FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case References	**:**	**LON/00AT/HNA/2021/0021** **LON/00AT/HMK/2021/0003** **LON/00AT/HMK/2021/0008**
HMCTS Code	**:**	**V: CVPREMOTE**
Property	**:**	**Stamford Brook Centre, Stamford Brook Avenue, London, W6 0YD**
Applicants in HNA/2021/0021	**:**	**1. Global 100 Ltd** **2. Global Guardians Management Ltd** **3. Theo Kyprianou**
Representative	**:**	**Anthony Owen (Solicitor)**
Respondent	**:**	**London Borough of Hounslow**
Representative	**:**	**Tara O'Leary (Counsel)**
Type of Application in HNA/2021/0021	**:**	**Appeal against a financial penalty – Section 249A & Schedule 13A of the Housing At 2004**
Applicants in HMK/2021/0003	**:**	**1. Tony Cannam** **2. Maria Laleva** **3. Michael Green** **4. Henry Blidgeon** **5. Gaelle Ndanga** **6. Gentian Lumani** **7. Elliot Parkin** **8. Carol Ndunge** **9. Charmain Griffiths**
Representative	**:**	**George Penny (Flat Justice)**
Applicants in HMK/2021/0021	**:**	**10. Joanna Budzich** **11. Andrea Kyselakova**

Representative	**:**	**In Person**
Respondent in HNA/2021/0003 & 0008	**:**	**Global 100 Limited**
Representative	**:**	**Anthony Owen (Solicitor)**
Type of Applications in HNA/2021/0003 & 0008	**:**	**Applications for Rent Repayment Order by Tenants**
Tribunal Members	**:**	**Judge Robert Latham** **Stephen Mason FRICS**
Date and Venue of Hearing	**:**	**21 and 21 October 2021 at** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**15 December 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: CPVEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The Tribunal has had regard to the various bundles filed by the parties (see Section 2 below).

Decision of the Tribunal (LON/00AT/HNA/2021/0021)

1. The Tribunal dismisses the appeals brought by (i) Global 100 Limited; (ii) Global Guardians Management Ltd; and (iii) Theo Kyprianou, and confirms the Financial Penalties imposed by the London Borough of Hounslow.

2. The Tribunal makes no order in respect of the Tribunal fees paid by the Applicants.

Decision of the Tribunal (LON/00AT/HMK/2021/0003)

3. The Tribunal makes the following Rent Repayment Orders against Global 100 Limited, which are to be paid by 7 January 2022:

(i) Tony Cannam: No award.

(ii) Maria Laleva: £4,750.

(iii) Michael Green: £4,400.

(iv) Henry Blidgeon: £2,370.

(v) Gaelle Ndanga: £5,600.

(vi) Gentian Lumani: £1,056.

(vii) Elliot Parkin: £5,940.

(viii) Carol Ndunge: £5,280.

(ix) Charmain Griffiths: £3,168.

4. The Tribunal determines that Global 100 Limited shall also pay the Applicants £300 by 7 January 2022 in respect of the reimbursement of the tribunal fees which they have paid.

Decision of the Tribunal (LON/00AT/HMK/2021/0008)

5. The Tribunal makes the following Rent Repayment Orders against Global 100 Limited, which are to be paid by7 January 2022:

(x) Joanna Budzich: £7,200.

(xi) Andrea Kyselakova: £3,704.

6. The Tribunal determines that Global 100 Limited shall also pay the Applicants £100 by 7 January 2022 in respect of the reimbursement of the tribunal fees which they have paid.

Index to Decision

1. Introduction

1. Property Guardians are a business model under which a Guardian Company provides on-site security to a property which is temporarily vacant by granting people ("guardians") the right to live in it. The property may be either owned by a public authority or a private body. The Global Guardians Group ("Global Guardians") have been running such schemes for a number of years and currently manage some 700 properties in the UK. Over the past ten years, Global Guardians have managed some 2,000 properties and have had over 15,000 guardians on their books. The issue raised by these applications is whether buildings which are occupied under these arrangements are Houses in Multiple Occupation ("HMOs") which require a licence under Part 2 of the Housing Act 2004 ("the 2004 Act"). The London Borough of Hounslow ("Hounslow"), the relevant Local Housing Authority ("LHA") contend that they are.

2. The Tribunal is required to determine three applications relating to the control and management of the former nursing home at the Stamford Brook Centre, Stamford Brook Avenue, London, W6 0YD ("Stamford Brook"):

   (i) LON/00AT/HNA/2021/0021 ("HNA-0021"): (a) Global 100 Limited ("G100"); (b) Global Guardians Management Ltd ("GGM"); and (c) Theo Kyprianou, the sole director of G100 and GGM, appeal against Financial Penalties of £6,000 imposed on each of them by Hounslow;

   (ii) LON/00AT/HMK/2021/0003 ("HMK-0003"): (a) Tony Cannam; (b) Maria Laleva; (c) Michael Green; (d) Henry Blidgeon; (e) Gaelle Ndanga; (f) Gentian Lumani; (g) Elliot Parkin; (h) Carol Ndunge; and (i) Charmain Griffiths apply for Rent Repayment Orders ("RROs") against G100 pursuant to the Housing and Planning Act 2016 ("the 2016 Act"). These total: £52,500.

   (iii) LON/00AT/HMK/2021/0003 ("HMK-0003"): (j) Joanna Budzich and (k) Andrea Kyselakova apply for RROs against G100. These total: £10,970.

3. Stamford Brook is owned by NHS Property Services Limited ("NHSPSL") which has played no part in these proceedings, albeit that it paid a Financial Penalty without protest when Hounslow contended that it had also committed an offence. On 31 March 2016, NHSPSL entered into a contractual agreement with GGM to provide guardianship services at Stamford Brook. The monthly licence fee was £600. The minimum term was four months, thereafter determinable by 4 weeks' notice. GGM entered into a contractual agreement with G100, a sister company, pursuant to which G100 identified occupants who would act as "guardians" paying a monthly "licence fee".

4. Upon taking possession of Stamford Brook, which had most recently been used as offices, Global Guardians converted the building to create 30 bedrooms with four kitchens, four bathrooms and four toilets. G100 licenced the rooms to guardians who paid a monthly licencing fee which depended upon the size of the room. Each guardian had a key to their room.

5. On 6 February 2020, Hounslow inspected Stamford Brook and satisfied itself that it was occupied as an HMO. 29 of the 30 rooms were occupied. On 19 March 2021, Hounslow imposed Financial Penalties of £6,000 on each of the following: (i) G100, as a person "having control of or managing" Stamford Brook; (ii) GGM as a further person "having control of or managing" Stamford Brook; and (iii) Mr Kypianou as sole director of both G100 and GGM. All three appeal against these penalties. Given the wholly intertwined nature of the corporate and contractual relationship between GGM and G100, these questions are closely related both legally and factually. The concepts of "person having control" and "person managing" an HMO are defined by section 263 of the 2004 Act. Section 251 makes a director liable for an offence committed by a body corporate where this is committed with his consent or connivance or attributable to any neglect on his part.

6. Eleven of the guardians have applied for RROs totalling £63,470 against G100. Their licence fees varied from £350 to £660pm, the average being £500 per month. They shared kitchen and bathroom facilities. G100 would receive a monthly income of some £15,000 if all 30 rooms were occupied.

7. Within each of the three applications, the central question for the Tribunal is whether G100 committed the offence under section 72(1) of the Housing Act 2004 ("the 2004 Act") of control or management of Stamford Brook as an unlicensed HMO. In addition, in the context of the appeals against the Financial Penalties, the Tribunal is required to determine whether GGM and/or Mr Kyprianou also committed the offence.

8. First-tier Tribunals ("FTTs") have recently determined a number of applications involving property guardian schemes and have held them to be HMOs which require a licence. We were referred to the following decisions:

   (i) *Cambridge Heath Road* (LON/00BG/HMF/2019/0037 - 9 December 2019). A FTT (Judge Dutton and Mrs E Flint FRICS) found that even though the guardian was a mere licensee of Live in Guardians Limited in a former London Electricity Board Property, she had exclusive use of her room. They rejected the suggestion that she was occupying the room as a service occupant pursuant to a term of employment.

   (ii) *Russell Hill Road* (LON/00AH/HMK/2020/0021 22 February 2021): A FTT (Judge Latham and Anthony Parkinson MRICS)

determined an application by ten guardians who occupied rooms in a former children's home in a property owned by Croydon LBC. In determining who was "managing" or had "control of the building, it was important to determine whether the relationship between Croydon and Camelot Guardian Management Limited was one of landlord/tenant or principal/agent. The FTT was satisfied that Camelot had been granted an interest in land. The FTT tended to the view that the guardians were licensees, rather than tenants, having regard to the decision of Butcher J in *Camelot Guardian Management Limited v Heiko Khoo* [2018] EWHC 2296. However, this was not critical to this decision. There is an appeal pending before the Upper Tribunal in this case on whether the applicants could seek a RRO against a director. The FTT held that that they could not.

(iii) *William Road* (LON/00AG/HMF/2021/0042 – 6 July 2021). A FTT (Judge Brandler and Ms R Kershaw MCIEH) made RROs in favour of three guardians against G100 is respect of a building formerly occupied by Addison Lee. The FTT found that F100 was a lessee for the purposes of section 263(3) of the 2004 Act. The FTT noted the "fluidity" of the respective responsibilities of G100 and GGM. On 22 October, but only known after argument had been heard in this case, Judge Elizabeth Cooke granted permission for an appeal to the Upper Tribunal on the issue as to whether the "only use made of the property was as living accommodation". We discuss this issue at Section 10.2 below.

9. These three cases involved applications for RROs. The relevant LHAs were not parties to the proceedings. This Tribunal benefits from having heard detailed submissions from Hounslow. We have been asked to consider a wide range of authorities. Ms O'Leary urges the Tribunal to apply a purposive interpretation to the legislation. The 2004 Act gives effect to a long-term government objective to create sustainable communities by, amongst other measures, improving the standards and management of housing in the private rented sector. It does this through a range of measures. For example, Part 1 created the Housing Health and Safety Rating System and Part 3 provides for selective licensing of (single household) private rented properties. Part 2 relates to the licencing of HMOs. HMOs present particular housing problems. The chances of being killed or injured by a fire in an HMO is many times greater than for residents in other dwellings. HMOs can also present a number of other risks to the health and safety of those who live in them.

10. The legislative policy behind the detailed provisions in Part 2 is to require HMOs to be licensed to ensure that the premises are suitable for multiple occupation, that the licensee is a fit and proper person and that the management arrangements are satisfactory and to provide both criminal and civil sanctions if the provisions are not complied with.

11. This Tribunal must address the nature of the contractual relationship between (i) NHSPSL and GGM and (ii) G100 and the guardians. To adopt the words of Lord Ackner in *A.G.Securities v Vaughan* [1990] 1 AC 417 (at 446B), we must ask ourselves "what was the substance and reality of the transaction entered into by the parties"?

