HM Courts & Tribunals Service

Residential Property
TRIBUNAL SERVICE

London Rent Assessment Panel

DECISION OF THE RESIDENTIAL PROPERTY TRIBUNAL ON AN APPLICATION UNDER SECTION 73(5) OF THE HOUSING ACT 2004

Case Reference: **LON/00AG/HMA/2012/0004**

Premises: **4 Havering, Castlehaven Road, London NW1 8TH**

Applicants	:	**(1) Katrina Jane McFarlane** **(2) Nicholas Charles Flooks** **(3) Aleksandra Anna Kozowska** **(4) James Connery** **(5) Ruby Wootton** **(6) Katrina Dixon**
Representative:	:	**Mr Michael Warren** **EHO, London Borough of Camden**
Respondents	:	**(1) Mr Abdul Kalam** **(2) Mrs Jahanara Begum**
Representative		**Mr Kayum Kalam (Son)**
Date of Decision	:	**13 November 2012**
Leasehold Valuation Tribunal	:	**Mr John Hewitt** **Chairman** **Mr Christopher Gowman**

DECISION

Decision

1. The decision of the Tribunal is that that Rent Repayment Orders shall be and are hereby made pursuant to section 73(5) of the Housing Act 2004 in favour of the persons and in the sums set out below:

Katrina Jane McFarlane	£6,500.00
Nicholas Charles Flooks	£6,500.00

Aleksandra Anna Kozowska	£6,500.00
James Connery	£6.500.00
Ruby Wootton	£6.500.00
Katrina Dixon	£6,500.00

2. The said sums shall be paid by the Respondents to the Applicants within the period of 28 days beginning with the date of this Decision. The liability of the Respondents to effect payment of the above sums is a joint and several liability.

3. The reasons for our decision are set out below.

NB Later reference in this Decision to a number in square brackets ([ ]) is a reference to the page number of the hearing file prepared on behalf of the Applicants and provided to us for use at the hearing.

Procedural Background

4. On 20 July 2012 the Tribunal received a series of six applications from the Applicants seeking rent repayment orders pursuant to section 73(5) of the Housing Act 2004 (the Act) [1-33]. The Respondent cited in each of the application forms was Mr Abdul Kalam.

5. Directions were given on 20 August 2012 [34-37]. In essence the Applicants were to file and serve a file of papers containing specified documents material to their case by 17 September 2012. The Respondent was to file and serve his statement of case in answer by 15 October 2012.

6. The applicants duly filed and served their file of papers. The Respondent did not and has not filed a statement of case in answer.

7. The Respondents are husband and wife. They attended the hearing along with their son, Mr Kayum Kalam (Mr Kalam). Mr Kalam presented the case for his parents as their representative.

8. The Applicants were represented by Mr Michael Warren, an EHO with the London borough of Camden (Camden).

9. Mr Kalam made an application for an adjournment of the hearing.

10. Before dealing with that application it may be helpful to set out a little background so as to set the scene – none of which was in dispute.

11. The subject Premises comprise a maisonette laid out over three floors which was originally constructed as and intended to be a four bedroom family home with two reception rooms plus a kitchen and bathroom facilities. The Premises were let by Camden as a council house. At some point a secure tenancy of the Premises was granted to the Respondents. In or about 2003 or 2004 the Respondents exercised the Right to Buy granted by the Housing Act 1985. On 23 February 2004 a

lease of the Premises was granted by Camden to the Respondents for a term of 125 years from that date [86-129]. The lease records the net premium paid was £212,000 and that the Respondents had obtained a discount of £38,000. On 25 June 2004 the Respondents were registered at the Land Registry as the proprietors of the lease [131].

12. On 23 June 2005 the Respondents, named as Mohammed Abdul Kalam and Jahanara Begum, were registered at the Land Registry as the proprietors of a freehold property, 23 Lyndhurst drive, Hatch Warren, Basingstoke RG22 4QT. The price stated to have been paid is recorded as being £248,000. This property is now the family home and the Respondents live there with their son, Mr Kalam.

13. The subject Premises have been let as furnished accommodation since about 2006 to the present time. There appear to have been a succession of tenancies and it seems that most tenants were groups of students, some of whom studied at University College, London.

