FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00HB/HSD/2020/0002
Property	:	Top Floor Flat, 9 Dover Place, Bristol, BS8 1AL
Applicants	:	Mr Saoud Ahmed, Mr Gadier Kadhim, Mr Balraaj Manak, Mr Anil Matharu
Representative	:	
Respondent	:	Mrs Nayereh Rahimian
Representative	:	Mr Stuart Matthews of Reeds Solicitors
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(s)	:	Judge Tildesley OBE
Date and venue of the Hearing	:	24 July 2020 Havant Justice Centre Telephone Conference
Date of Decision	:	1 September 2020

DECISION

Summary of Decision

1. The Tribunal orders the Respondent to pay the Applicants the sum of £10,000 (£2,500 for each Applicant) by way of a rent repayment order and to reimburse the Applicants with the application and hearing fee in the sum of £300.00 within 28 days from the date of this decision.

Background

2. On 3 June 2020 the Applicants applied under section 41 of the Housing and Planning Act 2016 (2016 Act) for a rent repayment order (RRO) in the sum of £19,803.00 plus reimbursement of application and hearing fees of £300.00.

3. The sum of £19,803.00 is calculated as follows:

£6,900.00 Rent	(per calendar quarter): calculated as £2,300.00 per calendar month
£18,400.00	8th July 2019 to 7th March 2020 = 8 calendar months @ £2,300.00 per calendar month
£1,403.00	8th March 2020 to 26th March 2020 inclusive (19 calendar days within a month of 31 calendar days: calculated as 61% of a calendar month rent of £2,300.00)
£19,803.00	**Total claim**
£4,950.75	**The amount for each tenant**

4. The Applicants occupied the Top Floor Flat, 9 Dover Place, Clifton, Bristol BS8 1AL under an Assured Shorthold Tenancy dated 28th March 2019 from the 1st July 2019 until the 27th March 2020 when the Applicants vacated the property. The expiry date in the agreement was the 30th June 2020. The Respondent was named as the landlord on the tenancy agreement.

5. Under the tenancy the Applicants were required to pay the Respondent rent of £6,900.00 per calendar quarter in advance commencing 1 July 2019. The rent for the final quarter was reduced to £5,500.00 by way of settlement. The Applicants vacated the property early because they wished to return to their parents' home following the imposition of lockdown as a result of the Coronavirus Pandemic.

6. The accommodation was a self-contained top floor flat organised over various levels in a converted house with two other flats. The premises comprised four bedrooms (one with an en-suite), a lounge area, a kitchen a WC and a bathroom. The majority of the windows were double glazed and the property had the benefit of a gas fired central heating system.

The Dispute

7. The Applicants alleged that the Respondent had committed an offence of controlling or managing an HMO which was not licensed for the period of 8 July 2019 to 27 March 2020 contrary to section 72(1) of the Housing Act 2004.

8. Mr Cole, Senior Environmental Health Officer for Bristol City Council confirmed that there was no licence in force for the property from 8 July 2019 to 27 March 2020. Mr Cole stated that on 30 April 2020 Bristol City Council received an application for an HMO licence for the property from a Mr Ali Abbassi (the Respondent's husband).

9. The Respondent questioned whether the Applicants had established beyond reasonable doubt that an offence under section 72(1) of the 2004 Act had been committed. The Respondent further submitted that if the Tribunal concluded that an offence had been made out the Tribunal should exercise its discretion not to make an award or if the Tribunal decided to make an award it should keep the amount small in view of the mitigation put forward.

The Proceedings

10. On 11 June 2020 Judge Tildesley OBE issued directions requiring the parties to exchange their evidence, and also fixed a hearing on the 24 July 2020 which would be conducted by means of telephone conferencing.

11. On the 10 July 2020 the Tribunal directed that the witness statement of Ian Cole dated 1 July 2020 be admitted in evidence.

12. On the morning of the hearing Mr Matthews informed the Tribunal that he had received a phone call from the Respondent's son the evening before advising him that the Respondent was unwell and unable to attend the hearing. Mr Matthews advised that the Respondent was content for the matter to proceed in her absence with Mr Matthews representing her interests. The Applicants asked for the case to proceed.

13. The Tribunal indicated that it was content with Mr Matthews' suggestion but reserved its position that it might adjourn the proceedings if it proved later in the hearing that the attendance of the Respondent was necessary in furtherance of the overriding objective for a fair and just hearing.

14. The four Applicants attended the hearing. Mr Cole of Bristol City Council was also in attendance. Mr Matthews attended for the Respondent.

15. Judge Tildesley OBE explained at the commencement of the hearing that the procedure adopted was in accordance with the Emergency Legislation passed in response to the Coronavirus Pandemic. Judge Tildesley stated that the hearing was held in public at Havant Justice Centre but conducted remotely by means of telephone conferencing and that the proceedings were being recorded. Judge Tildesley said that he was sitting alone which was permitted under the *Pilot Practice Direction: Panel Composition in the First-Tier Tribunal and the Upper Tribunal Statement* issued by Sir Ernest Ryder, Senior President of Tribunals dated 19 March 2020. Judge Tildesley pointed out that he was entitled to sit alone in the Practice Direction dealing with Panel Composition which was in force and remains in force prior to the Pandemic.