> (i) NHSPSL and GGM: The Tribunal must consider the nature of the arrangement contemplated by agreement recorded in a document the "Property Protection Programme", dated 4 April 2016. Whilst not entirely apparent from this agreement, it is clear that the most recent use of Stamford Brook had been for offices. Global Guardians were going to use it as residential accommodation for guardians. The Tribunal must consider whether this transaction created an interest in land or an agency/service agreement with a mere personal right to occupy.
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> (ii) G100 and the guardians: All the guardians were required to sign "temporary licence agreements" which are in similar terms. The distinction as to whether they were tenants or licensees is not critical to their right to apply for RROs under the 2016 Act as section 56 provides that a "tenancy" includes a "licence". The Tribunal informed the parties that we would not be making any finding on whether the guardians are licensees or tenants because the matter was pending before the Court of Appeal. On 3 December, the Court of Appeal, in *Global 100 Limited v Laleva* [2021] EWCA Civ 183, held that the guardians were licensees. However, the Tribunal must also determine the nature of their occupancy of their rooms. The guardians contend that they occupied their rooms as their residences and that this is the sole use which they made of them. Mr Owen suggests that they rather occupied their rooms as service occupants, to perform guardian services at Stamford Brook to protect the property against trespassers and vandalism.

12. In August 2020, Guardians decided to determine the guardian's rights of occupation and to evict them. On 29 March 2021, DJ Parker, sitting in the County Court at Wandsworth, held that the guardians had no arguable defence to a claim for possession brought by G100 and made possession orders against 11 guardians. On 25 August, HHJ Luba QC allowed an appeal by Ms Laleva, the only guardian who appealed. He held that it was arguable that she was a tenant. G100 appealed to the Court of Appeal. In the interim, NHSPSL had obtained a possession order against Ms Laleva. On 3 December, the Court of Appeal (Lewison, Macur and Snowden LLJ) held that the guardians were licensees. Lewison LJ noted (at [56]) that it was an essential element of the Guardian business model that GGM should be able to hand back Stamford Brook to NHSPSL when the owner required vacant possession. NHSPSL require vacant possession so that Stamford Brook can be used as a temporary health facility to facilitate the development of the Chiswick Health Centre.

13. There is a chronic shortage of affordable housing in London. Property Guardian Schemes provide a useful source of short life housing for single people or couples without children. Many are key workers who are unable to afford market rents in London. The concern of the LHA is that such housing should meet the basic health and safety standards imposed by the 2004 Act.

2. The Applications

14. HNA-0021: On 6 April 2021, G100, GGM and Theo Kyprianou issued their application appealing against the Financial Penalties imposed by Hounslow. On 19 May, the Tribunal gave Directions, pursuant to which the parties have filed the following bundles:

> (i) Respondent's Bundle (386 pages), references to which will be "FP1.__". This includes a witness statement from Mr Jasvinder Bhatia, a Regulatory Officer in Hounslow's Housing Enforcement Team.
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> (ii) Applicants' Bundle (38 pages), references to which will be "FP2.__"). The Applicants have included no witness statements, despite the fact that Mr Kyprianou is appealing against a Financial Penalty of £6,000.
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> (iii) Respondent's Reply (4 pages), references to which will be "FP3.__".

15. HMK-0003: On 2 February 2021, Tony Cannam, Maria Laleva, Michael Green, Henry Blidgeon, Gaelle Ndanga; Gentian Lumani; Elliot Parkin; Carol Ndunge, and Charmain Griffiths issued their application seeking RROs against G100. They had initially also sought RROs against Mr Kyprianou. On 2 March, the Applicants notified the Tribunal that they no longer sought to proceed with this application. On 8 March, the Tribunal gave Directions pursuant to which the parties have filed the following bundles:

> (i) Applicant's Bundle (311 pages), references to which will be "RRO1.__". This includes witness statements from four of the Applicants.
>
> (ii) Respondent's Bundle (298 pages), references to which will be "RRO2.__". This includes a witness statement from Ms Andrea Amasanti, G100's Asset and Delivery Manager.
>
> (iii) Applicant's Reply (20 pages) references to which will be "RRO3.__". This includes witness statements from an additional three of the Applicants. This also includes an updated schedule of the RROs which are sought. These total £52,050.

16. HMK-0008: On 14 September 2021, Joanna Budzich and Andrea Kyselakova issued their application seeking RROs against G100. On 16 September, the Tribunal gave Directions pursuant to which the parties have filed the following bundles:

> (i) Applicant's Bundle (68 pages), references to which will be "RRO4.__". This includes witness statements from the two applicants.
>
> (ii) Respondent's Bundle (21 pages), references to which will be "RRO5.__". The Respondent also seeks to rely on the material filed in HMK-0008.
>
> (iii) Applicant's Reply (9 pages) references to which will be "RRO6.__".

17. On 22 September, Judge Latham gave further directions at a virtual Case Management Hearing at which all the parties were present. It was agreed that the three applications should be heard together, the effect of which would be that the Tribunal would have regard to the totality of the evidence in determining each of the applications. This was welcomed by Hounslow as it would afford them the opportunity to put the questions to Ms Amasanti on the relationship between GGM and G100 to which they had been unable to obtain answers.

18. Pursuant to these Directions, the parties have provided: (i) a List of Essential Reading; (iii) a Timetable for the two day hearing; (ii) Skeleton Arguments; and (iv) an Agreed Bundle of 22 authorities (392 pages).

3. The Hearing

19. Mr Anthony Owen, a Solicitor with Kelly Owen Ltd (Solicitors) appeared for G100, GGM and Mr Kyprianou. He stated that on 14 October, Ms Amasanti had been certified as unfit to work due to stress and would therefore be unable to give evidence. The other parties expressed surprise that they had not been notified of this. The Tribunal observed that it had expected to hear evidence from his clients and that it might draw adverse inferences were no evidence to be adduced. On the second day, Mr Owen adduced evidence from Mr Stuart Woolgar, the Chief Executive Officer of both G100 and GGM. He did not provide a witness statement, but was tendered for cross-examination.

20. Ms Tara O'Leary, Counsel, appeared for Hounslow, instructed by HB Public Law. She adduced evidence from Mr Jasvinder Bhatia, a Regulatory Officer in their Housing Enforcement Team.

21. Mr George Penny, from Flat Justice, appeared for Mr Tony Cannam, Ms Maria Laleva, Mr Michael Green, Mr Henry Blidgeon, Ms Gaelle Ndanga; Mr Gentian Lumani, Mr Elliot Parkin, Ms Carol Ndunge, and Ms Charmain

Griffiths, the nine Applicants in HMK-0008. He adduced evidence from eight of his clients. Flat Justice is a Community Interest Company which seeks to ensure that tenants have access to justice.

22. Ms Joanna Budzich and Ms Andrea Kyselakova appeared in person. Both gave evidence.

23. The Tribunal is grateful to the assistance provided by all the advocates. Their self-discipline and concise submissions ensured that the Tribunal was able to complete these complex cases within the allocated time of two days.

4. The Issues in Dispute

HNA-0021

24. G100, GGM and Mr Kyprianou raise the following issues in support of their appeal:

(i) whether the building is exempt from the HMO Regime (Schedule 14 of the 2004 Act);

(ii) whether the "standard test" for an HMO as set out in section 254(2)(d) satisfied, namely whether "their (the licensee's) occupation of the living accommodation constitutes the sole use of that accommodation".

(iii) whether G100 or GGM is a "person having control" or a "person managing" the premises for the purposes of section 263. Hounslow rely on both these formulations.

(iv) whether Global Guardians have a "reasonable excuse" for not licencing the HMO (section 72(5)).

(v) Mr Kyprianou relies on an additional defence under section 251. Hounslow must establish that the offence was committed with his consent or connivance or be attributable to any neglect on his behalf.

25. These grounds of appeal all relate to liability. The applicants do not seek to appeal against the size of their Financial Penalties, namely £6,000 against each of them. Mr Owen recognised that these penalties are at the lower end of the appropriate scale.

HMK/0003 and HMK-0008

26. The 11 applicants must satisfy the Tribunal beyond reasonable doubt that an offence under section 72(1) of the 2004 Act has been committed (see section 43 of the 2016 Act). The applicants contend that G100 is the "person managing" the HMO as it receives the payments from the

licensees. G100 raise similar issues to those in the appeals against the Financial Penalties (see (i) to (iv) above). G100 raise an additional jurisdictional point, namely that it is not open to a licensee to seek a RRO as they do not pay rent.

27. If satisfied beyond reasonable doubt that G100 has committed an offence under section 72(1), there are a range of additional issues that the Tribunal needs to consider:

(i) Whether to make RROs. The Tribunal has a discretion under section 43(1) of the 2016 Act. Mr Owen argues that a number of the applicants have failed to adduce sufficient evidence to justify any RRO.

(ii) The period over which any RRO is sought. The 2016 Act provides for a maximum period of 12 months during which G100 was committing an offence under section 72(1).

(iii) whether any applicant has been in receipt of any relevant benefits. It is agreed that deductions must be made in respect of any receipt of universal credit paid in respect of rent.

(iv) The conduct of the landlord. The applicants criticise the manner in which the building has been managed. Mr Owen responds that Hounslow has not taken any statutory action in respect of the condition of Stamford Brook.

(v) The conduct of the tenants. Mr Owen asks the Tribunal to take into account any arrears of licence fees that have accrued. He notes that a number of the applicants have remained in occupation of their rooms after they were required to give up possession on 26 April 2021 pursuant to the possession order made by DJ Parker on 29 March 2021. Only Ms Laleva has exercised her right to appeal against this possession order. Other guardians have remained in occupation as "trespassers" albeit that they could only be evicted by due process. Mr Owen emphasised that it is an essential element of the Guardian business model that GGM should be able to hand back Stamford Brook to NHSPSL now that the owner required vacant possession. Properties for such schemes would not be made available, if Global Guardians are unable to guarantee this.

(vi) The financial circumstances of G100. The landlord has adduced no evidence on this.

(vii) Any relevant convictions against the landlord. The tenants do not seek to rely on any previous convictions.

(viii) Other relevant matters. Mr Owen asks the Tribunal to consider the interplay between any Financial Penalty and any RRO. He submits that the Tribunal should guard against any element of double penalty.

5. The Witnesses

28. Mr Jasvinder Bhatia: Ms O'Leary adduced evidence from Mr Bhatia who is a Regulatory Officer in Hounslow's Housing Enforcement Team. He is a qualified gas engineer and a Domestic Energy Assessor. On 14 November 2019, Hounslow received a complaint from a guardian claiming that Stamford Brook was very overcrowded. He describes the action which led him to serve Final Notices to Issue Financial Penalties of £6,000 on G100, GGM, and Mr Kyprianou. Mr Owen cross-examined Mr Bhatia to suggest that there had been undue delay on Hounslow in serving the notices. He suggested that Hounslow should have revealed the legal advice that had led Hounslow to conclude that this was an HMO that required a licence. We consider this in the context of the defence of reasonable excuse (see Section 10.4 below).

29. Ms Andrea Amasanti: G100 has filed a witness statement from Ms Amasanti (at RRO2.6). She was not available to give evidence. She describes herself as G100's Asset & Delivery Manager. She states that she works for both GGM and G100 from the same office. Mr Woolgar stated that she was employed by GGM. NHSPSL are now anxious to secure vacant possession of Stamford Brook. The ability of Global Guardians to be able to surrender properties at short notice is a vital part of the business model. A number of guardians have remained in occupation despite a possession order made on 29 March 2021, which ordered the guardians to give up possession on 26 April 2021 (at FP1.238). Global Guardians have offered sums to the guardians to encourage them to vacate. A number of the guardians are in arrears of their licence fees. This is admitted by the minority of guardians who remain in occupation. She denies that any HMO licence is required. If one is required, she suggests that this is the responsibility of NHSPSL. She produces (i) two Fire Risk Assessment prepared by Essential Living Products on 16 July 2017 and 5 July 2018 (at RRO2.33-101). GGM is specified as the "responsible person" (RRO2.42); (ii) a number of electricity, gas and water bills all of which were issued to GGM; and (iii) a number of repair orders for Stamford Brook. Her evidence could not be tested by cross-examination.

