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

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| **Case reference** | : | **LON/00AM/HMR/2020/0120** |
| **HMCTS code** | : | **V: VIDEO** |
| **Property** | : | **Basement flat, 98 Albion Road, London N16 9PD** |
| **Applicants** | : | **Mr W Spilsbury, Ms C Jervis and Ms I Shaw** |
| **Representative** | : | **Justice for Tenants** |
| **Respondent** | : | **Mrs C Stern** |
| **Representative** | : | **Bude Nathan Iwanier LLP** |
| **Type of application** | : | **Application for a Rent Repayment Order** |
| **Tribunal members** | : | **Judge Pittaway**<br>**Mrs L Crane MCIEH** |
| **Date of Hearing** | : | **1 March 2021** |
| **Date of decision** | : | **15 March 2021** |

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**DECISION**

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## Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents before the tribunal at the hearing were;

1. The application (44 pages)
2. The applicants' statement of case (110 pages)
3. The respondent's statement of case (49 pages)
4. The applicants' response (55 pages)
5. The skeleton argument of Ms Rimington-Pounder on behalf of the respondent dated 26 February 2021

the contents of which the tribunal has noted.

At the hearing Mr McClenahan of Justice for Tenants represented the applicants and Ms Rimington-Pounder of counsel represented the respondent.

The tribunal heard evidence from Mr Spilsbury for the applicants, to which evidence Ms Jervis and Ms Shaw, who were present concurred. The tribunal heard evidence from Mr Simon Stern, the son of the respondent and he was examined and cross-examined on the respondent's statement of case which contained his statement of truth as well as that of Mrs Stern, his mother. Mrs Stern did not attend the hearing. Mr Stern explained that he acted as his mother's agent in relation to the property, both as to its letting and subsequent management.

The tribunal had regard to the decisions in the following cases to which they were referred;
*Fallon v Wilson* [2014] UKUT 0300 (LC)
*Mohamed & Anor v L B of Waltham Forest* [2020] EWHC 1083 (Admin)
*I R Management Services Ltd v Salford City Council* [2020] UKUT 81
*Vadamalayan v Stewart* [2020] UKUT 183 (LC)
*Thurrock Council v Khalid Daoudi* [2020] UKUT 209 (LC)
*Thurrock Council v Palm View Estates* [2020] UKUT 355 (LC)

## Decisions of the tribunal

1. The tribunal is satisfied beyond reasonable doubt that the respondent committed the offence under s72(1) Housing Act 2004 (the '**2004 Act**') of controlling or managing an unlicensed HMO.

2. The tribunal finds that the respondent did not have the defence set out in s72(5) of the 2004 Act, of having a reasonable excuse for continuing to manage and control the HMO without licence during the relevant period.

3. The tribunal determines that the applicants are entitled to a Rent Repayment Order in the sum of £28,200.

4. The tribunal determines that the respondent shall pay the applicants £300 in respect of the reimbursement of the tribunal fees paid by the applicants.

## The background

5. The tribunal received an application dated 2 July 2020 under section 41 of the Housing and Planning Act 2016 ("**the 2016 Act**") for a rent repayment order ('**RRO**') in respect of Basement flat, 98 Albion Road, London N16 9PD ('the **Property**'). The London Borough of Hackney is the local housing authority.

6. The application has been brought by the applicants jointly. They allege that in respect of the period 14 April 2019 to 14 April 2020 the respondent committed an offence under section 72(1) of the Housing Act 2004 (the **'2004 Act'**) in controlling or managing a House in Multiple Occupation without a licence.

7. In their application the applicants sought a total repayment of £28,200, being twelve monthly payments of £2,350, in respect of the period from 14 April 2019 to 14 April 2020. All the applicants were in occupation of the property during this period, being tenants of the property from 12 June 2018 to 1 June 2020.

8. The applicants also seek repayment of their application fee of £100 and their hearing fee of £200.

9. In their application the applicants named Justice for Tenants as their representative. Official copies for the freehold of the property were attached to the application which showed the respondent to be the registered proprietor of the freehold interest in the Property.

