FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AN/HMF/2022/0125**
HMCTS	:	**Face to Face Hearing**
Property	:	**Unit 6, 2A Byam Street, London, SW6 2RD**
Applicants	:	**Charlie Delilkan** **Luke Joynes** **David Forbes** **Robert Pledger** **Jacob Lovie**
Representative	:	**Justice for Tenants (Cameron Neilson)**
Respondent	:	**Majorlink Limited** **Luis Rubio**
Representative	:	**No appearance**
Type of Application	:	**Application for a Rent Repayment Order by Tenant – Sections 40, 41, 43 & 44 of the Housing and Planning Act 2016**
Tribunal Member	:	**Judge Robert Latham** **Steve Wheeler MCIEH**
Date and Venue of Hearing	:	**3 February 2023 at** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**20 February 2023**

DECISION

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The Applicant provided a Bundle of Documents which extended to 291 pages.

Decision of the Tribunal

1. We give the Applicants permission to withdraw their application against the First Respondent.

2. The Tribunal makes the following Rent Repayment Orders against the Second Respondent which is to be paid by 13 March 2023:

(i) Ms Charlie Delilkan: £6,146.50.
(ii) Mr David Forbes: £7,410.00.
(iii) Mr Luke Joynes: £4,322.50.
(iv) Mr Robert Pledger: £2,009.25.
(v) Mr Jacob Lovie: £8,236.50.

3. The Tribunal determines that the Second Respondent shall also pay the Applicants £300 by 13 March 2023 in respect of the reimbursement of the tribunal fees paid by the Applicant.

The Application

1. By an application, dated 20 June 2022, the Applicants seeks Rent Repayment Orders ("RROs") against the Respondents pursuant to Part I of the Housing and Planning Act 2016 ("the 2016 Act"). The application relates to the accommodation known as Unit 6, 2A Byam Street, London, SW6 2RD ("the Premises"). These were formerly a warehouse. The Premises are in the London Borough of Hammersmith and Fulham ("LBHF"). The Applicants have provided a number of documents to which reference is made in this decision.

2. The Applicants are seeking to recover RROs in a total of £29,690.50:

(i) Ms Charlie Delilkan seeks a RRO in the sum of £6,470.00 for the rent paid over the period 1 August 2020 to 31 July 20.

(ii) Mr David Forbes seeks a RRO in the sum of £7,800.00 for the rent paid over the period 5 August 2020 to 4 August 2021.

(iii) Mr Luke Joynes seeks a RRO in the sum of £4,550.00 for the rent paid over the period 16 January 2020 to 31 July 2021.

(iv) Mr Robert Pledger seeks a RRO in the sum of £2,115.00 for the rent paid over the period 23 May 2021 to 31 August 2021.

(v) Mr Jacob Lovie seeks a RRO in the sum of £8,670.00 for the rent paid over the period 1 June 2020 to 31 May 2021.

3. In their application form, the Applicants gave the following addresses for the Respondents:

(i) Majorlink Limited ("Majorlink"): 115 Craven Park Road, London, N15 6BL. This is the address on the Land Registry title deed for the subject property (see p.189-191). Majorlink acquired the freehold interest on 23 May 2007.

(ii) Mr Luis Rubio: masih.x.sadeghi@gmail.com, This is the contact address provided on the Applicants' tenancy agreements. Mr Rubio did not provide his tenants with an address for service as required by Section 48 of the Landlord and Tenant Act 1987. The tenancies were granted by Masih Sadeghi on behalf of Mr Rubio.

4. On 30 August 2022, Tribunal gave Directions. By 29 September, the Applicants were Directed to serve their Bundle of Documents. The Applicants complied with this Direction.

5. By 21 October, the Respondents were directed their Bundle of Documents. Neither Respondent has engaged with these proceedings. On 7 December 2022, the Applicants sought a debarring order. On 10 January 2023, Judge Vance refused this application, on the ground that this would serve no practical purpose, the Respondents' involvement in the proceedings already having been limited by their failure to comply with the Directions.

<u>The Hearing</u>

6. The Applicants were represented by Mr Cameron Neilson, from Justice for Tenants. Justice for Tenants is a Community Interest Company which seeks to ensure that tenants have access to justice. The Tribunal heard evidence for the five Applicants.

7. Mr Neilson provided a Skeleton Argument. He is a law graduate. We are grateful for the assistance that he provided and would commend him for the quality of both his written and oral advocacy.

8. Neither Respondent appeared. The Tribunal is satisfied that both Respondents were aware of the application and the hearing date. On 24 June 2022, the Tribunal sent them a copy of the application. On 8 September 2022, they were sent a copy of the Directions. On 10 January and 24 January, the Respondents were notified of the hearing. The Tribunal is satisfied that they have made an informed decision not to engage with these proceedings.

9. Mr Neilson accepted that he had no sufficient evidence as to the relationship between the First and Second Respondents. He is unable to establish that Mr Rubio was acting as an undisclosed agent for Majorlink Limited. He therefore informed the Tribunal that he was no longer seeking a RRO against the First Respondent.

10. Justice for Tenants had submitted a detailed Statement of Case in support of the application which addressed the approach that the Tribunal should adopt in making a RRO. This did not address the most recent decision of the Court of Appeal decision in *Kowalek v Hassanein* [2022] EWCA Civ 1041; [2022] 1 WLR 4558 ("*Kowalek*" – 25 July 2022) or the further guidance given by Judge Cooke in the Upper Tribunal ("UT") in her recent decisions of *Acheampong v Roman and Choudhury v Razak* [2022] UKUT 239 (LC); [2022] HLR 44 ("Acheampong" – 5 September 2022) and *Hancher v David* [2022] UKUT 277 (LC) ("*Hancher*" – 21 October 2022). Mr Neilson addressed these recent authorities in his Skeleton Argument. We asked him to consider the extent to which Judge Cooke's guidance is consistent with the Court of Appeal decision in *Kowalek*.

