

# Y Tribiwnlys Eiddo Preswyl

## Residential Property Tribunal Service (Wales)

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### DECISION AND REASONS OF RESIDENTIAL PROPERTY TRIBUNAL (WALES) ss.73 & 74 Housing Act 2004

**Premises:** 78 Argyle Street, Swansea, SA1 3TA ("the property")

**RPT ref:** RPT/0005/04/12  
qA1035911

**Hearing:** 14 March 2013

**Applicants:** Anna Roberts, Nicola Main-Reade, Amy Roberts and  
Daniel Roberts.

**Respondent:** Dr Adam Musson

**Tribunal:** Mr R S Taylor  
Mr R Baynham FRCIS

## DECISION

1. The Respondent shall forthwith pay:-
  - a. £345.34 to Miss Anna Roberts
  - b. £1423.70 to Miss Main- Reade

Either party may apply to the Tribunal for permission to appeal this decision to the Upper Tribunal (Lands Chamber). The application must be in writing and made within 21 days of receipt of this decision to the Residential Property Tribunal (Wales). First Floor, West Wing, Southgate House, Wood Street, Cardiff. CF10 1EW. The application must be signed by the appellant or the appellant's representative and must:-

- c. State the name and address of the appellant and of any representative of the appellant;
- d. Identify the decision and the tribunal to which the request for permission to appeal relates; and
- e. State the grounds on which the appellant intends to rely in the appeal.

## REASONS

### Background.

1. This is an application dated 20 September 2012, received by the Tribunal on the 21 September 2012, for a Rent Repayment Order ("RRO") by four occupants of the property. This application is made pursuant to s.73(5) & (8) of the Housing Act 2004 ("the Act"). In determining the level, if any, of a RRO we apply the relevant test as set out in s.74(5), the factors in s.74(6), noting the limit to the jurisdiction to make an order in 74(8)(b), set out below.
2. The applicants occupied the property under the terms of an assured shorthold tenancy for the following periods:-
  - a. Miss Anna Roberts occupied from 1 July 2009 to 28 April 2012
  - b. Miss Amy Robert occupied from 1 July 2009 to 30 June 2011
  - c. Miss Nicola Main-Reade from 1 July 2009 to 12 April 2012
  - d. Mr Daniel Roberts from 30 June 2011 to 28 April 2012.
3. Throughout their periods of occupation each Applicant has paid £225 per month by way of rent to the Respondent. The rent was due, under the terms of a sample tenancy we have seen, as being due on the first of each month. However, the rental payments have been paid during various differing dates of each month. This has been confirmed to us with bank statements supplied by the Applicants which have been condensed into a summary document prepared by Miss Anna Roberts. Miss Anna Roberts confirmed at the hearing the schedule accurately reflects the payments made in the bank statements. It was confirmed to us that the utility bills were paid by the occupiers in addition to rent.
4. The property is situated in the Castle ward of Swansea, which was designated as an area subject to additional licensing requirements under Part 2 of the Act from January 2009. These requirements provide that a house in multiple occupation ("HMO" - for definition see below) is subject to the licensing requirements under the Act.
5. The Respondent has been the landlord throughout the relevant period. He was convicted, on a guilty plea, of an offence pursuant to 72(1) of the Act on the 6 September 2012. This was due to the Respondent having failed to licence the property as required by Part 2 of the Act. The Respondent was fined £12,000 for this offence and ordered to pay costs of £1,520. On the same date he was convicted of a

further 7 offences pursuant to section 234 and 235 of the Act and the Management of Houses in Multiple Occupation (Wales) Regulations 2006. In summary these involved:-

- a. Failing to ensure that all means of escape from fire were kept free from obstruction (x2)
- b. Failing to ensure that any fire fighting equipment and fire alarms were maintained in good working order.
- c. Failing to ensure that all common parts were maintained in good and clean decorative repair.
- d. Failing to ensure that the garden was kept in a safe and tidy condition
- e. Failing to ensure that sufficient bins or other suitable receptacles were provided
- f. Failing to produce documents to the local housing authority when required to do so.

