all bills, but for April she'd only pay from the Friday until 11 May. Ms Akhtar then said at 12:58 "*… the contract runs up until September then we're not sure what we're all doing but I'm pretty set on staying.*" Ms Akhtar then sent a further message at 13:01 saying: "*Let me speak to Louis and stuff to finalise what we're doing whether it's a sublet or take over the contract because the guy who left the room has totally gone off grid…*"

90. At 15:11 Ms Akhtar sent a further message saying she had spoken to Mr Thompson and he agreed to Ms Wilkins moving in. Ms Akhtar also messaged that she had worked out that the rent for the remaining 23 days until May 11th would be £378.35. First Ms Akhtar said Ms Wilkins would only need to transfer the £750 deposit to hold the room and could wait to pay the rent until the Friday, but then at 15:18 she said "*… actually just re thinking we actually do need to pay the rent ASAP before our landlord goes mental so if you'd be ok to transfer the whole lot that would be great!*" They then discussed whether Ms Wilkins would be willing to transfer the money before attending the Property to collect the key and view furniture, Ms Akhtar saying she wanted Ms Wilkins to be 100% comfortable with her decision "*before I pay him [i.e. Mr Akodu] out any money basically…"* Ms Wilkins asked for details, i.e. for making the payment, and Ms Akhtar replied at 15:28 that she would text shortly.

91. Then at 17:08 Ms Akhtar messaged Ms Wilkins saying: "*Hey Gabriella I've just spoken to the landlord and he has said he will agree to let you move in at the end of the week as long as we pay the rent and deposit ASAP so I will pay the week that's just passed if you're happy to pay the rest (£424.68 including council tax)?*" At 17:14 Ms Akhtar then messaged Ms Wilkins with her own bank details and said the total sum was £1,174.68 (being the amount which Ms Wilkins did transfer to Ms Akhtar on 18 April 2019).

92. There are two possible interpretations of this message timed at 17:08. One is that Ms Akhtar had indeed communicated with Mr Akodu in the intervening hour and a half, and he had indeed agreed in these terms to Ms Wilkins moving in. The other is that Ms Akhtar was lying about having spoken to Mr Akodu and was fabricating the terms of a communication with Mr Akodu to persuade Ms Wilkins to transfer the money and move in quickly.

93. Mr Akodu's evidence was that both Ms Wilkins and Mr Seddon were brought into the Property without the consent of himself or his wife. However, he also agreed in cross examination that when he emailed a draft tenancy agreement to Mr Watts and Ms Akhtar on 13 September 2019, with a space in it for the name of a third tenant and asked "*I cannot seem to find the name of the third tenant, Please let me have*

her full name asap", he had the intention of formalising a tenancy with the three people who were in occupation of the Property. The tribunal considers that the evidence is that he was well aware that she was in occupation and was content with that occupation, even if he did not know or could not remember her name. It is also notable that he, a solicitor and not a lay person, describes her as "*the third tenant*".

94. Taking into account all of the context in which the message at 17:08 on 17 April 2019 was sent and the inherent likelihood of events, the tribunal considers that it is significantly more likely that this message was the result of a genuine communication between Ms Akhtar and Mr Akodu on that day, and that he did agree in these terms to Ms Wilkins moving in. In particular:

(i) it rings true, given how Mr Akodu handled arrangements with the Property on other occasions, that he would have required Ms Akhtar to cover the rent for the intervening week before Ms Wilkins moved in, if Ms Wilkins was to meet the rent attributed to bedroom 3 going forwards;

(ii) there was a high degree of urgency in finding a replacement tenant, given Mr Rasmussen's disappearance and the overdue rent. This makes it much more likely that Mr Akodu would have been willing to change his previous practice and accept a tenant without documentary evidence of their income or payment of the rent direct to his account, and certainly without insisting on a new 12 month fixed-term written AST being executed;

(iii) Clause 20 is somewhat obscure in its legal effect, and the tribunal does not consider it necessary to definitively determine its meaning, since what is more important is its effect on Mr Akodu's and Ms Akhtar's behaviour. However its inclusion certainly meant that Mr Akodu was aware that if one of the tenants left before the end of the term, they or the remaining tenants on their behalf, would be making positive efforts to find a replacement who appeared objectively to be suitable and credible. A proposal to him by Ms Akhtar of Ms Wilkins would therefore have been expected.