14. The tenancy agreement, the subject of these applications, is dated 20 July 2011. It was granted to four of the six Applicants, Flooks, Dixon, McFarlane and Wootton for a term of 12 months from 20 July 2011 to 19 July 2012 at a rent of £3,354 per calendar month payable in advance on the 20th of each month. A deposit in a sum equalling six weeks rent was paid prior to the grant of the tenancy. Each of the four Applicants named in the tenancy agreement were required to provide a guarantor. It appears that mostly parents stood in as guarantors.

15. The tenancy agreement named Mr Abdul Kalam of 23 Lyndhurst Drive as the landlord. His contact email address was given as kayum_mohammed_abdul@hotmail.co.uk [38-47].

16. The letting was arranged by a letting agent engaged by the Respondents, Tony Alan Estates Limited and the person there who negotiated the transaction was a Mr Juelz Miah.

17. By an email dated 23 June 2011 from Mr Miah to Nicholas Flooks [56] it was stated that the monthly rent was to be paid into an account numbered 100117094 in the name of J Begum at Barclays Bank; Sort Code: 20 44 86. It was not in dispute that the 'J Begum' referred to is the Second Respondent, Mrs Jahanara Begum. It was not in dispute that throughout the 12 months of the tenancy the rent was so paid. It was also not in dispute that following the expiry of the tenancy, the deposit has been repaid.

18. In or about January 2012 Camden issued a number of summonses against each of the Respondents. It was alleged that each of the Respondents was guilty of an offence under section 72(1) of the Act – *" A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed."*

It was also asserted that each of the Respondents were guilty of a further 10 offences concerning alleged breaches of HMO Management Regulations. Not guilty pleas were indicated a trial was arranged for 20 and 21 June 2012. Prior to the trial the Respondents had the benefit of legal representation but evidently their lawyer did not attend the trial. At court on 20 June 2012 an agreement was arrived at between Camden and the Respondents whereby each of the Respondents would plead guilty to the offence under section 72(1) of the Act, and Mr Abdul Kalam would plead guilty to certain other offences, and that the remaining summonses would be withdrawn. That agreement was duly given effect to. The District Judge then heard pleas in mitigation put forward by Miss Nazira Akhtar Kalam, a daughter of the Respondents who was then assisting them in the running of the Premises. Each of the Respondents was fined £1,000 for the breach of section 72(1) of the Act. Mr Abdul Kalam was also fined £1,000 for failing to provide fire doors, £1,000 for failing to provide a fire alarm and £250 in connection with a broken window.
Mrs Begum was ordered to pay costs of £2,000 and Mr Abdul Kalam was ordered to pay costs of £2,508.75 [326].

19. Turning back to Mr Kalam's application for an adjournment of the hearing Mr Kalam explained that he had recently completed his university education and had just started a temporary job. The evening prior to the hearing his parents had, for the first time, mentioned the proceedings to him. He said that they had received the papers and directions in August 2012 and had since then consulted three different firms of solicitors, they had paid fees to each of them but, for one reason or another, none of the firms was willing to take on the case. Evidently his parents had not raised the issue with him on an earlier occasion because they did not wish to burden him with it. Mr Kalam said that he had some knowledge of the Premises and he had in past years assisted with the management of them, but he did not have any detailed knowledge of the subject tenancy. His sister, Nazira, had assisted with the management of the subject tenancy, but there has been a falling out within the family and they were no longer on speaking terms with Nazira. Mr Kalam said that he and his parents were more than prepared to co-operate; they just needed more time. He said that they had stuff at home he wanted to go through.

20. Mr Warren opposed the application. He said that the Respondents had had months to prepare their case and had failed to file and serve a statement of case in answer. The six Applicants were now third year students all of whom were present and who had taken time out from their studies to be present. The father of one of them had travelled up from Haywards Heath to give evidence. One of the Applicants, Ms Kozlowska was ordinarily resident in Poland, but was now studying in France and had travelled over for the hearing. She was not planning to be back in London until sometime in January 2013.

21. We adjourned to consider the application. We had regard to Regulation 30 of the Residential Property Tribunal Procedures and Fees (England) Regulations 2011 (the Regulations). We were satisfied that the Respondents had been given sufficient prior notice of the hearing. We noted that by Regulation 30 an adjournment should not be granted except where it is reasonable to do so having regard to:

a) the grounds of the request;
b) the time at which the request was made; and
c) the convenience of the parties.

