FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AN/HMA/2016/0011**
Property	:	**221 Munster Road, London SW6 6BU**
Applicant	:	**(1) Ilaria Manco** **(2) Gemma McNamara** **(3) Susie McAllister** **(4) Alice Jackson** **(5) Alyssa Bullen**
Representative	:	**In person**
Respondent	:	**Mr Sudarshan Puri**
Representative	:	**In Person**
Type of Application	:	**Application for a Rent Repayment Order under section 73 Housing Act 2004**
Tribunal Members	:	**Judge Amran Vance** **Mr C Gowman, MCIEH**
Date and venue of Hearing	:	**25 January 2017** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**2 February 2017**

DECISION

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Decision

1. We order the respondent, Mr Sudarshan Puri to repay to the applicants the sum of **£16,022**.

2. Numbers in bold and square brackets below refer to pages in the hearing bundle provided by the applicant.

Background

3. This is an application for a rent repayment order ("RRO") made pursuant to section 73(5) of the Housing Act 2004 ("the Act"). The application, which was issued by the tribunal on 7 October 2016, relates to 221 Munster Road, London, Sw6 6BU, a residential property on the second and third floor of a three-storey building with a commercial unit beneath. The residential accommodation was, at all relevant times, let as a five-bedroom property ("the Property").

4. The five applicants entered into a joint tenancy agreement with the respondent on 18 June 2015, commencing on 7 August 2015 for a term of 12 months. The rent payable was £3,141.67 per month, payable in advance on the 7th day of each month. They paid a deposit of £4,350 which was returned to them after they vacated the Property on 6 August 2016. The rent payable did not include utility payments which were paid by the applicants themselves. As they were all students they all received an exemption from payment of council tax.

5. On 6 September 2016, at the Central London Magistrates Court, the respondent was convicted of multiple offences in respect of the Property. For failure to license the Property as a House in Multiple Occupation ("HMO") under section 61(1) Housing Act 2004 he was fined £5,000.

6. He was also ordered to pay fines of £2,500 for four offences under Regulation 7 of the Management of Houses in Multiple Occupation (England) Regulations 2006 concerning his failure to keep the fridge in good repair, failure to maintain the bath and shower screen in a good state of repair, and failure to supply a gas safety certificate and electrical safety test certificate when requested by London Borough of Hammersmith.

7. In addition, he was ordered to pay fines of £2,500 each for failure to comply with: (a) Schedule 2 of the Food Safety and Hygiene (England) Regulations 2013 in that the shower cubicle was not maintained in a good state of repair; (b) section 16(2)(a) of the Local Government (Miscellaneous Provisions) Act 1976 for failure to comply with a Notice requiring information as to interests in land for the Property; (c) regulation 3 of the Management of Houses in Multiple Occupation (England) Regulations 2006 for failure to provide a name, address and contact details to each household in the HMO; and (d) regulation 8(2)(a) of the Management of Houses in Multiple Occupation

(England) Regulations 2006 for failure to maintain ceiling plaster in the first floor rear bedroom which was cracked and stained.

8. The respondent pleaded guilty to all nine of these offences. He received a total fine of £25,000 and was ordered to pay a victim surcharge of £120 and costs of £3,341.67, totalling £28,461.67.

9. The tribunal gave directions on 25 October 2016. The respondent was required to file a bundle setting out his reasons for opposing the application which was to include a statement as to any circumstances that could affect the amount of an RRO, which could information about his conduct and financial circumstances. He was directed to include in the bundle any documents to be used at the hearing. The tribunal subsequently received bundles from both parties

10. The relevant legislation is set out in the Appendix 2 to this decision.

The Hearing

11. Ms Manco, Ms McNamara and Ms McAllister all attended the hearing. Mr Armel Collard, Public Protection and Safety Officer at London Borough of Hammersmith & Fulham also attended on behalf of the applicants. The respondent and his wife, Mrs Pratibha Puri were present, as was their son, Mr Jasdeep Puri. Ms McNamara spoke on behalf of the applicants. Mr Puri's son spoke on behalf his father.

