



**FIRST - TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

<b>Case Reference</b>	:	<b>BIR/ooFY/HMK/2021/0007-18</b>
<b>Property</b>	:	<b>6a &amp; 8 Gamble Street, Nottingham NG7 4EY</b>
<b>Applicants</b>	:	<b>Matthew Charles McAllister (1) Sandeep Kang (2) Robert Lewis McCarron (3) Bradley Peters (4) Nathan Mark Ball (5) Jack Cronin (6) Carli Nicholls (7) Joshua Chapman (8) Ben Shepherd (9) Grace Bedford (10) Patrick Richardson (11) Joseph Whitehead (12)</b>
<b>Respondents</b>	:	<b>Claudine Skinner and Claire Jackson As Personal Representatives of Ashley Fletcher Deceased</b>
<b>Respondent's Representative</b>	:	<b>James Carter. Counsel</b>
<b>Type of Application</b>	:	<b>Application under section 41(1) of the Housing and Planning Act 2016 for a rent repayment order</b>
<b>Tribunal</b>	:	<b>Tribunal Judge P. J. Ellis. Tribunal Member Mr R.Chumley-Roberts MCIEH, J.P.</b>
<b>Date of Hearing</b>	:	<b>6 August 2021</b>
<b>Date of Decision</b>	:	<b>27 August 2021</b>

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## **DECISION**

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- a. The Respondent was guilty of a housing offence namely having control of or managing a house, which was required to be licensed under Part 3 Housing Act 2004 but was not so licensed**
- b. There was no reasonable excuse for the failure to licence the properties.**
- c. The Applicants are entitled to a rent repayment order under s41 Housing and Planning Act 2016 (the 2016 Act)**
- d. The period for which rent is repayable is 2 September 2019 to 16 August 2020**
- e. Applicant 1 Matthew Charles McAlister is entitled to a rent repayment order of £4628.55.**
- f. Applicant 2 Sandeep Kang is entitled to a rent repayment order of £4628.55.**
- g. Applicant 3 Robert Lewis McCarron is entitled to a rent repayment order of £4628.55.**
- h. Applicant 4 Bradley Peters is entitled to a rent repayment order of £4628.55.**
- i. Applicant 5 Nathan Mark Ball is entitled to a rent repayment order of £4628.55.**
- j. Applicant 6 Jack Cronin is entitled to a rent repayment order of £4236.05.**
- k. Applicant 7 Carli Nicholls is entitled to a rent repayment order of £4628.55.**
- l. Applicant 8 Joshua Chapman is entitled to a rent repayment order of £4628.55.**
- m. Applicant 9 Ben Shepherd is entitled to a rent repayment order of £4628.55.**

- n. Applicant 10 Grace Bedford is entitled to a rent repayment order of £4628.55.**
- o. Applicant 11 Patrick Richardson is entitled to a rent repayment order of £4628.55.**
- p. Applicant 12 Joseph Whitehead is entitled to a rent repayment order of £4034.19.**

## **Introduction and background**

1. This decision concerns twelve applications for rent repayment orders under s41(1) and Chapter 4 Part 2Housing and Planning Act 2016 (the 2016 Act) and the Housing Act 2004 (the 2004 Act). The applications relate to two properties namely 6a and 8 Gamble Street Nottingham NG7 4EY. Each of the tenants of the respective property issued their applications for repayment of rent on either 12 April or 18 April 2021. By a direction of the Tribunal on 7 June 2021 the applications in respect of both properties were consolidated on the grounds that the applications and the tenancy agreements were identical in each case. Other directions for filing and serving Statements of Case were made. The matter was listed for a half day hearing by video conference facility without an inspection of the properties.
2. Applicants 1-6 were tenants of 8 Gamble Street. Applicants 7-12 were tenants of 6a Gamble Street. The rent repayment claimed by each of the Applicants other than Mr Cronin and Mr Whitehead is £4950.00 being the weekly rent of £99.00 for the duration of the tenancy period of 50 weeks. In the case of Mr Cronin and Mr Whitehead, who each agreed a rent reduction, their claims are £4557.50 and £4578.75 respectively.
3. At the hearing the Applicants were unrepresented but four of the Applicants were present. Two Applicants from 6a Gamble Street, namely Mr Chapman and Mr Whitehead and two from 8 Gamble Street, Mr McAllister and Mr Kang were present to speak on their own and other Applicants' behalf. The Respondents were represented by My James Carter of Counsel.