We decided that we would not adjourn the hearing to another day. The application was made very late. The Respondents plainly had the papers in good time and evidently had sought legal advice from three different firms of solicitors. We took into account the convenience of the parties and noted the efforts the Applicants and their witness had made to be present and the travel arrangements made by some of them. We also took into account that it was not in dispute that each of the Respondents had pleaded guilty to an offence under section 72(1) of the Act.

We were however sympathetic to Mr Kalam who had only seen the papers for the first time very recently. When we had the parties back in we explained that we would not adjourn to another day but that we would adjourn for about an hour and ten minutes or so to give Mr Kalam some more time to familiarise himself with the papers and to discuss matters further with his parents. We also explained to Mr Kalam that given the circumstances of the of the convictions of an offence under section 72(1) of the Act the Tribunal was empowered by section 73 to make a rent repayment order of such an amount as it considers reasonable in the circumstances and that in arriving at its decision the Tribunal was to have regard to the conduct and financial circumstances of the appropriate person(s) and where the application is made by an occupier, the conduct of the occupier. We thus indicated to him that these were the matters he should focus on.

22. Mr Warren made an application to amend the applications to include Mrs Begum as a Second Respondent. He said that it was an error that Mrs Begum's name had been omitted. He said that whilst Mrs Begum's name was not stated on the subject tenancy agreement, she was one of the joint owners of the Premises and the rent had been paid into an account in her name.

Mr Kalam consulted with his parents and rather generously said that the application was not opposed. Accordingly we granted the application and dispensed with formal service of it on Mrs Begum.

The statutory law

23. As a matter of policy Parliament has decided to bring in measures with the aim of trying to improve the safety and standards of residential premises occupied by a number of persons who share the facilities available. For a number of years there has been regulation of houses in multiple occupation (HMOs).

24. That regulation was substantially revised by the Housing Act 2004. The long title of the Act states:

> *"An Act to make provisions about housing conditions; to regulate houses in multiple occupation and certain other residential accommodation; to make provision for home information packs in connection with the sale of residential properties ... to make other provision about housing; and for connected purposes."*

The Act is divided into seven parts. It has 270 sections and 16 schedules. Part 2 and certain provisions in Part 7 are aimed at the greater protection of the health, safety and welfare of the occupants of HMOs.

Part 2 of the Act sets out a regime for the licensing of HMOs. There is a scheme for the mandatory licensing of a house with three or more storeys to be occupied by five or more persons living in two or more separate households. In order to enforce the Act there are both criminal and civil remedies for non-compliance.

For present purposes the following provisions are material:

"Section 72
Offences in relation to licensing HMOs

(1) A person commits an offence if he is a person having the control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

(2) – (5) ...

(6) A person who commits an offence under subsection (10 or (2) is liable on summary conviction to a fine not exceeding £20,000.

(7) – (10) ...

Section 73
Other consequences of operating unlicensed HMOs: rent repayment orders

(1) For the purposes of this section an HMO is an 'unlicensed HMO' if:

(a) it is required to be licensed under this part but is not so licensed; and

(b) neither of the conditions in subsection (2) is satisfied.

(2) ...

(3) *No rule of law relating to the validity or enforceability of contracts in circumstances involving illegality is to affect the validity or enforceability of:*

(a) *any provision requiring the payment of rent or the making of any other periodical payment in connection with any tenancy or licence of a part of unlicensed HMO, or*

(b) *any other provision of such a tenancy or licence.*

(4) *But amount paid in respect of rent or other periodical payments in connection with such a tenancy or licence may be recovered in accordance with subsection (5) and section 74.*

(5) *If–*

(a) *an application in respect of an HMO is made to a residential property tribunal by the local housing authority or an occupier of a part of the HMO, and*

(b) *the tribunal is satisfied as to the matters mentioned in subsection (6) or (8),*
the tribunal may make an order (a "rent repayment order") requiring the appropriate person to pay to the applicant such amount in respect of the housing benefit paid as mentioned in subsection (6)(b), or (as the case may be) the periodical payments paid as mentioned in subsection (8)(b), as is specified in the order (see section 74(2) to (8)).

