FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**NS/LON/00AP/HMF/2022/0115**
Property	**:**	**61 Hermitage Road, London N4 1LU**
Applicants	**:**	**(1) Stefano Magini** **(2) Nadim Mostafa** **(3) Ana Martinez Saez** **(4) Louisa Leroy**
Representative	**:**	**Justice for Tenants**
Respondent	**:**	**(1) Zanka Properties Limited** **(2) Abdul Mubin**
Representative	**:**	**Mr Andrew Walker – representative for 1st Respondent**
Type of application	**:**	**Application for a rent repayment order by tenants** Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016
Tribunal	**:**	**(1) Judge Amran Vance** **(2) Ms Sue Coughlin, MCIEH**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of Hearing	**:**	**18 October 2022**
HMCTS Code	**:**	**CVPREMOTE**
Date of Decision	**:**	**28 November 2022**

DECISION

Description of hearing

The hearing of this matter took place on 18 October 2022 by remote video conferencing (HMCTS code: Remote: CVP). The Applicants provided a hearing bundle (283 pages) in PDF format and references in square brackets and in bold below are to page numbers in that bundle. No party objected to a video hearing.

Decisions

1. The tribunal makes the following Rent Repayment Orders. The sums ordered must be paid by the First Respondent Zanka Properties Limited to the respective Applicants within 28 days of the date of issue of this decision

   (a) Stefano Magini **£4,317.15**.
   (b) Nadim Mostafa **£1,924.40**.
   (c) Ana Martinez Saez **£2,775.68**.
   (d) Louisa Leroy **£1,609.05**.

2. The First Respondent must also pay to the Applicants, within the same 28 day timescale, the sums they paid for the tribunal's application fee (£100) and hearing fee (£200).

3. No order is made against the Second Respondent Abdul Mubin

Background

4. This application concerns requests for Rent Repayment Orders ("RROs") made by former tenants of 61 Hermitage Road, London N4 1LU ("the Property"), a two storey, six-bedroom terraced house with a shared kitchen and bathrooms in the London Borough of Haringey.

5. On various dates, each Applicant entered into a written Assured Shorthold Tenancy Agreement for the rental of a room in the Property. Each agreement named the First Respondent, Zanka Properties Limited, as the landlord, and specified that the tenant was to pay rent to that company. Information filed at Companies House records Mr Simone Zanchetta as being the sole Director of Zanka Properties Limited **[72]**. The tenancy agreements recorded that the tenants were responsible for paying gas and electricity costs, with water charges, council tax and the cost of internet broadband being paid by the landlord. The tenants paid for gas and electricity by topping up meters located in the property. However, from time to time Mr Zanchetta topped up the meters himself and asked the tenants to reimburse him. The cooking, toilet, and washing facilities in the Property were all communal.

6. The Second Respondent, Mr Mubin, is the registered proprietor of the freehold interest in the Property, and is recorded as such on the title at HM Land Registry **[223]**. His name does not appear in any of the

tenancy agreements. Mr Mubin has not engaged in these proceedings. The only relevant communication received by the tribunal from him, or on his behalf, was an email received on 21 July 2022 from a Mr Nigel Popo in which it was said that Mr Mubin would like to engage in mediation. There was a high rate of turnover of tenants renting rooms in the Property, with some moving from one room to another. The Applicants' evidence regarding occupancy was not challenged by the First Respondent, and, for the period relevant to their application, is summarised in the following table.

	Room 1	**Room 2**	**Room 3**	**Room 4**	**Room 5**
2020					
Aug	Luigi Fersini	Mahdi Missouri	**Stefano** (from 08.08)	Rajla Hutsulka	Sam Lee Jones
Sep	Luigi	Mahdi	**Stefano**	Rajla	Sam
Oct	Luigi	Mahdi	**Stefano**	Rajla	Sam
Nov	Luigi	Mahdi	**Stefano**	Rajla (to 30.11)	Sam **Ana Martinez Saez** (from 27.11)
Dec	Luigi	Mahdi	**Stefano**	Junio (from 10.12)	
2021					
Jan	Luigi	Mahdi	**Stefano**	Junio (to 04.01) **Nadim** Mostafa (from 20.01)	**Ana**
Feb	Luigi (to 15.02.21)	Mahdi	**Stefano**	**Nadim**	**Ana**
Mar	**Louisa Leroy (from 10.03.21)**	Mahdi	**Stefano**	**Nadim**	**Ana**
Apr	**Louisa**	Mahdi	**Stefano**	**Nadim**	**Ana**
May	**Louisa**	Mahdi (to 7.05) Micky (from 20.05)	**Stefano**	**Nadim**	**Ana**
Jun	**Louisa (to 11.07.21)**	Micky (to 21.06)	**Stefano** (to 15.06)	**Nadim** (to 21.06)	**Ana** (to 01.06)

7. Nor did the First Respondent challenge the rent that the Applicants were liable to pay, or dispute that the sums they say were paid were, in fact, received. Bank statements for each Applicant evidence rental payments made to Zanka Properties Ltd **[135 – 221].**

8. Stefano Magini paid a monthly rent of £600. He was a tenant from 8 August 2020 to 15 June 2021. He seeks a RRO for the period 7 September 2020 to 6 June 2021 in the sum of £5,160.