12. All parties present agreed that the Property was an unlicensed HMO for the purposes of subsection 73(1) of the 2004 Act during the whole period of the applicants' tenancy and that the respondent was convicted of the nine offences set out above on 6 September 2016. It was also agreed that the total rent paid during the 12 months of the tenancy was £37,700.04. However, the respondent stated that he had to pay 8% of this sum to the letting agents on the initial letting of the Property by way of a letting fee. The letting agents were not, however, involved in managing the Property which was the sole responsibility of the respondent.

The Applicants' Case

13. Ms McNamara gave evidence on behalf of the applicants, referring to her witness statement dated 5 August 2016 which had been provided during the earlier prosecution of the respondent.

14. In that statement she explained how the applicants saw the Property advertised on the website of a letting agent called Lets Do Business. They subsequently inspected the Property and saw that the living room was being used as a bedroom. This was the room that was occupied by Ms McAllister during the applicants' tenancy. Ms McNamara stated that before the tenants signed the tenancy agreement she pointed out to the letting agents that there was a leak affecting the bathroom and was assured this would be remedied by

the landlord. She states that the leak was not remedied and that throughout the tenancy water leaked whenever anyone took a shower. Other problems she says they experienced concerned a small crack in the ceiling plaster of her bedroom and brick and cement dust that fell down the chimney flue spilling out in to the floor. In addition, the fabric of the chair in her bedroom was torn and her wardrobe was very unstable as she believed it had not been properly assembled.

15. She states that she reported these problems to the respondent by email and by telephone on several occasions. She said that her telephone calls usually went unanswered but that she managed to speak to the respondent on 16 September 2015 when he informed her he would attend the Property the following day to look at the problems. She said that he failed to do so.

16. Ms McNamara told us she therefore approached the local authority for assistance which resulted in Mr Collard inspecting the Property on 14 October 2015. Following that inspection, she stopped contacting the respondent as she believed the local authority would deal with him directly to get the problems in the Property resolved.

17. Mr Collard also gave oral evidence. A summary of the evidence he was to provide was included in the applicants' bundle **[27]**. He expanded on this at the hearing. He confirmed that following his inspection of the Property in October 2015 he wrote to the respondent on 29 October 2015 to inform him that the property was required to be licensed as a House in Multiple Occupation. He stated that he wrote, reminding the respondent of this obligation in early December 2015, and received an email in response just before Christmas 2015 stating in which the respondent indicated that he had experienced personal problems. He also stated that in January 2016, he notified the respondent that he was at risk of prosecution and that he should apply for a license by the end of January or early February. We were informed that despite these reminders, at no time did the respondent indicate to the local authority that he wished to apply for a HMO license and no such application was made. Mr Collard therefore initiated the prosecution that resulted in the fine imposed on the respondent by the Central London Magistrates Court.

18. Mr Collard explained that also he served an Improvement Notice under sections 11 and 12 Housing Act 2004 on the respondent dated 13 May 2016 which required him to remedy two category one hazards concerning a security risk in respect of the broken letter box to the main door and a fire hazard relating to the lack of self-closers on the kitchen and bedroom doors. Five category two hazards were also identified in the Notice. A copy of the Improvement Notice was provided to the tribunal by Mr Collard and admitted in evidence, with no objection from the respondent. Mr Collard stated that no enforcement action has yet been initiated in respect of this Notice because the pressure to do so has lessened due to the applicants vacating the Property and, to his knowledge, the Property not being re-let.

19. In cross-examination Mr Collard confirmed that Mr Puri had contacted him in August 2015 and requested a meeting to discuss conditions in the Property.

However, he did not accept that invitation as he considered it inappropriate due to the on-going prosecution that was to be heard at court in the near future.

20. The applicants stated that they recognised that they had received the benefit of a place to live, albeit one with several problems of which the water leak was the most serious, and that in their view a RRO 50% of the rent paid was appropriate.