30. Mr Stuart Woolgar: Mr Owen tendered Mr Woolgar for cross-examination. Mr Woolgar had not provided any witness statement. Mr Penny suggested that Mr Woolgar had a selective memory. The Tribunal does not accept this. We consider that Mr Woolgar did his best to assist the Tribunal given his limited knowledge of Stamford Brook, albeit that he had visited the property.

31. Mr Woolgar did not have sufficient knowledge of Stamford Brook to be able to deal with many of the questions arising from the statement of Ms Amasanti which both Hounslow and the guardians would have wished to put to her. This affects the weight which the Tribunal feels able to give to her evidence.

32. There are three major shareholders of GGM and G100: Mr Woolgar, Mr Kyprianou and Mr Nicolas Charalambous. Mr Kyprianou is the sole director of both companies. Albeit that Mr Woolgar is the Chief Executive Officer of both companies, he is employed under a consultancy arrangement with G100. Ms Amasanti works for both companies, but is employed by GGM. Global Guardians also operate under the names of Global Guardians Facilities Management ("GGFM"); Global Guardian Security, and Global Guardian Software Services. It is unclear whether these are separate companies or trading names used by GGM and G100. Global Guardians employ 27 staff and currently manage 700 properties.

33. The relationship between GGM and G100 remains opaque. Mr Woolgar was unable to assist the Tribunal on the financial arrangements between G100 and GGM in respect of Stamford Brook. GGM paid a monthly fee of £600 to NHSPSL. G100 collected some £15,000 per month from the guardians from the 30 rooms at Stamford Brook. Mr Penny suggested that the Tribunal should "follow the money". On 30 June 2020, G100 had cash reserves of £1,171,490, whilst GGM had reserves of £22,991.

34. Mr Penny adduced evidence from eight of his nine applicants. Ms Ndunge did not give evidence. All the applicants provided copies of their licence agreements and details of their payments to G100.

35. Mr Tony Cannam seeks a RRO of £7,740 for the period October 2018 to September 2019. On 3 June 2016, moved into occupation of his room at a charge of £600pm. In June 2019, this was increased to £660pm. He was named as a defendant in the possession proceedings. He still occupies his room. His licence agreement is at RRO1.1; his record of payments at RRO1.177; and his witness statement at RRO1.249. He works in market research. He describes a number of problems that have arisen. He was told that there was central heating, but this never functioned. He was given a poor quality heater which gave off very little heat. He has stopped making any payment for his room. He stated that Global Guardians are exploiting the housing market and that action needs to be taken to stop this. He admitted that there are arrears of £12,000. Global Guardians offered him £5,000 to leave. He made a counter offer of £10,000.

36. Mr Michael Green seeks a RRO of £4,440 for the eight monthly payments of £550 which he made between February and October 2020. On 2 March 2020, he moved into occupation of his room at a charge of £550pm. He left on 1 October 2020. The Tribunal notes that he was named as a defendant in the possession proceedings. His is licence agreement is at RRO1.45; his record of payments at RRO1.206; and his witness statement at RRO3.12. He worked as Head of Brand Content Income and Engagement at CLIC Sergeant. Mr Green was furloughed due to Covid-19 and during this period, he reduced his payments to £440pm. Although it was suggested that there were arrears of £1,760, we accept that he cleared these before he left. He had seen the accommodation advertised on-line. This was attractive to him as he was saving for his marriage. He left in

order to marry. He never had any guests staying overnight. The reason seemed to be a combination of the terms of his licence agreement and his strong religious beliefs. Mr Green had initially indicated that he was seeking a RRO of £4,290. However, when his bank statements were analysed, it was apparent that he had paid a total of £4,730. Eight monthly payments of £550 total £4,440. The additional sum of £330 seems to relate to other sums that he was required to pay.

37. Ms Maria Laleva seeks a RRO of £4,750 for the period December 2019 to November 2020. On 28 September 2019, she moved into occupation of Room G4 (ground floor) at a charge of £350. She remains in occupation. She asked to move to a different room as the mobile reception was poor. In April 2020, she moved to Room F2 (first floor) at an increased licence fee of £400pm. Her licence agreement is at RRO1.33; her record of payments at RRO1.190; and her witness statement at RRO1.252. Ms Laleva had previously been a guardian with Global Guardians at a property in the White City area. Her first language is Spanish. Ms Laleva works in publicity, photography and as a teacher. She has a number of complaints about the condition of the property. She states that there were rodents. Whilst a possession order was made against her on 29 March 2021, she has appealed against that order. At the date of the hearing, her appeal was pending before the Court of Appeal. She was the only guardian to appeal and was therefore the only guardian who remained in lawful occupation of Stamford Brook. She had been offered £25,000 to vacate her room. She complained about the quality of her water supply and suggested that her drinking water was not fed off the mains water supply. Her evidence on this point was not entirely clear and no expert evidence was adduced. We accept that there were problems with the hot water supply, and it may be that both hot and cold water taps were supplying cold water. Ms Laleva was in receipt of universal credit. It was accepted that the maximum RRO which she could claim was £2,800, namely in respect of seven monthly payments of £400 over the period 28 September 2019 to 30 April 2020.

38. Ms Charmain Griffiths seeks a RRO of £5,280 for the period September 2019 to August 2020. On August 2018, she moved into occupation of her room at a charge of £440pm. She was named as a defendant in the possession proceedings. She remains in occupation. Her licence agreement is at RRO1.159; her record of payments at RRO1.238; and her witness statement at RRO1.259. She has worked as a Blue Bird guide. Ms Griffiths had previously been a guardian. Global Guardians have offered her alternative accommodation in Clapham which she would have been willing to accept. However, nothing came of this.

39. Ms Gaille Ndanga seeks a RRO of £6,600 for the period September 2018 to August 2019. On 15 June 2017, she moved into occupation of Room F11 at a charge of £550pm. She subsequently asked to move to Room F10. Her licence agreement is at RRO1.80; her record of payments at RRO1.210; and her witness statement at RRO3.9. She has worked as a Settlement Analyst for Capita. Her evidence was extremely vague. She had not read her witness statement to refresh her evidence before she gave evidence. Her

witness statement was far from satisfactory. Flat Justice had sent her a template to complete. She had returned it having only partially completed it. She stated that she had agreed a notice period of 3 weeks. This was contradicted by what was in her witness statement. There was an issue as to whether she still occupied her room. However, we note that she was not included in the possession claim. Despite the unsatisfactory state of her evidence, the Tribunal is satisfied that she paid licence fees of £6,600 for the period September 2018 to August 2019. She admits that she received universal credit of £1,000. She must give credit for this.

40. Mr Elliott Parkin seeks a RRO of £5,940 for the period October 2019 to September 2020. On 19 June 2017, he moved into occupation of Room G3 at a charge of £400pm, which was increased to £495pm. He left on 17 September 2020. His licence agreement is at RRO1.128; his record of payments at RRO1.128; and his witness statement at RRO3.6. He works as a Highways Inspector for a London borough.

41. Mr Henry Blidgeon seeks a RRO of £4,610 for the period May 2019 to April 2020. On 12 October 2018, he moved into occupation of his room at a charge of £400pm. He states that he left on 17 October 2020. The Tribunal notes that he was named as a defendant in the possession proceedings. His licence agreement is at RRO1.63; his record of payments is at RRO1.208; and his witness statement at RRO1.256. He admitted that there are arrears of £2,640. However, he paid a deposit of £400 which has not been returned to him.

42. Mr Gentian Lumani seeks a RRO of £7,860 for the period April 2019 to March 2020. On 1 March 2019, he moved into occupation of his room at a charge of £600pm which was increased to £660pm. He was named as a defendant in the possession proceedings. He is still in occupation. His licence agreement is at RRO1.113 and his record of payments is at RRO1.214. He has not made a witness statement, but did sign the statement of truth on the application form. He works as a plumber. He has been in receipt of universal credit since 1 April 2020. However, this does not cover the period for which he is claiming his RRO. He admitted that there are arrears of £3,660. He explained to the Tribunal that he had no money to put food on the table.

43. Ms Carol Ndunge seeks a RRO of £5,280 for the period August 2019 to July 2020. On 11 June 2016, she moved into occupation of her room at a charge of £440pm. She states that she left in September 2020. Her licence agreement is at RRO1.143; her record of payments is at RRO1.237; and her witness statement at RRO3.3. She has provided proof that she made 12 monthly payments of £400 over the period 1 August 2019 to 1 July 2020. In the Reply served by Flat Justice on 14 May 2021, it is asserted that Ms Ndunge was still in occupation of her room (see RRO3.13). However, she was not named as a defendant in the possession proceedings and this seems to have been a mistake. Her licence agreement records that she was employed by Kaspersky Lab UK as “Contracts Admin”. She was not

available to give evidence and no explanation was provided as to why she was not available. This is not satisfactory. However, her evidence was not disputed.

44. Ms Andrea Kyselakova appeared in person and gave evidence. She seeks a RRO £4,620 for the period October 2019 to September 2020. She recognises that she must give credit for the universal credit that she has received. On 23 September 2019, she moved into occupation of Room F7 (first floor) at a charge of £385pm. She left in June 2021. She was named as a defendant in the possession proceedings. Her licence agreement is at RRO4.11; her record of payments at RRO4.47; and her witness statement at RRO4.43. Ms Kyselakova is Czech. She had previously been a guardian and had seen Stamford Brook advertised on-line. Her licence agreement records that she was working as an Office Manager at the Porchester Centre. She currently works for a charity supporting victims of slavery. On the first floor, 16 people shared two showers. However, for most of the time, they only had use of one shower as the second one leaked into the flat below. She complains that there was initially no cold mains water supply in the kitchen. This was eventually fixed in August 2020. There was no central heating. She was provided with a small oil heater, but this provided limited heat.

45. Ms Joanna Budzich also appeared in person and gave evidence. She seeks a RRO of £7,200 for the period October 2019 to September 2020. On 1 June 2016, she moved into occupation of Room 2 (on the ground floor) at a charge of £600pm. She was named as a defendant in the possession proceedings. She left on 21 May 2021. Her licence agreement is at RRO4.29; her record of payments at RRO4.49; and her witness statement at RRO4.45. Ms Budzich is Polish. On 14 February 2018, she was joined by her partner, Michael Scott. He was required to sign a separate agreement, but no additional licence fee was payable. Her licence agreement records that she was working as a Senior Project Controller for TNS. She is now working as a market researcher with the same employer. She was subsequently furloughed. She complains about the absence of a cold mains drinking water supply in the kitchen. Between June 2016 and August 2020, the building was unheated. There was no hot water in the kitchen and bathroom, except for an electric shower unit. As soon as she received a Notice to Quit, she looked for alternative accommodation. Global Guardians offered to assist her to find alternative accommodation, but this came to nothing. On 13 May 2021, she had had a meeting with Ms Amasanti, Mr Woolgar and Mr Owen. Mr Woolgar had apologised for the problems that she had faced. She had been offered £5,000 to vacate Stamford Brook, but this had been conditional on her forgoing any RRO. Mr Owen suggested that there were arrears, but he accepted her response that he was wrong.