4. One of the subject properties, 8 Gamble Street, is owned by the Respondents. 6a Gamble Street is owned by a third party as explained in paragraph 88 below. Each of the properties is managed by the Respondents with the assistance of Uni2 Rent Limited, an agency specialising in student letting. A third property, 8a Gamble Street, Nottingham was the subject of an earlier substantially similar application which was determined on papers (Decision BIR/ooFY/HMK/2020/0054-59P) (the 2020 Decision). All three properties form part of a development constructed by the late Ashley Fletcher specifically for the purpose of providing student accommodation.
5. At the time each of the tenancy Agreements was made the properties were owned by Mr Ashley Fletcher. It was common ground the properties are houses in multiple occupation and at the date of death Mr Fletcher was the holder of appropriate licences. He died on 7 March 2019 before the Applicants took up occupation in September 2019 but the Agreements were not amended to change the name of the landlord. By his will made on 20 April 2011 his daughters Claudine Skinner and Claire Jackson were appointed executors and trustees of the estate. They were granted Probate on 16 January 2020. According to the evidence of Mrs Skinner administration of the estate has not yet been concluded. Accordingly, this is an application against the estate of the late Ashley Fletcher by its personal representatives Mrs Skinner and Mrs Jackson.
6. The grounds for the applications are that the Properties are both houses in multiple occupation and that throughout the tenancies there was no HMO licence pursuant to s 61 of the 2004 Act.
7. The person having control of or management of an HMO which is required to be licenced and is not so licenced commits an offence. By s 41(1) of the 2016 Act a tenant may apply to this Tribunal for a rent repayment order against a person who has committed an offence when at the time of the offence it was let to the tenant.
8. In this case it is admitted by the Respondents that the properties, each being let to six people, were an HMO and that at the time of the tenancy and throughout its term they were unlicenced. Nottingham City Council, the local housing authority,

interviewed the Respondent Mrs Skinner but decided not to prosecute her for the offence. There is also no dispute that the sum claimed by the Applicants was rent in accordance with the tenancy agreements and fully paid.

9. The issue for the Tribunal is first whether or not the Respondents had a reasonable excuse for not having a licence pursuant to s72(5) Housing Act 2004 Act. If there is no reasonable excuse whether or not the tribunal has a discretion to reduce the amount of rent repayable and in any event what must the Tribunal deduct from any repayable rent

### **The Tenancy Agreement.**

10. The Agreements were made on 6 December 2018 in the case of 6a Gamble Street and 30 November 2018 in the case of 8 Gamble Street. Each agreement had a summary sheet setting out the principal terms. Rent is stated as £99.00 inclusive per week per person. The start date and end date are recited as 2 September 2019 and 16 August 2020. The rent payable over the term is calculated in four periods: 29 August for four weeks £396.00; 30 September 2019 for 15 weeks £1,485.00; 13 January 2020 for 16 weeks £1584.00; 4 May 2020 for 15 weeks £1485.00.
11. The total rent payable over the tenancy of 50 weeks is £4950.00 per person. In addition, the Applicants were required to make a pre-payment of £100.00 each in anticipation of utility charges exceeding the sum allowed for utilities in the tenancy agreement.
12. At paragraph 6 of the Agreement, it is provided:

*“Services provided may include: water, gas, electricity, internet, TV licence. Uni2 Rent Loyalty Card, Endsleigh contents insurance, and/or any other service that Uni2 Rent or the Landlord may in their reasonable discretion provide from time to time.*

*If this tenancy agreement is inclusive of utilities then the Landlord agrees to pay the suppliers of gas, water, electricity, internet and TV licence for the Property. The tenants covenant to ensure at all times that a fair usage policy of 5181 kilowatts for*

*electricity and 18032 kW for gas, for the services is adopted throughout the tenancy. This has been calculated by a third-party company over three years of historical usage for energy in the student market.*