Issues in Dispute

11. There are two issues which the Tribunal is asked to determine:

(i) Whether we are satisfied beyond reasonable doubt that Mr Rubio has committed an offence under section 72(1) of the Housing Act 2004 of having control or management of an unlicenced HMO. We are so satisfied. We are further satisfied that this is an appropriate case for RROs to be made.

(ii) The amount of any RRO, assessed under section 44 of the Housing and Planning Act 2016. This is the more difficult issue which requires careful consideration of the legislation and the relevant authorities. An important role of the Upper Tribunal ("UT") is to provide guidance so that First-Tier Tribunals ("FTTs") can adopt a consistent approach in assessing RROs. The Tribunal reluctantly concludes that Judge Cooke's most recent guidance merely adds yet further confusion to an uncertain area of the law. It is unlikely to be the last word on the matter.

The Housing Act 2004 ("the 2004 Act")

12. The 2004 Act introduced a new system of assessing housing conditions and enforcing housing standards. Part 2 of the Act relates to the licencing of Houses in Multiple Occupation ("HMOs") whilst Part 3 relates to the selective licensing of other residential accommodation. The Act creates offences under section 72(1) of having control and management of an unlicenced HMO and under section 95(1) of having control or management of an licenced house. On summary conviction, a person who commits an offence is liable to a fine. An additional reedy was that either a

local housing authority ("LHA") or an occupier could apply to a FTT for a RRO.

13. Part 2 of the 2004 Act relates to the licensing of HMOs. Section 61 provides for every prescribed HMO to be licensed. HMOs are defined by section 254 which includes a number of "tests". Section 254(2) provides that 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."

14. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 prescribes those HMOs that require a licence. Article 4 provides that an HMO is of a prescribed description 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 the standard test under section 254(2) of the 2004 Act.

15. In addition, LBHF introduced an Additional Licencing Scheme that came into force on 5 June 2017. This applies to all HMOs in the borough which are occupied by 3 or more persons occupying 2 or more households. The Addition Licencing Scheme is relevant in the current case as between June 2020 and July 2021, there were only four people occupying the Premises. During this period, a licence would have been required under the Additional, rather than the mandatory, Scheme.

16. Section 263 provides:

> "(1) In this Act "<u>person having control</u>", in relation to premises, means (unless the context otherwise requires) the person <u>who receives the rack-rent of the premises</u> (whether on his own account

or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

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

(3) In this Act "person managing" means, in relation to premises, the person who, being an owner or lessee of the premises–

(a) receives (whether directly or through an agent or trustee) rents or other payments from–

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person."

17. It is to be noted that there may be more than one person who may commit an offence under section 95 as having "control of" or "managing" a house. In such circumstances, it will be for the LHA to determine who is the appropriate person to hold a licence. However, when it comes to the making of a RRO, this can only be made against the "landlord".

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

18. Part 2 of the 2016 Act introduced a raft of new measures to deal with "rogue landlords and property agents in England". Chapter 2 allows a banning order to be made against a landlord who has been convicted of a banning order offence and Chapter 3 for a data base of rogue landlords and property agents to be established. Section 126 amended the 2004 Act by adding new provisions permitting LHAs to impose Financial Penalties of up to £30,000 for a number of offences as an alternative to prosecution.

19. Chapter 4 introduces a new set of provisions relating to RROs. An additional five offences have been added in respect of which a RRO may now be sought. The maximum award that can be made is the rent paid over a period of 12 months during which the landlord was committing the offence. However, section 46 provides that a tribunal must make the

maximum award in specified circumstances. Further, the phrase "such amount as the tribunal considers reasonable in the circumstances" which had appeared in section 74(5) of the 2004 Act, does not appear in the new provisions. It has therefore been accepted that the case law relating to the assessment of a RRO under the 2004 Act is no longer relevant to the 2016 Act.

20. In *Jepsen v Rakusen* [2021] EWCA Civ 1150; [2022] 1 WLR 324, the Court of Appeal first considered the 2016 Act. The issue in the appeal was whether a RRO could be made against a superior landlord. The Upper Tribunal held that it could; the Court of Appeal reversed this decision. The tenant has appealed to the Supreme Court. Argument has been heard and the judgment of the Supreme Court is awaited.

21. In the Upper Tribunal (reported at [2012] UKUT 298 (LC)), Martin Rodger KC, the Deputy President, had considered the policy of Part 2 of the 2016. He noted (at [64]) that "the policy of the whole of Part 2 of the 2016 Act is clearly to deter the commission of housing offences and to discourage the activities of "rogue landlords" in the residential sector by the imposition of stringent penalties. Despite its irregular status, an unlicensed HMO may be a perfectly satisfactory place to live. The "main object of the provisions is deterrence rather than compensation."

22. In the Court of Appeal, Arnold LJ endorsed these observations. At [36], he noted that Part 2 of the Act was the product of a series of reviews into the problems caused by rogue landlords in the private rented sector and methods of forcing landlords to either comply with their obligations or leave the sector. Part 2 is headed "Rogue landlords and property agents in England". At [38], he noted that the Act conferred tough new powers to address these problems. At [40], he added that the Act is aimed at "combatting a significant social evil and that the courts should interpret the statute with that in mind". The policy is to require landlords to comply with their obligations or leave the sector.