6. The Law: Licencing of Houses in Multiple Occupation

46. Part 2 of the 2004 Act relates to the licensing of HMOs. Section 61 provides for every prescribed HMO to be licensed. HMOs are defined by section 254 which includes a number of "tests". Section 254(2) provides that a building or a part of a building meets the "standard test" if (emphasis added):

> "(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
>
> (b) the living accommodation is occupied by persons who do not form a single household (see section 258);
>
> (c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
>
> (d) their occupation of the living accommodation constitutes the only use of that accommodation;
>
> (e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and
>
> (f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities."

47. Section 260 provides that there is a presumption that the sole use condition is met:

> (1) Where a question arises in any proceedings as to whether either of the following is met in respect of a building or part of a building–
>
> (a) the sole use condition, or
>
> (b) the significant use condition,
>
> it shall be presumed, for the purposes of the proceedings, that the condition is met unless the contrary is shown.
>
> (2) In this section–
>
> (a) "the sole use condition" means the condition contained in–

(i) section 254(2)(d) (as it applies for the purposes of the standard test or the self-contained flat test), or .....

48. Section 262 defines various terms. Section 262(6) provides:

> "(6) In this Act "occupier", in relation to premises, means a person who–
>
> (a) occupies the premises as a residence, and
>
> (b) (subject to the context) so occupies them whether as a tenant or other person having an estate or interest in the premises or as a licensee;
>
> and related expressions are to be construed accordingly."

49. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 prescribes those HMOs that require a licence. Article 4 provides that an HMO is of a prescribed description if it (a) is occupied by five or more persons; (b) is occupied by persons living in two or more separate households; and (c) meets the standard test under section 254(2) of the 2004 Act.

50. Section 72 specifies a number of offences in relation to the licencing of HMOs. The material parts provide (emphasis added):

> "(1) 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.
> ……..
>
> (4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time–
>
> (a) a notification had been duly given in respect of the house under section 62(1) (a temporary exemption notice), or
>
> (b) an application for a licence had been duly made in respect of the house under section 63,
>
> and that notification or application was still effective (see subsection (8)).
>
> (5) 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).

51. It is to be noted that neither of these sections use the word "landlord". Section 263 defines the concepts of a person having "control" and/or "managing" premises (emphasis added):

`"(1) In this Act "person having control", in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act "person managing" means, in relation to premises, the person who, being an owner or lessee of the premises–

(a) receives (whether directly or through an agent or trustee) rents or other payments from–

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person."

52. Section 251 provides for offences by bodies corporate. It does not create a new offence, but rather allows proceedings based on existing offences to be brought against directors personally for actions by corporate bodies under their control. The section provides (emphasis added):

(1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of–

(a) a director, manager, secretary or other similar officer of the body corporate, or

(b) a person purporting to act in such a capacity,

he as well as the body corporate commits the offence and is liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

53. Schedule 14 specifies buildings which are not HMOs for the purposes of the licensing provisions in Part II. Paragraph 2 includes "a building where the person managing or having control of it is a health service body within the meaning of section 9 of the National Health Service Act 2006".

7. The Law: Financial Penalties ("FPs")

54. Sections 249A(1) and (2)(b) of the 2004 Act, read together, provide that:

> "the local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England. This includes … offences under section 72 (licencing of HMOs)".

A LHA may impose a Financial Penalty of up to £30,000.

55. Schedule 13A deals with the procedure for imposing Financial Penalties and appeals against them. Paragraph 10 of Schedule 13A provides for a right of appeal:

> "(1) A person to whom a final notice is given may appeal to the First-tier Tribunal against—
>
> (a) the decision to impose the penalty, or
>
> (b) the amount of the penalty.
>
> (2) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.
>
> (3) An appeal under this paragraph—
>
> (a) is to be a re-hearing of the local housing authority's decision, but
>
> (b) may be determined having regard to matters of which the authority was unaware.
>
> (4) On an appeal under this paragraph the First-tier Tribunal may confirm, vary or cancel the final notice.
>
> (5) The final notice may not be varied under sub-paragraph (4) so as to make it impose a financial penalty of more than the local housing authority could have imposed."

56. Paragraph 12 requires a LHA to have regard to any guidance given by the Secretary of State about the exercise of its functions under s.249A. Hounslow have provided a copy of "Civil penalties under the Housing and Planning Act 2016: Guidance for Local Housing Authorities" (at FP1.307-326). LHAs are expected to develop and document their own policy on when to prosecute and when to issue Financial Penalties and should decide which option they wish to pursue on a case-by-case basis in line with that policy.

57. Hounslow have adopted their "Private Sector Housing Enforcement Policy" (at FP1.298-305). Appendix 1 sets out the Council's "Civil Penalties Policy" (at FP1.287-297). The Policy outlines, amongst other matters, the Council's approach to fixing the amount of financial penalties for offences committed in its area. Under the policy, an offence may fall into one of six bands which reflect the gravity of the offence in question, for which the corresponding penalty may be adjusted to account for mitigating and aggravating circumstances.

58. In *Marshall v Waltham Forest LBC* [2020] UKUT 35 (LC), the Upper Tribunal confirmed that when dealing with an appeal against a Financial Penalty, a FTT should start with the LHA's policy and apply it as if "standing in the shoes of the local authority". Moreover, although the appeal is conducted as a re-hearing, the Tribunal must consider the authority's original decision (i) to impose the Financial Penalty and (ii) as to the level of the penalty set under the Policy. The Tribunal must afford those decisions "considerable weight" and "great respect".

8. The Law: Rent Repayment Orders ("RROs")

59. Section 40 of the Housing and Planning Act ("the 2016 Act") provides:

> "(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.
>
> (2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—
>
> (a) repay an amount of rent paid by a tenant, or
>
> (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy."

60. Section 40(3) lists seven offences "committed by a landlord in relation to housing in England let by that landlord". These include offences under section 72(1) and 95(1) of the 2004 Act of control or management of (i) an unlicenced HMO; and/or (ii) an unlicenced house.

61. Section 41 deals with applications for RROs. The material parts provide:

> "(1) A tenant or a local housing authority 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.

62. Section 43 provides for the making of RROs (emphasis added):

> "(1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted)."

63. Section 44 is concerned with the amount payable under a RRO made in favour of tenants. By section 44(2) that amount "must relate to rent paid during the period mentioned" in a table which then follows. The table provides for repayment of rent paid by the tenant in respect of a maximum period of 12 months. Section 44(3) provides (emphasis added):

> "(3) The amount that the landlord may be required to repay in respect of a period must not exceed—
>
> > (a) the rent paid in respect of that period, less
> >
> > (b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

64. Section 44(4) provides (emphasis added):

> "(4) In determining the amount the tribunal must, in particular, take into account—
>
> > (a) the conduct of the landlord and the tenant,
> >
> > (b) the financial circumstances of the landlord, and
> >
> > (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies."

65. Section 56 is the definition section. This provides that "tenancy" includes a licence.

9. The Background Facts

66. On 22 May 2013, NHSPSL acquired the freehold interest in Stamford Brook (see FP1.12). In the past it had been used as accommodation for NHS staff. However, more recently it had been used as office accommodation. NHSPSL now want to regain possession so that it can be used as a temporary health facility whilst the Chiswick Health Centre is being refurbished (see FP2.297).

67. On 31 March 2016, NHSPSL signed a written agreement with GGM headed "Property Protection Proposal" (at FP1.57-70). The substance of the agreement is that GGM would protect Stamford Brook from squatters, vandalism and other anti-social behaviour. It would do so by (i) taking possession of the property; (ii) carrying out such works as are necessary to convert this from office use and make it fit for habitation; and (iii) place guardians in the rooms who will occupy the rooms as their residences.

68. The proposal is made by Mr Kyprianou (see F1.68). It is a slightly odd document, as the letter from Global Guardians setting out the proposal is dated 4 April 2016, namely some four days after the agreement had been signed by Mr Braham, on behalf of NHSPSL. The "start date" of the agreement is 31 March 2016. Mr Braham signs the following declaration: "I hereby accept this Property Protection Proposal provided by (GGM) for the services as detailed herein and on the Terms and Conditions provided". This declaration highlights the initial issue that the Tribunal needs to determine: Was the substance and reality of this agreement one of agency, namely GGM manging Stamford Brook on behalf of NHSPSL or was NHSPSL granting GGM an interest in land?

69. Albeit that the Property Protection Proposal is drafted in language more consistent with a service agreement or a licence, it has all the hallmarks of the grant of an interest in land, namely the grant of exclusive possession for a term at a rent (see *Street v Mountford* [1985] 1AC 810). In *A.G.Securities v Vaughan*, Lord Templeman observed (at 463C) that "where the language of the licence contradicts the reality of lease, the facts must prevail". At 458H, he had set out the approach that should be adopted:

> "In considering one or more documents for the purpose of deciding whether a tenancy has been created, the court must consider the surrounding circumstances including any relationship between the prospective occupiers, the course of negotiations and the nature and extent of the accommodation and the intended and actual mode of occupation of the accommodation."

70. The minimum contractual term is four months. Thereafter, it is determinable by four weeks written notice expiring on a Monday. Upon the determination of the agreement, GGM "will vacate the Property" and

return all keys. There is no "management fee" payable by NHSPSL to GGM. Rather GGM agrees to pay £600 per month to NHSPSL. NHSPSL is asked to provide GGM with a full set of the master keys. The agreement goes on to specify that "GGM will manage all access to the Property including that by the Owner and their contractors". GGM is responsible for the council tax levied on the guardians in respect of the rooms which they occupy. GGM is also responsible for all utility bills.

71. GGM undertake to "ensure that the building is brought up to a state that is suitable for habitation" (FP1.61). The agreement goes on to state that "in order to comply with Health & Safety legislation, certain works will be required to be carried out prior to allowing guardians to commence their duties in protecting the Property" (FP1.64). GGM agrees to bear the cost of these works. These are extensive and include the provision of kitchen and shower facilities and all necessary gas, electrical and fire safety works (see the Schedule at FP1.69). The agreement provides that all plant and equipment "owned by GGM will be tested and serviced at regular intervals in accordance with manufacturer recommendations. Records will be kept of all testing and servicing".

72. The Agreement incorporates "Maintenance Plan 2" (At FP1.65) which provides:

> "GGM's in-house maintenance team will be on call 24/7 to deal with any maintenance issues. GGM will not charge the Owner for any maintenance works completed in the internal parts of the Property. GGM will cover all minor repairs arsing at the property. However, external and structural repairs including roof repairs, guttering, and external drainage systems will be the responsibility of the Owner".

73. Mr Woolgar stated that when Global Guardians entered into any agreement with an owner, they would immediately change the keys both to the main entrance doors. On accepting responsibility for Stamford Brook, six sets of keys were cut. These were provided to (i) NHSPSL; (ii) GGM; (iii) G100; (iv) GGFM; (v) The Global Guardian office; and (vi) the guardian. Global Guardians exercised control over who entered the property. The owner would only enter with their permission. Mr Woolgar stated that Global Guardians ensured that all the rooms occupied by guardians had locks, to which the occupants had keys. This arrangement was essential to enable Global Guardians to exercise control over the property.

74. Mr Woolgar explained how Global Guardians used to charge the owner for the start-up costs, council tax and utilities. Global Guardians now absorbed these costs. Properties would be accepted for a minimum period of three months, albeit that a scheme would only be viable if the property is available for a longer period. At Stamford Brook, four electric shower units were installed. These would have a minimum life expectancy of a year. Four basic kitchens were installed. These would often be recycled from

other properties. Inevitably, the longer the guardian arrangement lasted, the more tired these units would become.