10. On 9 November 2020 the Tribunal issued Directions.

11. The directions set out the issues which the Tribunal would need to consider. The respondent, having been sent the application and supporting documents by the tribunal, was advised to seek independent legal advice. The applicants were directed to file a bundle of documents for use by the tribunal by 14 December 2020, and the respondent to file a bundle of documents by 18 January 2021. The applicants were given the right to send a brief reply to the issues raised by 1 February 2021.

## The Property

12. The Property is described as a 3-bedroom, self-contained basement flat with a shared kitchen and bathroom. The applicants describe it as 'a standard HMO arrangement, there were communal cooking and toilet and washing facilities, with separate, unrelated individuals/households each paying rent and occupying the property as their only place to live.'

13. No party requested an inspection and the tribunal did not consider that one was necessary.

14. The property was let to the applicants under one Assured Shorthold tenancy Agreement dated 12 July 2018. The rent was paid to the landlord out of one account.

15. The London Borough of Hackney designated the entire borough as subject to Additional Licensing, with effect from 1 October 2018, with the designation applicable to all Houses in Multiple Occupation occupied under a tenancy or licence unless subject to a mandatory licence or statutorily exempt and with an exception for converted blocks flats where not all the flats were privately rented, and the notice it issued to this effect is in the applicant's bundle. The application also included an e mail from Property Licensing at the London Borough of Hackney dated 5 May 2020 which confirmed that at that date the property did not have a licence under the Additional Licensing Scheme currently operated by that authority, that such a licence had never been issued for the property and that no application had ever been made for such a licence.

**Matters agreed**

16. The respondent accepts that she was a person having control or managing the property for the purposes of s72(1). The respondent acknowledges that she received rent of £28,200, during the relevant period of 12 months from 14 April 2019, and accepts that there was no HMO licence for the property during the relevant period.

**Evidence**

17. Mr Spilsbury gave evidence that the applicants had met on an on-line website in 2017 when each was looking for a property to rent in London. Before moving into the property they had lived together in another rental property for a year, together with one other person. References were taken for each of the applicants, who had given details of their respective addresses over the previous three years and details of their next of kin.

18. In cross-examination Mr Spilsbury denied that the applicants had held themselves out as one unit. He said that the property had been advertised as a flat. He said the applicants were not one household and that the letting agent knew that they were three independent professionals, and that each had been checked independently. The respondent, acting by her son, had not asked them whether or not they were one household. He agreed that the internal doors did not have locks on them. As to requested repairs Mr Spilsbury referred to an ongoing problem with an external leak and damp, which had necessitated the use of a humidifier at the property. An internal leak had been dealt with promptly but not the resultant redecoration required. He confirmed that in April 2020 he had contacted Mr Stern to ask for a rent reduction. The request was made at a time, during the pandemic, when it would have been difficult for

the applicants to look for a new property. The garden at the property was in a poor condition with debris in the area that might be grassed. He undertook work to it, and the landlord reimbursed him the cost price of materials.

19. In re-examination Mr Spilsbury referred to the length of time it had taken Mr Stern to deal with issues raised of him, and that he believed that the landlord was aware of existing leaks at the time of the letting. The tribunal were referred to an e mail in the Applicant's bundle dated 6 May 2020 which confirmed that the applicants' deposits were not protected under any of the other government authorised Tenancy Deposit Protection schemes. Mr Spilsbury stated that his deposit had not been returned.

20. Mr Spilsbury confirmed to the tribunal that the property had three bedrooms, one occupied by each of the applicants.

21. Ms Shaw and Ms Jervis confirmed that they had nothing to add to the evidence that the tribunal had heard from Mr Spilsbury.

22. The tribunal heard evidence from Mr Stern, as his mother's agent and the person responsible for letting and managing the property on her behalf. His oral evidence expanded upon the information contained in the joint statement of case from Mrs Stern and himself. He explained that the property, the basement of a converted Victorian house, had been renovated with the intention of letting it, through a letting agent, for single family use. It had never been intended that it should be let as an HMO. If that had been the intention it would have had fire doors and locks installed. Mr Stern explained that the external damp was penetrating the flat through the asphalted stairs leading to the remainder of the house. Because remedying this type of damp ingress is difficult he had wanted to be certain that the membrane was working. He said that the applicants had never complained about long-term health problems, that he had offered them a humidifier and that he was unaware of a damp issue in the bathroom. He considered that the property was let with the garden in its then stat but that he had removed bulky items from it. He had paid for the garden works undertaken by Mr Spilsbury as a matter of goodwill. Mr Stern explained that he believed that the tenants' deposits had been resecured when the original protection ended in February 2020 and that the tenants had never requested the return of their deposits which he would have returned if requested, as he had no issues at the end of their tenancy. They had wanted to remain at the property in April 2020, but at a reduced rent to which he was unable to agree. The property had not required an HMO licence when it was let and neither he nor his mother had been told of the change in legislation which occurred in October 2018.