23. In the subsequent decision of *Kowelek*, Newey LJ summarised the legislative intent in these terms (at [23]):

> "It appears to me, moreover, that the Deputy President's interpretation of section 44 is in keeping with the policy underlying the legislation. Consistently with the heading to part 2, chapter 4 of part 2 of the 2016 Act, in which section 44 is found, has in mind "rogue landlords" and, as was recognised in *Jepsen v Rakusen* [2021] EWCA Civ 1150, [2022] 1 WLR 324, "is intended to deter landlords from committing the specified offences" and reflects a "policy of requiring landlords to comply with their obligations or leave the sector": see paragraphs 36, 39 and 40. "[T]he main object of the provisions", as the Deputy President had observed in the UT (*Rakusen v Jepsen* [2020] UKUT 298 (LC), [2021] HLR 18, at paragraph 64; reversed on other grounds), "is deterrence rather

than compensation". In fact, the offence for which a rent repayment order is made need not have occasioned the tenant any loss or even inconvenience (as the Deputy President said in *Rakusen v Jepsen*, at paragraph 64, "an unlicensed HMO may be a perfectly satisfactory place to live") and, supposing damage to have been caused in some way (for example, as a result of a failure to repair), the tenant may be able to recover compensation for it in other proceedings. Parliament's principal concern was thus not to ensure that a tenant could recoup any particular amount of rent by way of recompense, but to incentivise landlords. The 2016 Act serves that objective as construed by the Deputy President. It conveys the message, "a landlord who commits one of the offences listed in section 40(3) is liable to forfeit every penny he receives for a 12-month period". Further, a landlord is encouraged to put matters right since he will know that, once he does so, there will be no danger of his being ordered to repay future rental payments."

24. Section 40 provides (emphasis added):

> "(1) This Chapter confers power on the First-Tier Tribunal to make a rent repayment order where a <u>landlord</u> has committed an offence to which this Chapter applies.
>
> (2) A rent repayment order is an order requiring <u>the landlord under a tenancy</u> of housing in England to—
>
> > (a) repay an amount of rent paid by a tenant, or
> >
> > (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy."

25. Section 40(3) lists seven offences "committed by a landlord in relation to housing in England let by that landlord". The five additional offences are: (i) violence for securing entry contrary to section 6(1) of the Criminal Law Act; (ii) eviction or harassment of occupiers contrary to sections 1(2), (3) or (3A) of the Protection from Eviction Act 1977; (iii) failure to comply with an improvement notice contrary to section 30(1) of the 2004 Act; (iv) failure to comply with prohibition order etc contrary to section 32(1) of the Act; and (v) breach of a banning order contrary to section 21 of the 2004 Act. There is a criminal sanction in respect of some of these offences which may result in imprisonment. In other cases, the local housing authority might be expected to take action in the more serious case. However, recognising that the enforcement action taken by local authorities was been too low, the 2016 Act was enacted to provide additional protection for vulnerable tenants against rogue landlords.

26. In a number of cases, Judge Cooke has suggested that FTTs should adopt a "starting point", before considering any mitigating or aggravating features. This suggests that a FTT should adopt the role of a criminal sentencer. It is

difficult to reconcile this with the restitutionary remedy contemplated by the Court of Appeal in *Kowalek*.

27. Judge Cooke now suggests that a FTT is now obliged to assess the relative seriousness of seven categories of offence which "can be seen from the relevant maximum sentences on conviction" in assessing any RRO (see [36] below). She suggests that that the failure to licence an HMO should now be treated as less serious than an offence of harassment as no prison sentence can be imposed. There is nothing in the statute that indicates that a FTT should adopt such a course. Indeed, it is surprising that legislation intended to strengthen the regime of RROs should have had the opposite effect in respect of the two licencing offences under sections 72(1) and 95(1) on the 2004 Act which were the only offences in respect of which a RRO could be made.

28. Section 41 deals with applications for RROs. The material parts provide:

> "(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.

29. Section 43 provides for the making of RROs:

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

30. Section 44 is concerned with the amount payable under a RRO made in favour of tenants. By section 44(2) that amount "must relate to rent paid during the period mentioned" in a table which then follows. The table provides for repayment of rent paid by the tenant in respect of a maximum period of 12 months. Section 44(3) provides (emphasis added):

> "(3) The amount that the <u>landlord</u> may be required to repay in respect of a period must not exceed—
>
> > (a) the <u>rent</u> 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.

31. "Rent" is not defined in the Act. However, for the past 100 years, "rent" has had a clearly defined meaning, namely "the entire sum payable to the landlord in money" (see Megarry on the Rent Acts, 11th Ed at p.519 and the reference to *Hornsby v Maynard* [1925] 1 KB 514 and subsequent cases). The meaning is the same at common law as under the Rent Acts (see the current edition of Woodfall "Landlord and Tenant" at 7.015 and 23.150). Parliament would have had this in mind in enacting the Act.

32. Section 44(4) provides:

> "(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."

33. Section 46 specifies a number of situations in which a FTT is required, subject to exceptional circumstances, to make a RRO in the maximum sum. These relate to the five additional offences which have been added by the 2016 Act where the landlord has been convicted of the offence or where the LHA has imposed a Financial Penalty.

34. In *Williams v Parmar* [2021] UKUT 244 (LC); [2022] HLR 8, the Chamber President, Fancourt J, gave guidance on the approach that should be adopted by FTTs in applying section 44:

(i) A RRO is not limited to the amount of the profit derived by the unlawful activity during the period in question (at [26]);

(ii) Whilst a FTT may make an award of the maximum amount, there is no presumption that it should do so (at [40]);

(iii) The factors that a FTT may take into account are not limited by those mentioned in section 44(4), though these are the main factors which are likely to be relevant in the majority of cases (at [40]).

(iv) A FTT may in an appropriate case order a sum lower than the maximum sum, if what the landlord did or failed to do in committing the offence is relatively low in the scale of seriousness ([41]).

(v) In determining the reduction that should be made, a FTT should have regard to the "purposes intended to be served by the jurisdiction to make a RRO" (at [41] and [43]).

35. The Deputy Chamber President, Martin Rodger KC, has subsequently given guidance of the level of award in his decisions *Simpson House 3 Ltd v Osserman* [2022] UKUT 164 (LC); [2022] HLR 37 and *Hallett v Parker* [2022] UKUT 165 (LC); [2022] HLR 46. Thus, a FTT should distinguish between the professional "rogue" landlord, against whom a RRO should be made at the higher end of the scale (80%) and the landlord whose failure was to take sufficient steps to inform himself of the regulatory requirements (the lower end of the scale being 25%).