(6) ...
(7) ...

(8) *If the application is made by an occupier of a part of the HMO, the tribunal must be satisfied as to the following matters–*

(a) *that the appropriate person has been convicted of an offence under section 72(1)in relation to the HMO, or has been*

required by a rent repayment order to make a payment in respect of housing benefit paid in connection with occupation of a part or parts of the HMO,

(b) *that the occupier paid, to a person having control of or managing the HMO, periodical payments in respect of occupation of part of the HMO during any period during which it appears to the tribunal that such an offence was being committed in relation to the HMO, and*

(c) *that the application is made within the period of 12 months beginning with–*

(i) *the date of the conviction or order, or*

(ii) *if such a conviction was followed by such an order (or vice versa), the date of the later of them.*

(9) ...

(10) *In this section–*

"the appropriate person", in relation to any payment of housing benefit or periodical payment payable in connection with occupation of a part of an HMO, means the person who at the time of the payment was entitled to receive on his own account periodical payments payable in connection with such occupation;

"housing benefit" means housing benefit provided by virtue of a scheme under section 123of the Social Security Contributions and Benefits Act 1992 (c. 4);

"occupier" in relation to any periodical payment, means a person who was an occupier at the time of the payment, whether under a tenancy or licence or otherwise (and "occupation" has a corresponding meaning);

"periodical payments" means periodical payments in respect of which housing benefit may be paid by virtue of regulation 10 of the Housing Benefit (General) Regulations 1987

(S.I. 1987/1971) or any corresponding provision replacing that regulation.

(11) ...

Section74
Further provisions about rent repayment orders

(1) This section applies in relation to rent repayment orders made by residential property tribunals under section 73(5).

(2) Where, on an application by the local housing authority, the tribunal is satisfied–

(a) that a person has been convicted of an offence under section 72(1)in relation to the HMO, and

(b) that housing benefit was paid (whether or not to the appropriate person) in respect of periodical payments payable in connection with occupation of a part or parts of the HMO during any period during which it appears to the tribunal that such an offence was being committed in relation to the HMO, ***the tribunal must make a rent repayment order*** *requiring the appropriate person to pay to the authority an amount equal to the total amount of housing benefit paid as mentioned in paragraph (b).*

This is subject to subsections (3), (4) and (8).

(3) ...

(4) A rent repayment order made in accordance with subsection (2) may not require the payment of any amount which the tribunal is satisfied that, by reason of any exceptional circumstances, it would be unreasonable for that person to be required to pay.

(5) In a case where subsection (2) does not apply, the amount required to be paid by virtue of a rent repayment order under section 73(5)is to be ***such amount as the tribunal considers reasonable in the circumstances.***

This is subject to subsections (6) to (8).

(6) In such a case the tribunal must, in particular, take into account the following matters–

(a) the total amount of relevant payments paid in connection with occupation of the HMO during any period during which it appears to the tribunal that an offence was being committed by the appropriate person in relation to the HMO under section 72(1);

(b) the extent to which that total amount–

(i) consisted of, or derived from, payments of housing benefit, and

(ii) was actually received by the appropriate person;

(c) whether the appropriate person has at any time been convicted of an offence under section 72(1)in relation to the HMO;

(d) the conduct and financial circumstances of the appropriate person; and

(e) where the application is made by an occupier, the conduct of the occupier.

(7) In subsection (6) "relevant payments" means–

(a) in relation to an application by a local housing authority, payments of housing benefit or periodical payments payable by occupiers;

(b) in relation to an application by an occupier, periodical payments payable by the occupier, less any amount of housing benefit payable in respect of occupation of the part of the HMO occupied by him during the period in question.

(8) A rent repayment order may not require the payment of any amount which–

(a) (where the application is made by a local housing authority) is in respect of any

time falling outside the period of 12 months mentioned in section 73(6)(a); or

(b) (where the application is made by an occupier) is in respect of any time falling outside the period of 12 months ending with the date of the occupier's application under section 73(5);

and the period to be taken into account under subsection (6)(a) above is restricted accordingly.

(9) – (13) ...

(14) Any amount payable to an occupier by virtue of a rent repayment order is recoverable by the occupier as a debt due to him from the appropriate person.