*If in the reasonable opinion of the Landlord, the cost of the services used by the Tenant exceeds that which would normally be expected at the Property as per the above usages, the excess will be charged to the Tenant and any arrears may be deducted from the Deposit.*

*The tenant must not add, remove or change any service or service provider during the Term. The cost of the services in this contract equates to £19 per week per tenant of the weekly rent. The Landlord reserves the right at any time during the Term to withdraw or change any inclusive package for services; and add, remove or change any individual service or service provider.”*

13. Although the Tenancy Agreement provided by this clause 6 that the cost of services included in the rent was £19 per week, Mrs Skinner in her evidence on behalf of the Respondents stated the actual sum taken for services was £10.00 per week, with an additional £4.00 per week (paid to the agents) for “other services” and with a further £5.00 taken for Uni2 Rent for a reason which Mrs Skinner did not fully explain.

### **The Parties Evidence**

14. Mr Matthew McAllister spoke on behalf of the Applicants from 8 Gamble Street. He confirmed the payments which he and the other Applicants had made. He complained that there was little communication with the Landlord. The Applicants did not know the name of the Landlord following the death of Mr Fletcher. He stated that Uni2 Rent refused to disclose the Landlord’s name.
15. The Applicants had not seen either a gas safety certificate nor any fire safety documents. He complained that one Applicant had suffered with bed bugs and his mattress had a damaged spring on entry although he agreed both matters were dealt with.
16. In answer to questions from the Tribunal regarding utilities he agreed there was a large discrepancy between the charges allegedly incurred by the occupants of 8

Gamble Street when compared with 6a. He agreed that the sum which was charged to their property seemed about right. He confirmed the Applicants were not seeking reimbursement of the cost of services. He was unable to say whether the cost of the services amounted to £19pw.

17. In answer to questions from Mr Carter he stated he knew landlords needed some kind of licence, but he was unaware of HMO licences on signing the Tenancy Agreement. He was shown the HMO licence held by Mr Fletcher at the time of making the Tenancy Agreement and agreed had he been shown it, he would have been satisfied the property was registered. He also agreed the licence does not state what happens on the death of the licence holder.
18. Mr McAllister also accepted he did not know anything about Mrs Skinner's experience as a landlord but he referred to a YouTube promotional video prepared by Uni2 Rent in which Mrs Skinner appeared describing the service provided to her by the company. The caption in the video described her as a Student Landlord. He would not accept that the failure to obtain a licence was an honest mistake and stated Mrs Skinner could have made contact with the council.
19. He agreed the property was generally ok subject to a few problems and would not have described Mrs Skinner as a rogue landlord.
20. Mr Joseph Whitehead spoke on behalf of the Applicants from 6a Gamble Street. He pointed out that the HMO licence provides on its face that the licence is not transferable and that it should be read as such, on the death of the landlord.
21. He then went on to assert that the tenants of 6a have been overcharged for the electricity. The other services are accepted but there was a significant discrepancy in the charges allocated to his property that was not properly explained. He referred to the electricity bills produced by the Respondents and claimed the amount charged was less than the sum charged back to the tenants.
22. In answer to questions from the Tribunal he asserted that properties 8, 8a and 6a Gamble Street are all substantially the same with the same heating system. They are

terraced houses. He alleged his fellow applicants were charged much more than the other Applicants. He agreed that according to the lease the sum payable for services was £950.00. He believed a reasonable sum would have been £750.00.

23. In answer to questions from Mr Carter, he agreed the licence made no express provision for what happens in the event of death of a licence holder. He stated that while he would not describe Mrs Skinner generally as a rogue landlord although he stated the Nottingham City Council definition of a rogue landlord included someone who did not have an HMO licence and who wanted to enter the tenanted property with less than 24 hours notice. He complained that Mrs Skinner had not given 24 hours notice for end of tenancy inspections. He accepted that the Respondent had agreed a rent reduction for him although it was a payment plan he had requested. He also complained that Uni2 Rent refused to supply the name of the landlord. There was no gas safety certificate visible in the property and a s21 notice was served in May 2020 without good cause.