The Respondent's Case

21. The respondent disagreed. In his view a RRO of not more than 25% of the rent paid should be made.

22. We heard oral evidence from the respondent. A copy of his witness statement dated 7 December 2016 was included in his hearing bundle. He confirmed that he bought the Property in 1999. Office Copy Entries supplied by Mr Collard dated 30 November 2015, admitted in evidence with no objection from the respondent, confirmed that he was registered as the freehold proprietor at HM Land Registry on 22 July 1999. A charge over the Property in favour of Nationwide Building Society dated 5 July 1999 was registered on the same date.

23. He stated that that at no time prior to the letting to the applicants was the Property let to more than four tenants and that he did not realise when the letting agents told him that the proposed letting to the applicants was to be to five persons that this meant that the Property needed to be licensed as a HMO. He said that he did not know that this was the case until he received Mr Collard's letter of 29 October 2015.

24. When asked by the tribunal why he made no attempt to license the Property after receipt of that letter his response was that he had been suffering from depression that he hid from his family. He said that he had been prescribed anti-depressants previously but that he was currently taking these as he was worried about side-effects.

25. He stated that he had not re-let the Property since the applicants vacated in August 2016 and that he did not intend to do so because he had secured planning consent from the local authority to convert it into three separate one-bedroom properties. His intention was for one of these flats to be occupied by his son, Mr Jasdeep Puri, and for the other two to be let to tenants and managed by his son. He was, he said, deriving no rental income from the Property at present.

26. In his witness statement the respondent provided details about his financial circumstances. He states that both his home at Maple House West, Main Drive, Iver, Buckinghamshire SL0 9DP and the Property were subject to mortgages. Taking into account council tax and utility payments he states that he had financial outgoings of £4,000 per month in respect of the properties. He explains that the magistrates court allowed him to repay the fine over a 12-month period and that he was working extra shifts at work in order to meet

this liability. His family were also providing him with financial support. In a separate document included in his bundle entitled “Rent Repayment Order: Financial Circumstances” he states that the mortgage on his home was more than £2,000 per month and that his income from his work was substantially less than this. He also states that he has had to pay towards legal costs but does not specify the amount paid.

27. That is the extent of his evidence regarding his financial circumstances. No documentary evidence was supplied to support his assertions or to verify his income and expenditure. What is completely missing from both the respondent’s witness statement and the document entitled “Rent Repayment Order: Financial Circumstances” is any mention of the respondent owning additional properties and deriving rental income from those properties.

28. The tribunal asked Mr Collard if he was aware of the respondent owning any other properties other than the Property. His response was that he believed the respondent was the freehold owner of a property two doors down from the subject Property at 217 Munster Road.

29. The tribunal also identified from the Office Copy Entries of the Property that the respondent had granted a lease of a shop on the ground floor of the Property on 4 August 2005 for a 15-year term commencing on 4 August 2005.

30. The respondent agreed that he owned a house at 217 Munster Road and that, as with the subject Property, the ground floor was let by him as a commercial shop from which he derived rental income. The shop below the Property is a convenience store that he used to run personally but which is now let to someone else. The shop below 217 Munster Road is a beauty salon and he also lets out two flats above the shop at 217 Munster Road.

31. He also told us that he owned another property at 16 Ambassador Close, Hounslow, Middlesex which was not let out and was occupied by his son from time to time.

32. He stated that he had bought his home, Maple House West, about two years ago, for the sum of just under £1 million and that he pays mortgage payments of £2,400 per month, estate service charges of £330 per annum and council tax of £4,000 per annum. The property at 16 Ambassador Close was, he said, mortgage-free but there was a combined mortgage in respect of 217 Munster Road and the Property (including the shops subject to commercial leases) for which he had to pay £1,500 per month.

33. He estimated that the anticipated conversion costs of the Property would be in the region of £100,000 which he hoped to fund by taking out another mortgage. He told us he had also had to pay £18,000 for a community infrastructure levy and £1,500 for a planning application fee to the local authority in respect of the planned development and that he had paid architects fees of £3,000 to date.

34. He informed us that he had paid £12,000 of the magistrate's court fine leaving just over £16,000 to pay which he intended to pay with financial assistance from his son. He also said that he was expecting to pay a significant sum, probably in the thousands of pounds, to remedy a leaking mains pipe at 217 Munster Road.