95. Accordingly, the tribunal has concluded on the evidence that Mr Akodu did in fact expressly agree to Ms Wilkins moving in to the Property as a "replacement" for Mr Rasmussen (to use a neutral term).

96. In terms of the legal effect of this, it cannot have been an assignment, as faintly suggested by Mr Mcclenahan, since an assignment of even a tenancy of less than 3 years can only be effected by deed – *Crago v. Julian* [1992] 1 W.L.R. 372 (Court of Appeal).

97. The tribunal has concluded that what happened on 19 April 2019 was a surrender and regrant by operation of law. Mr Thompson, Ms Akhtar and Ms Wilkins agreed with Mr Akodu on behalf of BIL to the grant of a joint tenancy of the Property to Mr Thompson, Ms Akhtar and Ms Wilkins. This was fundamentally inconsistent with the continuation of the old tenancy, which was therefore surrendered and replaced by the new tenancy by operation of law. Mr Rasmussen had abandoned possession of the Property and so his consent was not required to any such surrender and regrant.

98. The best analysis is probably that the new tenancy was a monthly periodic tenancy of the Property at a rent of £1,650 per month from the 11th of each month (plus an initial part-period), although it is possible that it was a new fixed term tenancy for the remaining period from 19 April to 10 September 2019 at a rent of £1,650 per month payable on the 11th of each month. (It does not strictly speaking matter which for the purposes of the present application.)

99. This means that Ms Wilkins was a tenant of BIL. The tribunal rejects BIL's submission that she was a sub-tenant of Ms Akhtar, since this is not consistent with the agreement of Mr Akodu which the tribunal has determined took place. Although a sub-tenancy was mentioned by Ms Akhtar as a possibility in her message at 13:01 on 17 April 2019, this was before she had communicated with Mr Akodu and the tribunal considers a sub-tenancy (which would have had to have been of bedroom 3 only) is less consistent with the available evidence as to what was agreed.

100. Then in July 2019, Mr Thompson decided to leave, leaving at the end of a period. There is no evidence that he gave notice to BIL. Ms Akhtar identified Mr Watts as a potential replacement. As mentioned above, the evidence includes an email from Mr Watts to Mr Akodu dated 9 July 2019, which was before he moved into the Property, in which he introduced himself to Mr Akodu, saying he planned to move in on 21 July and attached a proof of employment letter relating to his employment with Rolex.

101. Mr Akodu claims that he has no recollection of receiving this email at that time (the email was only produced as an attachment to his February 2022 statement) and that the only copy of the Rolex letter that he remembers receiving was a wet ink copy, at a later meeting with Mr Watts which he says was in September 2019. He also claimed in oral evidence that he did not know if Mr Watts was already living in the flat when he says he met him in September 2019.

102. The tribunal considers that Mr Akodu's assertion that he did not agree to Mr Watts moving into the Property in July 2019, and did not know prior to September 2019 whether Mr Watts was living there, is simply not credible in view of the email correspondence dating from 9 July

2019 which he has now disclosed and which is inconsistent with it, as well as his ongoing receipt of rent, and it rejects that assertion.

103. The tribunal has concluded that Mr Akodu's recollection of and evidence as to events in the period around July to September 2019 is unreliable and has been at the very least coloured by his realisation in about mid-September 2019 that the Property required a licence as an HMO and that BIL was probably committing a criminal offence in letting it without one. Mr Akodu's evidence was that he discovered this in September 2019 in the course of carrying out work for one of his clients. Prior to that he had, as he put it "arrogantly" assumed that no licence was required (possibly because he was only aware of old law around HMOs). Mr Akodu is a solicitor and he will have immediately realised the seriousness of his and BIL's position. In his oral evidence, but not in his original statement, he said that this was why he did not proceed to execute the draft tenancy agreement which he had sent to Ms Akhtar and Mr Watts on 13 September 2019.