24. Mrs Claudine Skinner gave evidence in respect of both properties in accordance with her statements which had been served on the Applicants. The Tribunal asked her representative to adduce her evidence in chief personally. The evidence was consistent with her statements and is not summarised here but forms the basis of Mr Carter's submissions on her behalf.

25. By additional evidence given by Mrs Skinner, she described the property portfolio created by Mr Fletcher. The subject properties formed part of a block of ten houses which he built in 1997 specifically for the purpose of student accommodation. He retained ownership of eight houses, each comprising six bedrooms and two bathrooms. The portfolio included in addition, two flats and one other house. They were owned by Mr Fletcher in a partnership with Marie Selders who was also his life partner. In her written statement Mrs Skinner described Ms Selders as her father's ex-partner. They ran the business as a partnership. The properties were not owned by a company. Ms Selders owned four of the properties in her own name. After Mr Fletcher died two of his properties were sold by the Respondents in order to pay debts of the estate. Mrs Skinner stated that Mrs Selders retains her properties, one of them being 6a Gamble Street, but she takes no part in its management. Her

responsibility was confined to administration involving paying bills as they accrued. Mrs Skinner still owns two properties being 8 & 8a Gamble Street.

26. Prior to 2015 Mrs Sinner had no involvement with the business. She was a receptionist with an unconnected business. Her father was responsible for all strategic aspects of the business. It was his idea to appoint Uni2 Rent as managers when it was first established because he had known the principal, Mr Henderson, since his infancy and he wanted to help the business get started. There was no written agreement setting out their management responsibilities.
27. Mrs Skinner liaised with Uni2 Rent dealing with any issues the student tenants raised. She agreed to take part in a promotional video for Uni2 Rent but she did not know that the video described her as a “Student Landlord” until it was presented as part of the Applicants’ evidence.
28. Mr Fletcher became ill in 2017. After he died Mrs Skinner asked Uni2 Rent to pick up more things relating to the property themselves. In May 2019 Mrs Skinner gave instructions to Uni2 Rent to obtain quotes for work required by the local housing authority further to an inspection connected with the HMO licence. Mrs Skinner admitted she had seen the licence but as it appeared to be valid until June 2021 she assumed no further action was required. Although she was aware properties needed a licence, dealings with the council had been undertaken by her father. Her responsibility was to arrange any work required in connection with the licences as agreed by her father.
29. In September 2020 Mrs Skinner learned from Uni2 Rent that the tenants of 8a Gamble Street had applied for a rent repayment order (the 2020 Decision). Until that time she was unaware that the HMO licence expired on the death of the licensee or that there was a grace period of three months.
30. Mrs Skinner also stated the absence of a gas safety certificate in the properties, the incorrect service of s21 Notices, the inadequate notice of inspection and the refusal to supply the name and address of the landlord were not her actions. Uni2 Rent were responsible for all such matters. As far as she was aware the Welcome Pack which

Uni2 Rent gave to new tenants did not give much information other than what they should do or who they should contact in the event of an emergency.

31. So far as Mrs Skinner was concerned the rent included £10.00 per week for services together with an additional £100.00 paid at commencement of the tenancy against excess usage of electricity. In addition, there is a further deduction of £4.00 for the agents. The rent is £85.00 per week. Mrs Skinner was unable to explain the difference between that sum and the sum set out in the tenancy agreement of £19.00 per week for services.
32. The electricity bills are rendered by EDF for all three properties although she has tried to arrange for bills for each house. A spreadsheet was produced setting out the sums paid for electricity for each property. Mrs Skinner agreed there was a substantial difference between the charges raised for 6a and those for 8 Gamble Street which could only be explained by reference to greater consumption by the tenants of 6a. Electricity meters are contained in a locked cupboard. The tenants cannot get access to the meter cupboards.
33. In answer to a question from the Tribunal, Mrs Skinner agreed that the tenants paid an additional one-off payment of £99.00 to Deposit. She was unable to fully explain the purpose of that payment but described it as an insurance payment.
34. In answer to a question from Mr Whitehead, Mrs Skinner stated she was trying to understand what Uni2 Rent did and she is likely to move her business from the agent.
35. In answer to Mr Carter's re-examination Mrs Skinner explained that the business is a partnership, not a limited company. Four properties are owned by Ms Selders including 6a. Two were sold to pay debts and Mrs Skinner retains 8 and 8a. All properties were properly licenced at the date of death of Mr Fletcher. Ms Selders duty was to manage payment of bills, she had no involvement with management and did not deal with Nottingham City council.