36. In *Acheampong*, Judge Cooke has now stated that FTTs should adopt the following approach:

"20. The following approach will ensure consistency with the authorities:

a. Ascertain the whole of the rent for the relevant period;

b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate.

c. Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step:

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

21. I would add that step (c) above is part of what is required under section 44(4)(a). It is an assessment of the conduct of the landlord specifically in the context of the offence itself; how badly has this landlord behaved in committing the offence? I have set it out as a separate step because it is the matter that has most frequently been overlooked."

37. The Tribunal makes the following observations on these guidelines:

(i) Judge Cooke did not have regard to the recent decisions of the Court of Appeal in *Kowalek*, a judgment given six weeks before Judge Cooke issued her guidelines. This contemplates a restitutionary remedy, rather than a criminal sentencing exercise. Indeed, there are a number of circumstances when a FTT is required, subject to exceptional circumstances, to make a RRO at the maximum level (see section 46). Parliament has set the maximum penalties that a criminal court can impose for these offences. A RRO is rather a summary remedy that Parliament has afforded whereby a tenant is entitled to recover up to 12 months' rent.

(ii) Steps (a) and (d) are uncontroversial. They do no more than restate the factors specified in the s.44(3) and (4). Steps (b) and (c) are more surprising as they seem to add a judicial gloss, namely additional steps that a FTT must follow, the effect which will be to ratchet down the RRO that a FTT would otherwise be minded to take were it merely to have regard to the statute.

(iii) Judge Cooke suggests that the maximum award is the "net rent" rather than the "rent". She has not had regard to the established jurisprudence, but rather states (at [9]) that "a sum the tenant pays the landlord for utilities is not really rent".

(vi) Judge Cooke does not explain how she has reached her conclusion that "rent" is to be equated with "net rent". Is she redefining the maximum award that a FTT has power to make under section 44(3) or is this a deduction that a FTT should make when it has regard to the financial circumstances of the landlord (section 44(4)(b))? There are circumstances where the legislation requires an FTT to make a RRO at the maximum level (section 46). The Tribunal would question whether it is appropriate for a judicial gloss to be applied reducing the maximum award from the "rent" to the "net rent".

(vii) Judge Cooke suggests that where precise figures are not available of the utility bills paid by a landlord, a FTT should make "an informed estimate". This is highly relevant in the current case where there is no evidence of the size of the deductions that should be made for gas, electricity and the internet. We must ask ourselves whether we, as an Expert Tribunal, are competent to make such an estimate at this property given its unusual and complex design and construction.

(vii) FTTs are now required to assess the seriousness of the seven offences specified in section 40(3) having regard to the maximum sentences which are available on conviction. It would seem that a RRO should reflect the following:

> (a) The most serious offences are those contrary to section 6(1) of the Criminal Law Act; and sections 1(2), (3) or (3A) of the Protection from Eviction Act 1977 which are punishable by up to 6 months imprisonment and/or a fine. On indictment, the maximum

sentence for an offence under the Protection from Eviction Act is two years.

(b) The next level of RRO is for an offence of breaching a banning order contrary to section 21 of the 2004 Act which carries a prison sentence of up to 51 weeks.

(c) The other offences under the 2004 Act should be at the lowest level of scale as they are only punishable by a fine, albeit that a Level 5 fine is now unlimited.

(d) Thus, the two licencing offences, which were the only two offences in respect of which RROs could be made under the 2004 Act, should now attract a lower RRO.

(viii) FTTs should then consider the seriousness of the particular offence compared with other examples of the same offence. Section 44(4)(a) requires a tribunal to take into account the conduct of the landlord and the tenant. It is unclear what this additional statutory gloss adds.

(ix) An FTT is then to adopt a figure as a "starting point" and carry out a quasi-sentencing exercising. It is only at this stage that a FTT should apply the statutory criteria specified in section 44(4) and consider any aggravating or mitigating circumstances. This would seem to involve an element of double counting requiring an FTT to consider the seriousness of the offence and then make a separate adjustment having regard to the conduct of the landlord and the tenant.

38. In *Hancher*, Judge Cooke added two further judicial glosses:

(i) The FTT (in LON/00AP/HMG/2021/0013) had declined to make any reduction to the rent in respect of the utility bills and council tax which had been paid by the landlady as there was insufficient evidence as to what deductions should be made. Judge Cooke granted permission to appeal on the ground that it was arguable that the FTT had failed to take into account the evidence that the landlady had paid the utility bills. However, in her decision on the substantive appeal, Judge Cooke (at [18]) declined to make any adjustment as the landlady had not adduced any evidence about the payments that she had made. Judge Cooke did not explain why she had not made the "informed estimate" that she had directed that FTTs should make.

(ii) At [19] of her decision, Judge Cooke suggested that the FTT should have considered whether a licence would have been granted had an HMO licence been sought. The facts are not dissimilar to the current case, both cases involving a former warehouse, now let as residential accommodation. The FTT had made a finding that the staircase was not suitable and that a tenant had had a fall. An architect had identified a

range of works that were required to improve the means of escape. In reducing the RRO from 100% to 65%, Judge Cooke held (at [19]) that there was no suggestion that the property would not have qualified for an HMO licence had one been sought.

39. Judge Cooke's guidance that FTTs should adopt a "starting point" has caused particular problems for both FTTs and those who appear before us. It has had two iterations. She initially suggested that the starting point should be the rent paid over the relevant period of 12 months (see *Vadamalayan v Stewart* [2020] UKUT 183 (LC); [2020] HLR 38 at [12] and *Chan v Bilkhu* [2020] UKUT 289 (LC) at [11]). In the subsequent decisions of *Ficcara v James* [2021] UKUT 38 (LC); [2021] HLR 30 (the Deputy Chamber President) and *Williams v Parmar* (the Chamber President) reminded FTTs that the rent could not be the starting point as this was the maximum award that could be made. The concept of a starting point has now appeared in a different guise.

40. This Tribunal finds this recent iteration equally difficult to reconcile with the wording of the 2016 Act and the recent decisions of the Court of Appeal. To suggest that the seriousness of the offence is the starting point before applying the statutory criteria in section 44(4), seems to put the cart before the horse. A FTT rather needs to assess the seriousness of the offence having applied the statutory criteria. It is only at this final stage that it can determine at what percentage any RRO should be set.