104. He also said that when he investigated the requirements for a licence in September 2019, he realised that it was unlikely that the Property would satisfy the conditions for a licence, because there was no communal sitting room, which was being used as a third bedroom. He said that he did not apply for a TEN for the same reason, because he did not believe it would be granted.

105. In his first statement Mr Akodu asserted that "*the Respondent refused to enter into a further tenancy agreement*" after Ms Akhtar had introduced Mr Watts to them – with no explanation as to the reason for the refusal and so an implication that it was related to Mr Watts' suitability. He claimed repeatedly in that statement that BIL had "*refused to enter into a tenancy agreement with Lewis Watts*", and further that the Applicants knew this. In cross examination, Mr Akodu sought to resile from this assertion. When it was put to him that he had claimed that he had refused to enter into a tenancy agreement, he replied "*I didn't suggest that – the wording could read in that way but that isn't what I meant*".

106. Then he said that it was correct that they had refused to enter into a tenancy but he hadn't suggested that they refused at the point of introduction. Later in cross examination he said that the evidence of this refusal was the fact that an appointment to meet was made and then cancelled and not reinstated, and that the agreement was not signed. He said that the fact they cancelled the meeting coupled with the fact the agreement remained unsigned told you that this was because they were not willing to sign it.

107. However the reality is that there is no evidence whatever of any email or other communication by which Mr Akodu refused to enter into a 12 month written tenancy agreement with Ms Akhtar, Ms Wilkins and Mr

Watts. The planned meeting simply never took place, so there was no meeting at which Mr Akodu could have expressed such refusal either.

108. Further, Mr Watts stated in his email of 4 October 2019 that he would not be signing the contract. Not only would this statement have been unnecessary if Mr Akodu had already said BIL was refusing to sign any contract, but it also suggests that Mr Watts believed that Mr Akodu was expecting him to sign a 12 month tenancy agreement.

109. Mr Akodu's evidence on these points was inconsistent and changed during his oral evidence. Further, on any view, the statements in his first statement, where he claimed repeatedly that BIL had refused to enter into an agreement with Mr Watts, were incorrect, misleading and incomplete.

110. The tribunal has concluded that Mr Akodu realised in September 2019 that BIL should not enter into a further 12 month fixed term tenancy because he had realised the Property was an unlicensed HMO, that BIL was unlikely to be able to obtain a licence for it in its current configuration as a 3-bedroom flat, and BIL was probably already committing a criminal offence because it was occupied by 3 people. The tribunal has further concluded that Mr and Mrs Akodu gave effect to that recognition simply by never signing the draft AST, but that they did not positively communicate to the occupants of the Property that they were not willing to execute a new agreement. The tribunal considers that the most likely reason for them behaving in this way is that they did not wish to reveal to their tenants that the Property was an unlawful, unlicensed HMO, with all the consequences this had, including restrictions on serving notices seeking possession and potential liability for RROs.

111. However, the fact that by September 2019 Mr and Mrs Akodu wished to avoid BIL entering into a fresh 12 month tenancy with Ms Akhtar, Ms Wilkins and Mr Watts does not mean that no tenancy was created in July 2019 when Mr Watts joined Ms Akhtar and Ms Wilkins in living at the Property, with (as the tribunal has concluded) Mr Akodu's agreement, and paying a monthly rent which continued to be accepted by Mr Akodu on behalf of BIL. It merely means that what was created was a new oral, monthly periodic joint tenancy.

112. In respect of this period, the tribunal has accordingly concluded that Mr Akodu agreed to the replacement of Mr Thompson with Mr Watts in July 2019, and that this took effect as a surrender and regrant in the same way as had occurred in April 2019. The new tenancy probably started on 11 July 2019, even though Mr Watts did not actually move in until 21 July 2019. Again this was most probably a monthly periodic joint tenancy from the 11th of each month.