23. In cross-examination Mr Stern stated that his mother rented five or six properties, to individual households which did not have to fulfil HMO requirements. In re-examination he confirmed that these were let on Assured Shorthold tenancies. There were a total of eight properties referred to in Mrs Stern's 2018 tax return. Mr Stern confirmed that the others were ground rent properties. He confirmed that he was now aware of the HMO licensing requirements in general. On being referred to Mr Spilsbury's message of 20

March 2019 which referred to the possibility of the damp and mould causing health problems he commented that at that date it was not an existing problem. On being referred to Ms Jervis 'snagging list' which referred to an agreement having been reached that the garden would be de-weeded and concrete blocks and wooden beams removed from it Mr Stern denied that he had agreed to do any work to the garden; paying for the turf had been a 'one-off' gesture. Mr Stern was unable to provide evidence from the bundle which he had provided to the tribunal of the resecuring of the deposits after February 2020, simply repeating that he would have repaid these on request. Mr Stern did not provide evidence that the letting agent had confirmed that the letting was to one household, nor when builders had been contacted to remedy the disrepair in the property. He stated that he had not paid for the electrical cost of running the humidifiers, as he had not been asked to. Mr McClenahan directed Mr Stern to the message of 20 May 2019 in the Applicants' bundle timed at 20.43 which asked him if he would be covering the increased electricity bill. Mr Stern was unable to point the tribunal to any statement in the respondent's statement of case as to undertaking any internal repair.

24. In response to a question from the tribunal Mr Stern confirmed that he had made periodic inspections of the property, including the interior.

**Respondents' submissions**

25. Ms Rimington-Pounder made submissions on behalf of the respondent. She submitted that for the tribunal to make a rent repayment order s 43(1) of the 2016 Act required it to be satisfied beyond reasonable doubt that the landlord had committed an offence. By s.72(1) of the 2004 Act such offences include the control or management of an unlicensed HMO. Ms Rimington-Pounder submitted that if the property was occupied by one household it did not require an HMO.

26. Ms Rimington-Pounder then submitted that the tribunal had to decide whether the respondent had a reasonable excuse for controlling an HMO without a licence, which is a defence available to the respondent under s.72(5) and which must be proved by the respondent to a civil standard of proof, citing *Thurrock Council v Palm View Estates*. In her submission it was a reasonable excuse that the respondent did not let the property as an HMO and was not alerted to the fact that the property was an HMO during the relevant period. Mrs Stern does not usually let her properties as HMOs. The property did not have the physical characteristics of an HMO and the rent was paid in one payment.

27. Ms Rimington-Pounder submitted that if there was a breach it was a genuine mistake on the respondent's part, acting through her son. As she did not know a licence was required failure to obtain one cannot be considered poor conduct on her part. She submits that the respondent is not a professional landlord.

28. Ms Rimington-Pounder invited the tribunal to have regard to the landlord's genuine mistake as to the need for a licence which only arose after the letting, that the landlord had not been told by the council of the need for a licence, that

she had believed the applicants to be one household and that she had had no intention to flout the law. She submitted that Mrs Stern should not be considered a 'professional landlord', and that the distinction made in *Fallon v Wilson* at paragraph 22(6) as regards professional landlords remained relevant notwithstanding the decision in *Vadamalayan*. Ms Rimington-Pounder also invited the tribunal to have regard to the fact that the flat had been refurbished, that the landlord had been accommodating with regard to the garden and that the landlord had sought to address the damp problem. In her submission if the landlord's conduct had been poor the tenants would not have asked to remain in April 2020.

29. Ms Rimington-Pounder submitted that the matters to be taken into account specified in s44(4) are not exhaustive. She invited the tribunal to have regard to conduct outside the relevant period and referred to the refurbishment which had occurred immediately before the letting, the payment for work in the garden, and that the respondent had been a responsive landlord who dealt with repair issues directly.