16. Judge Tildesley asked each Applicants to confirm the truth of their joint statements as set out in the "Particulars of Grounds" and in the "Reply to the Respondent's Case" which they did. Mr Saud Ahmed acted as spokesperson for the Applicants and he also gave evidence on their behalf. Mr Matthews was given permission if he wished to do so to ask questions of the other Applicants.

17. Mr Cole also confirmed the truth of his two witness statements. The parties were given the opportunity to ask questions of Mr Cole.

18. The Tribunal had before it the following documents:

a) The Application dated 3 June 2020 with the "Particulars of Grounds" signed as true by the four Applicants and a witness statement from Mr Cole comprising 134 pages.

b) A further witness statement from Mr Cole dated 1 July 2020 comprising 19 pages.

c) The Respondent's Response dated 3 July 2020 with the Respondent's statement signed as true comprising 93 pages.

d) The Applicant's right of reply dated 21 July 2020 with a further statement from the Applicants signed as true comprising 74 pages.

Consideration

19. The Housing Act 2004 introduced RROs as an additional measure to penalise landlords managing or letting unlicensed properties. Under the Housing and Planning Act 2016 (2016 Act) Parliament extended the powers to make RRO's to a wider range of "housing offences". The rationale for the expansion was that Government wished to support good landlords who provided decent well

maintained homes but to crack down on a small number of rogue or criminal landlords who knowingly rent out unsafe and substandard accommodation.

20. Sections 40 to 47 of the 2016 Act sets out the matters that the Tribunal is required to consider before making a RRO.

21. The Tribunal is satisfied that the Applicants met the requirements for making an application under section 41 of the 2016 Act. The Applicants alleged that the Respondent had committed an offence of control or management of an HMO without a licence contrary to section 72(1) of the Housing Act 2004 (2004 Act) whilst the property was let to them. An offence under section 72(1) falls within the description of offences for which a RRO can be made under section 40 of the 2016 Act. The alleged offence was committed from 8 July 2019 to 29 April 2020 which was in the period of 12 months ending on the day in which the Applicants made their application on 3 June 2020.

22. The Tribunal turns now to those issues that it must be satisfied about before making a RRO.

Has the Respondent committed a specified offence?

23. The Tribunal must first be satisfied beyond reasonable doubt that the Respondent has committed one or more of seven specified offences. The relevant offence in this case is under section 72(1) of the 2004 Act, "control or management of an HMO without a licence".

24. The Applicants signed with a statement of truth "the Particulars of Grounds" and a "Reply to the Respondent's case". The Applicants stated in those documents that they were four individual males not of the same family, not living as married couples or civil partners and not relatives of each other in any way. The Applicants stated that they did not know each other prior to moving into the property. They asserted they were four individuals who happened to share the property whilst they were in Bristol undertaking full-time degree studies at Bristol University. Three of the Applicants were undertaking a degree course in Dentistry whilst Mr Balraaj Manak studied Economics and Management at the University. All four Applicants exhibited their University identification cards in their "Reply to the Respondent's case".

25. The Applicants stated that they occupied the property as four separate households but shared basic amenities including the kitchen, dining and lounge areas, WC and bathroom. The Applicants supplied copies of redacted bank statements to show that they had paid rent in respect of their occupation of the property to the Respondent.

26. The Applicants contended that the property was a house in multiple occupation as defined by section 254(1)(b) of the 2004 Act by meeting the requirements of the "self-contained flat" test under section 254(3) of that Act.

27. The Applicant supplied two witness statements from Mr Cole of Bristol City Council. Mr Cole stated that Bristol City Council on 2 April 2019 gave notice of an Additional Licensing Scheme pursuant to section 56 -60 of the Housing Act 2004 which came into effect on the 8 July 2019. The scheme covered twelve electoral wards including the Clifton Ward within which the property was situated. The effect of the designation was all properties that met the definition of a house in multiple occupation were required to be licensed from the 8 July 2019.

28. On their website Bristol City Council gave a deadline of the 8 October 2019 for receipt of applications for HMO licences under the Additional Licensing Scheme Bristol City Council indicated that no prosecutions would be taken against individuals who applied for their licences after 8 July 2019 but before 8 October 2019

29. Mr Cole conducted a search of Bristol City Council's records which showed that the property had not been granted a HMO licence and that no application had been received for the property until 30 April 2020, which was submitted by Mr Ali Abbassi (the Respondent's husband). Mr Cole also confirmed that there was no temporary exemption notice issued and no interim or final management orders in force in relation to the property.

