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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AG/HMF/2020/0213** **CVP Remote**
Property	**:**	**12 Bransdale Close, London NW6 4QH**
Applicants	**:**	**(1) David Eadie (2) Bogdan Andreescu Berian, (3) Jacob Palmer (4) Sophie Hallam**
Representative	**:**	**Justice for Tenants**
Respondent	**:**	**Sunette Zone**
Representative	**:**	**Ms Sarah Davey**
Type of application	**:**	**Application for a rent repayment order by tenant** Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016
Tribunal members	**:**	**Judge Professor Robert Abbey** **Ms. S Coughlin MCIEH (Professional Member)**
Venue and date of hearing	**:**	**Video hearing on 25 May 2021**
Date of decision	**:**	**2 June 2021**

DECISION

Decision of the tribunal

(1) The tribunal finds that a rent repayment order be made in the sums set out below in favour of the applicants, the tribunal being satisfied beyond reasonable doubt that the respondent has committed an offence

pursuant to s.72(1) of the Housing Act 2004, namely that a person commits an offence if he or she is a person having control of or managing a house which is required to be licensed under Part two of the 2004 Act but is not so licensed. Under section 99 of the 2004 Act "house" means a building or part of a building consisting of one or more dwellings.

(2) The amounts of the rent repayment orders are for Bogdan Berian the sum of £1748.34 for the rent paid relating to the period of 23 November 2019 and 7 February 2020 and for David Eadie the sum of £1487.83 for the rent paid relating to the period of 13 December 2019 and 7 February 2020 and for Jacob Palmer and Sophie Hallam the sum of £2332.44 for the rent paid relating to the period of 23 November 2019 and 7 February 2020.

(3) the tribunal determines that there be an order for the refund of the application fees in the sum of £300 pursuant to Rule 13(2) of the Tribunal Rules.

Reasons for the tribunal's decision

Introduction

1. The applicants made an application for a rent repayment order pursuant to the terms of s.41 of the Housing and Planning Act 2016 in respect of a property known as **12 Bransdale Close, London NW6 4QH**. This property is a three-bedroom house in the London Borough of Camden let as four rooms to multiple occupants on separate tenancy agreements expressed on the face of the documents to be tenancies giving a total of six occupants. Ms Hallam and Mr Palmer moved in to Room 2 on 23 November and Mr Berian moved in to Room 1on the same day. Mr Eadie moved in to room 4 on 23 December 2019. There were two further occupants beyond the number of applicants who were two French females who were in occupation from 7 December until sometime in March 2020. Eloine Singou and Nesrinee Ahmed-Chaouch moved into the Premises increasing the number of occupiers to 6. From the 7 December 2019 to 7 February 2020, the date a license was applied for, the applicants say the property was required to have a mandatory license.

2. The tribunal did not inspect the property as it considered the documentation and information before it in the trial bundle enabled the tribunal to proceed with this determination and also because of the restrictions and regulations arising out of the Covid-19 pandemic.

3. The hearing of the application took place on Tuesday 25 May 2021. Not all the applicants appeared , but all had the benefit of the representation as more particularly described above. The non-appearing applicant was Mr Eadie who is a Police Officer who was on duty at the time of the

hearing and hence his non-attendance. The respondent did not appear but there was a representative present on her behalf, Ms Sarah Davey. She was there to represent both the named respondent, Miss Zone and Mr Abdelelah Ouhiya of Estateagentpower limited. Miss Zone was not present but the Tribunal decided to proceed in her absence in accordance with Rule 34 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 (L. 8) as the Tribunal was satisfied that the parties had been notified of the hearing or that reasonable steps had been taken to notify the parties of the hearing; and the Tribunal considered that it was in the interests of justice to proceed with the hearing. The Applicants other than Mr Eadie attended with their representative and were ready to proceed with their application.

4. Rights of appeal are set out in the annex to this decision and relevant legislation is set out in an appendix to this decision.

5. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was coded as CVPREMOTE - use for a hearing that is held entirely on the Ministry of Justice Cloud Video hearing Platform with all participants joining from outside the court. A face to face hearing was not held because it was not possible due to the Covid -19 pandemic restrictions and regulations and because all issues could be determined in a remote hearing. The documents that were referred to are in a bundle of many pages, the contents of which we have recorded and which were accessible by all the parties. Therefore, the tribunal had before it an electronic/digital trial bundle of documents prepared by the parties, in accordance with previous directions.

6. The respondent is the owner of the property as listed on its registered title. At the start of the hearing there was an application to substitute Estateagentpower Limited for the respondent. It was asserted that the company was the party responsible for the lettings and not the respondent. In reply the applicants asserted that :-

> *The Respondent, Sunette Zone, is a person in control of the property and the Applicants have the right to chose the party to proceed against. It is the Applicant's position that removal of the person in control of the property would not only contradict the decision in the Upper Tribunal case of Rakusen v Jepsen [RRO/3/2020], which confirmed the decision in Goldsbrough v CA Property Management [RRO/7/2019] that the superior landlord can be named as a Respondent but also go against the overriding objectives of the Tribunal. Rule 3 of the FtT highlights that the case should dealt with fairly and justly considering the resources of the parities. It is neither fair or just to replace the Respondent with a company in financial distress, who may dissolve at a moments notice or be unable to pay any award that is made. There is nothing stopping EAP paying the award on behalf of the Respondent if they choose to.*

The Tribunal accepted the view of the applicants set out above and therefore refused the application to substitute the respondent with Estateagentpower Limited so that the respondent remained the party named in the application namely Ms Zone. The company also submitted a trial bundle comprising a statement from the company and reasons for opposing the application as well as other supporting documentation and information. The Tribunal did not consider this documentation as it was submitted very late and by a party that had no standing with regard to this dispute and was not a party to it. This information was submitted after the respondent was served with a notice from the Tribunal threatening to bar her from further participation in the proceedings as a consequence of her complete failure to comply with the Directions of the Tribunal. The respondent failed to file and serve any evidence whatsoever, or even to respond to any correspondence from the Tribunal.

Background and the law

7. An HMO (Housing in Multiple Occupation) is when you have a minimum of 3 people in 2 households living together who are sharing amenities. There are a range of different types of accommodation that could be an HMO, depending on how many people are living there and what the living arrangements are. As a general rule, where there are three or more tenants in a property who make up more than one household with shared toilet, bathroom or kitchen facilities, this could be an HMO. An HMO where there are at least 5 tenants forming more than one household sharing the facilities mentioned above is generally licensable under the Mandatory Licensing scheme introduced by the Housing Act 2004.

8. Section 41 of the Housing and Planning Act 2016 allows tenants to apply to the Tribunal for a rent repayment order. The Tribunal must be satisfied beyond reasonable doubt that a person/company has committed an offence described in Part two of the Act and in that regard section 72 of the 2004 Act states: -

> *72 Offences in relation to licensing of HMOs*
>
> *(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.*

9. Under section 41 (2) (a) and (b) of the 2016 Act 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. The application to the Tribunal was made on 19

September 2020. From the evidence before it the Tribunal was satisfied that the alleged offence occurred in the period of 12 months ending with the day on which the application was made to the Tribunal.

10. The total value of the application is the combined amounts for the three claimed sums set out above. The applicants also supplied to the Tribunal proof of payment shown in the trial bundle by way of bank statements. The Tribunal were satisfied that these payments had indeed be made.

11. It was noted that the local authority confirmed by letter dated 17 March 2020 that no licence in respect of the property existed but one had been applied for on 7 February 2020. The Environmental Health Officer for Camden wrote "*I visited the above property on 24 January 2020 when it was confirmed that the property was being occupied as an HMO There were 6 tenants living in the property who shared kitchen and bathroom amenities and paid rent to the managing agents Estateagentpower Limited …. A HMO licensing application was applied for this property on 7 February 2020 by Estateagentpower Limited on behalf of the owner Sunette Zone. A landlord who operates a licensable HMO without a licence commits an offence. This offence carries an unlimited fine, an offence was therefore committed under section 72(1) of the Housing Act 2004*.". Accordingly, there was no issue before the tribunal as to the need for a licence.