9. Ana Martinez Saez paid a monthly rent of £600. She was a tenant from 27 November 2020 to the 1 June 2021, and seeks a RRO for the whole of that period, in the sum of £3,346.50.

10. Nadim Mostafa paid a monthly rent of £575. He was a tenant from 20 January 2021 to 21 June 2021. He seeks a RRO for the period 15 February 2021 to the 14 June 2021 in the sum of £2,300.

11. Louisa Leroy paid a monthly rent of £640. She was a tenant from 10 March 2021 to 11 July 2021, and seeks a RRO for the whole of that period, in the sum of £1,920.

The Hearing

12. At the hearing the Applicants were represented by Mr Cameron Nielsen from Justice for Tenants. The only Applicant who attended was Ms Leroy who gave oral evidence. We were informed that Mr Magini was in the USA, that Mr Mostafa was unable to attend because he was having a medical procedure, and that Ms Saez was at work. The First Respondent was represented by Mr Andrew Walker, a retired solicitor. Mr Zanchetta was also present. The Second Respondent did not attend.

13. All four of the Applicants had provided short witness statements which were included in the hearing bundle. Ms Saez's statement **[270]** was rather confusing and appears to be a composite statement in which each Applicant sets out their description as to who was occupying the various rooms in the Property whilst they were living there.

14. Mr Walker provided us with a skeleton argument in advance of the hearing. We did not have the benefit of a witness statement from Mr Zanchetta. However, Mr Nielsen did not object to him giving oral evidence at the hearing and we granted such permission.

15. Mr Nielsen had prepared a draft skeleton argument in advance of the hearing but had not sent it to the tribunal or to Mr Walker. We adjourned the hearing for a short while so that he could provide this and allowed Mr Walker time to consider it.

16. Mr Zanchetta had some technical difficulties in connecting to the hearing. His camera was working, and he could see the tribunal members and the other parties, but he could not be heard. He therefore joined by telephone as well as maintaining his video connection. We are satisfied that no procedural unfairness occurred in the way the hearing was conducted.

The Law

17. Section 72(1) of the Housing Act 2004 ("the 2004 Act") provides as follows:

> "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) and is not so licensed."

18. Section 263 provides the following definitions of persons having control of, or managing, premises:

> "(1) In this Act "person having control", in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.
>
> (2) In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.
>
> (3) In this Act "person managing" means, in relation to premises, the person who, being an owner or lessee of the premises—
>
> (a) receives (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 …
>
> (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.

19. Section 77 defines an "HMO" as a house in multiple occupation as defined by sections 254 to 257. Section 254 provides:

> "(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) – (e) ……
>
> (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."

20. Not all HMOs have to be licensed, but only those to which Parts 2 or 3 of the 2004 Act applies. Section 55(2) provides that Part 2 of the 2004 Act applies to the following HMOs:

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

(a) 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.

(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."

21. The Licensing of Houses in Multiple Occupation Order 2018 makes it mandatory for a certain HMOs to be licensed. It will apply, in the case of the Property, if it was occupied by five or more persons, occupied by persons living in two or more separate households; and if the standard test in section 254(2) of the Act was met.

22. Section 40 Housing and Planning Act 2016 ("the 2016 Act") states as follows:

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

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—

(a) repay an amount of rent paid by a tenant, 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."

23. Among the relevant offences is the s.72(1) HMO licencing offence.

24. Section 43 provides that this tribunal may make a rent repayment order if it is satisfied beyond reasonable doubt that the offence has been committed, and that where the application is made by a tenant the amount is to be determined in accordance with section 44 which, in respect of the s.72(1) offence limits the amount of the award to the rent paid during a period "not exceeding 12 months, during which the landlord was committing the offence."

25. Section 43(4) says as follows:

(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

(b) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

26. In *Rakusen v Jepsen and others* [2021] EWCA Civ 1150, the Court of Appeal held that a RRO can only be made against an immediate landlord of an applicant tenant, and not against a superior landlord. *Rakusen* is to be considered by the Supreme Court in January 2023, but, for now, the decision of the Court of Appeal is binding on this tribunal.