6. The Respondent received a further £1,500 fine for each further offence, bringing the total fine to £24,020, inclusive of costs. There was also a victim surcharge of £15.
7. We note from a newspaper article which has been supplied to all parties that the Respondent was also convicted of housing related offences on two other properties in February 2011 for which he was fined £4,000.

**Procedural history.**

8. Upon receipt of the application procedural directions were given on the 25 September 2012 for each party to set out their case. The Applicants' sent in a short statement with supporting documents showing the period of occupation and the rent paid. The Respondent filed a statement and a statement from Martin Knight (who had assisted the Respondent with managing the property) to which the Applicants filed a response.
9. The Tribunal received a letter from the Respondent dated 5 December 2012 in which he stated that he intended "to reopen the [criminal] case so that I can contest the level of the fine" as he regarded the fine as unduly harsh. Further, he described himself as an attentive landlord who had been confused by the fact that some of the occupants of the family were related. He further described himself as having suffered a loss of nearly 5 million pounds, having been the victim of a fraud. He stated "I now have no income, all my savings are depleted and I may lose my properties that were supposed to be my pension." (It should be noted that as part of the Applicants' disclosure we have a letter from Bradford & Bingley dated 6 October 2009 suggesting that the

Respondent was the co-owner of at least 13 properties which he had offered by way of a security for borrowing.)

10. On the 7 January 2013 further directions were given for the disclosure of further details of the Respondent's convictions and any updating material relating to the appeal he referred to. This resulted in a letter dated 22 January 2013 being sent to the Tribunal on behalf of the Respondent which enclosed a letter from Bath Magistrates indicating that it was not the court in which the Respondent could seek to appeal. We have no evidence before us of any live appeal.
11. Further directions were given on the 7 February 2013, requesting proper compliance with the 7 January order and giving the Respondent an opportunity to set out his financial circumstances. He has failed to do this.
12. The Tribunal directed an inspection to take place at 10 am on the 14 March 2013. Upon attendance at the property, three of the Applicants were present but the Respondent was not. Attempts were made to contact him by the Tribunal office which was unsuccessful. We are satisfied that the Respondent has had proper notice of the inspection and hearing by virtue of the order dated 7 February 2013.
13. It is to be noted that the Respondent did not attend the hearing in the magistrates' court and that he states in his 5 December 2012 letter, "It is regrettable with hindsight that I was unable to attend the hearing and it may have indeed appeared that I simply did not care – but this is not the case. Since losing such a large amount of money, and attempting to keep daily control of my property portfolio – a struggle in its own right, things have simply got on top of me and at times I find it very difficult to cope with the sharp downward spiral my life seems to have taken. However, I realise that this was a mistake and I should have appeared in person to at least request an adjournment."
14. No formal application for an adjournment has been received by the Tribunal office.

**Inspection.**

15. We attended at the property at the directed time to be met by three of the Applicants. The Respondent did not attend. The property, from the outside, is a mid-terrace two storey house with pebble dash render front and tiled roof. It has a small forecourt. The ground floor has wooden framed windows and the first floor has UPVC windows. The front door was boarded up and there was smashed glass near the front door. Access to the property could not be obtained.

## **Hearing.**

16. Miss Anna Roberts, Miss Amy Roberts and Mr Daniel Roberts attended at the hearing. Miss Main-Reade was not in attendance but had supplied a form of authority for Miss Anna Roberts to act on her behalf.
17. The Applicants were able, via Miss Anna Roberts, to confirm the truth of their statements and supporting documents. As the Respondent was not in attendance he was unable to put any of his case to the Applicants. The case of *Parker v Waller* [2012] UKUT 301 (LC) (for more detail see below) suggests that the only relevant 'conduct' by the Respondent which the Tribunal should take into account is that relating to the offence committed under s.72(1) of the Act. This point makes the various assertions and counter assertions, as to the state of the property, made in the documentary evidence largely redundant. However, we do not find that there is any conduct on behalf of the Applicants which would cause us to discount any RRO in this case.
18. The Applicants made clear for the first time during the hearing that, during the relevant periods, they had been in receipt of housing benefit which had made a substantial contribution towards the £225 which they each had to pay. The Tribunal invited them to download some evidence in the form of bank statements proving the figures which they had received by way of housing benefit. A facility was provided for them to do so and they supplied redacted statements showing receipt of housing benefit for the 12 months up to the 21 September 2012. It was also confirmed that Miss Main-Reade had been in employment during the period commencing 21 September 2011 until she left the property in April 2012.