12. The property is potentially subject to two licensing schemes but the Tribunal were satisfied that the following applied. First the Mandatory Licensing Scheme. This is the scheme under the Housing Act 2004, defined at s.254 of that Act as applicable to all HMOs in which five occupants from more than one household share amenities. The scheme applies across England. A failure to licence a property as required by this scheme is an offence under s.72(1) of the Housing Act 2004. At the time of the EHO's visit on 24 January 2020the property was required to be licensed under this scheme as it housed six occupants from more than one household. Each of the applicants confirms in their sworn witness statements that they shared the property with other persons, none of whom were members of the same household. The presence of six persons with separate households clearly meets the requirements of the Mandatory Licensing Scheme; the property was accordingly required to be licensed under this scheme.

13. Secondly, and in the alternative, the Additional Licensing Scheme was established by the London Borough of Camden, as defined by the designation of 8 December 2015 being applicable to all HMOs with three or more occupants from two or more households if it was not subject to mandatory licensing The scheme applies across the borough. A failure to license a property as required by this scheme is an offence under s.72(1) of the Housing Act 2004. The property was required to be licensed under this scheme from the point when it housed three or more occupants from more than one household. The property clearly met the requirements of

the Additional Licensing Scheme from 23 November 2019 until 7 December 2019 when the occupation increased to 5 and the property then came within the mandatory scheme..

The Offence

14. There being a house as defined by statute, then a person commits an offence if he is a person having control of or managing a house which is required to be licensed under Part two of the Act but is not so licensed. The respondent has therefore committed an offence under section 72 (1) of the Housing Act 2004 (as amended by the Housing and Planning Act 2016) as the respondent was in control of an unlicensed property. The Tribunal relies upon the Upper Tribunal decision in the case of *Goldsbrough and Swart v CA Property Management Ltd and Gardner* [2019] UKUT 311(LC) in making this finding.

15. In the Upper Tribunal Judge Elizabeth Cooke found that where the alleged offence is controlling or managing an unlicensed HMO, an RRO can only be made against a landlord of the property in question. While a managing agent cannot be a landlord, she concluded that the definition of a landlord, for the purposes of the 2016 Act, included both the tenants' immediate landlord and the freehold owners of the property, in circumstances where the freehold owners had granted a lease of the property to the tenants' immediate landlord, who then entered into tenancy agreements with the tenants. This is the Tribunal believes the situation that arose in this case and therefore the case applies thus enabling the Tribunal to make a decision that affects this respondent.

16. To assist I quote some paragraphs of Judge Cooke's decision: -

> *"31. I also agree that a managing agent that does not have a lease of the property cannot be a landlord. If that is what the government guidance, quoted at paragraph 23 above, is intended to say then it is correct. But if it is intended to say that an intermediate lessee, who is the landlord of the applicants but the sub-tenant of the freeholders (or indeed of another superior lessee) cannot be subject to an RRO than that would appear to be incorrect and misleading. It would be very helpful for that guidance to be clarified.*
>
> *32. Where I part company with the FTT is in its restriction of liability to an RRO to "the landlord" of the occupier. That is not what the 2016 Act says. The only conditions that it sets for liability to an RRO are, first, that the person is "a landlord" and second that that person has committed one of the offences. Certainly the person must be a landlord of the property where the tenant lived; section 41(2)(a) requires that the offence relates to housing that, at the time of the offence, was let to the tenant. It does not say that the person must be the immediate landlord*

of the occupier; if that was what was meant, the statue would have said so.