**Applicants' submissions**

30. Mr McClenahan submitted that it was illogical for the respondent to argue that she was unaware of the need to licence the property as an HMO and at the same time argue that no HMO was necessary because the applicants were one household. He referred to the applicants having different surnames, coming from different areas (except in the immediately preceding year when they were renting together) and having different next-of-kin. He submitted that belief that the applicants were a single household was not a reasonable excuse to the offence.

31. Mr McClenahan submitted that the evidence before the tribunal pointed to the applicant being equivalent to a professional landlord; her tax return showed that her income derived from let properties and there was no evidence before the tribunal that her other properties were not HMOs.

32. Mr McClenahan submitted that the respondent has conducted herself poorly and that 100% of the rent applied for should be awarded to the applicants. He referred the tribunal to paragraph 48 of *Vadamalaya,* which makes it clear that the relevant landlord's conduct is that occurring during the relevant period, in this case April 2019 to April 2020, during which period no attempt was made to licence the property so that there should be no deduction from the maximum amount on the grounds of the landlord's conduct. He submitted that the respondent had made no admission of guilt or offered an apology to the applicants for her failure to licence. He reminded the tribunal of her failure to protect the deposit. He reminded the tribunal of the delays by the landlord in remedying the damp at the property. He submitted that these did not point to good conduct on the part of the respondent and that therefore there should be no reason for the tribunal to reduce the RRO. Conversely he submitted that the applicants' conduct had been exemplary, they had paid their rent promptly,

reported issues as they arose to the landlord and no complaint had been made against them.

33. Mr McClenahan referred the tribunal to the decision in *Mohamed,* that a breach of s72(1) is a strict liability offence for which no mens rea is required. As to the respondent's submission that she was unaware of the need for an additional HMO licence Mr McClenahan submitted that ignorance of the law is not an excuse.

34. Mr McClenahan also submitted that paragraph 48 of *Vadamalaya* makes it clear that not being a professional landlord is not of itself justification for any deduction from the maximum amount. In that regard Mr McClenahan submitted that there was insufficient evidence before the tribunal as to the status of the respondent's other properties. Given that the tax return included in the respondent's bundle showed that her entire income derived from property rentals suggested that she was a professional landlord.

## The tribunal's reasons for its decisions

**35.** The tribunal has had regard to the statements of case, the evidence that it heard, the statements of case in the bundles, the skeleton argument and the submissions made at the hearing on behalf of the parties, and the case law referred to in reaching its decision. As appropriate these are referred to in the reasons for the tribunal's decision.

36. The relevant legal provisions referred to in the tribunal's decision and reasons are set out in the Appendix to this decision.

37. The issues before the tribunal to determine were

- Did the respondent commit an offence under s72(1) of the 2016 Act?
- Did the respondent have a reasonable excuse for not having an HMO licence because she believed the applicants to be one household or because she was not informed of the need for a HMO licence after October 2018.
- The quantum of any RRO.
- Whether the applicants' fees should be refunded.

## Offence under s72(1) of the 2004 Act

38. No HMO licence would be required if the property was occupied by persons living in a single household. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 makes it a condition of an HMO that it is occupied by persons living in two or more single households.

39. The property was let to three individuals and on the evidence before it the tribunal finds that the applicants did not hold themselves out as a single household. S258(2) (a) of the 2004 Act provides that persons are not to be regarded as forming a single household unless they are all members of the same family. That all the applicants are named as tenants on the AST does not make them a single household, nor does the fact that they have previously rented a property together and wished to so again, nor the fact that rent was paid monthly by one single payment. The applicants are not all members of the same family. Their different surnames on the tenancy agreement, and subsequent inspection of the property by Mr Stern should have alerted him to the fact that they were not all members of the same family.

40. The tribunal find that the property was not occupied by a single household and therefore it did require a HMO licence. The tribunal is satisfied beyond reasonable doubt that the respondent committed an offence under s72(1) of the 2004

**Did the respondent have a reasonable excuse for not having an HMO licence?**

41. The tribunal do not consider that the respondent has shown that it was reasonable to believe that the applicants were a single household.