## **The Parties Submissions**

36. Mr Carter submitted that the properties were validly licenced until the date of death. Licences are not transferable is noted on the licence document, but it is not stated that they cease on the death of the holder. Mrs Skinner checked the licences and believed they were valid until June 2021. It was an honest mistake having not had any previous experience of licencing and being upset at the death of her father who had been a significant figure in her life. There was no suggestion of prosecution by the local housing authority.
37. He contended that her ignorance of the need for a licence was a reasonable excuse within s72(5) Housing Act for not holding a licence. He did not contend that it was an ignorance of the law.
38. He agreed operating an unlicenced HMO is a continuing offence but proposed that having seen what appeared to be a valid licence on first checking there was no need to revisit the document.
39. He refuted the proposition that Mrs Skinner was a rogue landlord as anticipated by the relevant legislation and the recent decision of Arnold LJ who said in *Rakusen v Jepsen [2021] EWCA Civ 1150* “*it is common ground that Chapter 4 is intended to deter landlords from committing the specified offences*”. Mr Carter referred to compassion in offering two students rent reduction, her wish to provide students with reasonable accommodation and the circumstances leading to her assuming responsibility for the properties.
40. In his submission Mr Carter proposed that the Tribunal should consider whether the Respondents had a reasonable excuse by answering the question: ‘Whether the Respondents had a reasonable excuse for managing and controlling the Property and the Second Property when they did not have a HMO licence in their names in the specific circumstances where a HMO licence was in place for the Property and the Second Property in the Deceased’s name, but that licence had ceased to be valid due to his death”

41. He concluded that because the Respondents are not ‘rogue landlords’ and should be afforded the protection of the defence. Thus, they have a complete defence to the Applicants’ claim and accordingly the Applications should be dismissed. If her situation was not a reasonable excuse, then he urged the Tribunal to exercise discretion to consider even making no rent repayment order.
42. The estate of Mr Fletcher is not as well off as the Probate documents suggest. Two properties were sold to pay debts. There are no significant conduct issues on either side in this case. There is no conviction which would ordinarily mean the starting point is the maximum as explained by Mr Martin Rodger QC in *Ficcaro v James [2021] UKUT 38 (LC)*. Mr Carter went on to submit that simply adopting the full rent paid over the period should not be the end point because HHJ Cooke said in *Awad v Hooley [2021] UKUT 0055 (LC)*, at paragraph 40, it is “*unusual for there to be absolutely nothing for the FTT to take into account*”.
43. Therefore, he submitted, there must be some reduction from full rent repayment in any award. As far as the utilities were concerned he suggested the correct approach was to deduct sums actually paid as appeared in the spreadsheet adduced in evidence.
44. Mr Whitehead asserted that the general law of agency should apply fixing Mrs Skinner with the defaults of Uni2 Rent. Alternatively, Mrs Skinner was not a fit and proper person because of her failure to check properly the licence situation. He referred the Tribunal to the FtT decision in *Flat 7 1 Richard Street London* in support of his proposition that ignorance is not an excuse.
45. Mr McAllister referred to the length of time available for Mrs Skinner to check the position regarding the licence with Nottingham City Council. He contended being unaware is not an excuse.

## **The Statutory Framework**

46. The Act of 2004 gave the First-tier Tribunal the jurisdiction to make a rent repayment order against a person who had been convicted of controlling or managing an unlicensed HMO. Chapter 4 of the Housing and Planning Act 2016 replaced the jurisdiction to make a rent repayment order where a landlord has committed an offence to which the Chapter applies after 6 April 2017. The Chapter provides the framework by which decisions are made.

47. S40(2) defines a rent repayment order as an order requiring the landlord under a tenancy of housing in England to repay an amount of rent paid by a tenant, and subsection (3) provides:

*“A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord”* and at item 5 of the table in subsection 3 having control or management of an unlicensed HMO contrary to s72(1) of the 2004 Act is identified as behaviour amounting to an offence.