27. In *Cabo v Dezotti* [2022] UKUT 240 (LC), the facts were that Ms Cabo, the owner of a six-bedroom property in West Kensington, entered into an agreement with Top Holdings Ltd to manage the property, which included granting the company permission let rooms in it. Top Holdings duly did so, including to Ms Delzotti, describing itself in the written agreements entered into as the licensor. The Deputy President, Martin Rodger KC found that the relationship between Top Holdings and Ms Cabo was that of agent and principal, with Ms Cabo being an "undisclosed principal" whose existence had not been disclosed to the persons renting rooms from Top

Holdings. As such, although the company had let rooms in the property in its own name, it did so on behalf of Ms Cabo as her agent, thereby creating the relationship of landlord and tenant between Ms Cabo and Ms Dezotti who had entered into an agreement to let a room with Top Holdings. When the true relationship between the company and Ms Cabo was revealed, Ms Dezotti was therefore entitled to make a claim for a RRO against Ms Cabo, as her landlord. The Deputy President also said that it was likely that she could additionally have made a claim against the company itself, because the contractual relationship of landlord and tenant also existed between them, but she chose not to do so.

28. Guidance on how this tribunal should approach quantification of the amount of a RRO has been provided by the Upper Tribunal in *Williams v Parmar* [2021] UKUT 244 (LC) and, more recently, in *Acheampong v Roman* [2022] UKUT 239. We refer to that guidance below when deciding how much to order by way of a RRO.

The Applicants' Case on Liability

29. The Applicants' application is made pursuant to s.41 of the Housing and Planning Act 2016 ("the 2016 Act") which enables a tenant to apply to the tribunal for a RRO against a person who has committed an offence to which Chapter 4 of Part 2 of the Act applies. S.41(2)(b) specifies that a tenant may apply for a RRO only if the offence in question was committed in the period of 12 months ending with the day on which the application is made. In this case, the application was made on 27 May 2022, so the offence is required to have been committed within the 12 month period ending on that date (the "relevant period").

30. The offence that the Applicants assert the Respondents have committed is that specified in s.72(1) of the 2004 Act, having control of or managing an HMO which is required to be licensed under Part 2, but which was not so licensed. They argue that both Zanka Properties Limited and Mr Mubin were persons having control of the Property, and also persons managing it, because they either received the rack-rent for it, or were entitled to receive it.

31. It is also the Applicants' case that:

    (a) the Property was a HMO that was subject to the mandatory licensing requirements of s.55(2)(a) of the 2004 Act, because it was occupied by at least five persons during the relevant period of claim. As such, they say that the requirements of the Licensing of Houses in Multiple Occupation Order 2018 were met; or, alternatively

    (b) it is a HMO in an area designated by Haringey Council ("the Council") as subject to the additional licensing requirements of s.55(2)(b), Haringey Council having designated the whole of its borough as subject to additional HMO licensing with effect from 27 May 2019 **[237]**. The designation applies to all HMO's that are occupied under

a tenancy or a licence unless it is an HMO subject to mandatory licensing.

32. In an email exchange between Justice for Tenants and the Council's HMO licensing team in July 2022, the Council confirmed that an additional licence was applied for on 21 June 2022 (for occupation by three persons), but that prior to that date the Property was unlicensed **[224-226]**. The Council did not state who applied for the additional license. It is the Applicants position, however, that both Respondents committed the offence until the date that application was made.

33. Mr Nielsen was fully aware of the decisions in *Rakusen* and *Cabo*. He argued that, as in *Cabo,* Mr Mubin was an undisclosed principal, with Zanka Properties Ltd being his agent, and that both were simultaneously the Applicants' landlord, meaning that both can be sued for a RRO. His alternative position is that Zanka Properties Ltd, as the landlord named in in the Applicants' tenancy agreements, could be the subject of an RRO as it was the tenants' immediate landlord.

34. It is also the Applicants' case that the First Respondent had breached a significant number of legal duties imposed upon it, including failing to ensure the Applicant's deposits were protected in line with section 213 Housing Act 2004, failing to ensure that a gas safety certificate was obtained and provided to the occupants in breach of section 36 of The Gas Safety (Installation and Use) Regulations 1998, failing to ensure that an electrical safety certificate was obtained and provided to the occupants in breach of section 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020, and failing to ensure that an energy performance certificate was obtained and provided to the occupants in breach of section 6 of the Energy Performance of Buildings (England and Wales) Regulations 2012. Several breaches of the Management of Houses in Multiple Occupation (England) Regulations 2006 ("the 2006 Regulations") are also alleged, the principal one being that there were no fire-escape notices at the Property.

Ms Leroy's Evidence

35. In her oral evidence to the tribunal Ms Leroy confirmed that she was in occupation of the Property between 10 March 2021 to 14 July 2021, during which time this was her only accommodation. She said that at no time did she receive a gas or electrical safety certificate or EPC for the Property and she also said that there were no fire escape notices present. Her room was next to the front door, which she said did not close properly, and the door to her room did not have a working lock and she ended up installing her own lock.