## **Statutory provisions.**

19. The statutory provisions set out in section 72 and 74 of the Act below are complex and made more complicated by the fact that there are two types of RRO, namely one made by a local housing authority for the return of housing benefit and one made by occupants for the return of rent. The statutory provisions set out below focus in the main on the "occupant" RRO under s.73(5) & (8) of the Act and the relevant test in s.74(5), particular considerations in s.74(6) and limitation at s.74(8)(b). Brief reference is made to the "local housing authority" simply to put the "occupant" provisions in context.
20. The definition of a HMO is contained within s.254 of the Act. The standard test is set out in s.254(2) and in summary is satisfied where a building contains one or more units of living accommodation which are not self-contained, they are occupied by persons who do not form a single household, at least two or more of those households share a

toilet, bathroom or cooking facilities and rent is payable by at least one person occupying the property.

21. s.55 of the Act and the Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (Wales) Order 2006 provides that HMOs that are of at least three stories and occupied by at least five people must be licensed with the local housing authority. s.56 of the Act empowers local housing authorities to designate areas in their district as subject to additional licensing schemes, over and above the statutory regime. As already noted, the Castle ward became such a district in January 2009.

22. Under s.61 of the Act (as read with s.55) every HMO which falls within any relevant description of HMO must be licensed. Application for a licence is to be made to the local housing authority under s.63, and the authority may grant or refuse a licence (s.64). Before granting a licence the authority must (s.64) be satisfied about a number of matters, including that the house is suitable for multiple occupation, that the licence holder is a fit and proper person to be the licence holder, that the proposed manager of the house is a fit and proper person for that purpose, and that the proposed management arrangements are otherwise satisfactory. Under s.67 a licence may include such conditions as the local housing authority consider appropriate for regulating the management, use and occupation of the house and its condition and contents. s.72(1) provides that a person commits an offence if he is a person having control of or managing an HMO which is required to be licensed but is not licensed. Under subsection (7) such person is liable on summary conviction to a fine not exceeding £20,000.

4 Sections 73 and 74 make provision about rent repayment orders as follows:

**"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) The conditions are—

(a) that a notification has been duly given in respect of the HMO under section 62(1) and that notification is still effective (as so defined by section 72(8));

(b) that an application for a licence has been duly made in respect of the HMO under section 63 and that application is still effective (as so defined).

(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 an unlicensed HMO, or

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

(4) But amounts paid in respect of rent or other periodical payments payable 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)).

(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.

(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 occupations;

'housing benefit' means housing benefit provided by virtue of a scheme under section 123 of the Social Security Contributions and Benefits Act 1992 (c4);

'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 (SI 1987/1971) or any corresponding provision replacing that regulation.

#### **74 Further provision 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).

(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.

### **The case of *Parker v Waller*.**

23. As noted above, the Upper Tribunal has recently analysed in detail the RRO provisions of the Act in a case called *Parker v Waller*. This is the first time the provisions have been analysed in depth by the Upper Tribunal. The case seeks to explain the legislative intent behind the provisions and how, therefore, a RPT should

be applying them. This Tribunal has carefully considered that decision and sets out herein the most pertinent parts of that decision. HHJ Bartlett QC (P) stated:-

"[26] It can be concluded ... that the occupier RRO provisions have a number of purposes – to enable a penalty in the form of a civil sanction to be imposed in addition to the fine payable for the criminal offence of operating an unlicensed HMO; to help prevent a landlord from profiting from renting properties illegally; and to resolve the problems arising from the withholding of rent by tenants (on the basis of illegality). What amount it would be "reasonable in the circumstances" for an RPT to order to be repaid under an RRO must be considered in relation to these purposes. The following points, in my view, should be borne in mind:

(i) Since the RRO provisions are in their nature penal, an RPT must be satisfied on every matter that is determinative of the tenant's entitlement to an order or its amount. It must be satisfied of the matters set out in section 73(8), and it must take into account the particular matters set out in section 74(6) as well as any other matters that may be material.