<u>The Background</u>

41. There is a plan of the Premises at p.196 and an aerial photograph at p.195. 2A Byam Street is a large warehouse unit which is surrounded by terraced residential properties. It had been a bagel factory. It has been divided into eight units, one of which are the Premises at Unit 6. The Premises are self-contained with its own front door. There are two long passages through the warehouse that lead to the front door; one leads off Byam Street and the other off Querin Street. At least one of the other units has been let for residential use.

42. There are five bedrooms in the Premises. Two of the bedrooms look out onto an external passage way which runs along the back of the gardens of the terraced properties in Querin Street. Each of these two bedrooms have small windows which open out onto the passageway. Both these windows can be opened for natural ventilation. However, the windows are too small were someone to seek an exit route in the event of fire.

43. There are three further bedrooms on the opposite side of the warehouse. These have a mezzanine construction, the bed being at a higher level. These bedrooms have no natural ventilation. Each has a hatch type sliding window that opens out into the living area in the centre of the premises. The living area also includes kitchen facilities. There is no natural ventilation in the living area which was shared by all the tenants. There

was no extract ventilation in the kitchen. There was transparent plastic sheeting running along part of the ceiling. In July 2021, an officer from LBHF suggested that the roof might include asbestos. The tenants complained that on occasions water leaked into the Premises.

44. There were no smoke detectors in either the communal living area or the bedrooms. The wooden bedroom doors were flimsy and were not fire resistant. The means of escape were wholly inadequate. All the bedrooms led into the living area where the cooking facilities were located. The front door of the Premises leads out into an enclosed passageway within the warehouse. There was then a choice of two long corridors, one leading into Byam Street and the First to a passageway between two terraced properties in Querin Street. The rubbish was dumped in the passage way leading to Byam Street as is illustrated in the photographs at p.270-272. This would obstruct any escape in the event of fire and contains combustible material that is liable to enhance the spread of any fire.

45. On 5 July 2019, Mr Forbes moved into the Premises. He was the first of the Applicants to do so. He works for an Indoor Climbing Centre. He saw an advert on Gumtree. This offered a room in a spacious and creative converted warehouse living space. He contacted the property manager Masif Sadeghi whom he knew as "Max". Upon inspecting the Premises, he found that the flat was a complete mess, with the main spaces and storage areas completely covered with belongings and rubbish from previous tenants. However, he had run out of options and decided that it would do in the short term. His tenancy agreement is at p.62. Mr Sadeghi signed it "on behalf of Landlord Luis Rubio". The rent was £650 pm which included all bills as well as a clearer. He paid a deposit of £650. He was granted a tenancy of "the large room downstairs". This was on the Querin Street side of the flat and had a small circular window which looked out onto an external passageway behind the gardens of the Querin Street terrace. His Schedule of Payments is at p.63. He paid his rent by standing order and has provided details of his bank payments. He was the last tenant to leave, vacating his room on 30 November 2021.

46. On 1 August 2019, Ms Delilkan moved into the Premises. She is a Research Manager for the National Institute of Health Research. She also saw an advert on Gumtree. Three rooms were advertised. She messaged Max and arranged to visit on 10 July. She was shown round by one of the tenants. The location was ideal for her job. Her tenancy agreement is p.61. Mr Sadeghi signed it "on behalf of Landlord Luis Rubio". The rent was £750 pm. She paid a deposit of £750. Although this was not specified in her tenancy agreement, the rent included all bills, namely gas, electricity, water, council tax and wifi. She was granted a tenancy of "the first double floor room". This was on side of the Premises which had no natural ventilation. She had a hatch window with sliding plastic units which opened onto the living area. This was a double mezzanine room. She was concerned about her security. The flat entrance door only had a single yale lock. Although there was a lock on the door into her room, she was not given a key for this. When she asked for a new lock, Max told her to install

it herself and deduct the cost for the rent. Her Schedule of Payments is at p.63. She paid her rent by standing order and has provided details of her bank payments. She vacated her room on 31 August 2021.

47. On 1 June 2020, Mr Lovie moved into the Premises. He is a self-employed events promoter. He also promotes a range of vaping products. His tenancy agreement is at p.58. Mr Sadeghi signed it "on behalf of Landlord Luis Rubio". The rent was £750 pm. He paid a deposit of £750. The rent was inclusive of all bills as well as a cleaner. His room was on side of the Premises which had no natural ventilation. He had a hatch window with sliding plastic units which opened onto the living area. In January 2021 he moved into another room which had the same arrangements for ventilation. The rent was the same. His Schedule of Payments is at p.65. He paid his rent by standing order and has provided details of his bank payments. He claims a RRO in respect of the rent of £8,670 which he paid over the 12 month period between 1 June 2020 to 31 May 2021. However, he did not vacate his room until 2 September 2021. He paid his rent up to the end of August. Max allowed him to remain rent free for the final two days.

48. On 16 January 2021, Mr Joynes moved into the Premises. He is a music agent. His tenancy agreement is at p.59. Mr Sadeghi signed it "on behalf of Landlord Luis Rubio". The rent was £700 pm. He paid a deposit of £700. The rent was inclusive of all bills as well as a cleaner. His room was on side of the Premises which had no natural ventilation. He had a hatch window with sliding plastic units which opened onto the living area. His Schedule of Payments is at p.66. He paid his rent by standing order and has provided details of his bank payments. He vacated his room on 31 July 2021.

49. On 23 May 2021, Mr Pledger moved into the Premises. He worked in a Pathology Laboratory. He found the flat through a friend of a friend. He messaged Max to arrange a viewing. His tenancy agreement is at p.60. Mr Sadeghi signed it "on behalf of Landlord Luis Rubio". The rent was £650 pm. He paid a deposit of £650. The rent was inclusive of all bills. His room was on the Querin Street side of the flat and had a small window which looked out onto an external passageway. This was not big enough to be used as a means of escape. His Schedule of Payments is at p.67. He paid his rent by standing order and has provided details of his bank payments. He vacated his room on 31 August 2021.