42. When the property was let to the applicants, a letting to the three individuals did not require an HMO licence. An additional HMO licence became necessary after October 2018.

43. The tribunal accept that the respondent may not have had previous experience of HMOs, that she had not intended the property to be let as an HMO, and indeed at the time of the letting the property did not require an HMO licence.

44. Paragraph 44 of *Mohamed* refers to the dicta in *Thanet District Council v Grant* [2015] EWHC 4290 (Admin) where it was recognised that absence of knowledge might be relevant to the defence of reasonable excuse.

45. At paragraph 34 of the decision in *Thurrock Council v Palm View Estates* it was held that the relevant issue was whether the appellant had a reasonable excuse for continuing to manage and control an HMO without a licence. The issue was not whether the appellant had a reasonable excuse for not applying for a licence. Accordingly, the tribunal do not find that the respondent's submission that she believed that the property was let to a single household and that she had not intended to let the property as an HMO to be a reasonable excuse to the offence, which continued throughout the relevant period. Even if the respondent believed that the applicants were one household at the commencement of the letting subsequent inspection of the property, undertaken by Mr Stern, should have put the respondent, as a prudent landlord, on notice that this was not the case.

46. The tribunal finds that while the respondent may have had a reasonable excuse immediately after the introduction of the additional licensing regime in October 2018 for not realising that she should licence the property she did not have a reasonable excuse continuing to manage and control an unlicensed HMO for the next 18 months.

## Quantum

47. The quantum of any RRO is determined in accordance with s44 of the 2016 Act which provides at s44(3) that the amount the landlord may be required to repay must not exceed the rent paid in respect of that period.

48. As to quantum of the RRO the tribunal is also bound by the decision in *Vadamalayan v Stewart*. Accordingly the starting point for the calculation of the quantum is the rent paid during the relevant period (to a maximum of 12 months) less the deductions permitted by that decision, of which there were none in this case.

49. Accordingly the maximum amount that the tribunal may order in repayment is £28,200.

50. S44(4) requires the tribunal to take into account, in particular, the conduct of the landlord and tenant, the financial circumstances of the landlord and whether the landlord had ever been convicted of an offence to which that Chapter of the 2016 Act applies.

51. For the respondent Ms Rimington-Pounder submitted that the landlord had never been convicted of an offence and this was not challenged by Mr McClenahan. Ms Rimington-Pounder made no submissions as to the financial circumstances of the landlord. Mr McClenahan drew the tribunal's attention to the fact that the respondent's income derived entirely from property rental.

52. None of the submissions the tribunal heard as to the conduct of either landlord or the tenants would cause the tribunal to reduce the quantum of the RRO from the maximum amount.

53. The tribunal therefore determines that the applicants are entitled to a Rent Repayment Order in the sum of £28,200.

## Fees

54. As the tribunal has made an RRO in favour of the applicants it is appropriate that they should have their fees refunded.

**Name:** Judge Pittaway **Date:** 15 March 2021

## 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

### Housing Act 2004

**55 Licensing of HMOs to which this Part applies**

(1)This Part provides for HMOs to be licensed by local housing authorities where—

(a)they are HMOs to which this Part applies (see subsection (2)), and

(b)they are required to be licensed under this Part (see section 61(1)).

(2)This Part applies to the following HMOs in the case of each local housing authority—

(a)any HMO in the authority's district which falls within any prescribed description of HMO, and

(b)if an area is for the time being designated by the authority under section 56 as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in the designation.

(3)The appropriate national authority may by order prescribe descriptions of HMOs for the purposes of subsection (2)(a).

(4)The power conferred by subsection (3) may be exercised in such a way that this Part applies to all HMOs in the district of a local housing authority.

### 56 Designation of areas subject to additional licensing

(1) A local housing authority may designate either -

(a) the area of their district, or

(b) an area in their district,

as subject to additional licensing in relation to a description of HMOs specified in the designation, if the requirements of this section are met.

### 61 Requirement for HMOs to be licensed

(1) Every HMO to which this Part applies must be licensed under this Part unless–

(a) a temporary exemption notice is in force in relation to it under section 62, or (b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.