36. Her understanding was that Mr Zanchetta was the landlord of the Property, her rent was paid to his company, and he was the person that she contacted if any issues arose regarding the house. As to the other Applicants, she said that they were all living there when she moved in, but

that she was not friends with them and she did not get to know any of them very well. She said that she mostly kept herself to her room.

37. Ms Leroy was clear that she had not received a gas safety certificate, electrical safety notice, or Energy Performance Certificate from Mr Zanchetta . She described the condition of the small downstairs bathroom as "tragic", with lots of damp and a shower that did not work, meaning that everyone used the upstairs bathroom.

38. She agreed that she was responsible for contributing towards gas and electricity costs, and that she made irregular payments, on Mr Zanchetta's request, by including additional amounts in her rental payments. For example, a £680 payment included a £40 contribution towards those utility costs.

39. In cross-examination, Mr Walker suggested to Ms Leroy that she had placed some furniture in the garden without Mr Zanchetta's consent. Her response was that this was a broken chest of drawers that she had asked him, unsuccessfully, to remove. She also said that there was already a lot of discarded furniture in the garden.

The First Respondent's Case on Liability

40. The First Respondent disputes that it was Applicants' landlord. Its position is that at all relevant times it was no more than a letting agent instructed by the Second Respondent, Mr Mubin. It acknowledges that it collected the rent from the tenants but asserts that, after deducting an agreed "commission" this was paid to a managing agent engaged by Mr Mubin, a company called Rent Me London Limited ("Rent Me London"), run by a Mr Mirko Merizio.

41. It relies upon the decision in *Cabo*, and argues that Mr Mubin was an undisclosed principal who instructed it to source tenants and collect rent for the Property. It argues that it was merely an agent for Mr Mubin, who was the tenants' only landlord, and that Mr Mubin is therefore the only person who can be made the subject of a RRO.

42. Its position is that no tenancy, lease, or written terms of agreement were entered into between it and Mr Mubin, and that Mr Mubin deliberately sought that the First Respondent enter into short-term tenancy agreements for rental of rooms in its own name, so that he was distanced from the letting of the Property.

43. We were told by Mr Walker that there had been a verbal agreement between Mr Zanchetta and Rent Me London, whereby the First Respondent was to keep 6% of the rent received from the tenants as a letting fee, with the balance remitted to Rent Me London.

44. Mr Walker also said that the First Respondent is no longer trading, is no longer involved in the letting of property, and that it only has £40 in its bank account.

Mr Zanchetta's Evidence

45. Mr Zanchetta told us that as well as the Property, he had also previously been involved in letting out four other properties to tenants. He said that he became involved with the letting of the Property when two men he knew from Rent Me London approached him and asked him to do so. He said that he had previously looked after two other properties for Rent Me London. At the time of this approach he was working part-time for a lettings agency and two of his colleagues at that agency, Claudio and Lorenzo, said that it would be a good idea for him to name Zanka Properties as the landlord in the tenancy agreements he was going to enter into for the letting of rooms in the Property. He said that it was Claudio and Lorenzo who helped him draft the tenancy agreements for the Property. He confirmed that nobody from Rent Me London told him to specify that Zanka Properties was the Applicants' landlord.

46. Mr Zanchetta said that he would advertise rooms in the Property on the Spare Rooms website, find tenants, enter into tenancy agreements with them, collect the rent, and after deducting a 6% commission, pay the balance to Rent Me London. The decision on whether to rent a room to a tenant was his alone, and was not subject to approval from Rent Me London.

47. He said that he let four rooms in the Property, one room was used as a communal area, and that a fifth room was used for storage.

48. He said that he had never met Mr Mubin, and did not know that he owned the Property until a few months ago, following the instigation of this litigation. He had assumed that someone other than Rent Me London owned the Property when he was letting it out, but did not know their identity. He confirmed that he would carry out repairs in the Property when needed and that he had replaced a fridge, repaired the washing machine, and paid for the Property to be cleaned when he was involved with letting it.

49. With regard to utilities, he said that there was a pay as you go card for gas and electricity that the tenants were meant to charge up. When they failed to do so he would charge it up and ask the tenants to reimburse him as a top-up to their rent. He said that he paid the water bill for the Property and that Rent Me London paid the council tax and internet broadband charges due.

50. When asked whose responsibility it was to obtain gas safety certificates for the Property his initial answer was that this would have been Mr Mubin's

responsibility as landlord. He was then asked if he was aware of the need for safety certificates and responded saying that there were gas and electricity certificates on the walls that had been obtained by Rent Me London, he presumed at Mr Mubin's request. He said that he thought there was a green sign that might have been a fire escape notice but that he was not sure.