113. On 4 October 2019, Mr Watts gave notice terminating that joint tenancy. Since he gave 5 weeks' notice ending on 10 November 2019, which was the end of a monthly period, this was valid and effective as a written notice to quit terminating the tenancy. A single joint tenant can terminate a joint tenancy on behalf of all, so long as it is a valid notice to quit (*Hammersmith & Fulham LBC v. Monk* [1992] 1 A.C. 478; *Hounslow LBC v Pilling* [1993] 1 W.L.R. 1242). Incidentally it is apparent from WhatsApp messages of the same date that Ms Akhtar was furious with Mr Watts when he said he intended to email Mr Akodu direct to give notice. However the tribunal does not conclude from this, as Mr Akodu suggests in his first statement, that this is evidence that Mr Akodu was unaware that Ms Wilkins and Mr Watts were in occupation, especially since there is ample evidence that he was aware. It only suggests that Ms Akhtar objected to Mr Watts dealing directly with Mr Akodu without her involvement. Mr Watts also expressly told Mr Akodu in his email that "*… Fifi would like to find the next tenant to take my place.*"

114. Consequently, Ms Akhtar and Ms Wilkins did not then move out; instead Mr Seddon moved in. Thereafter Ms Akhtar continued to pay rent to Mr Akodu's account on the 11th of each month, and Ms Wilkins and Mr Seddon paid their contribution to that rent to her the day before. The process was the same as it had been after Ms Wilkins and then Mr Watts moved in. Mr Akodu and BIL accepted that rent without any demur.

115. Mr Seddon admits he had no direct communication with Mr Akodu when he moved in. He says in his statement that he gave Ms Akhtar the information about his full name and salary, that he never met the landlord and that Ms Akhtar handled all correspondence.

116. Unlike with Ms Wilkins and Mr Watts, there is therefore no evidence from which it may be inferred that Mr Akodu expressly agreed to Mr Seddon becoming a tenant. However, the tribunal has concluded that when Mr Akodu and BIL continued to accept the payment of rent on the 11th of each month for a property which he knew had 3 bedrooms and would be occupied by 3 individuals, and where he had accepted Ms Akhtar finding replacement tenants in the past and had been told expressly that she would be finding a new one this time, that he was treating this as a joint monthly periodic tenancy to the three persons in occupation from 11 November 2019, at a rent of £1,650 pcm.

117. This conclusion is further supported by the conduct of Mr Akodu during the telephone call which probably took place on 1 April 2020, with Ms Wilkins, Ms Akhtar and Mr Seddon. When asked about his expectations as to payment of the rent if one of them should move out or be made redundant, Mr Akodu said that he expected the remaining tenants to continue to pay the rent. He did not say that Mr Seddon should not have been in occupation at all or had no responsibility for

the rent. He treated all 3 of them as joint tenants of the Property. This is good evidence of his contemporaneous understanding of the nature of the legal relationship between BIL and the 3 occupants of the Property.

118. Accordingly, the tribunal has concluded that a new monthly joint periodic tenancy was created on 11 November 2019 between BIL as landlord and Ms Akhtar, Ms Wilkins and Mr Seddon as tenants, at a monthly rent of £1,650 pcm.

119. As explained above, Ms Wilkins moved out on 23 March 2020 and Mr Seddon on 3 April 2020. They also each made a payment to Ms Akhtar in April 2020 which was essentially of a further month's rent, in the belief that they were thereby bringing their tenancies and liabilities for the Property to an end. They did not give any written notice to Mr Akodu, which is not surprising given that neither had his email address nor any other contact details for him.

120. There is no evidence therefore that any effective written notice to quit was given by any of the tenants in April 2020. BIL has at no stage asserted that either Ms Wilkins or Mr Seddon have any ongoing rental liability in respect of the Property, which Mr Strelitz says is because they were considered to be sub-tenants. Certainly they have not been joined to the proceedings against Ms Akhtar. It may be their attempts to "give notice" are properly considered a surrender of the joint tenancy which has been accepted by BIL, but it is not necessary for the tribunal to determine this issue for the purposes of this application and it does not do so.

121. Accordingly the tribunal concludes that it does have jurisdiction to make an RRO in favour of both Ms Wilkins and Mr Seddon under s.41(2) of the 2016 Act because both were tenants of BIL. The relevant periods for the purposes of that section are:

(i) 21 July 2019 to 23 March 2020 for Ms Wilkins; and,

(ii) 11 November 2019 to 23 March 2020 for Mr Seddon.

Issue 3: the quantum of the RROs

122. 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 against BIL in favour of each of Ms Wilkins and Mr Seddon, there being no proper basis on which it could refuse to do so.