50. Mr Forbes was the first of the Applicants to move into the Premises and was the last to leave. He provides full details of the other tenants who occupied the rooms. We are satisfied that at least five people were occupying the five rooms apart from a period between 1 June 2020 and 27 July 2021 when there were only four. He describes how whilst he lived at the Premises, there was always a respectful dynamic between all the tenants, despite not knowing anyone prior to living there. Some of the tenants were closer than others as people moved in and out. For the most

part, they were all considerate of each other’s needs. They would have movie nights/watch TV together, play card games, and occasionally go out to the pub/restaurants together.

51. On 1 June 2021, matters were brought to a head when there was an unannounced visit by an officer from LBHF. The tenants were told that LBHF were aware that people are living in the units residentially, even though it only had planning permission for commercial use. The officers stated that they would return with a warrant for an inspection. After the inspection, Max asked Mr Lovie to purchase a fire extinguisher and a fire blanket and deduct the cost from his rent.

52. On July 27 2021, John O’Neill (LBHF's Private Housing Standards Officer) returned with a number of colleagues to carry out an inspection. They inspected all the rooms in the property and voiced strong concerns about the lack of smoke detectors, locks, fire exits, and HMO license. There was also reference to there being asbestos on the Premises. The tenants were signposted to Justice for Tenants for advice.

53. There was an interesting exchange of WhatsApp messages between the tenants and Max after these visits (see p.222). The tenants stated that they were worried about the issues raised by LBHF. Max responded: "Not to worry, they probs want us to apply for a new HMO licence, just a way for them to make more money". Max later added: "Nothing to worry about, they did the exact same thing 5 years ago".

54. After the visits, the Applicants became increasingly concerned about their safety. They were told that LBHF would be serving statutory notices and that that they would not be able to stay at the Premises. We suspect that having regard to the conditions, LBHF were contemplating serving a Prohibition Order. Ms Delilkan kept in touch with Mr O'Neill (see p.276-278). On 17 August, he stated that LBHF were drafting the requisite statutory notices. However, they were having difficulty in tracing an address for the landlord. LBHF had his name as "Mr Luis Manual Rubio Marin". LBHF had obtained a copy of the agreement between the First and Second Respondents. However, this only provided his name. This had been acceptable to the freeholder. The Tribunal was not provided with a copy of this agreement. LBHF had planned to serve notices in the first week on September. Notices had still not been served when Mr Forbes vacated his room on 30 November. Justice for Tenants were unable to update the Tribunal on the current situation.

55. After the two visited by LBHF, the Applicants accepted that their future at the Premises were limited. They became increasingly concerned about their safety. They all left between 31 July and 30 November 2021. They all set off their deposits against their last month's rent.

Issue 1: Has an Offence been Committed?

56. Our starting point is section 263 of the 2004 Act (see [16] above). We are satisfied that the Second Respondent falls within the statutory definitions of the "person having control" of the Property as he received the rack rent.

57. The Tribunal is satisfied beyond reasonable doubt that the Respondent committed an offence under section 72(1) of the 2004 Act. We are satisfied that:

(i) The Property was an HMO falling within the "standard test" as defined by section 254(2) of the 2004 Act which required a licence (see [37] above):

(a) it consisted of five units of living accommodation not consisting of self-contained flats;

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

(c) the living accommodation was occupied by the tenants as their only or main residence;

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

(e) rents were payable in respect of the living accommodation; and

(f) the households who occupied the living accommodation shared the kitchen, bathroom and toilet.

(ii) The Property fell within the prescribed description of an HMO that required a licence (see [14 above):

(a) it was occupied by five or more persons;

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

(c) it met the standard test under section 254(2) of the 2004 Act.

(iii) There was a period June 2020 to July 2021, when there were only four people in occupation. During this period a licence was required under LBHF's Additional Licencing Scheme.

(iv) The Second Respondent had not licenced the HMO as required by section 61 of the 2004 Act. This is an offence under section 72(1).

(v) The offence was committed between 5 July 2019 and 31 August 2021. It ceased when there were less than three people in occupation of the premises. The offence was committed throughout the period during which RROs are sought.

58. The Tribunal notes that Mr Lovie is claiming a RRO for the period 1 June 2020 to 31 May 2021. He issued his application on 22 June 2022, which was more than 12 months after this period. However, we are satisfied that the offence continued to be committed up to 2 September 2021, the date on which he vacated the Premises.

Issue 2: The Assessment of the RRO

2.1 Introduction

59. The 2016 Act gives the Tribunal a discretion as to whether to make an RRO, and if so, the amount of the order. We are satisfied that this is an appropriate case for a RRO to be made.

60. Section 44 provides that the period of the RRO may not exceed a period of 12 months during which the landlord was committing the offence. The amount must not exceed the rent paid by the tenant during this period, less any award of universal credit. None of the Applicants were in receipt of any State benefits.

61. The Tribunal was told that Max allowed the Applicants to set-off sums which they expended on the Property against their rent. For example, Ms Delilkan purchased a fire extinguisher and a fire blanket. Mr Forbes purchased a new oven. We note that section 52(2) of the Act provides that "an amount that a tenant does not pay as rent but which is offset against rent is to be treated as having been paid as rent".

62. We are satisfied that the Applicants paid the following rent over the periods that they are claiming their RROs:

(i) Ms Charlie Delilkan paid £6,470.00 over the period 1 August 2020 to 31 July 20.

(ii) Mr David Forbes paid £7,800.00 over the period 5 August 2020 to 4 August 2021.

(iii) Mr Luke Joynes paid rent of £4,550.00 over the period 16 January 2020 to 31 July 2021.

(iv) Mr Robert Pledger paid rent of £2,115.00 over the period 23 May 2021 to 31 August 2021.

(v) Mr Jacob Lovie paid rent of £8,670.00 over the period 1 June 2020 to 31 May 2021.