51. As to the complaints about the front door, he explained that there were two entrance doors. The external door had two working locks. That led to a second door which had a defective lock that he said he replaced after week. He disputed that there were problems with Ms Leroy's door lock.

52. He agreed that the rent deposit he took from Stefano was not protected in a tenancy deposit scheme, but that Ms Leroy had not paid a deposit and nor had Nadim.

Reasons for Decision

Who is the Applicants' landlord?

53. The problem with the assertion made by both parties that Mr Mubin is an undisclosed principal, with Zanka Properties as his agent, is that there is no evidence at all to support that assertion. In *Cabo*, the relationship of principal and agent was self-evident because of the terms of the written agreement entered into between Ms Cabo and Top Holdings. In this case, there is no written agreement between Mr Mubin and the First Respondent, nor between Rent Me London and the First Respondent. Mr Walker's submission that Mr Mubin induced the First Respondent to enter into tenancy agreements in its own name, in order to distance from the letting of the Property is clearly unsubstantiated given Mr Zanchetta 's own evidence that he did not even know of Mr Mubin's existence until a few months ago.

54. Nor can it seriously be contended that the First Respondent was induced to enter into tenancy agreements in its own name by Rent Me London, acting on behalf of Mr Mubin. Firstly, there is no evidence at all that Mr Mubin engaged Rent Me London to act as his managing agent and even if he did, Mr Zanchetta 's evidence was that it was his colleagues in the lettings agency where he worked, Claudio and Lorenzo, who advised him to specify Zanka Properties as being the landlord when entering into tenancy agreements for letting rooms in the Property, not Mr Mubin.

55. This is not, therefore, a case like *Cabo* where an agent failed to disclose on the face of a tenancy agreement that it was acting as an agent for a principal. On his own evidence, Mr Zanchetta had no idea who owned the Property and the fact that this is Mr Mubin was, according to Mr Zanchetta, never disclosed to him by Rent Me London. In such circumstances, it is untenable to suggest that a relationship of agent and principal existed between the First Respondent and Mr Mubin. There is simply no proof of the existence of such a relationship.

56. Both parties referred us to the decision in *Bruton v London & Quadrant* [2000] 1 AC 406, 415, and agreed that the First Respondent could grant tenancies in respect of rooms in the Property despite having no proprietary interest in it. We concur, and in our determination when granting tenancies to the Applicants it did so in the capacity of a landlord.

57. Given the Court of Appeal's decision in *Rakusen*, it follows that as the Applicants' immediate landlord was the First Respondent, it is the only body who can be made subject to a RRO. We cannot make an RRO against the Second Respondent, and the remainder of this decision concerns the making of an RRO against the First Respondent alone.

Did Zanka Properties commit the s.72(1) offence?

58. The first question is whether the Property was a HMO during the 12 month period ending on 27 May 2022. In this case, the Property will be a HMO if the standard test in s.254(2) was met. We are satisfied that it was. The only contentious area is subsection (c), Mr Walker having submitted that on the evidence we could not be satisfied that the Property was occupied by the Applicants as their only or main residence.

59. It is notable that the Applicants do not address this point in their witness evidence, an omission that Justice for Tenants should bear in mind in future cases. Despite this, we are satisfied, on the evidence, and to the criminal standard of proof, that the requirement was met for each Applicant.

60. As far as Ms Leroy is concerned, we found her to be a convincing witness and her oral evidence on the point was clear. She confirmed that she had no other accommodation during the period that she was living in the Property and we find that this to be true.

61. As for the other Applicants, there is no evidence at all to suggest that any of them had any alternative accommodation, and whilst this issue should have been addressed directly in their witness evidence, there are several factors that lead us to infer, beyond reasonable doubt, that when they occupied the Property they occupied it as their only or main residence.

62. Firstly, we have the evidence of Ms Leroy who said at the hearing that all of the other Applicants were living there when she moved in. When Mr Walker asked if any of them could have been on holiday, she was adamant that this was not the case and that all of them were living there. Although Ms Leroy was not sure of the other Applicants "timelines", her evidence suggests a high level of occupancy, consistent with occupation as a main or only residence.

63. Secondly, the bank statements provided by each Applicant show that they paid a substantial rent to the First Respondent throughout their period of

occupancy. We consider it highly unlikely that they would have done so if this was not their only or main residence.

64. Thirdly, all of the Applicants specify the dates they were in occupation of the Property in their witness statements, and all, apart from Ms Leroy, set out the dates that the other Applicants were in occupation of the Property. None of them mention any gaps in occupation by any of the Applicants, which suggests occupation by all of them as an only or main residence.