By s41 of the 2016 Act:

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

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

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

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

48. S43 Provides that a Tribunal may make a rent repayment order only if made under s41, if satisfied beyond reasonable doubt that a landlord has committed an offence to which the Chapter applies, whether or not the landlord has been convicted. By s43(3) the amount of a rent repayment order in the case of an application by a tenant is to be determined in accordance with s44.

49. S44 provides that where a First-tier Tribunal decides to make an order under s43 the amount to be repaid must not exceed the rent paid in respect of the unlicenced

period and in determining the amount the tribunal must in particular take into account:

- a. The conduct of the landlord and the tenant,
- b. The financial circumstances of the landlord, and
- c. Whether the landlord has been convicted of an offence to which the Chapter applies.

50. S68(6) 2004 Act provides that an HMO licence may not be transferred to another person.

51. It is a defence to a charge of letting an unlicenced HMO that the person had applied for a licence or had a reasonable excuse for having control or managing the house without a licence (s72(5) 2004 Act) which provides:

*“In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse*  
*(a)for having control of or managing the house in the circumstances mentioned in subsection (1), or*  
*(b)for permitting the person to occupy the house, or*  
*(c)for failing to comply with the condition, as the case may be.”*

### **The Decision**

52. In this case the Respondents accept that the properties are houses in multiple occupation which should be licenced under the relevant legislation, but they were not so licenced. It is also not in dispute that at the time of the offence they were let to the Applicants.

53. The issues for the Tribunal are whether or not there was a reasonable excuse for the failure to hold a licence, if not, whether the Tribunal has discretion to and should make an award less than repayment of all rent paid during the tenancy.

54. The burden of proving a reasonable excuse was considered in *Thurrock Council v Palm View Estates [2020] UKUT 0355 (LC)* when it was accepted that whether or not an excuse is “reasonable” is not a subjective question. HH Judge Cooke said “*the*

*law is now clear, following the Tribunal's decision in IR Management Services Limited v Salford [2020] UKUT 0081 (LC). The HMO licence is defined in section 72(1) of the 2004 Act, while the defence is set out separately in section 72(5); the absence of reasonable excuse is not part of the definition of the offence. Therefore this is a defence that the defendant, in criminal proceedings, or the respondent in these civil proceedings, must prove to the civil standard of proof".*

55. Also in Palm View Estates HHJ Cooke said at paragraph 39 "*it is vital to observe what the statute actually says. The focus must be on an excuse for committing the offence; there might be all sorts of reasons for not applying for a licence that might, or might not, provide a reasonable excuse for the commission of the offence*" because, as Mr Carter submitted in his skeleton argument "*It is conceivable that a good reason for not applying for a licence might provide an excuse for committing the offence, for example the level of ignorance of the law referred to in Daoudi, noted above*" (Palm View Estates at para 37).
56. In deciding whether the Respondents have discharged the burden upon them the Tribunal must have regard to any explanation offered by the landlord for their failure to obtain a licence because "*Tribunals should consider whether any explanation given by a person managing an HMO amounts to a reasonable excuse whether or not the appellant refers to the statutory defence*" per Martin Rodger QC (Deputy Chamber President Upper Tribunal (Lands Chamber) in *IR Management Services Limited v Salford City Council [2020] UKUT 81 (LC)*).
57. In *Sutton v Norwich City Council 2020 [UKUT] 0090(LC)* Martin Rodger QC said in relation to the defence of reasonable excuse "*It is possible to conceive of circumstances in which a lack of knowledge of the facts which caused a house to be an HMO might provide a reasonable excuse for non-compliance..*" with the obligation to licence a property but in *Thurrock Council v Daoudi [2020] UKUT 209 (LC)* Martin Rodger QC held that a genuine lack of awareness of the need to obtain a licence was irrelevant in deciding whether the landlord had a reasonable excuse for not obtaining a licence.