(ii) Since the landlord is liable to suffer two penalties – a fine and an RRO – it will be necessary to take this into account. An RPT should have regard to the total amount that the landlord would have to pay by way of a fine and under an RRO. There may be a tension between the imposition of a fine and the making of an RRO. The maximum fine is £20,000, and this shows the seriousness with which Parliament regards the offence. In the present case the magistrates imposed a fine of £525, which would suggest that they did not consider this particular offence to be other than minor. The RPT, however, is entitled to take a different view about the seriousness of operating the HMO without a licence.

(iii) There is no presumption that the RRO should be for the total amount received by the landlord during the relevant period unless there are good reasons why it should not be. The RPT must take an overall view of the circumstances in determining what amount would be reasonable.

(iv) Paragraph (a) of section 74(6) requires the RPT to take into account the total amount of rent received during any period during

which it appears to it that the offence was being committed. It needs to do that because the RRO can only be made in respect of rent received during that period. It is limited to the period of 12 months ending with the date of the occupier's application (see section 74(8)(b)). But the RPT ought also to have regard to the total length of time during which the offence was being committed, because this bears upon the seriousness of the offence.

(v) The fact that the tenant will have had the benefit of occupying the premises during the relevant period is not, in my judgment a material consideration or, if it is material, one to which any significant weight should be attached. This is because it is of the essence of an occupier's RRO that the rent should be repaid in respect of a period of his occupation. While the tenant might be viewed as the fortunate beneficiary of the sanction that is imposed on the landlord, it is only misconduct on his part (see paragraph(e)) that would in my view justify the reduction of a repayment amount that was otherwise reasonable.

(vi) Payments made as part of the rent for utility services count as part of the periodical payments in respect of which an RRO may be made. But since the landlord will not himself have benefited from these, it would only be in the most serious case that they should be included in the RRO.

(vii) Paragraph (d) requires the RPT to take account of the conduct and financial circumstances of the landlord. The circumstances in which the offence was committed are always likely to be material. A deliberate flouting of the requirement to register will obviously merit a larger RRO than instances of inadvertence – although all HMO landlords ought to know the law. A landlord who is engaged professionally in letting is likely to be more harshly dealt with than the non-professional.

[27] ... Under section 73(8)(b) the RPT must be satisfied that the occupier paid rent during a period during which an offence under section 72(1) was being committed. An RRO may only be made in respect of rent paid during that period (see section 73(5)), and it is limited to the 12 months ending

with the occupier's application to the RPT (see section 74(8)(b) ...

[32] ... What the RPT was required to do under section 74(5) was to determine an amount that was reasonable in the circumstances. It had to form a judgement, bearing in mind the purpose of the provisions as I have identified them, and having regard to the circumstances, including in particular the matters set out in section 74(6). The power under section 73(5) to make an occupier's RRO in respect of rent is to be contrasted with the duty that is imposed under section 74(2) to make a repayment order in respect of housing benefit that is equal to the full amount of that benefit; and subsection (5) of section 74 is to be contrasted with subsection (4), which provides that a repayment order in respect of housing benefit may not require the payment of any amount which, by reason of exceptional circumstances, it would be unreasonable for the landlord to pay....

[33] ... The matters set out in section 74(6) are not the only potential material considerations. Since the power to make an RRO is a penal power, it must be relevant to have regard to the benefit that the landlord has derived from his illegal conduct as well as considerations that go to his culpability and the seriousness of the offence itself ...

[39] ... I do not think that conduct on the part of the landlord that is unrelated to the offence under section 72(1) that underlies the RRO could entitle the tribunal to increase the amount of the RRO above the level that would otherwise be justified. To do so would be to punish the landlord for matters that form no part of the offence. ... I am not satisfied that the matters of which [the tenant] complains are related to the failure to license the premises. ... It is, therefore, only Mr Parker's conduct in relation to his failure to obtain a licence that requires to be considered.