(15) ...

(16) Section 73(10) and (11) apply for the purposes of this section as they apply for the purposes of section 73.

The hearing

25. Mr Warren presented the case on behalf of the Applicants.

Mr Kalam presented the case on behalf of the Respondents.

26. Mr Warren gave oral evidence. Mr Warren produced his witness statement and the exhibits thereto [60-326]. He confirmed his witness statement was true when signed and remained true. Mr Warren confirmed that he was in court at Highbury Magistrates Court on 20 June 2012 when each of the Respondents pleaded guilty to the charges brought under section 72(1) of the Act and when fines were imposed and costs orders made.

Mr Warren recounted the enquiries he had made into the subject letting and the letting in the prior academic year. He said that the Respondents had sought and obtained exemption from council tax on the basis that students were in occupation of the Premises.

Mr Warren was cross-examined by Mr Kalam, but he was not cross-examined on the report of his inspection of the Premises in October 2011 and the deficiencies he noted in his letter to Mr Abdul Kalam dated 13 October 2011 [156-159].

27. Each of the Applicants (save for Mr Nicholas Flooks) gave oral evidence and produced their respective witness statements (and exhibits) as follows:

Katrina Jane McFarlane	[390-402]
Aleksandra Anna Kozowska	[397-382]
James Connery	[376-378]
Ruby Wootton	[386-389]
Katrina Dixon	[383-385]

They confirmed that their witness statements were true when signed and remained true save only as to their current addresses, and in one case a mistake as to the date of the statement was corrected.

28. Evidently the witness statement of Mr Nicolas Flooks was omitted from the file in error. However the exhibits he had intended to produce were included at [448-470]. Mr Flooks gave oral evidence. He stated that he was present at the meeting on 20 July 2011 with Mr Miah in his office when the tenancy agreement was signed by him, Ms Dixon, Ms McFarlane and Ms Wootton. He said this was the first time he had seen this document. He scanned through it. He asked why only four names were listed as the Tenant and he was told by Mr Miah that was normal. He saw the reference in paragraph 1.5.2 to the effect that the property was not let as an HMO and he asked about that. He said that Mr Miah said that was just a formality and if there were any problems the landlord would sort them out. Mr Flooks said that he was not aware of the legal implications whether the Premises were or were not an HMO. He and his colleagues wanted the house very much as there were few six roomed houses available in the locality and he readily accepted Mr Miah's assurance that there was nothing for them to worry about. Evidently this was the first occasion on which the Applicants had rented a residential property. They formed the impression Mr Miah knew what he was doing and accepted what he told them. They did not see fit to question it. In a similar vein Mr Flooks said that he had visited the Premises previously when Mr Charles Weedon was in occupation. He knew about the mice infestation issue and accepted Mr Miah's assurance that it would be dealt with before they moved in.

29. All of the Applicants were cross-examined by Mr Kalam. In most instances the thrust of the cross-examination focussed on whether they knew before they moved in that with six of them living there the Premises would become a licensable HMO and that it was not licensed. He also cross-examined them on the circumstances of and the time it took to resolve the mice infestation issue and also the carrying out of works of repair and the provision of new mattresses.

30. Mr James Flooks, Nicholas' father, gave evidence. He produced his witness statement (and exhibits) which he said was true [403-442]. Mr Kalam did not cross-examine Mr Flooks on his evidence.

31. The final witness for the Applicants was Mr Charles Weedon. He produced his witness statements at [443-447] which he said were true when signed and remained true save only as to his current address. Mr Weedon confirmed that he and five other students had rented the Premises in the academic year 2010/2011. The Premises were laid out with six bedrooms each furnished with a bed, a desk and other furniture. He said the letting had been arranged through Mr Miah of Tony Alan Estates and that although there were six people living there only four names were on the tenancy agreement.
In cross-examination by Mr Kalam, Mr Weedon said that when Mr Kalam visited the Premises with his Dad early on in the tenancy he was asked to give contact details for the occupiers and he handed over a list of six names with a telephone number against each.

32. Mr Kalam did not wish to call any evidence in support of the Respondents' case.

Findings

33. We considered Mr Warren to be a careful witness who had carried out a number of enquiries into the occupation of the Premises in recent years. We find that Mr Warren is witness upon whom we can rely with confidence and we accept his evidence.