30. The Applicants contacted Bristol City Council concerning Notification of the Additional Licensing Scheme. The Applicants exhibited the following information in their "Reply to the Respondent's Statement of Case":

- Log of consultation carried out by Bristol City Council.
- Letter from Bristol City Council to a Mr Ali Abbassi dated 28th February 2018 seeking views on the proposal to licence privately rented house in multiple occupation in 12 Central Bristol Wards.
- Letter from Bristol City Council to the Respondent and Mr Ali Abbassi dated 20th April 2018 saying that they had been contacted because the Council believed that the Respondent and her husband owned an HMO. The purpose of the letter was to remind them to respond to the consultation if they had not already done so.
- Letter from Bristol City Council to the Respondent and Mr Ali Abbassi dated 11th April 2019. Bristol City Council advised them that the additional licensing scheme had been approved and that owners of HMO would need a licence from the 8 July 2020. Bristol City Council in the letter also provided a

definition of an HMO which is where houses or flats are let to three or more people who aren't related and who share some facilities like kitchens or bathrooms.

- The Tribunal notes that the letters were addressed to the Respondent and Mr Ali Abbassi at 1 Grange Park, Westbury on Trym Bristol BS9 4BU.
- Copies of the publication of the Notice of the Additional Licensing Scheme Designation in two local newspapers namely the Bristol Evening Post and the Western Daily Press on the 5th April 2019, 19th April 2019, 3rd May 2019, 17th May 2019, 31st May 2019 and the 14th June 2019
- Content of an announcement on the 3rd April 2019 about the licensing scheme on the Bristol City Council web-site.
- Copy of an email from Jan Hamilton, Senior Policy & Projects Officer to Ian Cole, Senior Environmental Health Officer (both of Bristol City Council) dated 21st July 2020 confirming how consultees on the licensing scheme were advised of the decision Mrs Hamilton stated:

> "I can confirm that post cabinet we wrote or emailed details of the designation to all landlords on our database; all consultees (who provided their contact details); tenants of potential licensable properties; landlord and letting agent organisations; ANUK members and placed an article in the BCC Landlord news".

31. The Respondent said that on the 26 March 2019 she went onto Bristol City Council Website to check whether a licence was required for the property. She entered in the address of 9 Dover Place, Clifton, Bristol, BS8 1AL four tenants and four households and received a response that no licence was required. The Respondent said that she repeated the exercise in May or June 2019 before the tenancy commenced and received the same answer that no licence was required for the property.

32. The Respondent stated that the tenancy began on the 1 July when the four tenants named in this application moved into the property. The Respondent pointed out that as at this date the property was not licensable. Further had she known it was shortly to become licensable she would have made a valid application in good time. The Respondent asserted that this would not have been a difficult process for her as she had rented properties for many years.

33. The Respondent stated that she was not aware of the designation of the 12 Bristol Central Wards under the Additional Licensing Scheme. The Respondent stated that she did not see the Notice of Designation published in local newspapers and that no attempt had been made by Bristol City Council to contact her directly about the scheme either by letter of telephone. The Respondent pointed out that she lived a mile and half away from the Clifton Area.

34. Mr Matthews reminded the Tribunal that it had to be satisfied beyond reasonable doubt that Respondent had committed the offence of having no licence. The Respondent accepted that she managed and controlled the property. The Respondent, however, questioned whether Applicants had adduced convincing evidence to establish that the property meet the definition of an HMO. The Respondent pointed out that it was for the Applicants to satisfy the Tribunal that they were not related to one and that they occupied the property as their main residence.

35. Mr Matthews questioned Mr Ahmed about the Applicants' departure from the Property. Mr Matthews referred Mr Ahmed to a text message sent by him to the Respondent on 25 March 2020 advising her that they were returning home because of lockdown and that they were unable to afford to pay the last instalment of rent. Mr Ahmed added in the text message that they would be terminating the contract as the house would be vacant and the current situation was out of their control. Finally Mr Ahmed said that they hoped the Respondent would understand on compassionate grounds their reason for terminating the tenancy so that they could be with their families during lockdown. The Respondent responded by pointing out that she too had financial commitments to meet on the house and that the tenancy could only be terminated legally. The Respondent directed the Applicants to seek help from Bristol City Council but in her view the Council would advise them to pay the outstanding rent because all the Applicants were in receipt of student finance.

36. The Respondent concluded that the Applicants were trying to bully her into allowing them not to pay the last quarter's rent. The Respondent asserted that if they had treated her with more respect and integrity she would have bent over backwards to help them and would have been more generous to them regarding the final quarter's rent. Instead the Respondent instructed her solicitors to deal with it resulting in a settlement where the Respondent accepted a lower figure of £5,500 for the last quarter.

37. In answer to a question from Mr Matthews, Mr Ahmed accepted that with hindsight the Applicants should have dealt with the situation of terminating their tenancy in a better way.

38. Mr Ahmed explained that he learnt about the possibility of a rent repayment order from Bristol City Council after they had vacated the property. Mr Cole said that Mr Ahmed contacted Bristol City Council on 22 April 2020 with a request for advice and information on the RRO process and was emailed a Bristol City Council information pack the same day.

39. Mr Ahmed denied that the Applicants brought these proceedings for a financial gain. Mr Ahmed asserted that their reason for making

the Application was to get justice because the property was not licensed.