58. Further in *Chan v Bilku [2020] UKUT 289(LC)* HHJ Cooke said “*a landlord with a portfolio of properties is to be expected to keep abreast of their professional and legal responsibilities. I do not regard inadvertence as a mitigation in such a case.*”

59. This Tribunal has previously considered a similar claim in respect of another property in the terrace (the 2020 decision) when it did not have the benefit of hearing witnesses and oral argument. In this case the presentation by both sides was very helpful including the preparation of an indexed electronic bundle.

60. In the 2020 decision the Tribunal found that the facts did not amount to a reasonable excuse. Since that decision there have been further Upper Tribunal decisions considering the defence of reasonable excuse but the dicta of Vice President in *Daoudi* referred to above is unchallenged. HHJ Cooke in *Palm View Estates* while acknowledging there could be all sorts of reasons for not applying for a licence said at para 36 “*there would not be a reasonable excuse where it was open to the landlord to avoid committing an offence altogether by legitimising its position*”.

61. The factual position is very clear. The offence was committed because Mrs Skinner looked at the licence when she assumed management responsibilities and made an incorrect decision that the licence was valid until June 2021 notwithstanding the endorsement that the licence is not transferable. The Tribunal is not satisfied that is a reasonable excuse. Insufficient regard was given to the implications of the death of the licence holder.

62. Mrs Skinner was aware that properties required a licence; her evidence was that she was not familiar with what was actually required. In other evidence Mrs Skinner referred to her duties while her father was alive which included arranging contractors to carry out work required to comply with conditions imposed by the Council without ever informing herself of the obligations imposed in managing properties in multiple occupation. Although she requested assistance from Uni2 Rent her evidence relating to the roles and responsibilities was vague and uncertain. Mrs Skinner did not know the purpose of the payment for Deposit, nor did she understand the meaning and effect of clause 6 of the Agreement. There was no management agreement describing the obligations of Uni2 Rent. There is some force in her evidence that they have not

provided a service which she intends to continue, but she did not regularise the relationship when the initial confusion and emotional turmoil after the death of Mr Fletcher had eased.

63. It appeared to the Tribunal that although Mrs Skinner did not fully understand all the obligations upon a landlord of residential property Uni2 Rent were of little assistance in providing advice or service which she required. Nevertheless, as HHJ Cooke made clear in *Chan v Bilkhu* a landlord with a portfolio of properties is expected to keep abreast of their obligations.
64. The Tribunal is satisfied beyond reasonable doubt that the Respondents have committed a housing offence of letting a property in multiple occupation without a licence. It is also satisfied that in this case Mrs Skinner's misunderstanding the meaning and effect of the death of the former licence holder on the licence which was in force until his death is not a reasonable excuse for not having an HMO licence when the tenancies commenced several months after the death of Mr Fletcher.
65. In light of that decision, the Tribunal will decide whether to make a rent repayment order in favour of the tenant notwithstanding that the Respondents were not convicted by any court of an offence; but in accordance with s44 2016 Act it will take into account the conduct of the landlord and tenant, the financial circumstance of the landlord. In *Vadamalayan v Stewart & Others [2020] UKUT 0183(LC)* HHJ Cooke confirmed the regime is intended to be harsh and fiercely deterrent and described the rent as "*the obvious starting point*" in deciding upon a rent repayment order. In *Rakusen* the regime introduced by Chapter 4 of Part 2 Housing and Planning Act 2016 is described as "*intended to deter landlords from committing the specified offences*".
66. Mr Carter urged the Tribunal to exercise discretion by not making an order for repayment of rent. The Tribunal has a discretion as to whether or not to make a RRO (*London Borough of Newham v Harris [2017] UKUT 0264 (LC)*) and in *Ficarra v James (2021) UKUT 0038 (LC)* the Upper Tribunal, referring to the Vadamalayan decision that rent is the obvious starting point said,

*“The concept of a “starting point” is familiar in criminal sentencing practice, but since the rent paid is also the maximum which may be ordered the difficulty with treating it as a starting point is that it may leave little room for the matters which section 44(4) obliges the FTT to take into account, and which Parliament clearly intended should play an important role. A full assessment of the FTT’s discretion as to the amount to be repaid ought also to take account of section 46(1). Where the landlord has been convicted, other than of a licensing offence, in the absence of exceptional circumstances the amount to be repaid is to be the maximum that the Tribunal has power to order, disregarding subsection (4) of section 44 or section 45.*