[42] The RPT ordered the repayment of the whole of the rents received. [the landlord] says that the amounts that he had to pay out of these gross rents in respect of his mortgage, insurance, gas, electricity, water, council tax and cleaning should be brought into account. These totalled, according

to him, £13,550, of which £5,904 was mortgage costs. I consider that it would not be appropriate to impose upon him an RRO amount that exceeded his profit in the relevant period. [The tenant] says that the cleaning charges are unreasonable as he had to do much of the cleaning himself, but the amount does not seem to me to be such that I should discount it. However, it appears that, although [the landlord] bought the house in 1996, the costs of the mortgage relate to a mortgage that was taken out relatively recently, as he says that he is in negative equity. I am not satisfied, therefore, that the mortgage costs should be brought into the reckoning. If these are deducted from the total costs the resulting figure is £7,646; and if this amount is deducted from the total rents, £14,494, the resulting figure of £7,148 seems to me to be a fair representation of the profit that he derived from the lettings over the relevant period. The fine that he paid plus costs amounted to £786, and taking account of this the amount that he was left with was £6,362."

#### **Analysis.**

24. Miss Amy Roberts accepted that as she had ceased to pay rent on the 30 June 2011 (more than 12 months before the application was made) the Tribunal has no jurisdiction to make a RRO in respect of her (s.74(8)(b)).
25. We are satisfied that the Respondent has a conviction under s.72(1) of the Act which was being committed during the entire period of the Applicants' occupation of the property. There was some confusion as the memorandum of conviction supplied to us suggested that the offence was contrary to 72(3) of the Act. However, 72(3) of the Act only allows for a fine up to £5,000, whereas the Respondent has been fined £12,000. On the face of the memorandum something appears to be wrong. We have been supplied with the summons from Swansea City Council which confirms that the offence charged was contrary to 72(1). We also have a s.9 statement from Mrs Alice Evans of Swansea City Council which narratively describes the detail of an offence contrary to 72(1) and not 72(3). The schedule to the Residential Property Tribunal Procedures and Fees (Wales) Regulations 2012, paragraph 13(2)(b) requires us to have "evidence that the appropriate person has been convicted of an offence under section 72(1) of the 2004 Act..." The rules do not make memoranda of conviction evidentially binding. We are satisfied on the evidence before us, namely the summons, s.9 statement, memorandum and level of fine that the Respondent was convicted of an offence contrary to 72(1).



26. We make the following findings:-

- a. The total payments received in respect of occupation of the property whilst an offence was being committed was £21,600. This is the total of the summary provided by the Applicants, verified by bank statements.
- b. The amount in the 12 months preceding the application on the 21 September 2012 was £4,271.10. This was £1,423.70 per occupant, taking the rent day from the first of the month as per the tenancy agreement. This is the sum over which we have jurisdiction to make a RRO once we have deducted the housing benefit.
- c. The Act requires (74(6))(b)) us to consider the extent to which the total amount paid whilst the offence was being committed consisted of payments from housing benefit.
  - i. The Applicants have been able to furnish us with a precise figure of the housing benefit received from 12 months prior to the 21 September 2012 until each occupant vacated. Miss Anna Roberts received £1,078.36 and Mr Daniel Roberts received £1,661.44. We have taken these figures from the redacted bank statements supplied at the hearing.
  - ii. Mr Roberts' housing benefit covered 100% of his rent payments.
  - iii. From historical figures we are able to make a broad estimate of the housing benefit received throughout the period when an offence was being committed, as the Applicants confirmed to us that, save for Miss Main-Reade, the occupants were largely in receipt of housing benefit for the whole period which went to pay a part or whole of their rent. Miss Main-Reade received housing benefit for very short periods of time, but we have not been supplied with enough evidence to make a precise finding.
  - iv. Doing the best we can it appears to us that Miss Anna Roberts and Miss Amy Roberts would have been receiving between 60% - 75% of their rent via housing benefit. Mr Roberts appears to have been receiving 100%. Miss Main-Reade received several notional amounts.

d. Deducting the housing benefit paid (where applicable) from the 21 September 2011 to the date of vacation we find that the figures over which we can make an order are:

- i. Miss Anna Roberts £1,423.70 - £1,078.36 = £345.34
- ii. Mr Daniel Roberts was on housing benefit which paid 100% of his rent and we have no jurisdiction to make any order in this application.
- iii. Miss Nicola Main-Reade £1,423.70 (no housing benefit during the relevant period)