3.2 Submissions by the Applicants

63. Had the Tribunal been able to merely focus on the statutory criteria specified in section 44 of the 2016 Act, the assessment of the RRO would have been straight forward:

(i) The rent paid by the tenants is set out above.

(ii) There is no criticism of the conduct of the tenants.

(iii) The only issue in dispute was the conduct of the landlord.

(iv) There is no evidence of the landlord's financial circumstances.

(v) There is no evidence that the landlord has been convicted of any relevant offence.

64. Regretfully, it is now necessary for the Tribunal to address the judicial minefield which has been created by the UT.

65. In their Statement of Case (at p.2-14), the Applicants had initially sought RROs at 100% of the rent that they had paid over the relevant periods. However, in his Skeleton Argument, Mr Neilson felt constrained by the recent decisions of Judge Cooke to reduce the RROs sought to 90%, on the basis that an FTT is now required to adopt a "starting point" applying her non-statutory criteria. However, we note that in *Hancher*, Judge Cooke had reduced the RROs from 100% to 65% on facts not dissimilar to the current case.

66. Mr Neilson first addressed the issue of the maximum award that a tribunal is now entitled to make:

(i) When reminded that the maximum award under section 44(3) is the "rent" paid by the tenant, he accepted that the Tribunal should adopt the "rent" and not the "net rent" with deduction made for the utility bills paid by the landlord.

(ii) If the maximum rent under section 44(3) is now to be defined as the "net rent", it would be inappropriate for any deduction to be made. The landlord had not adduced any evidence of the sums that he has expended. It would be inappropriate for the Tribunal to make an "informed estimate".

(iii) Having determined the maximum RRO that could be made, the Tribunal should make an award at the highest level having regard to the statutory criteria in section 44(4). Particular regard should be had to the conduct of the landlord.

67. Mr Neilson argued that the Tribunal should have regard to the following factors:

(i) The Second Respondent had committed a deliberate breach. He had been warned five years previously that a licence was required (see [53] above).

(ii) The Second Respondent had failed to keep abreast of his legal obligations. Mr Neilson referred to *Aytan v Moore* [2022] UKUT 27 (LC) at [52]).

(iii) The Premises had no adequate fire precautions. The bedrooms did not have smoke alarms. There were no fire doors in the property or self-closing mechanisms. There were no smoke detectors anywhere else in Premises.

(iv) There were various breach of The Management of Houses in Multiple Occupation (England) Regulations 2006 which had been particularised at [49] – [53] of their Statement of Case. The landlord failed to ensure that his name, address and telephone contact number were available to all the households in the property, and that they are clearly displayed in a prominent position in the HMO. The landlord failed to ensure that all fire-escape routes were kept free from obstruction and were maintained in good order and repair. For HMOs with 5 persons or more, fire-escape notices should have been well-located in the HMO. The tenants were put at greater risk of harm, loss of property, and death due to the inadequate provision of fire safety equipment, smoke alarms and fire retardant doors.

(v) Mr Neilson raised a range of maintenance, repair and management issues. The Premises were not secure. The back entrance to the warehouse could not be shut in a secure manner. The front door to the Premises was insecure. There was water ingress through the plastic units which formed part of the ceilings of the Premises. LBHF had warned the Applicants of their being a strong possibility of the presence of carcinogenic asbestos in the ceilings. The communal bins outside in the warehouse passage were constantly overflowing and became a local fly tipping site.

(vi) Failure to comply with other regulatory obligations, including (a) failure to ensure that a gas safety certificate was in place throughout the tenancy and provided to the occupants; (b) failure to ensure that an electrical safety certificate was in place throughout the tenancy and provided to the occupants; (c) failure to provide a copy of their energy performance certificate to the occupants; failure to provide the tenants with the Right to Rent booklet. Mr Neilson referred to *Simpson House 3 Limited v Osserman* [2022] UKUT 164 (LC) at [50]).

(vii) Failure to protect the Applicants' deposits in a Rent Deposit Scheme.

<u>3.4 The Tribunal's Assessment of the RRO</u>

68. Section 44(4) of the 2016 Act provides that the maximum RRO that it is open to this Tribunal to make is the rent paid by the tenants over the relevant period of up to 12 months. Having determined the maximum award, section 44(4) of the 2016 Act required us to take into account the following factors:

(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.

69. There is no criticism of the conduct of the tenants. We find that the following matters are relevant to the conduct of the landlord:

(i) We are satisfied that Mr Rubio let the Premises in a condition that was manifestly not fit for human habitation having regard to the hazards identified under the Housing Health and Safety Rating System introduced by the 2004 Act. The means of escape were wholly inadequate. There was a severe risk of death or serious injury had there been a fire in the Premises or in any other part of the Premises. The lack of natural ventilation in the habitable rooms was a major cause of concern. The concern is the greater given the arrival of Covid-19. We are satisfied that the condition of the Flat was prejudicial to their health as defined by the Environmental Protection Act 1990.

(ii) The Premises were in part of a building that had been a warehouse. We were told that it had most recently been used to bake bagels. The warehouse had been divided into eight units, a number of which were being used for residential accommodation. There is no evidence that the landlord had sought planning permission for change of use. The warehouse was manifestly unsuitable for residential accommodation.

(iii) Parliament has imposed a range of additional obligations on those who manage HMOs. Mr Rubio has failed to comply with any of these requirements.

(iv) We are satisfied that Mr Rubio acted in cynical disregard of his obligations as landlord. This was a clear and deliberate breach of his legal obligations. We accept that he was well aware that a licence was required.

(v) Apart from his failure to licence the Premises, Mr Rubio failed to comply with a range of his statutory obligations. He did not provide any of the tenants with an EPC, a gas safety certificate, a record of the electrical inspections or the "How to Rent" checklist. Their deposits were not placed a Rent Deposit Scheme.