75. On the basis of this evidence, the Tribunal is satisfied that NHSPSL granted GGM an interest in land. It is impossible to categorise the agreement as a service agreement whereby GGM managed Stamford House on behalf of NHSPSL. NHSPSL had no interest in permitting the property to be used as residential accommodation. Their concern was that their vacant property should not be squatted or vandalised. G100 collected licence fees of some £15,000 per month from the guardians, but only paid £600 per month to NHSPSL. This was not of concern to NHSPSL as Global Guardians were securing their property.

76. The Tribunal's conclusion that NHSPSL granted GGM an interest in land is also shared by NHSPSL. On 19 October 2020, Bevan Brittan, solicitors acting on behalf of NHSPSL, wrote to Wandsworth County Court in these terms (at RRO2.297): "Pursuant to the agreement between our client and GGM, GGM was given possession of the Property and was entitled to grant licences to the individual "guardians" for the purpose of securing the Property".

77. On 17 February 2020, Mr Bhatia checked the Global Guardian's website which was advertising a total of 30 spaces at Stamford Brook of which one was available (at FP1.50-55). The rooms were being offered at £450 to £500pm, which was stated to be some 65% less than a market rent of a room let to modern standards. It was advertised as "a great opportunity to enjoy living in West London at a much lower cost". It further stated: "Your home is as important to us as it is to you as we are a safe pair of hands to ensure it is looked after no matter what type of property it is". Stamford Brook was advertised as consisting of 30 rooms, 4 kitchens, 4 bathrooms and 4 toilets. Applicants were required to provide an employer's reference and 3 months previous pay slips. They were also required to pay one month upfront and a key payment.

78. Mr Woolgar accepted that in advertising for guardians, G100 were looking for people who were in employment. Particulars of their employment was recorded on the licence agreements. He accepted that the guardians were not employed by Global Guardians to carry out any security duties. They were not security specialists. They were not expected to confront any trespasser. They were not offered any training. The guardians were rather people of good character, with good employment, who would help to exercise control over Stamford Brook through their occupation of their rooms as their residences. This was highlighted by the requirement in the guardian's licence agreements that they must sleep at the property "at least five nights out of every seven". Were there to be any problems of squatters or vandalism, the guardians were merely expected to report this to Global Guardians. Global Guardians did not employ any caretakers to occupy Stamford Brook.

79. The guardians gave similar evidence as to how they came to secure their rooms. Some had previous experience as guardians, others came new to the concept. They were all looking for accommodation below market rents accepting that they would be taking short term accommodation which would be significantly below modern letting standards. Most saw the accommodation advertised on-line, whether on the Global Guardian's website or on "SpareRoom". They would be invited to a viewing. They would be shown a range of rooms. They were allowed to select the room that they preferred. In June 2016, Mr Cannam was shown rooms for which the charges ranged from £350 to £600pm. He selected the larger room at £600pm. It had previously been used as an office. There was still shelving on the walls. He was required to pay an administration fee of £95 and £65 for a safety pack. The "safety pack" was a fire extinguisher, a single point smoke detector, and a fire blanket or a first aid kit.

80. The guardians had keys to their rooms. No one would come in without their permission. Global Guardian would give 24 hours' notice if they needed to inspect. None of the guardians had been required to move from one room to another. Some have requested to move rooms. Ms Laleva was allowed to move to another room because her mobile reception was poor. Others requested a larger or a better room; if moved, they would pay a higher licence fee. A number of the guardians had friends who stayed overnight. This must have been known to Global Guardians. No one objected to this. The position was different if a partner was to move into occupation; approval was needed from Global Guardians. Ms Budzich was joined by her partner, Michael Scott. He was obliged to sign an agreement, but no additional sum was payable.

81. All the guardians were required to sign a "temporary licence agreement". These were all in a similar form. The agreement signed by Mr Limani is at FP1.123. It is dated 1 March 2019. It was signed by Mr Kyprianou on behalf of G100. His licence fee was £600pm. He was required to make a "key payment" of £600. By Clause 7.4, G100 may terminate the agreement by four weeks written notice. By Clause 5.1, the guardian is prohibited from conducting any business on the premises. His employer's details are specified in an annexe to the agreement.

82. The agreement records in a footer that it had been drafted by Mr Owen and approved by Leading Counsel. Mr Owen stated that it had been drafted specifically to ensure that it was a licence rather than a tenancy. The agreement records that the guardian "is an individual who is willing to pay a weekly licence fee for use and occupation of the designated space in order to perform the Guardian's functions". Those functions are not defined. However, by Clause 4.22, the guardian agrees to sleep at the property for at least five nights out of any seven.

83. There are two clauses of note. By Clause 5.8, the guardian agrees not to permit any other person to stay overnight. It is difficult to understand how this condition could be enforced in modern day Britain. Clause 1.5 states

that the agreement does not give the guardian a right to use any specific room as living space. G100 assert the right "at any time and from time to time to decide which room any one or more of the Guardians may use as their space". The guardians contend that this did not reflect the reality. They were each allocated a specific room at a specific fee and were provided with a key to their room.

84. It was not necessary for this Tribunal to determine whether the Guardians were tenants in that they were granted exclusive possession of their rooms and a monthly rent. The right to move an occupier from one room to another is inconsistent with the grant of exclusive possession (see *Westminster City Council v Clarke* [1992] 2 AC 288). The guardians would need to establish that the "temporary licence agreements" were shams or pretences. In *Street v Mountford*, the House of Lords also recognised that there may be exceptional cases where the grant of exclusive possession is not referable to a relationship of landlord and tenant. The Court of Appeal has now confirmed that the guardians were mere licensees.

85. The Tribunal is satisfied that the guardians were granted exclusive use of their rooms. They occupied their rooms as their residences. They had keys to their rooms. Global Guardians would only enter with their permission. However, as had been noted by Lewison LJ in *Ludgate House Ltd v Ricketts (Valuation Officer)* (see [98] below), a service occupier, a lodger, or a caretaker could all have exclusive use, but not exclusive possession, of their rooms.

86. Mr Bhatia gave evidence that on 14 November 2019, Hounslow had received a complaint from a guardian claiming that Stamford Brook was very overcrowded. The guardian stated that he had exclusive possession of his bedroom for three years. On 6 February 2020, Mr Bhatia visited Stamford Brook and met both Ms Amasanti and Mr Owen on site. He took a number of photographs (at FP1.17-35) a number of which illustrate the shared kitchens and toilets. Mr Owen asserted that the property was exempt from the licencing requirements. On 7 February (at FP1.40), Mr Owen provided a letter setting out why he did not consider a licence to be required. However, on 7 February (at FP1.40), Ms Amasanti emailed Hounslow confirming that Global Guardians were keen to ensure that the building met the necessary health and safety standards for guardians.

87. On 17 February 2020, Mr Bhatia checked the Global Guardian's website which was advertising a total of 30 rooms at Stamford Brook of which one was available (at FP1.50-55). He describes the statutory action which he took which led to the service of the Financial Penalty Notices:

(i) On 17 February 2020, he served a statutory Requisition for Information on GGM. On 24 February, a response was received from Dominic Slatter, Business Development Manager (at FP1.81). He provided a copy of the agreement between NHSPSL and GGM. On 2 March, Mr Bhatia noted that the response was incomplete (FP1.87). By return, Mr Slatter returned a

second form (at FP.89). GGM was specified as the person who "directly or indirectly receives the rent". On 14 April, Mr Bhatia complained that GGM had not provided details of the duration that each occupant had occupied their rooms (FP1.93). Mr Bhatia sent reminders on 26 May, 15 June and 21 July. No response was received.

(ii) On 29 September 2020, Mr Bhatia required GGM to apply for an HMO licence (FP1.95). By return (at FP1.100), Ms Amasanti responded that NHSPSL had served a notice to determine their agreement. Global Guardians would be surrendering the property.

(iii) On 13 October 2020 (at FP1.105), GGM applied for a Temporary Exemption Notice ("TEN"). The ground of the application was that possession proceedings had been issued to provide vacant possession to the owner. It is to be noted that it was GGM, rather than either G100 or NHSTSL, who had made the application. Mr Owen sent a covering email (at FP1103) setting out why he did not consider Stamford Brook to be a licensable HMO and requested sight of Hounslow's legal opinion. On 13 October, Mr Bhatia requested further information, which was provided on the same day (at FP1.110). On 21 October (at FP1.147), Mr Bhatia restated Hounslow's opinion that a licence was required. On 3 November, Hounslow granted GGM the first TEN for a period of 3 months (at FP1.152). On 9 February 2021, Hounslow granted GGM a second TEN for a further period of 3 months (at FP1.202). Mr Bhatia explained to the Tribunal that these have been granted because G100 was seeking possession of Stamford Brook.

(iv) On 19 October 2020 (at FP1.139), Hounslow served a Notice of Intention to impose a Financial Penalty of £7,000 on GGM. On 9 November (at FP1.157), Mr Owen made detailed representations in response. He asserted that GGM does not "receive rent or other payments from the tenants". The guardians rather had agreements with G100. He argued that if liability went up the chain from G100 to GGM it must travel again to NHSPSL.

(v) On 7 December 2020 (at FP1.163), Mr Bhatia requested further information to clarify the respective roles of G100, GGM and NHSPSL. Information was requested on 12 issues. This included a request for a breakdown of the licence fees paid by the guardians and details of how the licence fee and outgoings were distributed between G100 and GGM. On 17 December 2020 (at FP1.168), Mr Owen responded providing a partial answer to the questions which had been raised. He stated that until recently, it had not been important to distinguish between GGM and G100. GGM was the management company and it charged G100 a management fee to provide property guardian services to GGM. GGM paid a percentage of the guardian licence fees to the property owner. A number of documents were provided including the intercompany agreement between GGM and G100 (at FP1.175).

(vi) On 5 January 2021 (at G1.332) Mr Bhatia wrote asking three questions:

> (a) what monthly amount or percentage rate do G100 charge GGM from the licence fee collected?
> (b) What amount or percentage rate of the fee collected by G100 do they pass to the freeholder?
> (c) If G100 provide a service to GGM, why are G100 also paying a fee?

Neither Hounslow nor the Tribunal has received any satisfactory response to these questions.

(vii) on 4 February 2021, Hounslow served three Notices of Intention to Impose Financial Penalties of £7,500 on G100 (at FP1.179), GGM (at FP1.186), and Mr Kyprianou (at FP.193). These Notice replaced that served on GGM on 19 October 2020.

(viii) On 26 February 2021 (FP1.257), Mr Owen made detailed representations in response on behalf of G100 and GGM.

(ix) on 19 March 2021, Hounslow served Final Notices to Issue Financial Penalties of £6,000 on G100 (at FP1.206), GGM (at FP1.211), and Mr Kyprianou (at FP.216). Mr Bhatia stated that Hounslow had decided to reduce the Financial Penalty to £6,000 because GGM had applied for and been granted the two TENs.

(x) On 19 March 2021, Hounslow also served a Financial Penalty of £1,250 on NHSPSL. They paid the Penalty within 28 days, thereby benefiting from a 20% discount.

(xi) On 16 April 2021, G100, GGM and Mr Kyprianou issued their appeal against these Financial Penalties.