65. Finally, it is clear that the Property was let on the basis of the provision of low-cost rooms, and with a high turnover of occupants. It is highly unlikely, in our view that any of the Applicants are likely to have had a second home.

66. We are therefore satisfied, to the criminal standard of proof, that the standard test was met, and that the property constituted an HMO.

67. The next question is whether it was, at the relevant time, a HMO that was required to be licensed. We do not consider that the Applicants have established, beyond reasonable doubt, that the Property was an HMO that was subject to mandatory licencing during the relevant period. For that to be the case it would need to have occupied by five or more persons. We only have witness statements from the four Applicants and whilst we are satisfied that each of them were in occupation, we are not satisfied regarding the occupant of Room 2, who is said to have been Micky, from 20 May 2021 to 21 June 2022.

68. We have not been provided with any documents regarding Micky's occupation and the only evidence of his presence are the short statements asserting this in the witness statements of Mr Magini, Ms Saez, and Mr Mostafa. In their statements Mr Magini and Ms Saez both state that Micky was not given a tenancy agreement. The only Applicant who gave oral evidence, Ms Leroy, makes no mention of Micky in her witness statement and was unable to provide us with information about occupation by residents other than the Applicants. Given the lack of documentary evidence and the fact that the three Applicants who made mention of Micky did not submit themselves for cross-examination at the hearing we cannot be satisfied to the criminal standard that Micky was in occupation during the relevant period.

69. We are, however satisfied that the Property was required to be licensed pursuant to s.55(2)(b) of the 2004 Act, under the Council's additional licensing Scheme. A copy of the Council's designation has been provided, by which, with effect from 27 May 2019, **[237],** it designated the entire area of its district, as subject to additional licensing under section 56 of the Act.

70. The First Respondent did not dispute that the Property was unlicensed during the relevant period and we are satisfied that this was the case given

the email confirmation to that effect provided by the Council in July 2021 **[225]**.

71. We are also satisfied that the First Respondent was a person having control of the Property for the purposes of s.263(1) because it received the rack-rent paid by the Applicants. However, the Applicants do not suggest that the First Respondent is an owner or lessee of the Property, and given that we have found that there is no evidence of a relationship of agent and principal between it and the Second Respondent, we are not satisfied, to the criminal standard of proof, that the First Respondent was a person managing the Property for the purposes of s.263(3).

72. The First Respondent has not raised a reasonable excuse defence under s.72(4) and none is evident to us given that we have specifically rejected its assertion that it acted as agent for Mr Mubin. We are therefore satisfied, beyond reasonable doubt, that it has committed the s.72(1) offence during the the 12-month period ending on 27 May 2022, and that the offence was committed throughout the period of the Applicants' tenancies.

Should the tribunal make a RRO?

73. Section 43(1) of the 2016 Act provides that the tribunal may make a RRO if satisfied, beyond reasonable doubt, that a landlord has committed a prescribed offence, including the s.72(1) offence, whether or not the landlord has been convicted of that offence. Given that no attempt was made by the First Respondent to comply with the important obligation to ensure that the Property was licensed we are satisfied in the circumstances, that an RRO should be made.

The amount of the RRO

74. In *Williams v Parmar* the Chamber President said [50] that when quantifying the amount of a RRO:

> " A tribunal should address specifically what proportion of the maximum amount of rent paid in the relevant period, or reduction from that amount, or a combination of both, is appropriate in all the circumstances, bearing in mind the purpose of the legislative provisions. A tribunal must have particular regard to the conduct of both parties (which includes the seriousness of the offence committed), the financial circumstances of the landlord and whether the landlord has at any time been convicted of a relevant offence. The tribunal should also take into account any other factors that appear to be relevant."

75. In *Acheampong v Roman* Judge Cooke said [15] as follows:

> "*Williams v Parmar* did not say in so many words that the maximum amount will be ordered only when the offence is the

most serious of its kind that could be imagined; but it is an obvious inference both from the President's general observations and from the outcome of the appeal that an order in the maximum possible amount would be made only in the most serious cases or where some other compelling and unusual factor justified it. It is beyond question that the seriousness of the offence is a relevant factor – as one would expect from the express statutory provision that the conduct of the landlord is to be taken into consideration. If the tribunal takes as a starting point the proposition that the order will be for the maximum amount unless the section 44(4) factors indicate that a deduction can be made, the FTT will be unable to adjust for the seriousness of the offence (because the commission of an offence is bad conduct and cannot justify a deduction). It will in effect have fettered its discretion. Instead the FTT must look at the conduct of the parties, good and bad, very bad and less bad, and arrive at an order for repayment of an appropriate proportion of the rent."

76. She then said at [20] that the following approach would ensure consistency with previous legal 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).