*It has not been necessary or possible in this appeal to consider whether, in the absence of aggravating or mitigating factors, the direction in section 44(2) that the amount to be repaid must “relate” to the rent paid during the relevant period should be understood as meaning that the amount must “equate” to that rent. That issue must await a future appeal. Meanwhile Vadamalayan should not be treated as the last word on the exercise of discretion which section 44 clearly requires”.*

67. The Tribunal is aware that the local housing authority has refrained from prosecuting the Respondents for the housing offence. It also accepts that the intention of the Respondents was to provide students with reasonable quality accommodation at a reasonable price. It is also mindful of the observation of HHJ Cooke that landlords with a portfolio of properties are expected to keep abreast of professional obligations and *“I do not regard inadvertence as a mitigation in such a case”*.

68. In the 2020 Decision the Tribunal stated:

*“In this case it is apparent the Property is ordinarily suitable for multiple occupation typically by students. It was previously the subject of an HMO licence. However, on the death of Mr Fletcher the licence holder the licence lapsed. Allowing for the grace period, the Property was unlicensed with effect from June 2019. The managing agent failed to advise the estate that a new licence was needed and neither of Mrs Skinner nor Mrs Jackson considered the implication for the licence of the death of the holder. Their inadvertence is not a mitigation or a defence in this case. Uni2 Rent took no part in these proceedings consequently the Tribunal is unable to determine the extent of the Respondents’ reliance upon their advice.”*

69. Having now had the benefit of hearing the evidence of Mrs Skinner, the Tribunal considers that her inadvertence in failing to properly understand the meaning of the notice on the licence, stating the legal position that a licence is not transferable, was not the limit of her failure to keep abreast of her obligations.

70. There was no inquiry as to the implications of that endorsement. The relationship with Uni2 Rent did not clearly establish roles and responsibilities although the Tribunal with this decision does determine the extent of the agents, responsibility as it did not have evidence from them. Although Mrs Skinner denied that her agents were not required to withhold the name of the landlord there was no satisfactory explanation for the agent doing so. It was apparent that when Mrs Skinner took over the running of the business, she did not properly acquaint herself with the consequential duties and obligations. There were some further complaints about the state of the properties but apart from the failure to display a gas safety certificate the Tribunal does not regard them as examples of poor conduct by the landlord as they were soon remedied.

71. However, the failure on the part of the Respondents to have adequate regard to their responsibilities as landlord are such that the Tribunal has decided that this is not a case in which to exercise discretion and depart from the obvious starting point of the rent paid during the tenancy.

72. The starting point is to identify the rent paid for the relevant period of up to 12 months. The Applicants apart from Mr Cronin and Mr Whitehead have each claimed the sum of £4950.00 being 50 weeks at £99.00. In the case of Mr Cronin and Mr Whitehead, their claim after a rent holiday is £4557.50 and £4578.75 respectively. The Applicants concede they are not entitled to sums applied in payment of utilities and services which Mrs Skinner identified as £14.00pw. The tenancy agreement referred to the sum of £19.00 for the services. The Tribunal was shown evidence of the charges for the utilities which came to £3267.38 for 6a and £1928.71 for 8 Gamble Street. The share of the total annual sum for each tenant of 6a Gamble Street is £544.56 and for the tenants of 8 Gamble Street is it £321.45. The Tribunal will deduct from the rent claim an apportioned amount of the sums actually paid from the claim of each Applicant in order to identify the sum claimed.

73. Accordingly, the Tribunal makes a rent repayment order in the sum of £4628.55 for each of the Applicants other than Applicants Cronin and Whitehead. In the case of Mr Cronin, the Tribunal makes a rent repayment order of £4236.05. In the case of Mr Whitehead, the Tribunal makes a rent repayment order of £4034.19.

## **Appeal**

74. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal an aggrieved party must apply in writing to the First-tier Tribunal for permission to appeal within 28 days of the date specified below stating the grounds on which that party intends to rely in the appeal.

Tribunal Judge Peter Ellis  
Chair