40. Mr Ahmed insisted that the Applicants would not lie about their relationship to one another to secure a RRO in their favour. Mr Ahmed stated that if they lied they would be compromising the standards of their Profession which would put in jeopardy their future careers.

41. Mr Cole in cross examination acknowledged that Bristol City Council did not carry out independent checks on whether the Applicants were related. Mr Cole said that they asked questions of the Applicants about their relationship and was satisfied with the answers they gave that they were not related.

42. Mr Ahmed pointed out in his evidence that the Respondent knew that the Applicants were not related.

43. The Respondent's case in respect of whether an offence under section 72(1) of the Housing Act had been committed turned on whether the Applicants had proved beyond reasonable doubt that the property concerned was an HMO which required licensing.

44. The Applicants asserted in their Particulars of Grounds that the property was a HMO because they occupied the property as a group of four occupiers comprised of four distinct households and they shared a lounge area, kitchen, WC and bathroom in addition to each of them having his own bedroom. Further the Applicants said that they occupied the accommodation as their home over the period they were in occupation, and did not use the accommodation for any other purpose.

45. The Applicants contended that their occupation of the property met the conditions of the self-contained flat test for an HMO (section 254(1)(b) of the 2004 Act.

46. Section 254(3) of the 2004 Act provides that

> "A part of a building meets the self-contained flat test if –
> (a) It consists of a self-contained flat and
>
> (b)Paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat)".

47. The relevant parts of Section 254(2) of the 2004 Act are as follows:

> "(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".

48. The Respondent accepted that the property was a self-contained flat and that the requirement of section 254(2)(e) was met. The Respondent also accepted that the Applicants shared one or more basic facilities and that she had no evidence to contradict that the Applicants' occupation of the living accommodation constituted the only use of that accommodation.

49. The Respondent's challenge was whether the Applicants had established beyond reasonable doubt that they were separate households and that they occupied the property as their only or main residence.

50. The Respondent argued that the Applicants' "Particulars of Grounds" did not address whether the property was their main residence and the question of whether they were related to each other which was key to definition of household.

51. The Respondent referred to section 258 of the 2004 Act which sets out when persons are to be regarded as not forming a single household. Section 252(2)(a) states that persons are to be regarded as not forming a single household unless they are all members of the same family. Section 252(3) goes onto to define family members:

"3) For the purposes of subsection (2)(a) a person is a member of the same family
as another person if—
(a) those persons are married to each other or live together as husband and
wife (or in an equivalent relationship in the case of persons of the same sex);
(b) one of them is a relative of the other; or
(c) one of them is, or is a relative of, one member of a couple and the other is a relative of the other member of the couple.
(4) For those purposes—
(a) a "couple" means two persons who are married to each other or otherwise fall within subsection (3)(a);

(b) "relative" means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin;
(c) a relationship of the half-blood shall be treated as a relationship of the whole blood; and
(d) the stepchild of a person shall be treated as his child".

52. The Respondent submitted that it was impossible to determine whether someone was related within the meaning of section 258(3) from their name alone. The Respondent noted that Bristol City Council carried out no independent checks on whether the Applicants were related.

53. The Applicants in their "Reply to the Respondent's case" reaffirmed that they were not relatives of each other in any way. The Applicants pointed out that they were full-time students at Bristol University and were occupying the property in order to fulfil their studies. The Applicants relied on section 259 of the 2004 Act which treated a person's residence for the purpose of undertaking a full-time course of further or higher education as his/her only or main residence.

54. The Respondent did not dispute that the Applicants were living at the property in order to carry out their studies at Bristol University. The Tribunal is, therefore, satisfied that the Applicants had established beyond reasonable doubt that they were occupying the property as their only or main residence as defined by section 259 of the 2004 Act.

55. The focus of the Respondent's challenge to the property being an HMO was whether the Applicants had demonstrated beyond reasonable doubt that they were not related to each other, and, therefore, they did not occupy the property as separate households. The Respondent adduced no evidence to suggest that they were related. The Respondent's case was to put the Applicants to proof.

56. The Respondent argument comprised two strands. First that the Applicants had a significant financial incentive in form of a substantial RRO to lie about their relationship to one another. Second the burden of beyond reasonable doubt is a high one and that in a criminal court it could only be met by a witness giving evidence under Oath and cross examined on that evidence.

57. The Tribunal finds that the Applicants provided two statements which they confirmed as true at the commencement of the hearing The first their "Particulars of Grounds" dated 13 May 2020 in which they asserted they occupied the property as separate households. The second was their "Reply" dated 21 July 2020 in which they explicitly stated that they were not related to each other in any way. They also said in the "Reply" that "We have no inclination to act in an untruthful manner for our own personal gain whatsoever" and that they had no criminal convictions.