35. If the only possible respondent were the landlord who held the immediate reversion to the tenant, it would be possible for a freeholder to set up a situation where a rent repayment order could not be made, by first granting a lease of the property to a company that is not in control of, nor managing, the property and is ineligible for an HMO licence, and then having that company grant the residential tenancies…."

17. Further guidance can be found in Rakusen v Jepson [2020] UKUT 298 (LC) where the Deputy President Martin Rodger QC stated that:-

58. It follows that each of the offences under the 2004 Act identified in section 40, 2016 Act may be committed by a superior landlord.

59. These possibilities are not theoretical. There was evidence before the Tribunal that the policy of the London Borough of Camden is that licences will not be granted to landlords holding less than a five year term (that being the usual duration of a licence under Part 2 and 3, 2004 Act), and that Camden considers the most appropriate person to be a licence holder in such situations to be the superior landlord.

18. It was unclear in this case whether the role of Estateagentpower was one of landlord or agent. The tenancy agreements were ambiguous on this point and there was no evidence of the agreement between Estateagentpower and Ms Zone. However, it is clear that Ms Zone is the owner of the property and is therefore a landlord either directly or as a superior landlord. A letter from Camden council confirms that on 7 February 2020 Estateagentpower applied for a license on behalf of the owner Sunette Zone

19. In the light of the above, the Tribunal took time to carefully consider the evidence regarding the absence of a licence but came to the inescapable conclusion that none had been issued by the Council. Therefore, the Tribunal concluded that this was an unlicensed property in relation to this application. There were no submissions or other evidence of a reasonable excuse for not having applied for a licence. Accordingly, the tribunal had no alternative other than to find that the respondent was guilty of the criminal offence contrary to the Housing Act 2004 being in control of an unlicensed property.

The tribunal's determination

20. The amount of the rent repayment order was extracted from the amount of rent paid by the applicants during the periods of occupancy as set out within the trial bundle where the rents actually paid were fully stated in a spreadsheet format. The amounts are set out in this decision at paragraph (2) above. These sums represent the maximum sum, (100%), that might form the amount of rent repayment orders

21. In deciding the amount of the rent repayment order, the Tribunal was mindful of the guidance to be found in the case of *Parker v Waller and others* [2012] UKUT 301 (LC) as to what should the Tribunal consider an appropriate order given the circumstances of the claim. Amongst other factors the tribunal should be mindful of the length of time that an offence was being committed and the culpability of the landlord is relevant; a professional landlord is expected to know better. From the evidence before it provided by the applicants the Tribunal took the view that the respondent was a professional landlord. The Tribunal was told that the respondent in fact owned some 25 properties. As was stated in paragraph 26 of *Parker:-*

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

22. Having said that, when considering the amount of a rent repayment order the starting point that the Tribunal is governed by is s.44(4), which states that that the Tribunal must "in particular, take into account" three express matters, namely:

> (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.

The Tribunal must therefore consider the conduct of the parties and the financial circumstances of the respondent. Express matter (c) was not considered as no such convictions apply so far as the respondent is concerned.

23. The Tribunal were mindful of the recent Upper Tribunal decision in *Vadamalayan v Stewart and Others* [2020] UKUT 183 (LC). In particular Judge Elizabeth Cooke said: -

12. That means that there is nothing to detract from the obvious starting point, which is the rent itself for the relevant period of up to twelve months. Indeed, there is no other available starting point, which is unsurprising; this is a rent repayment order so we start with the rent.

14. It is not clear to me that the restriction of a rent repayment order to an account of profits was consistent with Parliament's intention in enacting sections 74 and 75 of the 2004 Act. The removal of the landlord's profits was – as the President acknowledged at his paragraph 26 – not the only purpose of a rent repayment order even under the provisions then in force. But under the current statutory provisions the restriction of a rent repayment order to the landlord's profit is impossible to justify. The rent repayment order is no longer tempered by a requirement of reasonableness; and it is not possible to find in the current statute any support for limiting the rent repayment order to the landlord's profits. That principle should no longer be applied.