77. Those two decisions are binding on this tribunal and we bear both in mind when calculating the amount of the RROs to be made in this case. In respect of the s.72(1) licensing offence committed by the First Respondent, the amount of an RRO this tribunal can award is limited to the amount of rent paid during a period "not exceeding 12 months, during which the landlord was committing the offence."

78. The Applicants have provided schedules of the amounts of rent they say were paid to the First Respondent in periods for which RROs are sought **[131- 4]**. These calculations are supported by bank statements **[135 – 221]**. Nowhere in the First Respondent 's skeleton argument is it disputed that these sums were paid, nor did Mr Zanchetta suggest this in his oral evidence. We therefore accept the Applicants evidence and find that for the periods relevant to their applications for RROs, they paid the following sums by way of rent to the First Respondent

    (a) Stefano Magini - although his contractual rent was £600 per month, it is evident that he did not always pay the full rent. He paid £5,160 for the period 7 September 2020 to 6 June 2021;

    (b) Nadim Mostafa – his contractual rent was £575 per month and he paid £2,300 for the period 15 February 2021 to 14 June 2021;

    (c) Ana Martinez Saez - her contractual rent was £600 per month, but her application for an RRO is limited to £540 per month because it is stated that this is the amount that relates exclusively to rent. She paid £3,346.50 for the period 27 November 2020 to the 1 June 2021; and

    (d) Louisa Leroy - her contractual rent was £640 per month , and she paid £1,920, for the period 10 March 2021 to 11 July 2021

79. What sum, if any, should be deducted for utility costs? On Mr Zanchetta 's own evidence, the only utility cost he was responsible for was the water supply. He has supplied no evidence of the payments made. Our informed estimate, as an expert tribunal is that the likely cost for a property of this size would be around £45 per month. As there were five tenants in occupation we will make a deduction of £9 per month per tenant.

80. Mr Zanchetta said in evidence that to avoid the tenants becoming disconnected for failing to top up the gas and electricity meters, he would occasionally do so out of his own pocket and then ask the tenants to refund him by 'topping-up' their rental payments. We accept that he did so as Ms Leroy confirmed that she was occasionally asked to make such payments, and the Applicants' rent schedules show these occasional sums paid on top of the contractual rent. However, no deduction from the amount of an RRO is appropriate as these top-up payments do not constitute rent and were not paid as such. Further, the Applicants have limited their claim to the amount paid by way of contractual rent. In any event, even if it were appropriate to make a deduction, we would not do so given the total lack of any documentary evidence of the sums paid by Mr Zanchetta .

81. We then turn to the seriousness of the offence. Whilst a failure to license a HMO might, depending on the circumstances, be considered to be a less serious offence than other types of offences in respect of which a RRO may be made, such as using violence to secure entry (where the tribunal must make a RRO in the maximum sum possible if the landlord has been convicted of the offence, and no exceptional circumstances apply) it is still a serious offence. As is stated in the introduction to the Ministry of Housing, Communities & Local Government's guidance to local authorities on the licensing of HMO's (updated October 2019) some HMOs are occupied by the most vulnerable people in our society, in properties that were not built for multiple occupation, and where the risk of overcrowding and fire can be greater than with other types of accommodation.

82. We also have respectfully agree with the comments made by the Deputy President in *Simpson House 3 Limited v Osserman* [2022] UKUT 164 (LC) [49] where he had regard to:

> "...the importance of HMO licensing as a tool for improving housing standards and the need to ensure compliance with additional licensing schemes made by local housing authority; additional licensing schemes may only be made where an authority considers that a significant proportion of HMOs in the area are being managed ineffectively (section 56(2), 2004 Act). Rent repayment orders are one means by which the objectives of such schemes can be promoted, and non-compliance curbed."

83. Proper enforcement of licensing requirements is, in our view, crucial to ensure the effectiveness of the system as a whole and to deter evasion.

84. In our view the seriousness of the failure to licence would warrant the making of RROs of 75% of the rent paid, subject to the remaining s.44(4) factors.

85. Turning to those factors, we consider the following to be relevant in respect of the First Respondent's conduct:

(a) the complete lack of any evidence that the First Respondent had taken steps to inform itself of its duties under 2006 Regulations, in particular in respect of fire safety measures, which we regard as serious failures. The Applicants assert that in breach of those duties, there were no fire-escape notices at the Property, the doors did not have self-closing mechanisms and it is believed that they were not fire safety rated doors. Mr Zanchetta 's oral evidence on the question of fire-escape notices supported the Applicants' case. His evidence that there may have been a fire escape sign but that he was not really sure was thoroughly unconvincing. We find that there was no such signage. Given that the First Respondent has not countered the assertion that

there were no self-closing mechanisms on the doors we find that the Applicants' account is true. There is no satisfactory evidence, one way or the other, about the fire safety rating of the doors, so we have no regard to that assertion.