35. As to his income, he stated that he works as an agency bus driver on a zero-hours contract, working about 25 hours each week and earning, between £250 to £300 per week before tax. His wife stated that she works part-time as a customer sales assistant in a supermarket earning about £800 per month net.

36. The respondent told us that his income from the letting of the ground floor shop below Property was £1,150 per month and that he received £1,150 in respect of the two flats at 217 Munster Road.

37. Apart from the above, the respondent stated that he had no other sources of income aside from intermittent financial help from his son.

38. He asked us to take into consideration not only his financial circumstances but also:

    (a) the large fine he has already been ordered to pay;

    (b) that whilst there were some problems with the Property at no time during their tenancy did the applicants ask for the tenancy to be terminated because of their living conditions;

    (c) that the rent paid reflected the condition of the Property and that if it had been furnished to a higher standard a higher rent would have been charged; and

    (d) the rent charged was based on occupancy by four tenants and he did not increase it when he was told that the five applicants wanted to rent it.

Decision and Reasons

39. Before making a RRO the tribunal needs to be satisfied that certain requirements set out in section 73(8) of the Act are met. The respondent was the registered owner of the freehold interest in the Property during the whole period of the applicants' tenancy. He was the applicants' landlord and we are therefore satisfied that he was, at all times, the Appropriate Person for the purposes of section 73(8)(a) of the Act. We are also satisfied that he was convicted on 6 September 2016 of an offence under section 72(1) of the Act in relation to the Property as a person having control of an HMO which was required to be licensed but was not so licensed.

40. It was agreed by the parties that periodical payments by way of rent were paid by the applicants throughout the 12-month term of the tenancy (thereby meeting the requirements of section 73(8)(b) of the Act and that the tenants'

application was made within 12 months of the date of respondent's conviction as required by section 73(8)(c).

41. We are satisfied that the requirements for making a RRO are met and that the only question remaining is the amount that the respondent should be required to repay. Guidance on the proper approach to this question was provided by the Upper Tribunal in *Parker v Waller* [2012] UKUT 301 (LC), [2013] JPL 568, and *Fallon v Wilson* [2014] UKUT 0300 (LC). We have had regard to that guidance.

42. Under section 74(5) of the Act the amount to be repaid is to be such amount as the tribunal considers reasonable in the circumstances. In determining what amount would be reasonable the tribunal is required to have regard, in particular, to five specified matters namely:

    (a) The total amount of rent paid during the period that the landlord was committing an offence for failing to have a licence;

    (b) The extent to which the rent was paid by housing benefit and how much was received by the landlord;

    (c) Whether the landlord has been convicted of an offence for failing to have a licence;

    (d) The conduct and financial circumstances of the landlord; and

    (e) The conduct of the occupier.

43. As stated in paragraph 20 of the decision in *Parker v Waller* what amount, taking account of those matters, would be reasonable to order can only be determined in the light of the purpose underlying the provisions. This is not expressly stated in the Act but the Upper Tribunal concluded that the occupier RRO provisions have a number of purposes – to enable a penalty in the form of a civil sanction to be imposed in addition to the fine payable for the criminal offence of operating an unlicensed HMO; to help prevent a landlord from profiting from renting properties illegally; and to resolve the problems arising from the withholding of rent by tenants.

44. Turning to the five matters specified in section 74(5) The total rent received during the period of the tenancy (less the 8% sum retained by the letting agents) was £34,684. The applicants paid their rent to the landlord by direct debit each month and the landlord did not receive any direct payments of housing benefit. The respondent was convicted of an offence for failing to have a licence on 6 September 2016. There is nothing to suggest that any conduct on the part of the applicants is relevant to the question of what sum to order by way of a RRO.

45. That leaves the question of the conduct and financial circumstances of the respondent. We do not think that the problems the applicants experienced with the water leak, and the other repair issues they identified, are matters

that we can take into account when deciding the amount of the RRO because this asserted conduct on the part of the landlord is unrelated to the offence under section 72(1) which was his failure to licence the Property as a HMO.