53. The provisions of the 2016 Act are rather more hard-edged than those of the 2004 Act. There is no longer a requirement of reasonableness and therefore, I suggest, less scope for the balancing of factors that was envisaged in Parker v Waller. The landlord has to repay the rent, subject to considerations of conduct and his financial circumstances. There may be a case, as I said at paragraph 15 above, for deducting the cost of utilities if the landlord pays for them out of the rent (which was not the case here). But there is no justification for deducting other expenditure. The appellant incurred costs for his own benefit, in order to get a rental income from the property; most were incurred in performance of the appellant's own obligations as landlord. The respondents as tenants were entitled to the items set out in the appellant's schedule of expenditure (insofar as they do relate to the property; in the circumstances I do not have to resolve disputes of fact for example about item 8). The respondents are entitled to a rent repayment order. There is no reason to deduct what the appellant spent in meeting one obligation from what he has to pay to meet the other.

54. The appellant also wants to deduct what he had to pay by way of mortgage payments to the TSB and interest on another loan which has not been shown to relate to the property. The FTT refused to deduct the mortgage payments because the mortgage was taken out in 2016 whereas the property was purchased in 2014, so that the mortgage did not appear to have funded the purchase. The appellant says that the property was bought some years before that and that this was a re-mortgage. He did not produce evidence about that to the FTT and he could have done so. More importantly, what a landlord pays by way of mortgage

repayments – whether capital or, as in this case, interest only – is an investment in the landlord's own property and it is difficult to see why the tenant should fund that investment by way of a deduction from a rent repayment order. The other loan has not been shown to relate to the property and I regard it as irrelevant, as did the FTT.

24. Since the decision in *Vadamalayan*, there have been other Upper Tribunal decisions in this area, notably those in *Ficcara and others v James*(2021) UKUT 0038 (LC) and *Awad v Hooley*(2021) UKUT 0055(LC). In *Ficcara v James*, in making his decision Martin Rodger QC stressed that whilst the maximum amount of rent was indeed the starting point the First-tier Tribunal (FTT) still had discretion to make deductions to reflect the various factors referred to in section 44(4) of the 2016 Act. He also noted that section 46(1) of the 2016 Act specifies particular circumstances in which the FTT must award 100% and must disregard the factors in section 44(4) in the absence of exceptional circumstances, and he expressed the view that a full assessment of the FTT's discretion ought to take section 46(1) into account. In addition, he stated that neither party was represented in *Vadamalayan*, that the Upper Tribunal's focus in that case was on the relevance of the amount of the landlord's profit to the amount of rent repayment and that *Vadamalayan* should not be treated as the last word on the exercise of discretion required by section 44.

25. In *Awad v Hooley*, Judge Cooke agreed with the analysis in *Ficcara v James* and said that it will be unusual for there to be absolutely nothing for the FTT to take into account under section 44(4).34.Therefore, adopting the approach of the Upper Tribunal in the above cases and starting with the specific matters listed in section 44, the tribunal is particularly required to take into account (a) the conduct of the parties, (b) the financial circumstances of the landlord, and(c) whether the landlord has at any time been convicted of a relevant offence. We will take these in turn.

26. In the light of the above when considering financial circumstances, the Tribunal should not consider profit, mortgage payments or reasonableness. So, the Tribunal did not take account of any of these points when coming to the amount of the rent repayment order. The tribunal could not see any justification for a deduction for any outgoing. The conduct of the respondents did not seem to justify this allowance.

27. It has been observed that quantum of any award is not related to the profit of the Respondent, following *Vadamalayan*. The only expense deductions that may be allowed, at the discretion of the Tribunal, are for utilities paid on behalf of the tenants by the landlord. We take the view that council tax is a fixed cost of the landlord, also payable when the property is empty. It is not "consumed at a rate the tenant chooses" (*Vadamalayan*, §16), as per utilities and should not be an allowable

expense. The Tribunal agrees with this assessment of the relevance of this outgoing. Details of other expenses were submitted but in the absence any witness before the Tribunal to give evidence on behalf of the respondent, the Tribunal was unable to take into account these items.