34. We equally accept the unchallenged evidence of Mr James Flooks particularly as to the state of the Premises when he first visited them on 24 July 2011 at pretty much the start of the tenancy.

35. We were impressed with the evidence given by the Applicants. All were cross-examined, on some occasions in some detail. They gave careful, thoughtful and measured replies to the questions put to them. They did not seek to exaggerate or embellish their evidence. We found them to be reliable witnesses and we accept their evidence as to the condition of the Premises when they moved in and the general lack of responsiveness of the landlord when issues arose. In particular we find that none of the Applicants had any knowledge of HMOs prior to signing the tenancy agreement. We find that so far as they were concerned they thought the tenancy was being taken by all six of them and that they agreed to share the costs equally. They were told by Mr Miah that only four names needed to be on the agreement and they accepted what he told them; it did not occur to them to challenge it. We are reinforced in this finding by the fact that when Nazira attended the Premises on 6 August 2011 to sign off the inventory she produced full and typed details of all the rooms in the Premises and obtained the signatures of the four persons who were present on that occasion, even though two of them were not named on the tenancy agreement. Further during the course of the tenancy agreement all six of the Applicants had occasion to contact the Respondents' representative at some time or another and it seems to us that each of them were dealt with as if they were a tenant, there being no apparent differentiation

between those who had signed the tenancy agreement and those who had not.

The gist of the case for the Respondents

36. Mr Kalam did not call any evidence or produce any documents. By a mixture of the thrust of his cross-examination and submissions Mr Kalam sought to persuade us that the agent, Tony Alan Estates, had been instructed to let to four tenants only. We infer from this that the Respondents had appreciated from the guidance notes and other literature sent to them by Camden that if a letting was to five or more persons the Premises would become licensable. Evidently they wished to avoid seeking a licence. It was suggested from the tenor of the cross-examination that the Respondents had instructed the agent to effect a letting to four students only, each one having a room of their own and the two spare bedrooms were fully kitted out and furnished in case the (four) tenants wished to have guests to stay over. No evidence to this effect was given by either of the Respondents, both of whom were present throughout the hearing, and no documents to support it were provided. We were told that Mr Miah who worked for Tony Alan Estates had since been sacked and that Tony Alan Estates' role as letting agent had been terminated but again no evidence to support this was provided.

37. It was not in dispute that a house bank account was set up in the names of Mr Flooks and Ms McFarlane and all six Applicants paid equal sums into it and payments out of it included £3,254 per month to Mrs Begum's account in respect of the rent. In cross-examination Mr Kalam sought to show that if all six Applicants had really thought they were joint tenants, they would each have sent their own separate one sixth rent cheques to Mrs Begum. Each of the Applicants said that the arrangements made were for the convenience of running the house and had nothing to do with tenancy status. We accept that. We also observe that it was no doubt equally convenient to Mrs Begum to receive one rent payment in full each month rather than six separate payments each month. In any event there were not four (or six) separate tenancy agreements. There was one tenancy agreement with four persons named as 'the Tenant'. It is quite clear from the agreement that the obligations of the 'Tenant' are joint and several. Beneath paragraph 1.1.3 are the words [39]

> *"Where the party consists of more than one entity or person the obligations apply to and are enforceable against them jointly and severally. Joint and several liability means that any one of the members of a party can be held responsible for the full obligations under the agreement if the other members do not fulfil their obligations."*

38. We thus conclude there is no significance to be derived from the fact that the monthly rent was made by way of one payment of the full £3,354.