46. The respondent's conduct in failing to obtain a license is, however a relevant matter. We accept as truthful his evidence that he was unaware of the need to licence the Property as a HMO when it was first let to the applicants. However, he agreed that he became aware of this requirement when he received Mr Collard's letter of 29 October 2015. Mr Collard states, and we accept, that the respondent then received reminders of the need to license in December 2015 and January 2016. Despite this, no attempt to secure a license was made.

47. The respondent states that this was because he was suffering from depression at the time. However, this assertion was not backed up by any medical evidence and we found the respondent's evidence unpersuasive. We accept that his prosecution by the local authority may have had an adverse effect on his state of mind, but we are satisfied that the respondent had ample opportunity to avoid that prosecution and did not engage with the local authority until August 2016, by which time the prosecution was underway and nearing its conclusion.

48. In addition, whilst not a professional landlord, he was a very experienced one. He has let the Property from 1999 and was a landlord of three other residential flats and two commercial shops. His income from lettings substantially exceeded his salary. In our view, any responsible landlord with his experience and background should have acted promptly when he or she became aware that the letting of the Property was unlawful and should have done what was required under the law, namely to apply for a licence. Instead he made no effort to do so.

49. We do not accept that the fact that the tenants did not ask for the tenancy to be terminated because of their living conditions, that the respondent might have charged a higher rent if the Property was in better condition, or that the rent charged was based on occupancy by four and not five tenants are relevant factors for us to consider when determining the amount of a RRO. Nor do we consider that the fact that the applicants had somewhere to live is relevant to our decision.

50. Under section 74(8) of the Act a RRO is limited to the 12 months ending with the occupier's application to the tribunal. It cannot be made for any period after an application for an HMO licence under section 63 has been made (see section 73(1) and (2)) but that is not relevant in this case as no application was made.

51. This application was made on 7 October 2016. The relevant period is therefore 7 October 2015 to 7 October 2016. Rent was payable monthly on the seventh day of every month in the sum of £3,141.67 per month. The tenancy ended on 6 August 2016. The total sum paid in the relevant period is therefore 10 months' rent, namely £31,416.70.

52. We consider that it would be reasonable to have regard to the costs of running the Property. We therefore consider that 8% of the sum of £31,416.70 should be disregarded as this sum was paid to the letting agents and did not form part of the respondent's profit from the letting of the Property. The resultant figure is £28,903.36. We consider that mortgage costs for the relevant period should also be disregarded. Unfortunately, no documentary evidence of mortgage costs was before us. We accept the respondent's evidence, which was not challenged by the applicants, that he makes combined mortgage payments for the Property and 217 Munster Road of £1,500 each month. The Office Copy Entries for the Property confirm that the original mortgage to Nationwide Building Society remains in place. Doing the best we can, in the absence of evidence relating to these payments, we split the monthly payment for the two properties equally. We therefore disregard the sum of £7,500 (£750 x 10) from the sum of £28,903.36 resulting in a figure of £21,403.36.

53. In our view it is appropriate to have regard to the fine that the respondent has had to pay for failure to license the house as a HMO. That amounted to £5,000. We do not, however, consider it is appropriate to have regard to the additional fines that he was ordered to pay for offences relating to breaches of the regulations set out in paragraphs 6 and 7 above. These offences relate to the condition of the Property and failure to provide information to the local authority. They do not relate to his failure to licence the Property as a HMO. As stated by the Upper Tribunal in paragraph 39 of the decision in *Parker v Waller,* conduct on the part of a landlord, unrelated to his offence of failing to licence, would not entitle a tribunal to increase the amount of the RRO above the level that would otherwise be justified. Similarly, we do not consider fines imposed for matters unrelated to the respondent's failure to licence should be disregarded when deciding the amount that it is reasonable to order as a RRO.

54. If we were to have regard to the additional fines this would reduce to almost nil the amount of the RRO. This, in our view, would run counter to the purpose of the RRO provisions of the Act which, as identified by the Upper Tribunal in *Parker v Waller*, included the imposition of a penalty in the form of a civil sanction *in addition* to the fine payable for the criminal offence of operating an unlicensed HMO. It could also potentially lead to a perverse situation whereby a landlord who had failed to licence a HMO could deliberately leave a property in substantial disrepair on the basis that fines subsequently imposed by a magistrate court would reduce to nil a RRO, leaving the landlord in a better financial situation than would otherwise have been the case. That cannot, in our view, have been the intention of this legislation.