58. The Applicants provided Bristol City Council with "A Supplementary Evidence Sheet (Property Licensing)" in which they ticked "Yes" to *"I am living with two other people that I am not related to"* and "No" to *"I am living with four other people that I am not related to"*. The Applicants signed a declaration of "true to the best of their knowledge" in respect of the Supplementary Evidence Sheet. Mr Ahmed also provided Bristol City Council with a completed "Tenant Questionnaire" in which he indicated "No" to the question: *"Are you related to or in relationship with any of the other tenants"*. These documents were exhibited to the "Particulars of Grounds".

59. The Tribunal heard from Mr Ahmed who was cross-examined by Mr Matthews for the Respondent. Mr Ahmed gave evidence that none of the Applicants were related to each other and that they would not lie for financial gain. Mr Ahmed stated that of they acted in an untruthful manner it might jeopardise their future careers, particularly the three Applicants who were studying dentistry. The Tribunal found Mr Ahmed to be a truthful and credible witness.

60. Judge Cooke of the Upper Tribunal in *Paulinus Chukwuemera Opara v Ms Marcia Olasemo* [2020] UKUT 96 (LC) said the following about the application of the criminal standard of proof by First-tier Tribunals in RRO applications at [46]:

> "I add a final observation. The FTT in its decision in this case was, I think, over-cautious about making inferences from evidence. For a matter to be proved to the criminal standard it must be proved "beyond reasonable doubt"; it does not have to be proved "beyond any doubt at all". At the start of a criminal trial the judge warns the jury not to speculate about evidence that they have not heard, but also tells them that it is permissible for them to draw inferences from the evidence that they accept. In this case there were obvious inferences to be drawn from the evidence, both about the eviction and about the circumstances of the other tenants. It may be that the FTT lost sight of those inferences and set the bar of proof too high. I say that in the hope that it is of assistance for the future".

61. The Tribunal finds the Applicants' evidence that they were not related to one another and that they occupied the property as four separate households compelling and met the threshold of beyond reasonable doubt. The Respondent did not produce evidence to undermine the Applicants' case, and her only line of attack was the suggestion that they might lie to gain a financial incentive. On this point the Tribunal found the Applicants' rebuttal convincing particularly the effect on their future careers if they were found to be untruthful. Mr Matthews cross-examined Mr Ahmed and had the opportunity to ask questions of the other Applicants. The Tribunal has already indicated that it found Mr Ahmed to be a truthful and credible witness. The fact that the Tribunal procedures

do not align with those in the Criminal Courts does not impugn the robustness and the rigour of the Tribunal procedures for establishing whether evidence meets the required standard of proof.

62. The Tribunal is, therefore, satisfied for the reasons given above that the Applicants had demonstrated beyond reasonable doubt that the property met the "self-contained flat" test for an HMO.

63. The Applicants also have to prove beyond reasonable doubt that the property was a licensable HMO. Section 61 of the 2004 Act requires every HMO to which Part 2 of the 2004 Act applies to be licensed. Part 2 of the 2004 Act applies, according to section 55(2), to a) any HMO falling within any prescribed description of HMO, and b) any HMO in an area that is designated under section 56 as subject to additional licensing if it is within the description specified in the designation.

64. The Applicants relied on the evidence of Mr Cole of Bristol City Council who stated that the Council designated Central Bristol as an area subject to an Additional Licensing Scheme from 8 July 2019. The Scheme require all HMOs with at least three tenants forming more than one household and shared facilities to be licensed. Mr Cole's stated that the property was located in the Central Bristol area and met the description of the HMOs requiring to be licensed.

65. The Respondent did not challenge Mr Cole's evidence that the property was required to be licensed. The Respondent, however, questioned whether Bristol City Council undertook the required steps of notification as set out in section 59 of the 2004 Act. The Respondent asserted that she saw no notification of the scheme, and that Bristol City Council made no attempt to contact her.

66. The Applicants in their "Reply to the Respondents' Case" exhibited various documents of the steps taken by Bristol City Council to notify the Community and local landlords of the designation of Bristol Centre as an area subject to Additional Licensing (see [30] above. The exhibits included three letters to the Respondent's husband, two of which were also addressed to the Respondent. The Tribunal has examined the exhibited documents and is satisfied that Bristol City Council undertook extensive consultation and communication. The Tribunal finds that a diligent landlord would have been aware of the designation.

67. The Tribunal holds that the Applicants have established beyond reasonable doubt that the property was an HMO that required to be licensed from 8 July 2019.

68. The Tribunal now turns to the elements of the Offence of managing or controlling an HMO without a licence pursuant to section 72(1)

of the 2004 Act which the Respondent is alleged to have committed.

69. The Offence under section 72(1) of the 2004 Act is one of strict liability. It does not require knowledge on the part of the offender. The fact that the offender may not know the property required a licence is not relevant. In this case the Applicants have demonstrated beyond reasonable doubt that the property was an HMO which required to be licensed from the 8 July 2019 and that it did not have a licence from that date. The Respondent accepted that no application for a licence was made until 30 April 2020.

70. The Offence under section 72(1) of the Housing Act is subject to the statutory defences of (1) that at the material time an application for a licence had been duly made, and (2) a reasonable excuse.