39. We reject the submission that the agent, Tony Alan Estates, acting by Mr Miah, exceeded his authority and that at all material times the Respondents thought they were simply effecting a letting to just four tenants. There is no evidence to support that submission. It is plain from the evidence of the Applicants that Mr Miah was always aware that the arrangements being entered into were a joint letting of the whole house by six students all of whom would have a room each and that they were sharing the rental costs and other house costs on an equal basis. Thus from the outset the arrangement meant that the effect of the letting was that the Premises became a licensable HMO and Mr Miah was aware of this. We are satisfied that the Respondents were also aware of this. We are reinforced in this conclusion by the evidence of Mr Weedon about a virtually identical arrangement the previous year. We are further reinforced in this conclusion by the fact that on 20 June 2012 both of Respondents pleaded guilty to an offence under section 72(1) of the Act. In his submission Mr Kalam said that the Respondents proposed to appeal against their respective convictions. He said that prior to the trial the Respondents had solicitors acting for them. The trial was set for a Wednesday and on the Friday prior the solicitors said that they would not be able to attend the trial on their behalf. Exactly why was not explained. Mr Kalam said that his parents were at court with his sister Nazira but no legal representation. He implied that his parents were bullied or led into the plea bargain arrangement without fully appreciating the consequences. It is, of course, a matter for the Respondents whether to seek to appeal the convictions. The fact is that as at the hearing before us the convictions stand and we are obliged to take notice of them and to give effect to the consequences of them.

40. We thus find that all six Applicants were treated by the Respondents and their agent and representatives as if they were each one of the joint tenants to whom the Premises were let. At the behest of the Respondents' agent the tenancy was granted to just four of them. We find that the arrangement was that the tenancy would be held by those four persons on trust for all six of them.

41. Accordingly each of the Applicants was an occupier within the definition set out in section 73(10) of the Act and each of them was an occupier who paid, to a person having control of or managing the HMO, periodical payments for the occupation of part of the HMO during the period 20 July 2011 to 19 July 2012 in which it appears to us that an offence was being committed in relation to the HMO.

42. We are satisfied that the Respondents have been convicted of an offence under section 72(1) of the Act. We are satisfied that the persons having control of or managing the Premises are the

Respondents. We are satisfied that the Applicants have made periodical payments into the account of Mrs Begum, at the direction of Mr Abdul Kalam, through the Respondents' agent – Mr Miah of Tony Alan Estates, in respect of the use of occupation of the Premises. The convictions referred to were effected on 20 June 2012. The subject applications under section 73(5) were made on 20 July 2012 and thus they were made within the period of 12 months beginning with the date of the convictions. We are satisfied that the provisions of section 73(8) have been met.

43. We therefore conclude that we have jurisdiction to entertain the application from each of the Applicants and that each Applicant has made out a case that the Tribunal should exercise its discretion and make a rent repayment order in his or her favour.

Rent Repayment Orders

44. The next question for us to consider is the amount of each rent repayment order.

45. Section 74 of the Act sets out further provisions about rent repayment orders. Section 74(1) applies where a local housing authority which has paid out housing benefit makes the application. In that situation the Tribunal must make a rent repayment order and it must be for a sum equal to the amount of housing benefit during the period in question.

46. By virtue of section 74(5), where, as here, the applications are made by occupiers the amount required to be repaid is to be such amount as the Tribunal considers reasonable in the circumstances having regard to the matters set out in sections 74(6) to (8) of the Act. There is a distinction drawn where rent has been paid from public funds and where rent has been paid from private sources. It seems to us that the mandatory requirement to make a rent repayment order for the full amount of housing benefit paid suggests that the purpose of rent repayment orders is to be penal or punitive in nature rather than compensatory or restitutionary. In the case of rent paid by an occupier the Tribunal is given some leeway but in deciding the amount required to be repaid it must take into account the matters set out in 74(6) to (8) of the Act. These matters are set out above paragraph 24). We consider the approach we should adopt is that the starting point is the full amount of the rent paid over the period in question should be repaid adjusted only to take account of the matters set out in sections 74(6) to (8).

47. It was not in dispute that the rent paid by the Applicants to the Respondents over the period 20 July 2011 to 19 July 2011 was the sum of £40,248. Mr Warren said that the rent included gas for hot water and central heating and water rates and that the sum claimed should be adjusted to reflect that. In the event Mr Warren helpfully put his claim in the conveniently round sum of £39,000.

48. Mr Kalam's position was that no sum should be required to be repaid. We asked him to suggest what sum he would contend for in the event we decided we should make a rent repayment order but he declined to suggest a figure to us.