(b) its failure to protect Mr Magini's deposit which we consider to be a significant failure of its obligations to him;

(c) its failure to provide Ms Leroy with a copy gas safety certificate, electrical installation certificate, or Energy Performance Certificate. We were persuaded by her evidence that none of these documents were received. Mr Zanchetta's evidence that gas and electricity certificates were fixed to the walls was unconvincing, and unsupported by documentary evidence. His suggestion that such documentation might have been obtained by Rent Me London at Mr Mubin's request demonstrated a lack of regard to important duties that were his responsibility, as manager of the Property, to meet;

(d) its failure to ensure that Ms Leroy had a functioning lock to her room. We found her evidence to be more convincing than Mr Zanchetta's, and find that she had to replace the lock herself;

(e) Mr Zanchetta's evidence that he had let at least four other properties to tenants, meaning that he was not an inexperienced landlord or agent.

86. The Applicants have made several complaints about the condition of the Property, including that the central heating broke down on regular occasions, and that the downstairs WC and bathroom were in a poor condition. However, the wording of Mr Magini's and Mr Mostafa's witness statements on these points were identical and there had obviously been some cutting and pasting involved when those statements were prepared. Given this, and the fact that neither of them attended the hearing to be cross-examined on their evidence we do not attach much evidential weight to their statements. Ms Leroy's evidence was that the ground floor bathroom was in a "tragic" condition, with a small shower that did not work properly. Whilst we accept her evidence that the shower may not have worked properly, she and the other tenants had access to the upstairs bathroom, of which there have been no complaints. On balance, we find that that the evidence does not suggest the presence of significant disrepair in the Property and do not therefore consider that the condition of the Property is relevant to the issue of the First Respondent's conduct for the purposes of s.44(4).

87. Turning to the remaining s.44 factors, there is no suggestion that the First Respondent has been convicted of a relevant offence. As to its financial circumstances, the indication that the First Respondent is no longer trading, and has only £40 in its bank account was not supported by any documentary evidence such as company accounts or bank statements. As such we are cannot be satisfied that this is the correct position. Even if it is,

we do not consider it to be a reason to reduce the amount of the RRO that we would otherwise make. We do not consider the First Respondent's ability to pay a RRO is a relevant factor to have regard to when considering the amount of an order. It is a corporate landlord and its situation can be distinguished from that of a non-corporate landlord with personal liability. The First Respondent's submission that any RRO should be in a nominal sum is therefore rejected.

88. We do not consider there to be any relevant issues of conduct by the Applicants. We considered Ms Leroy's evidence regarding the chest of drawers to be credible, namely that she asked for it to be removed, but her request was not addressed. In any event, placing it in the garden, where there was already broken furniture, is a minor issue, and cannot be regarded as relevant tenant conduct for the purposes of s.44.

89. In his skeleton argument Mr Walker argues [28] that the statutory purpose of a RRO is "to relieve the Respondent of unlawful profit in a similar manner to the Proceeds of Crime Act 2002". We reject this submission. Whilst the effect of the decision of the Upper Tribunal in *Parker v Waller* [2012] UKUT 301 (LC) was to focus on the profit element of the rent when considering the quantum of an RRO, this is no longer the correct approach, following the implementation of the 2016 Act, and the decision *in Vadamalayan v Stewart and others* [2020] UKUT 183 where the Upper Tribunal said [39] that a RRO is about the repayment of rent, not the repayment of profit.

90. Taking all these matters into account we determine that the appropriate order in this case is for the repayment of 85% of the rent paid, adjusting for the water charges. We therefore make RROs in the following sums:

Stefano Magini

Rent paid 7 September 2020 to 6 June 2020, £5,160 less water charges £9 per month x 9 months (£81) = £5,079 @ 85% = **£4,317.15.**

Ana Martinez Saez

Rent paid 27 November 2020 to 1 June 2021, £3,346.50 less water charges £9 per month x 6 months (£54) = £3,265.50 @ 85% = **£2,775.675**.

Nadim Mostafa

Rent Paid 15 February 2021 to 14 June 2021, £2,300, less water charges £9 per month x 4 months (£36) = £2,264 @ 85% = **£1924.40**

Louisa Leroy
Rent paid 10 March 2021 to 11 July 2021, £1,920, less water charges £9 per month x 3 months (£27) = £1,893 @ 85% = **£1,609.05**.

91. Given the Applicants' success, we order the First Respondent to reimburse them the sums they paid for the tribunal's fees.

Amran Vance

Date: 28 November 2022

ANNEX - RIGHTS OF APPEAL

Appealing against the tribunal's decisions

1. 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 date this decision is sent to the parties.

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 state the grounds of appeal, and state the result the party making the application is seeking.