71. Defence (1) is not applicable to the circumstances of the case because the application for a licence was not made until after the end of the period claimed for the RRO.

72. The Respondent's excuse for not applying for a licence until 30 April 2020 comprised two elements. The first element concerned her assertion that she was not aware that Bristol City Council had designated Bristol Centre as an area subject to an Additional Licensing Scheme. The Tribunal considered this issue in [66] and concluded that a diligent landlord would have been aware of the designation. The Tribunal also notes that Bristol City Council had corresponded directly with the Respondent and her husband about the Additional Licensing Scheme.

73. The second element was that the Respondent said that on 26 March 2019 and at some point in May or June 2019 she made a search on the Bristol City Council website to check whether a licence was required for the property, and on each occasion the website gave a negative response. The Respondent pointed out that these searches were done prior to the taking up of the tenancy by the Applicants which was on 1 July 2019 when the property would not have required a licence. The Respondent asserted that at the time of the commencement of the tenancy she was unaware that it was shortly to become licensable, and had she known, she would have made a valid application in good time. The Respondent said that this would not have been a difficult process for her as she had rented properties for many years.

74. Whether an excuse is reasonable or not is an objective question for the Tribunal to decide. Lack of knowledge or belief could be a relevant factor for a Tribunal to consider whether the Respondent had a reasonable excuse for the offence of no licence. If lack of knowledge is relied on it must be an honest belief (subjective test). Additionally, there have to be reasonable grounds for the holding of

that belief (objective). Ignorance of the law cannot amount to a reasonable excuse.

75. The Tribunal finds there were no reasonable grounds for the Respondent's belief that the property did not require a licence. The Respondent was an experienced landlord and on her own admission she did not make any enquiries that the property required a licence after June 2019. The Tribunal has found that a diligent landlord would have been aware of the requirement to licence the property from 8 July 2019. Further the Tribunal refers to the evidence of the correspondence from Bristol City Council to the Respondent and her husband from which the Tribunal infers that the Respondent either knew or closed her eyes to the requirement to the licence the property. The Tribunal is, therefore satisfied that the Respondent did not have a reasonable excuse for the offence of having no licence contrary to section 72(1) of the 2004 Act.

76. The final matter to address is the effect of Bristol City Council's decision not to prosecute landlords for having no licence during the period of 8 July 2019 to 7 October 2019 period if they applied for a licence by 8 October 2019.

77. The Tribunal is satisfied that the concession of Bristol City Council had no effect on the commencement date of when it became an offence to have an HMO without a licence under the Additional Licensing Scheme for Bristol Central. The date for the commencement of the offence is the date when the designation comes into force under section 59(2)(a) of the 2004 Act which has to be not earlier than three months from when the Notice of Designation is given. In this case the Notice of Designation was given on the 2 April 21019 and the designation came into force on the 8 July 2019.

78. Although the concession would have no impact upon the date of the commencement of the offence, the Tribunal acknowledges that a landlord who applies for a licence during the concessionary period of three months from 8 July 2019 might have grounds to argue the defence of reasonable excuse if proceedings were brought against him/her involving an allegation of no HMO licence. The Respondent, however, would not be in this category of landlords because she did not apply for a HMO licence until a long time after the 8 October 2019 which was on the 30 April 2020.

79. The Tribunal finds

a) The Respondent controlled and managed the property.

b) The property was an HMO which required to be licenced under the Additional Licensing Scheme introduced by Bristol City Council from 8 July 2019.

c) There was no licence in force for the property from 8 July 2019 to 26 March 2020.

d) The Respondent did not make a valid application for a licence until 30 April 2020.

e) The offence is one of strict liability. The Respondent did not have a reasonable excuse for commission of the offence.

80. **The Tribunal is, therefore, satisfied beyond reasonable doubt that the Respondent committed the offence of a person having control of or managing a HMO which is required to be licensed but is not so licensed from 8 July 2019 to 26 March 2020 (inclusive) pursuant to section 72(1) of the 2004 Act.**

What is the maximum amount that the Respondent can be ordered to pay under a RRO (section 44(3) of the 2017 Act?

81. The amount that can be ordered under a RRO must relate to a period not exceeding 12 months during which the landlord was committing the offence. The Tribunal has decided that the Respondent committed the offence from the 8 July 2019 to 26 March 2020 (inclusive). The Applicants vacated the property on 27 March 2020.

82. The Applicants paid the Respondent rent of £19,803.00 for the period of 8 July 2019 to 26 March 2020. The calculation is set out at [3].

83. The Tribunal, therefore, finds that the maximum amount that the Respondent can be ordered to pay under a RRO is £19,803.00.

What is the Amount that the Respondent should pay under a RRO?

84. In determining the amount, the Tribunal must, in particular, take into account the conduct and financial circumstances of the Respondent in her capacity as landlord, whether at any time the Respondent had been convicted of a housing offence to which section 40 applies, and the conduct of the Applicants.

85. The Applicants did not consider the Respondent to be exemplary landlord and that she was slow at times to resolve specific issues during the tenancy, particularly faults with the central heating system, and the major water leaks downstairs near the front door.