49. AS required by the Act we have to make separate orders in respect of each of the Applicants. Insofar as the common areas of the Premises are concerned each of the Applicants would have been affected to more or the less the same degree. As regards the individual bedrooms occupied by the Applicants each will have been affected by different matters or issues and to different degree in terms of the nature, extent and duration of the issue. Nevertheless this letting was a joint and several venture for the six Applicants. The rent and costs of running the house were shared equally between them. There was a 'all for one and one for all' approach. We consider we should adopt a similar approach in assessing the amounts to be repaid and that all six Applicants shall be treated the same. Mr Warren did not contend for any other approach.

50. First we wish to record that there is not any adverse conduct on the part of the Applicants which we should take into account to reduce the amount to be repaid. We were more than satisfied that the Applicants acted reasonably and with moderation. Their reasonable complaints were made in measured and polite terms. There was no suggestion at all that the Applicants misused or abused the Premises or the fittings and furniture or were the cause of any damage. Rent was paid promptly and regularly. We were satisfied that none of the Applicants knew that the Premises were a licensable HMO prior to signing the tenancy agreement and that they knew the Premises did not have the appropriate licence.

51. So far as the Respondents are concerned we have to record that at tenancy handover the Premises were not presented in a clean and tidy condition – see Mr James Flook's evidence. A number of reassurances given by Mr Miah prior to the signing were not met. In particular the mice infestation issue was not addressed robustly. Evidently the delay was due to the failure of the Respondents to pay the appropriate fee to Camden. The Applicants accepted that the issue was eventually dealt but they asserted, and we agree, that it took far too long. In his letter dated 13 October 2011 [156] Mr Warren drew attention to a number of deficiencies in the Premises. These included hazards relating to domestic hygiene, pests and refuse, personal hygiene, sanitation and drainage, electrical hazards and fire risks. These were not addressed and dealt with fully and effectively. We accept that up to January 2012 when Nazira was managing the Premises on behalf of the Respondents there were some responses to issues raised by the Applicants and evidently four new beds were provided, but post January 2012, there was no response at all by the Respondents to issued raised by the Applicants. Mr Kalam hinted that there was a reason for this but he did not say what it was.

52. We also consider it to be significant that prior to the letting in July 2011 the Respondents were aware that the Premises were laid out and furnished with six bedrooms and that the Premises were marketed for six students sharing and the monthly rent sought reflected such an arrangement. The Respondents were aware that the Premises were licensable as an HMO but they failed to apply for a licence and, with their agent, sought to mask the letting arrangement as being a letting to a group of four students only. This was a deliberate ploy to avoid compliance with the HMO requirements aimed at the health, safety and welfare of the occupiers.

53. There were no redeeming features of conduct on the part of the Respondents which we considered merited a reduction in the amount of the rent repayment to be ordered. Balanced with the fact that in the first six months or so of the tenancy the Respondents did make some efforts to respond and deal with matters raised by the Applicants, is the fact that in the second six months they failed to respond to anything.

54. In addition to conduct, we are required to take into account the financial circumstances of the Respondents. This factor was expressly drawn to the attention of Mr Kalam prior to the lunch adjournment. However no evidence about the financial circumstances of the Respondents was put before us. Mr Kalam submitted that his parents did not work and their only source of income was the rent from the subject Premises. However such a submission is not evidence upon which we can rely with any confidence. Further by not putting matters in evidence Mr Warren was deprived of the opportunity to challenge or cross-examine what was being said. For these reasons we find we cannot put any weight on the submission. The only financial material before us, which is a matter of public record, and which was not in dispute, is that the Respondents purchased the subject Premises for £212,000 in 2004 and purchased the house at 23 Lyndhurst Drive for £248,000 in 2005 and that there are mortgages on both properties securing loans for unknown sums.

55. Taking Mr Warren's adjusted figure of £39,000 as the starting point we find this should be shared between the Applicants equally. One sixth amounts to £6,500.00 for each Applicant. We have therefore made rent repayment orders in favour of each Applicant in the sum of £6,500.

Appeal

56. The parties are reminded of their right to seek permission to appeal this Decision. Any such appeal will be determined by the Upper Tribunal (Lands Chamber). First a party wishing to appeal must seek permission to do so. The provisions of Regulation 38 of the Regulations apply and any application for permission to appeal must be made to this Tribunal within the period of 21 days beginning with the date of this Decision. An application is made to the Tribunal when it is received by the Tribunal.

John Hewitt
Chairman
13 November 2012