(vi) An important safeguard is that a landlord should supply an address at which he can be contacted and at which any notices can be served (see section 48 of the Landlord and Tenant Act 1987). The HMO Regulations impose additional obligations so that tenant can ensure that effective action is taken in respect of any management breaches. The Tribunal is satisfied that Mr Rubio took an informed decision not to provide such details to make it more difficult for his tenants to seek any redress.

70. Mr Rubio has adduced no evidence that any RRO should be reduced on grounds of his financial circumstances. There is no evidence that Mr Rubio has been convicted of an offence to which the Chapter applies. However, we give limited weight to this. LHAs are under considerable financial pressures and are only able to take action in limited cases. A conviction would have been an aggravating factor. However, given the circumstances of this case, we make no reduction for the absence of any conviction.

71. We are considering a restitutionary remedy. Our first reaction was to make RRO at the maximum level of 100% of the rent paid by these Applicants over the relevant periods of up to 12 months. We believe that this is the award that Parliament would have expected us to make given the social evil at which this legislation is directed.

72. However, the Deputy President has indicated in his most recent decisions that a maximum award should be reserved for the worst case (see [35] above). Whilst the current case is extremely bad, we are reluctant to put it in the worst category. We therefore make an award of 95% of the relevant rents.

73. We must then turn to the guidance given by Judge Cooke in *Acheampong* and *Hancher*. First, we must consider whether the maximum award should be the "net rent", making deductions for utilities paid by the landlord. We decline to do so as we are satisfied that "rent" should be construed as it has been understood for the last 100 years, namely "the entire sum payable to the landlord in money" (see [31] above). We do not consider that Judge Cooke's suggestion (at [9] of *Acheampong*) that "a sum the tenant pays the landlord for utilities is not really rent" is a sufficient justification to depart from this established jurisprudence.

74. If we are wrong on this, there is no sufficient evidence before us to make any assessment of the "net rent":

(i) Mr Rubio has not adduced any evidence of the sums that he has paid for utilities. The Directions gave him ample opportunity to do so.

(ii) We reject the suggestion that a FTT should make "an informed estimate". We do so for two reasons. First, any litigant should plead in their Statement of Case any factors that they require the tribunal to take into account in assessing a RRO. It is not for a FTT to step into the arena

and take a point which has not been raised by a party. Secondly, whilst FTTs are Expert Tribunals, an assessment of utility bills payable in respect of these Premises is outside our expert knowledge, particularly at a time of rampant inflation in fuel charges. The Premises are complex and unusual. We have not inspected them. We note that in *Hancher* (another warehouse case), Judge Cooke decided not to make "an informed estimate". We are satisfied that she was correct to take this course.

75. Judge Cooke suggests that, before applying the statutory criteria in section 44(4), we should adopt a "starting point". We should make a significant reduction as an offence of failing to licence an HMO under section 72(1) is less serious than the other offences specified in section 40 as no term of imprisonment can be imposed. We find it impossible to accept that in passing the 2016 Act, parliament intended to ratchet down the level of RROs that FTTs should make in respect of licencing offences. Further, as an Expert Tribunal, we have considerable knowledge of housing conditions in London. Unlicenced HMOs with inadequate means of escape carry a serious risk of death or serious injury. Equally, properties let in in unfit condition with inadequate ventilation, dampness and mould growth also carry a risk of death or serious injury to health. These are serious hazards when assessed under the Housing Health and Safety Rating System introduced by the 2004 Act. We are not willing to minimise the social evil at which the 2016 Act is addressed.

76. We are comforted that our view is reflected in the judgment of the Deputy Chamber President, Martin Rodger KC, in *Global 100 Limited v Jiminez* [2022] UKUT 50 (LC); [2022] HLR 25 in which he noted at [14]:

> "In *Rogers v Islington LBC* [1999] 32 HLR 138, 140 Nourse LJ referred to research illustrating the poor quality of many HMOS: in 1993 four out of ten HMOs were found by the English House Condition Survey to be unfit for human habitation; other studies showed that residents of HMOs were at a far greater risk of death or injury from fire than residents of other dwellings. Norse LJ continued:
>
>> "HMOs can also present a number of other risks to the health and safety of those who live in them, such as structural instability, disrepair, damp, inadequate heating, lighting or ventilation and unsatisfactory kitchen, washing and lavatory facilities. It is of the greatest importance to the good of the occupants that houses which ought to be treated as HMOs do not escape the statutory control."

77. Judge Cooke then requires us to consider the seriousness of this offence compared with other licencing offences. This would have been an additional and separate exercise from considering the conduct of the landlord. This requires an element of double counting and the somewhat semantic exercise of seeking to distinguish which factors in [69] above

relate to the “seriousness of the offence” and which to “conduct of the landlord”. For example, the failure to protect a deposit by placing it in a Rent Deposit Scheme does not relate to the seriousness of a licencing offence; however, it is relevant to the conduct of the landlord. We do not consider that this "judicial gloss" impacts upon the RRO that we are minded to make.

78. Finally, Judge Cooke now requires us to consider whether a licence would be granted were an application to be made. We would not want to usurp the statutory function that the 2004 Act has bestowed on LHAs. However, having regard to the housing conditions that the Applicants were required to endure, we consider it most unlikely that LBHF would grant a licence. Indeed, it seems that LBHF had indicated that they were minded to impose a Prohibition Order on the Premises.

Conclusions

79. We give the Applicants permission to withdraw their application against the First Respondent.

80. Having regard to findings above, we are satisfied that it is appropriate to make RRO against the Second Respondent at 95% of the relevant rents as follows:

(i) Ms Charlie Delilkan: 95% of £6,470.00: £6,146.50.

(ii) Mr David Forbes: 95% of £7,800.00: £7,410.00.

(iii) Mr Luke Joynes: 95% of £4,550.00: £4,322.50.

(iv) Mr Robert Pledger: 95% of £2,115.00: £2,009.25.

(v) Mr Jacob Lovie: 95% of £8,670.00: £8,236.50.

81. We are also satisfied that the Second Respondent should refund to the Applicants the tribunal fees of £300 which they have paid in connection with this application.

Judge Robert Latham
20 February 2023

RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.