86. The Applicants denied that they had left the property in a dirty state when they vacated it in March 2020. They asserted that the property was thoroughly cleaned before their departure.

87. The Applicants asserted they never bullied the Respondent and were always respectful in their communications with the Respondent and her husband. The Applicants acknowledged that they should have adopted a more responsive approach in their handling of the departure from the property. The Applicants, however, pointed out that at the time the Pandemic was at its peak and they wanted to return to their parents' home before it became too late. The Applicants stated that they paid the rent for the last period in the reduced amount agreed with the Respondent.

88. The Respondent contended that she had been an exemplary landlord. The Respondent stated that she had maintained the property in good condition and that it complied with all safety regulations. The Respondent pointed out that the premises had a panelled fire/smoke alarm, fire doors where required, emergency lighting, EPC, Gas Safety Certificate and Electrical Installation Safety Certificate. The Respondent asserted that she had responded to any issues raised by the Applicants promptly and efficiently.

89. The Respondent stated that she was 60 years of age and of good character and had been married since 1988. The Respondent considered herself to be a good diligent landlord and someone of integrity. The Respondent said that she together with her husband had worked hard over the years and with their savings had bought several properties which they rented out. Mr Matthews believed that they owned ten such rented properties.

90. The Respondent said she lets some of her properties though Bristol City Council Private Renting Scheme which provides accommodation to vulnerable tenants at a rent lower than what the Respondent would achieve on the open market. The Respondent cited a particular property in the St Pauls District of Bristol where the rent charged by the Respondent was significantly below the market rent. The Respondent exhibited a testimonial from one of the tenants at the property who described the Respondent as *"a considerate landlord who regularly had the property inspected for safety and good maintenance"*.

91. The Respondent and her husband also worked with The Maples Community and helped with providing accommodation for persons with complex needs. The Respondent produced a letter from the Property Manager of The Maples Community who commended the Respondent for being pro-active as regards safety and maintenance issues with the property.

92. In respect of her financial circumstances the Respondent explained that the Pandemic had had impact on her finances. She gave as an

example that she had recently renovated three properties to be rented by the Maples Community but because of the current health crisis only one could be let. Also a number of her tenants had been unable to pay the full rent due with the result that reductions in rent had been agreed. The Respondent said that she had an interest only mortgage on the building that housed the property. The monthly amount of the mortgage allocated to the property was £581.25.

93. The Respondent relied on the decision of Bristol city Council not to impose a financial penalty upon her for having no HMO licence. The reason given by the Council was that it was not in the public interest to take enforcement action in relation to the offence. Mr Cole expanded on the reasons for not taking action which were the Respondent's good character, that she responded to his enquiries about the offence and a licence had been applied for soon after Mr Cole's letter of 28 April 2020.

94. The parties exhibited photographs of the condition of the property and texts between one another regarding the property. The Applicants' photographs showed incidents of water ingress. The Tribunal concluded on the evidence before it that the property overall was of reasonable/good letting standard and provided adequate facilities for four persons operating as separate households. There was no evidence to suggest that it did not meet the various safety standards expected of licensed HMOs. The Tribunal acknowledges that during the Applicants' occupation the property experienced problems with water ingress and the central heating broke down. The Tribunal formed the view that these problems were not due to the landlord's neglect but were ones that routinely occurred with properties. The text messages exchanged between the parties showed that the Respondent replied promptly and that she took steps to address the Applicants' concerns.

95. The Tribunal starts its consideration on the size of the RRO by considering the decision of the Upper Tribunal in *Mr Babu Rathinapandi Vadamalayan v Edward Stewart and others* [2020] UKUT 0183 (LC). Judge Cooke at [11] observed that there was no requirement that a payment in favour of Tenant in respect of RRO should be reasonable, and at [12] that this meant the starting point for determining the amount of rent is the maximum rent payable for the period in question. Judge Cooke went onto say at [14] and [15] that

> "It is not clear to me that the restriction of a rent repayment order to an account of profits was consistent with Parliament's intention in enacting sections 74 and 75 of the 2004 Act. The removal of the landlord's profits was – as the President acknowledged at his paragraph 26 –not the only purpose of a rent repayment order even under the provisions then in force. But under the current statutory provisions the restriction of a rent repayment order to the landlord's profit is impossible to justify. The rent repayment

> order is no longer tempered by a requirement of reasonableness; and it is not possible to find in the current statute any support for limiting the rent repayment order to the landlord's profits. That principle should no longer be applied.
>
> "That means that it is not appropriate to calculate a rent repayment order by deducting from the rent everything the landlord has spent on the property during the relevant period. That expenditure will have repaired or enhanced the landlord's own property, and will have enabled him to charge a rent for it. Much of the expenditure will have been incurred in meeting the landlord's obligations under the lease. The tenants will typically be entitled to have the structure of the property kept in repair and to have the property kept free of damp and pests. Often the tenancy will include a fridge, a cooker and so on. There is no reason why the landlord's costs in meeting his obligations under the lease should be set off against the cost of meeting his obligation to comply with a rent repayment order".