123. 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.

124. For the reasons set out above, the monthly rent which was paid during the relevant period was £567.50 pcm for Ms Wilkins. Mr Seddon paid £510 pcm in respect of his first 4 months but £485 for March 2020. The total amounts of rent paid by each of them in the period relevant to each, and so the maximum possible RRO under s.44(2), was therefore:

(i) 21 days, then 7 months, then 13 days, i.e. £391.80 + £3,972.50 + £242.55 or a total of £4,606.85 for Ms Wilkins.

(ii) £2,243.32 for Mr Seddon, as claimed in the Application.

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

126. 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 4 of the 2016 Act applied.

127. BIL 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 BIL under s.249A of the 2004 Act.

128. In his recent decision in *Williams v. Parmar* 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). 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, that guidance 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 amount 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].

129. Mr Mcclenahan submitted that the tribunal should nevertheless order an RRO which was in the maximum sum or "very close to" (he said 95% or 96%) of this. He said this was on the basis that Mr Akodu is a qualified solicitor and clearly should have been aware that the Property required a licence; that the Property had been operated as an unlicensed HMO since January 2016; that this was a professional landlord which existed solely to let out the Property; that Mr Akodu had taken steps to try to make the Property appear not to be an HMO to their mortgage surveyor, in particular by asking for the bed to be removed from the living room (it is not disputed that such a request was made); that no routine inspections were carried out by Mr Akodu/BIL; that there was a problem with a leak and defective fire alarm; and BIL took no steps to obtain either a licence or a TEN at any stage, apparently because it appeared the Property was not likely to obtain a licence.

130. In relation to quantum Mr Strelitz emphasised that Mr Akodu genuinely did not believe there was any licensing requirement until September 2019. He said too much should not be read into the fact Mr Akodu was a qualified solicitor given this was not his area of expertise. He also submitted that the conduct of the Applicants in making payments through Ms Akhtar rather than dealing directly with Mr Akodu, if they were indeed tenants of BIL, was not what one would have expected from joint tenants.

131. No evidence was put before the tribunal as to the financial position of BIL. In particular, although Mr Akodu referred to there being very substantial arrears now outstanding, no information as to the accounts or financial standing of BIL, or the effect of any such arrears, was put before the tribunal. In those circumstances, the tribunal does not consider that there are any relevant matters for it to take into account in relation to BIL's financial circumstances.

132. In the present case, the tribunal has reached the following conclusions on the specific matters it is to take into account under s.44(4), and it does not consider that there are any other relevant factors in this case beyond the specific matters set out in sub-section (4):

(i) It is significant that the Property would not have been able to obtain a licence if one had been applied for. This is clear 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) BIL is a professional landlord operated solely for that purpose, albeit it appears that this is its only property;

(iii) Given that whole Property was demised, with no common parts, the tribunal does not consider the absence of regular inspections to be significant. It was reasonable in those circumstances for Mr Akodu to expect the tenants to notify him of any problems;

(iv) While it is correct that the fire alarm appeared to be disconnected and that there had been problems with a water leak, the tribunal does not consider that these are significant factors as to condition especially as it is not clear whether they had been reported to Mr Akodu;

(v) The tribunal does not consider there is evidence of poor conduct on the part of the Applicants. It does not accept Mr Strelitz's submission that their failure to make arrangements to pay or communicate with Mr Akodu direct was poor conduct – such arrangements are not in the tribunal's view unusual for a property shared by renters under a joint tenancy.

133. 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.

134. 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.

135. Taking into account all of the above factors, the tribunal has concluded that the appropriate award in this case is 80% of the full amount of the rent for the relevant periods. This amounts to **£3,685 for Ms Wilkins** and **£1,794 for Mr Seddon**. It therefore awards RROs in these sums to the Applicants.

136. In view of its findings, and the fact the Applicants could not have obtained relief without pursuing this application, the tribunal further makes an order under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, that BIL shall within 14 days reimburse the application fee of £100 and the hearing fee of £200 paid by the Applicant. The order is made by the tribunal on the application of the Applicants, under rule 13(3).

Name: Judge Nicola Rushton QC **Date:** 24 March 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.