88. On 20 August 2020, G100 served Notices to Quit on the licensees (at FP1.95). On 3 September 2020, NHSPSL gave notice to terminate their agreement with GGM. On 7 October 2020 (at FP1.112), G100 issued possession proceedings against eight named guardians and additional "persons unknown". On 29 March 2021 (FP1.238), District Judge Parker made a possession order against the guardians requiring them to give up possession on 26 April 2021. Ms Laleva appealed against this decision. On 25 March, HHJ Luba QC allowed her appeal holding that it was arguable that she was a tenant, rather than a licensee. On 3 December, the Court of Appeal allowed G100's appeal against this decision, holding that Ms Laleva's defence had no reasonable prospects of success as the guardians at Stamford Brook were mere licences.

10. The Appeals against the Financial Penalties

89. G100, GGM and Mr Kyprianou raise five issues in their Grounds of Appeal, the fifth of which only relates to Mr Kyprianou. Mr Kyprianou has not provided any witness statement. These grounds all relate to liability. The applicants do not seek to appeal against the size of their Financial Penalties, namely £6,000 against each of them. Mr Owen recognised that these penalties are at the lower end of the appropriate scale. The maximum could have been £30,000.

10.1 Issue 1: Is the Building exempt from the HMO Regime?

90. Schedule 14 of the 2004 Act specifies buildings which are not HMOs for the Proposes of the Act (excluding Part 1). Paragraph 2 exempts certain buildings controlled or managed by certain public sector bodies and provides (emphasis added):

> "2(1) A building where the person managing or having control of it is ……. (f) a health service body within the meaning of section 9 of the National Health Service Act 2006".

91. Section 263 of the 2004 Act defines the meaning of "person having control" and "person managing" (see [51] above). Hounslow considered that NHSPSL was also a person having control or managing Stamford Brook and served a Financial Penalty Notice on it. NHSPSL paid the Penalty without demur.

92. Section 9(4)(m) of the National Health Service Act defines a "health service body" as including "the Secretary of State". It does not identify NHSPSL, nor is there any general extension of section 9(4) to include companies or other entities owned by a "health service body" as so defined. Hounslow asks the FTT to find that the categories of 'health service bodies' listed at s.9(4) are exhaustive for the purposes of Schedule 14 of the 2004 Act and to dismiss this ground. The Tribunal agrees.

93. Mr Penny makes the additional point that even if NHSPSL was an exempt freeholder, this would not be relevant as it was not a person "managing" or having "control" of Stamford Brook. Hounslow, having determined to serve a Financial Penalty on NHSPSL, do not accept this view.

10.2 Issue 2: Is the "standard test" for an HMO met?

94. Section 254(2) of the 2004 Act specifies the six conditions which must be met if a building meets the "standard" test for being an HMO (see [46] above). Mr Owen argues that one condition is not met, namely:

> "(d) their occupation of the living accommodation constitutes the only use of that accommodation"

95. Mr Owen contends that the guardians' use of their rooms was not the only use of the living accommodation. Relying on the express terms of their licence agreements, he argues that the guardians occupied their rooms to fulfil the guardian function of protecting the building. Their guardian management services are to secure the building against "trespassers, squatting and antisocial behaviour and protect (the building) from damage".

96. The Tribunal notes that Mr Owen raised a similar argument in *William Road* (LON/00AG/HMF/2021/0042). On 6 July 2021, this argument was rejected by Judge Brandler:

> "45. It is submitted that the Applicants were property guardians and their occupation was not to provide accommodation but rather to protect the property. The Tribunal rejects this contention as wrong. The Applicants were not service occupiers or otherwise employed to protect the building. A side effect of their presence may be to dissuade trespass or damage, but they were there in order to have a roof over their heads and only that."

On 22 October, Judge Elizabeth Cooke granted permission for an appeal to the Upper Tribunal on this point.

97. Mr Owen argues that the terms 'use' and 'purpose' are closely allied. The purpose of the guardians' occupation is to protect. Their use of the property is for the purposes of protection. The property is not being used to provide accommodation to the guardians. The guardians do not occupy the accommodation as a form of use of the accommodation, but rather for the purpose of protecting the accommodation. He relies on *Ludgate House Ltd v Ricketts (Valuation Officer)* [2020] EWCA Civ 1637; [2021] 1 WLR 1750 and the passage of Lewison LJ at [71].

98. This case involved a large multi-storey office building which was being occupied by guardians. A Valuation Tribunal had ruled that on the material day, the guardians had been in occupation of the building on behalf of the ratepayer and that the freehold owner was in paramount, and thus in rateable, occupation of the whole of the building as a single hereditament. The Upper Tribunal allowed the ratepayers appeal, holding that the licensees' individual rooms were separate hereditaments and that the rateable occupier of each of those hereditaments was not the ratepayer, but the individual licensee whose temporary home it was. The Court of Appeal reversed this decision. Lewison LJ (at [67]) held that the occupation by a guardian was analogous to that of a service occupier, a caretaker or a lodger, none of whom would be in rateable occupation. This should be contrasted with the position of a squatter or tenant at will, both of whom would be in exclusive, and therefore, rateable occupation. The Tribunal does not find this decision relevant to the issue which we are required to determine.

99. Ms O'Leary argues that this argument is ill-conceived, unattractive and seeks to make a mockery of Part 2 of the 2004 Act. Any such interpretation of section 254(2)(d) would actively undermine the statutory objective of the Act. She asks the Tribunal to apply a purposive interpretation to the legislation. She refers the Tribunal to the following passage from the judgment of Supperstone J in *Paramaguru v Ealing LBC* [2018] EWHC 373 (Admin); [2018] PTSR 1300:

> "37 Further, if it was necessary to apply a purposive interpretation to the meaning of the word "residents" in Class C4 I agree with Ms Phillips that Mr Webster's proposed interpretation runs counter to the purpose of the HMO legislation. In *Brent London Borough Council v Reynolds* [2002] HLR 15, paras 2—5 Buxton LJ explained the purpose of the HMO legislation:
>
> "2.... HMOs are, or are usually, domestic premises originally designed for occupation by one family, which have been converted for occupation by a number of separate families or individuals. This process, which almost inevitably involves the sharing of bathing or kitchen facilities, and the use of parts of the premises for purposes for which they were not originally designed, raises obvious potential problems in terms not just of the amenity but also of the safety of the premises. In addition, government and Parliament have seen the need to make special provision in respect of HMOs because of the regrettable fact that it is often persons and families most in need of social protection, including families with young children, who find themselves obliged to occupy housing that, in the main, is likely to be much less adequate than purpose-built flats or houses.
>
> 3. These problems, and the special attention that they justify to be given to HMOs, have been graphically recognised by this court. In *Rogers v Islington London Borough Council* 32 HLR 138, 140 Nourse LJ quoted a passage from the Encyclopaedia of Housing Law and Practice, and then added some comment of his own: "Since the first controls were introduced it has been recognised that HMOs represent a particular housing problem, and the further powers included in this part of the Act are a recognition that the problem still continues. It is currently estimated that there are about 638,000 HMOs in England and Wales. According to the English House Condition Survey in 1993, four out of ten HMOs were unfit for human habitation. A study for the Campaign for Bedsit Rights by G Randall estimated that the chances of being killed or injured by fire in an HMO are 28 times higher than for residents of other dwellings. The high or very high risks from fire to occupants of HMOs is confirmed by the study entitled "Fire Risk in HMOs", a summary report to the Department of the Environment, Transport and the Regions prepared by Entec UK Ltd in November 1997. HMOs can also present a number of other risks to the health and safety of those who live in them, such as structural instability, disrepair, damp, inadequate heating, lighting or ventilation and

> unsatisfactory kitchen, washing and lavatory facilities. It is of the greatest importance to the good of the occupants that houses which ought to be treated as HMOs do not escape the statutory control.
>
> 4. Parliament has long recognised the need to guard against such dangers, by giving to local housing authorities ["LHAs")] significant powers of control over the activities of those who own and manage HMOs. Such powers were first effectively included in Part IV of the Housing Act 1969, which was consolidated into Part XI of the Housing Act 1985."

100. Ms O'Leary argues that the Tribunal should focus on the use which the guardians made of their rooms at Stamford Brook, rather than the objectives or intentions of GGM or G100 when placing them there. That purpose was plainly to put a roof over their own heads. They occupied the rooms as their residences.

101. Mr Penny on behalf of the guardians, argues that the "only use" test is intended to exclude property which has a mixed residential and commercial use, rather than to exclude properties occupied by guardians. The guardians occupied Stamford Brook as their homes. No guardian was an employee of either GGM or G100. The guardians are not trained security professionals. They have a range of employments at locations outside Stamford Brook. The Global Guardians business model is dependent upon offering guardians cheap accommodation, knowing people will accept such accommodation. This enables Global Guardians to advertise the security benefits afforded by their occupation. It is clear from the terms of GGM's proposal to NHSPSL (at FP1.58) that Global Guardians would place "only reliable, vigilant and socially responsible, working people" to "legally occupy the property to secure it against squatters, vandals and dereliction". There is no suggestion the guardians would be employed by Global Guardians or that they would be working at Stamford Brook. It is clear from the proposal that the guardians would be living at Stamford Brook as a means of securing it. It is also clear from the terms of the advert posted by Global Guardians that they were seeking people who would use Stamford Brooks as their "home". It was a term of the temporary licence agreements that guardians should be employed and they were required to provide details of their employer. Even were some of the guardians to be undertaking activities beyond simple residential occupation, it would not follow that they were not "using" the accommodation "solely" as "living accommodation". Modern living involves people undertaking a range of activities at their residential accommodation, including potentially working from home. Such work does not mean the living accommodation is being used for a purpose other than residential occupation. Rather, a modern definition of "using living accommodation for residential occupation" includes a range of other activities beyond the basics of sleeping and storing possessions.

102. At Stamford Brook, the "units of accommodation" are the individual rooms occupied by the guardians. Even though they did not have "exclusive

possession", they did have "exclusive use" of their rooms. They had keys to their rooms. The guardians occupied their rooms as their residences. The Tribunal is therefore satisfied that their occupation of the living accommodation constituted the only use of that accommodation and that the condition specified in section 254(2)(d) is met.

103. If we were in any doubt about this, and we are not, there is a statutory presumption that the sole use condition is met. Global Guardians have not rebutted this presumption. We are further satisfied that this presumption reflects the purposive interpretation that should be applied to this Act.

10.3 Issue 3: The Person "having control" or "managing" the Building

104. Section 263, which defines the concepts of a "person having control" and a "person managing" premises is set out at [51] above. The definitions are wide enough to include a number of different people in respect of a property. It may also extend to a managing agent. Where there is a chain of landlords, more than one may be liable for an offence (see *Rakusen v Jepson* [2021] EWCA Civ 1150, per Arnold LJ at [33]).

105. A licence under the 2004 Act may be held by a person who is not the immediate landlord of the occupier of residential premises. Section 64 lays down no ownership condition for the grant of a licence. The local housing authority ("LHA") must be satisfied that an applicant is a fit and proper person to be the licence holder, and that, out of all the persons reasonably available to be the licence holder in respect of the house, they are the most appropriate person.

106. Given our finding that Stamford Brook is an HMO which required a licence, the issue for the LHA is to identify the most appropriate person to hold the HMO licence. Whilst a number of persons might commit an offence, the LHA must identify the one person who has ultimate responsibility for ensuring that Stamford Brook is suitable as living accommodation for multiple occupation.