96. Judge Cooke concluded at [19]

> "The only basis for deduction is section 44 itself. and there will certainly be cases where the landlord's good conduct, or financial hardship, will justify an order less than the maximum. But the arithmetical approach of adding up the landlord's expenses and deducting them from the rent, with a view to ensuring that he repay only his profit, is not appropriate and not in accordance with the law. I acknowledge that that will be seen by landlords as harsh, but my understanding is that Parliament intended a harsh and fiercely deterrent regime of penalties for the HMO licensing offence".

97. The 2016 Act extended the scope of rent repayments orders with an emphasis upon rogue landlords not benefiting from the letting of sub-standard accommodation and it also removed the requirement for the Tribunal to determine such amount as it considered reasonable for the eventual order.

98. The structure of the 2016 legislation requires the Tribunal to determine first the maximum amount payable under an RRO and then to decide the actual amount payable by taking into the circumstances of the case, having particular regard to the specific factors in section 44 of the 2016 Act.

99. The Tribunal finds in relation to the Respondent's conduct and financial circumstances that (1) The Respondent was a professional landlord. (2) The property was unlicensed throughout the period of the Applicants' occupation from the 8 July 2019 to 26 March 2020 (3) The Respondent should have known that the property required an HMO licence and closed her eyes to this fact. (4) The property was of reasonable/good letting standard. There was no evidence that it did not meet the safety standards expected of licensed HMOs. (5) Apart from her failure to licence the property, the

Respondent performed her duties as a landlord in a professional and responsible manner. (6) The Respondent recognised that as a landlord she had a wider responsibility to provide decent housing to vulnerable groups of tenants at rents below the market rent. (7) The Respondent was of good character and had no previous convictions. (8) Bristol City Council chose not to take enforcement action against her in relation to the offence of having no licence. (9) The mortgage payment is not an appropriate deduction to make against the RRO (see *Vadamalayan).* (10) The Respondent adduced no evidence to suggest that she would experience undue financial hardship as a result of an RRO.

100. The Tribunal is satisfied that the Applicants did not by their conduct contribute to the offence. The Tribunal considers that the Applicants were respectful in their dealings with the Respondent. There was no evidence that they bullied the Respondent. Their reaction to the Pandemic was understandable but they acknowledged that they should have handled matters better. Despite the unprecedented circumstances of the Pandemic, the Applicants were not entitled in law to terminate the tenancy unilaterally, and the Respondent was correct in insisting that they followed due process. The parties have reached a settlement in respect of this matter, and it is separate from the RRO. This is not relevant fact in determining the size of the RRO.

101. In this case the Tribunal determines that the maximum amount payable by the Respondent under a RRO is £19,803.00. The Tribunal then has to consider whether the findings on the Respondent's conduct and financial circumstances, and the Applicants' conduct merit a reduction in the maximum amount payable.

102. This is not a case which justifies an award of the maximum amount of £19,803.00. The Tribunal normally considers such an award where the evidence shows that the landlord was a rogue or criminal landlord who knowingly lets out dangerous and sub-standard accommodation. The Respondent did not meet that description.

103. The Tribunal here is dealing with two sets of decent honourable persons who are separated by the fact that the Respondent failed to licence the HMO and thereby committed an offence. The Respondent's offence weighs heavily in favour of making a substantial RRO which is supported by Judge Cooke's comment in *Vadamalayan*: "*Parliament intended a harsh and fiercely deterrent regime of penalties for the HMO licensing offence*".

104. The Tribunal holds that the Respondent was a professional landlord who closed her eyes to the fact that the property required licensing. The property was without a licence throughout the period from the 8 July 2019 to 26 March 2020 when the Applicants vacated the property. These facts together with the finding that the

Applicants did not by their conduct contribute to the offence are weighed against the facts that the Respondent apart from her failure to licence the property was a responsible landlord who provided accommodation of reasonable/good standard with adequate facilities, the Respondent was of hitherto good character who embraced the wider social responsibilities of being a landlord, the Respondent co-operated with Bristol City Council regarding their investigation of the offence with the result that no enforcement action was taken against her and the Respondent has now applied for an HMO licence. Having regard to all the circumstances the Tribunal considers an order of £10,000 is the appropriate sum balancing the objective of a "fiercely deterrent scheme", the status of professional landlord and the length of the offending against the mitigating circumstances found in favour of the Respondent.

105. The Tribunal determines that the rent repayment order should be £10,000.00 which breaks down to an order of £2,500 for each Applicant.

106. As the Applicants have been successful with their Application for a RRO, the Tribunal considers it just that the Respondent reimburses the Application fee and hearing fee totalling £300.00

Decision

107. The Tribunal orders the Respondent to pay the Applicants the sum of £10,000 (£2,500 for each Applicant) by way of a rent repayment order and to reimburse the Applicants with the application and hearing fee in the sum of £300.00 within 28 days from the date of this decision.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case. The application must be sent by email to rpsouthern@justice.gov.uk

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.