### **Decision.**

27. Under 74(5) we can set a RRO "to be such amount as the tribunal considers reasonable in the circumstances" having particular regard to the factors in 74(6). We do not start with the presumption that the Respondent has to show why the order should not be 100% of the relevant rent, rather we take an overall view of the circumstances in determining what would be reasonable.
28. We have described above the total rent received during which an offence was being committed and have described, the best we can with the evidence available to us, the element which was housing benefit. We find that it is likely that all of the housing benefit was paid to the Respondent from the Applicants, given the regular payments of £225 from the Applicants.
29. It is clear, for the reasons we have given, that the Respondent has been convicted of an offence under 72(1).
30. Following *Parker*, we do not count as a factor, or if it is a factor, place no weight upon the fact that the RRO will have the effect of providing a windfall to some of the Applicants by reducing the costs of their occupation.
31. We have carefully considered the comments at paragraph [39] of *Parker*. It is clear that the Upper Tribunal did not think that "mere" disrepair was "conduct" which can fairly be taken into account when setting the RRO, as it did not relate to the offence. As noted, given this approach we have made no factual findings as to the state of disrepair at the property during the relevant time. However, unlike *Parker*, in this case the Respondent has also been convicted of several further housing management offences which we have summarised above.
32. One of the purposes of the licensing requirements under Part 2 of the Act is to ensure that the property is suitable for multiple occupation. Had the Respondent complied

with the licensing requirements it is likely, we find, that the management offences would have been much less likely to have occurred. In short, we are of the view that the facts of this case are different to *Parker* in that the management offences are “related” to the failure to obtain the licence. As such we consider that these offences, some of which risk the safety of the occupants, are “conduct” which we can and should take into account under the Act. We find they are a significant aggravating feature to the 72(1) offence.

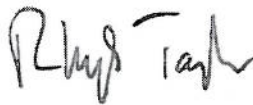
33. The offence related to failing to produce documents to the local housing authority is a further serious matter, carrying with it an element of ‘flouting’ rather than mere inadvertence.
34. The Respondent had also been convicted of previous housing offences in 2011. We do not accept the Respondent’s assertion that he was an attentive landlord. He also has a large property portfolio, and further, it would appear that for at least some of the relevant period the Respondent has had a business or website/web address called “International Property Finders.” Per *Parker* “A landlord who is engaged professionally in letting is likely to be more harshly dealt with than the non-professional.” In this case we are unclear as to the precise nature of the Respondent’s property portfolio, but we find that the ownership of at least 13 properties at one stage places him in the category of a professional for these purposes.
35. The Respondent has been directed to provide us with proof of his financial circumstances and has failed to do so. The best evidence we have is that he has a substantial property portfolio. Suggestions that he has lost five million pounds have simply not been made out to us. There are no mitigating financial circumstances before us.
36. As noted already, we do not find any conduct on behalf of the occupiers to be a relevant discounting factor.
37. We have are mindful of the very significant fine which the Respondent received from the magistrates court. *Parker* enjoins us to bear in mind the total amount which will have to be paid between the fine and RRO. We do. It is noted that “there may be a tensions between the imposition of a fine and the making of an RRO” [26(ii)]. It is clear that the Tribunal “is entitled to take a different view about the seriousness of operating the HMO without a licence.” We are not bound to consider the maximum fine in the court, £20,000, and discount the RRO by the amount magistrates fined the Respondent.

38. The total amount received whilst the offence was being committed aggravates the seriousness as well. By virtue of s.74(8)(b) we have jurisdiction to make a relatively minor RRO when compared with the total benefit which the Respondent has received over the course when the offence was being committed.
39. Utility payments are not a relevant factor when consider the RRO in this case.
40. Taking all of the above factors into account we are driven to the conclusion that this is a case in the top bracket of seriousness and we determine that the Respondent should pay 100% of the relevant sums back to Miss Anna Roberts, namely £345.34 and Miss Nicola Main-Read, namely £1423.70. This must be paid forthwith.

**Email received from Respondent after the hearing.**

41. An email was received, on behalf of the Respondent, after the hearing was concluded and the Tribunal had determined this matter. It has not been taken into account in our determination.

Dated 20 March 2013



Procedural Chairman