107. Mr Owen contends that neither G100 or GGM are the "person having control". The guardians only pay licence fees and not rent. Neither G100 or GGM would receive the rack-rent were Stamford Brook to be let at a rack-rent. Their agreement with NHSPSL is extremely restrictive. They are in the "property protection" and not the "property renting" business. Were Stamford Brook to be let at a rack-rent, only NHSPSL would be entitled to receive it. Further, neither G100 nor G100 is an owner or lessee of Stamford Brook. Therefore, neither is a "person managing" Stamford Brook.

108. Mr Owen does not go so far as to suggest that the housing standards watch dog has bitten the wrong leg, and that NHSPSL was the most appropriate person to hold the HMO licence. Under the "Property Protection Proposal", Global Guardians agree to accept responsibility for the health

and safety of the guardians. NHSPSL accepted no responsibility for adapting this office building for residential use. To impose this responsibility on the public authority/private developer freeholder would be the death knell for Property Guardian schemes. Mr Owen's primary submission is that no HMO licence is required for such schemes. We find this submission extremely unattractive.

109. Hounslow's case is that that both GGM and G100 are "persons having control" and "persons managing" Stamford Brook:

(i) They are "persons having control" as they are in receipt of the rack-rent from Stamford Brook. Hounslow contend that the monthly licence fees totalling some £15,000 received from the guardians is a "rack rent". Even were the guardians to be licensees, the term "rack-rent" should be construed accordingly" (see section 262 (6) at [48] above).

(ii) Alternatively, they are "persons having control" as they would be in receipt of the rack-rent were Stamford Brook were to be let at a rack-rent. This provision is engaged even if the guardians are mere licensees as Global Guardians have a contractual entitlement to let out Stamford Brook at a rack rent. Even were Global Guardians to be mere licensees, it would still be open to them to grant an interest in land at a rack rent (see *Bruton v London & Quadrant Housing Trust* [2000] 1 AC 104).

(iii) Alternatively, in the event the Tribunal is satisfied that GGM was a "lessee", GGM and/or 100 would be a "person managing" Stamford Brook as they were receiving "payments" from the guardians. In determining whether it was GGM and/or G100 who was the "person managing" Stamford Brook, it is necessary to analyse the contractual relationship between GGM and G100. Hounslow argue that their relationship was so confused that both were in fact "persons managing" the property.

110. Section 263(1) is divided into two limbs: if a house is let at a rack rent the person having control is the person who receives the rack-rent; if the house is not let at a rack rent (for example because the only letting is at a ground rent) the person having control is the person who would receive the rack-rent if the premises were subject to a letting at a rack rent. The formula used in the definition has a considerable history going back at least to 1847 (as Lord Bridge of Harwich explained in *Pollway Nominees Ltd v Croydon LBC* [1987] 1 AC 79). He concluded his analysis of the statute in this way (at p 92D):

> "In all these cases the rationale of the use of the formula to designate the person on whom the relevant obligation is cast is surely plain. The owner of that interest in premises which carries with it the right, actual or potential, to receive the rack rent, as the measure of the value of the premises to an occupier, is the person who ought in justice to be responsible for the discharge of the

liabilities to which the premises by reason of their situation or condition give rise."

111. The status of "person managing" is more restrictive. The relevant person must be an "owner" or "lessee". Whilst section 262(4) provides that a statutory tenant is to be included as a "lessee", there is no suggestion that this would extend to a licensee.

112. The relationship between GGM and G100 remains opaque. NHSPSL signed the "Property Protection Proposal" (at FP1.58) with GGM. G100 granted temporary licence agreements to the guardians. These state that G100 places guardians in Stamford Brook for GGM in order that the guardians may perform the guardian functions. The guardians paid their licence fees to G100. However, GGM seems to have paid the utility bills and council tax for Stamford Brook. Global Guardians have provided an Agreement between GGM and G100, dated 19 January 2018. This is signed by Mr Kyprianou on behalf of both GGM and G100. The agreement purports to grant G100 permission to grant "non-exclusive licences to persons selected by G100". GGM confers on G100 such rights to "manage, protect and occupy the premises as are required for the proper protection of the properties through their residential guardians". GGM also confer on G100 "sufficient interest in the properties for G100 to bring claims for possession if required against the guardians to whom it has granted licences".

113. The Tribunal is satisfied that the Global Group could have provided an employee with great knowledge of the arrangements at Stamford Brook, had they been minded to do so. Hounslow has been seeking to identify the respective responsibilities of GGM and G100 for the control and management of Stamford Brook. In the Particulars of Claim in the possession action (at FP1.114), GGM and G100 are described as "sister companies". In his letter, dated 17 December 2020 (at FP1.168), Mr Owen stated that until recently it has not been important to distinguish between GGM and G100. Mr Woolgar was unable to assist the Tribunal on the financial arrangements between G100 and GGM. GGM has paid £600pm to NHSPSL. G100 collected some £15,000pm from the guardians in respect of the 30 rooms at Stamford Brook.

114. The explanation provided to the Tribunal as to the relationship between GGM and G100 has been vague, unclear and wholly unsatisfactory. They have worked closely together and their operations appear to be entirely intertwined.

115. The Tribunal confirms Hounslow's decision that both GGM and G100 are persons having both "control" of and "managing" the HMO at Stamford Brook.

116. First, we are satisfied that both GGM and G100 are "persons managing" Stamford Brook as "lessees" who were in receipt of "rent or other

payments" from the guardians. We are satisfied that NHSPSL granted GGM an interest in land (see [75] above). We find it impossible to accept that the substance and reality of this arrangement was a service agreement whereby Global Guardians would manage Stamford Brook on behalf of NHSPSL. In such circumstances there would have been a direct contractual relationship between NHSPSL and the guardians. NHSPSL accepted no responsibility to convert Stamford Brook for residential occupation, for the subsequent internal maintenance of the building or for the health and safety of the guardians.

117. Were we to be wrong on this, NHSPSL would be the "person managing" Stamford Brook as it was receiving "rents of other payments" through GGM as "an agent". We are satisfied that finding NHSPSL was the appropriate licence holder would not reflect the substance and reality of the Guardian scheme agreed between NHSPSL and GGM.

118. Secondly, both GGM and G100 are "persons having control" as they have both been in receipt of the rack-rent from Stamford Brook. They have received some £15,000 per month from the guardians. We agree that it is irrelevant whether this is categorised as "rent" or "licence fees". Even were the guardians to be licensees (as the Court of Appeal has now confirmed), the term "rack-rent" should be construed accordingly" (see section 262 (6) of the 2004 Act at [48] above). Whilst the sums payable by the guardians are significantly less than they would have paid in respect of market rents for accommodation let under Assured Shorthold Tenancies, this is short life accommodation let in a very basic condition at substantial rents.

119. Thirdly, both GGM and G100 are "persons having control" as they would both be in receipt of the rack-rent, were Stamford Brook to be let at a rack-rent. We accept Hounslow's argument that this provision would be engaged even if the guardians are mere licensees, as Global Guardians have a contractual entitlement to let out Stamford Brook at a rack-rent. Even were Global Guardians to be mere licensees, it would still be open to them to grant an interest in land at a rack rent (see *Bruton v London & Quadrant Housing Trust* [2000] 1 AC 104).

120. Again, were we to be wrong on this, NHSPSL would be the "person having control" of Stamford Brook and would be the appropriate licence holder. We would find this conclusion surprising.

10.4 Issue 4: The Defence of "Reasonable Excuse"

121. Mr Owen argues that Global Guardians, namely the three applicants, have a defence of reasonable excuse (see section 72(5) of the 2004 Act at [49] above). GGM and G100 are property protection companies and their protection of the properties is a functional activity. Whilst Hounslow had argued for many months that an HMO licence was required, Global Guardians had sought clarification as to why Hounslow had formed this view. Hounslow had taken over a year to respond, by which time a

Temporary Exemption Notice ("TEN") was in place, thus removing the need for a licence.

122. Ms O'Leary contends that these facts cannot amount to a reasonable excuse. Global Guardians have been operating since June 2011. They have looked after more than 2,000 properties and have had over 15,000 guardians on their books (see RRO2.8). They have no excuse for not complying with their statutory obligations.

123. Ms O'Leary referred the Tribunal to *Sutton v Norwich CC* [2020] UKUT 0090 (LC) at [212, 214-216]:

> "Whether an excuse is reasonable or not is an objective question for the jury, magistrate or tribunal to decide. In *R v Unah* [2012] 1 WLR 545, which concerned the offence under the Identity Cards Act 2007 of possessing a false passport without reasonable excuse, the Court of Appeal held that the mere fact that a defendant did not know or believe that the document was false could not of itself amount to a reasonable excuse. However, that lack of knowledge or belief could be a relevant factor for a jury to consider when determining whether or not the defendant had a reasonable excuse for possessing the document. If a belief is relied on it must be an honest belief. Additionally, there have to be reasonable grounds for the holding of that belief."

124. The Upper Tribunal rejected Mr Sutton's argument that he had a reasonable excuse for committing offences under the Act because (a) he was unaware his property was an HMO and (b) he had relied upon professionals for advice and assistance. The Tribunal's reasoning shows that these arguments must be approached carefully as questions of fact to be determined in all the circumstances, and with reference to objective and verifiable evidence (see [217] and [223]).

125. Ms O'Leary also referred the Tribunal to the decision of the Divisional Court in *R (Mohamed and Lahrie) v Waltham Forest LBC* [2020] EWHC 1083 (Admin) at [46]. Dingemans LJ held that the strict liability nature of the Offence is relevant, because:

> "… [it] will promote the objects of the 2004 Act by ensuring that those who control or manage a property which is [an] HMO take reasonable steps to ensure that their properties are registered as HMOs where necessary. This promotes proper housing standards for tenants living in HMOs. "

126. The Tribunal has summarised the extensive correspondence between Hounslow and Global Guardians at [87] above. On 6 February 2020, Mr Bhatia inspected Stamford Brook. The Financial penalties were not served until 19 March 2021. It is for Global Guardians to establish a reasonable

excuse on a balance of probabilities (see *IR Management Services Ltd v Salford CC* [2020] UKUT 81 LC). Global Guardians had been informed that they required a licence. They decided not to heed this advice. Hounslow was not required to share the legal advice that it had received with Global Guardians. Hounslow asked a number of questions to clarify the complex relationship between NHSPSL, GGM and G100. We have found the responses from Global Guardians to be wholly unsatisfactory. Global Guardians should have protected their position by issuing an application to this tribunal to determine whether Stamford Brook was an HMO and by applying for a licence. They could also have applied for a TEN to protect their position. We are satisfied that a defence of reasonable excuse has not been established.

10.5 Issue 5: The liability of Mr Kyprianou

127. Section 251 provides for offences by bodies corporate (see [52] above). It does not create a new offence, but rather allows proceedings based on existing offences to be brought against directors personally for actions by corporate bodies under their control. Hounslow must prove beyond reasonable doubt that any offence committed by GGM or G100 was committed with the consent or connivance of, or to be attributable to any neglect on the part of Mr Kyprianou.

128. Mr Kyprianou is the sole director of both GGM and G100. He has elected not to file a witness statement or give evidence. He did not respond to the Notice of Intention Impose a Financial Penalty which had been served by Hounslow on 4 February 2021.