### 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)

### 254 Meaning of "house in multiple occupation"

(1) For the purposes of this Act a building or a part of a building is a "house in multiple occupation" if–

(a) it meets the conditions in subsection (2) ("the standard test");

(b) it meets the conditions in subsection (3) ("the self-contained flat test");

(c) it meets the conditions in subsection (4) ("the converted building test");

(d) an HMO declaration is in force in respect of it under section 255; or

(e) it is a converted block of flats to which section 257 applies.

(2) A building or a part of a building meets the standard test if–

(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.

(3)A part of a building meets the self-contained flat test if—

(a)it consists of a self-contained flat; and

(b)paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).

(4)A building or a part of a building meets the converted building test if—

(a)it is a converted building;

(b)it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);

(c)the living accommodation is occupied by persons who do not form a single household (see section 258);

(d)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);

(e)their occupation of the living accommodation constitutes the only use of that accommodation; and

(f)rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.

**258HMOs: persons not forming a single household**

(1)This section sets out when persons are to be regarded as not forming a single household for the purposes of section 254.

(2)Persons are to be regarded as not forming a single household unless—

(a)they are all members of the same family, or

(b)their circumstances are circumstances of a description specified for the purposes of this section in regulations made by the appropriate national authority.

(3)For the purposes of subsection (2)(a) a person is a member of the same family as another person if—

(a)those persons are married to , or civil partners of, each other or live together as if they were a married couple or civil partners;

(b)one of them is a relative of the other; or

(c)one of them is, or is a relative of, one member of a couple and the other is a relative of the other member of the couple.

(4)For those purposes—

(a)a “couple” means two persons who ... fall within subsection (3)(a);

(b)“relative” means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin;

(c)a relationship of the half-blood shall be treated as a relationship of the whole blood; and

(d)the stepchild of a person shall be treated as his child.

(5)Regulations under subsection (2)(b) may, in particular, secure that a group of persons are to be regarded as forming a single household only where (as the regulations may require) each member of the group has a prescribed relationship, or at least one of a number of prescribed relationships, to any one or more of the others.

(6)In subsection (5) “prescribed relationship” means any relationship of a description specified in the regulations.

## <u>Housing and Planning Act 2016</u>

**40 Introduction and key definitions**

(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord and 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.

(3) A reference to "an offence to which this Chapter applies" is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let to that landlord.

| | *Act* | *section* | *general description of offence* |
|---|---|---|---|
| 1 | Criminal Law Act 1977 | section 6(1) | violence for securing entry |
| 2 | Protection from Eviction Act 1977 | section 1(2), (3) or (3A) | eviction or harassment of occupiers |
| 3 | Housing Act 2004 | section 30(1) | failure to comply with improvement notice |
| 4 | | section 32(1) | failure to comply with prohibition order etc |
| 5 | | section 72(1) | control or management of unlicensed HMO |
| 6 | | section 95(1) | control or management of unlicensed house |
| 7 | This Act | section 21 | breach of banning order |

(4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

**41 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.

### 43 Making of a rent repayment order

(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 had been convicted).

(2) A rent repayment order under this section may be made only on an application under section 41.

(3) The amount of a rent repayment order under this section is to be determined with –

(a) section 44 (where the application is made by a tenant);

(b) section 45 (where the application is made by a local housing authority);

(c) section 46 (in certain cases where the landlord has been convicted etc).

***check***

(2) The amount must relate to rent paid during the period mentioned in this table.

| *If the order is made on the ground that the landlord has committed* | *the amount must relate to rent paid by the tenant in respect of* |
|---|---|
| an offence mentioned in row 1 or 2 of the table in section 40(3) | the period of 12 months ending with the date of the offence |
| an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3) | a period, not exceeding 12 months, during which the landlord was committing the offence |

(3) The amount that the landlord may be required to repay in respect of a period must not exceed –

(a) the rent 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,

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

## The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018

Citation and Commencement

**1.**—(1) This Order may be cited as the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018.

(2) This Order comes into force on 1st October 2018.

Application

**2.** This Order applies in relation to an HMO in England([2]).

Interpretation

**3.** In this Order "the Act" means the Housing Act 2004.

Description of HMOs prescribed by the Secretary of State

**4.** An HMO is of a prescribed description for the purpose of section 55(2)(a) of the Act 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—

(i)the standard test under section 254(2) of the Act;

(ii)the self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or

(iii)the converted building test under section 254(4) of the Act.