28. The Tribunal then turned to the matter of the conduct of the parties. The landlord should have licenced this property but did not. This is a significant factor as the property should have been licenced and ignorance of the law/facts does not assist the respondent, she remains liable. The Respondent's representative informed the Tribunal that the Respondent owned a number of properties and apart from this one all those that required to be licensed were licensed.

29. The applicants asserted that there were issues with doors at the property that were not proper fire doors. Once this issue was raised by the applicants the doors were replaced with appropriate fire doors. Furthermore, the necessary documents were not given to the tenants such as gas safety certificates and How To Rent leaflets. As the applicants said in their statement of case: -

> *"The regulations to comply with the Mandatory HMO Licensing scheme rules are more stringent, especially surrounding the additional fire risks for HMO properties. According to Fire risk statistics, you are "six times more likely to die in a fire if you live in any House in Multiple Occupation (HMO), compared with a single-family house" and "sixteen times more at risk of fatal injury if you live in an HMO which is 3 or more storeys high" compared to a single-family house."*

When the local authority inspected the house, they provided a schedule of works to the property which they described as being "with regards to the defective appliances in the common parts and the fire hazards that were present which posed a risk to the safety of the occupiers" Ms Davey informed the Tribunal that these works were minor and carried out immediately, however a copy of the schedule was not disclosed.

The Tribunal took particular note of these failings with regard to an assessment of the conduct of the parties and in particular the respondent.

30. Furthermore, there was a distinct lack of engagement with the Tribunal on the part of the respondent. The failure of the respondent to comply with the directions of the Tribunal is aggravating conduct. The respondent has made no response at any stage in the process, despite repeated valid service of documents upon her.

31. Consequently, while the Tribunal started at the 100% level of the rent it thought that there were no reductions that might be appropriate,

proportionate or indeed necessary to take account of the factors in the Act. Therefore, the Tribunal decided that there should be no reduction from the maximum figures set out above giving a final figure of 100% of the claim. This figure represents the Tribunals overall view of the circumstances that determined the amount of the rent repayment order.

32. Consequently, the Tribunal concluded that the amounts of the rent repayment orders are for Bogdan Berian the sum of £1748.34 and for David Eadie the sum of £1487.83 and for Jacob Palmer and Sophie Hallam the sum of £2332.44, the tribunal being satisfied beyond reasonable doubt that the respondent had committed an offence pursuant to s.72 of the Housing Act 2004, namely that a person commits an offence if he is a person/company having control of or managing a house which is required to be licensed under Part two of the 2004 Act but is not so licensed.

33. Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 N0 1169 (L.8) does allow for the refund of Tribunal fees. Rule 13(2) states that: -

> "*The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor*."

34. There is no requirement of unreasonableness in this regard. Therefore, in this case the Tribunal considers it appropriate and proportionate in the light of the determinations set out above that the first respondent refund the Applicants' Tribunal fee payments of £300.

35. In the circumstances the tribunal determines that there be an order for the refund of the Tribunal fees in the sum of £300 pursuant to Rule 13(2).

Name:	Judge Professor Robert Abbey	Date:	2 June 2021

Annex

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

72 Offences in relation to licensing of HMOs

(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.

(2) A person commits an offence if—

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3)A person commits an offence if—

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

(b) he fails to comply with any condition of the licence.

(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), 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), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine .

(7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(8) For the purposes of subsection (4) a notification or application is "effective" at a particular time if at that time it has not been withdrawn, and either—

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(9) The conditions are—

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or

(b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(10) In subsection (9) "relevant decision" means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

s41 Housing and Planning Act 2016

Application for rent repayment order

(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.

(3)A local housing authority may apply for a rent repayment order only if—

(a)the offence relates to housing in the authority's area, and

(b)the authority has complied with section 42.

(4)In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

44 Amount of order: tenants

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.
(2)....
(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.
(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.