129. Despite this, Mr Owen submits that Mr Kyprianou has neither consented nor connived, nor has he been negligent. To the contrary, he suggests, without any evidence whatsoever to support it, that Mr Kyprianou has gone to considerable lengths to establish a management system which operates according to the law. He employs more than 25 people to ensure that the whole gamut of regulation and legislation is complied with. He is not personally aware of every contract which the company enters into nor the legitimacy of this particular contract. In corporations with over a thousand customers and contracts at any one time, there will be mistakes. Such mistakes as this alleged mistake are not the personal responsibility of the Director under this legislation.

130. Ms O'Leary highlights Mr Kyprianou's failure to participate within these proceedings on any level. He and his companies have failed to file and serve any evidence whatsoever in support of their appeal against the Financial Penalties. She invites the Tribunal to draw adverse inferences from this failure. She suggests that this is entirely consistent with Global Guardians' attempts to obfuscate on the nature of the financial relationship between GGM and G100. He signed the 2018 agreement between GGM and G100 which is now relied upon in respect of the management and operation of Stamford Brook (see FP1.175). Mr

Kyprianou also signed a number of the temporary licence agreements with the guardians. Before serving a Notice of Intent, Hounslow corresponded with his Solicitor over a period of 12 months. Mr Kyprianou continued to assert that no licence was required. She concludes that it is proved beyond reasonable doubt that Mr Kyprianou consented to the structures of the companies and the agreements used to licence the rooms to the guardians and consequently to the failure to obtain an HMO licence.

131. In considering the scope of the duties of a director, we have considered the decision of the Divisional Court in *Huckerby v Elliott* [1970] All ER 189. Having regard to the factors identified by Ms O'Leary, we are satisfied beyond reasonable doubt that the offences of having control of or managing an unlicenced HMO which were committed by GGM and G100, were committed with Mr Kyprianou's consent and connivance and were attributable to his neglect. He was fully aware of the situation at Stamford Brook. As the sole director of both companies, he had the responsibility to ensure that an HMO licence was obtained.

10.6 Conclusions on the Appeals against the Financial Penalties

132. The Tribunal dismisses the three appeals and confirms the Financial Penalties imposed by Hounslow. No issue has been taken on the procedure adopted in imposing the Financial Penalties. Mr Owen has not sought to argue that they were excessive. The Tribunal is satisfied that Hounslow were justified in serving separate Financial Penalties on both G100 and GGM as both had a duty to ensure that the HMO at Stamford Brook was licenced.

11. The Applications for RROs

11.1 Liability

133. The 11 applicants must satisfy the Tribunal beyond reasonable doubt that an offence under section 72(1) of the 2004 Act has been committed (see section 43 of the 2016 Act). The applicants contend that G100 is the "person managing" the HMO as it receives the payments from the licensees. The landlord raises similar issues to those in the appeals against the Financial Penalties (Sections 10.1 to 10.4 above). We have addressed these issues and are satisfied beyond reasonable doubt that G100 committed an offence under section 72(1) of both "managing" and having "control" of Stamford Brook as an unlicensed HMO over the period from 1 June 2016 and continuing. The only periods during which no offence was committed was between 3 November 2020 and 2 February 2021; and 9 February and 8 May 2021 when G100 had the benefit of TENs. These provided a defence under section 72(4)(a) of the 2004 Act (see [50] above). None of the guardians seek RROs during these periods.

134. G100 raise an additional jurisdictional point that it is not open to a licensee to seek a RRO as they do not pay rent. The Tribunal can deal with this point shortly. Section 56 of the 2016 Act provides that "tenancy" includes a licence. Mr Owen ran exactly the same argument before the FTT in *William Road* (LON/00AG/HMF/2021/0042). Judge Brandler rejected this argument:

> "49. The Tribunal is of the view that there is no ambiguity in the Act and it is clear that the definitions of tenancy and letting in section 56 are enlarging ones and the terms rent and tenant are also adapted accordingly. The definitions in section 262 of the 2004 Act and section 56 of the 2016 Act are so wide that it is clearly intended to cover situations where there are multiple parties and arrangements.
> 50. Excluding licensees from the Act would negate the purpose and reach of rent repayment orders and it cannot have been intended to exclude them from the protection of the Act.
> 51. The Tribunal finds that licences, licensors and licensees come within Part 2 of the HPA 2016
> 52. It was accepted by the Respondent that it received licence fees from the Applicants"

135. On 22 October 2021, Judge Cooke (in the Upper Tribunal) refused to grant G100 permission to appeal on this point. Her reasons were:

> "As to the other grounds of appeal put forward by the applicant, section 56 of the Housing and Planning Act 2016 makes it clear that a letting includes a licence, and accordingly rent must include a licence fee. There is therefore no prospect of success on appeal on the basis that the applicant was not receiving rent."

136. We agree. We are satisfied that a RRO can extend to a licence fee payable by a licensee. At stated above, the Tribunal did not consider it necessary to determine whether the guardians were licensees or tenants. The Court of Appeal has now determined that they were licensees.

11.2 The Assessment of the RROs

137. The 2016 Act gives the Tribunal a discretion as to whether to make an RRO, and if so, the amount of the order. Section 44 provides that the period of the RRO may not exceed a period of 12 months during which the landlord was committing the offence. The amount must not exceed the rent paid by the tenant during this period, less any award of universal credit. The guardians have restricted their claims to relevant period of 12 months and, where appropriate, made adjustments for any receipt of universal credit.

138. Section 44 of the 2016 Act, requires the Tribunal to take the following matters into account: (i) the conduct of the landlord: (ii) the conduct of the

tenant: (iii) the financial circumstances of the landlord. (iv) whether the landlord has at any time been convicted of an offence to which Chapter 4 of the 2016 Act applies, namely the offences specified in section 40. There are no relevant convictions. We have had regard to the recent decisions of the Upper Tribunal including Judge Cooke in *Vadamalayan v Stewart* [2020] UKUT 183 (LC); the Deputy Chamber President, Martin Rodger QC, in *Ficcara v James* [2021] UKUT 38 (LC); and the Chamber President, Fancourt J in *Williams v Parmar* [2021] UKUT 244 (LC).

139. The Tribunal has first considered whether to make a reduction in respect of the utility bills and council tax which were paid by Global Guardians. The guardians are seeking RROs against G100. There is no evidence that G100 has paid for any utility bills. Whilst there is evidence that GGM has discharged such bills, this is not the legal entity against which the RROs are sought. The financial relationship between G100 and GGM remains opaque. On 5 January 2021, Hounslow sought to elicit information about the amount of any sums paid by G100 to GGM. G100 has declined to provide this information. It has also declined to call any witness with the requisite knowledge of this relationship. In these circumstances, the Tribunal is satisfied that no adjustment should be made.

140. The Tribunal is required to have regard to the conduct and financial circumstances of G100. G100 is a professional provider of this type of accommodation. It has made an informed decision not to apply for an HMO licence. It has substantial resources. The guardians have made a number of criticisms about the quality of the accommodation and the failure of G100 to keep it in a proper state of repair. Their evidence on this is uncontradicted. The Tribunal takes into account that this is short life accommodation, albeit that the licence fees are at the higher level of what G100 could command for this type of accommodation.

141. The Tribunal is required to have regard to the conduct of the guardians. Mr Owen submits that the Tribunal should have regard to the fact that a number of guardians have remained in occupation of their rooms, as trespassers, after 26 April 2021, the date on which DJ Parker ordered them to surrender possession. This is not relevant to Ms Laleva as she has appealed against this order. The Tribunal accepts that the guardians can only be evicted by due process, namely by court bailiffs. It seems that delays have arisen due to Covid-19. The Tribunal accept that NHSPSL now require vacant possession so that Stamford Brook can be used as a temporary health facility. The Property Guardian business model is premised on Global Guardians being able to surrender possession when this is required by the owner. However, even were the guardians to vacate, Global Guardians could not surrender Stamford Brook whist Ms Laleva remained in lawful occupation. Taking all these factors into account, we are satisfied that we should make a 40% reduction where the guardian remains in occupation as a trespasser.

142. Mr Owen also raises the arrears of licence fees. We are satisfied that we can, and that we should, take any arrears into account. The policy underpinning the 2016 Act is one of deterrence, rather than compensation. The maximum penalty for operating an unlicenced HMO is 12 months rent. If the tenant has not been paying their rent, this is properly a matter that the Tribunal should take into account. All these RRO applications have been framed to cover a period when the guardian was paying their licence fees.

143. Mr Owen asks the Tribunal to consider the interplay between the Financial Penalties that have been imposed and should guard against any element of double penalty. We accept that we should take into account the Financial Penalty of £6,000 that we have found is payable by G100. We have noted that this Penalty is at the lower end of the scale. In *Vadamalayan v Stewart* (at [55]), Judge Cooke concluded that no deduction should be made in respect of a Financial Penalty of £8,000. She noted that the Penalty was not unusually severe. Parliament has enacted legislation under which a landlord may be liable for both a RRO and a Financial Penalty. In this case, we do not consider it appropriate to make any deduction for this Financial Penalty. It was imposed in respect of an HMO with 30 rooms. This generated an income of some £15,000 per month for G100. Only a minority of the guardians have sought RROs. The proportion of the Penalty attributable to any room is just £270.

144. Taking all these matters into account, we have decided to make the following RROs:

(i) Tony Cannam: Mr Cannam seeks a RRO of £7,740, He remains in occupation of Stamford Brook as a trespasser. We make an initial deduction of 40% (£3,096). However, there are arrears of £12,000. We take these into account and decide not to make any RRO.

(ii) Maria Laleva: Ms Laleva initially sought a RRO of £4,750. However, she must give credit for the universal credit that she has received. This reduces her claim to £2,800 and we make a RRO in this sum.

(iii) Michael Green: Mr Green seeks a RRO in the sum of £4,440. We see no reason to make any deduction.

(iv) Henry Blidgeon: Mr Blidgeon seeks a RRO in the sum of £4,610. There are arrears of £2,240 (net of his deposit). We make a RRO of £2,370.

(v) Gaelle Ndanga: Ms Ndanga seeks a RRO of £6,600. She has received universal credit in the sum of £1,000. We make a RRO in the sum of £5,600.

(vi) Gentian Lumani: Mr Lumani seeks a RRO in the sum of £7,860. He remains in occupation as a trespasser. We make a reduction of 40% to £4,716. We make a further reduction of £3,660 in respect of the arrears. We make a RRO in the sum of £1,056.

(vii) Elliot Parkin: Mr Parkin seeks a RRO in the sum of £5,940. We make a RRO in this sum.

(viii) Carol Ndunge: Ms Ndunge seeks a RRO in the sum of £5,280. She was not called to give evidence, but the evidence in her witness statement was not disputed. We see no reason to make any deduction.

(ix) Charmain Griffiths: Ms Griffiths seeks a RRO in the sum of £5,280. She remains in occupation as a trespasser. We make a 40% deduction and make a RRO in the sum of £3,168.

(x) Joanna Budzich: Ms Budzich seeks a RRO in the sum of £7,200. She has now left Stamford Brook. We make a RRO in the sum of £7,200.

(xi) Andrea Kyselakova: Ms Kyselakova seeks a RRO in the sum of £4,620, but recognises that she must give credit for the universal credit that she has received "in respect of rent". She has now left Stamford Brook. She has received universal credit of £1,326, but only £916 related to her rent. We make a RRO in the sum of £3,704.

12. Repayment of Tribunal Fees

145. The appeal against the Financial Penalties has failed. We therefore make no order for the repayment of tribunal fees. The two applications for RROs have been successful We therefore make an order that G100 refund the tribunal fees to the applicants.

Judge Robert Latham
15 December 2021

RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

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

3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e., give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.