55. We consider it reasonable to have regard to the costs imposed by the magistrate's court on a pro rata basis. This amounts 20% of £3,341.67 namely £668.33. We do not consider it reasonable to make an allowance in respect of the victim's surcharge.

56. Applying these disregards leaves us with a figure of £20,735.03 which is 66% of the relevant rent. In our view we need to consider whether that is an appropriate amount to order as a RRO given the respondent's evidence about his financial means. Whilst we consider that the respondent was being

truthful when giving his oral evidence as to his finances it is a matter of concern that his true financial position was not reflected in his witness statement or in the documents he presented to the tribunal.

57. According to the respondent's oral evidence his current household income consists of the following:

Source		Amount per month
Salary	*say*	£1,000
Wife's salary		£800
Rental Income – flats at 217 Munster Road		£2,300
Rental Income – shop at 217 Munster Road		£1,200
Rental Income – shop at 221 Munster Road		£1,150
Total:		£6,450

58. He said he incurs the following costs:

Mortgage Payments – home	£2,400
Council Tax – home	£333
Mortgage Payments – Munster Road Properties	£1,500
	£4,233

59. We recognise that this is by no means a complete financial picture of the respondent's income and expenditure but we are limited by the lack of documentary evidence provided by the respondent. We also bear in mind that the respondent bought a house for £1 million two years ago, but only pays £2,400 per month towards mortgage payments, meaning that he must have substantial equity in that property. He also confirmed that he receives financial help from family members. Whilst he has elected to not rent out the Property but to instead redevelop it at an estimated cost of around £100,000 we see no reason why he cannot let it out on a short term let pending commencement of those works which do not appear to be imminent. On balance, we see no reason to reduce the amount that it is reasonable to order by way of a RRO on grounds of the respondent's financial means.

60. Finally, we have had regard to the fact that this appears to be the first time the respondent has let a house that needed to be licensed. He has been subject to a very large fine in the magistrate's court and it was not suggested that he has any other convictions relating to property management or licensing. His management of the Property was clearly very poor. Having said that, it does not seem to us that this was a property in major disrepair. We recognise the inconvenience caused to the applicants because of the continuous water leak when somebody took a shower and the difficulties they experienced because of the fridge not staying cold enough but the other items complained of, whilst clearly significant, are not serious disrepair items.

61. Having regard to the fact that the respondent was not a professional landlord and this appears to be his first experience of the HMO licensing regime we

discount the figure of 66% above by 15%. It is our view that the sum that it is reasonable to order by way of a RRO is 51% of the relevant rent namely £16,022. That is the sum that the respondent must pay to the applicants.

Amran Vance

2 February 2017

APPENDIX 1 - 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.

APPENDIX 2 - THE RELEVANT LEGISLATION

73 Other consequences of operating unlicensed HMOs: rent repayment orders

(1) For the purposes of this section an HMO is an "unlicensed HMO" if—

(a) it is required to be licensed under this Part but is not so licensed, and

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

(2) The conditions are—

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

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

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

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

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

(4) But amounts paid in respect of rent or other periodical payments payable in connection with such a tenancy or licence may be recovered in accordance with subsection (5) and section 74 [(in the case of an HMO in Wales) or in accordance with Chapter 4 of Part 2 of the Housing and Planning Act 2016 (in the case of an HMO in England)].

(5) If—

(a) an application in respect of an HMO [in Wales] is made to [the appropriate tribunal] by the local housing authority or an occupier of a part of the HMO, and

(b) the tribunal is satisfied as to the matters mentioned in subsection (6) or (8),

the tribunal may make an order (a “rent repayment order”) requiring the appropriate person to pay to the applicant such amount in respect of the [relevant award or awards of universal credit or the] housing benefit paid as mentioned in subsection (6)(b), or (as the case may be) the periodical payments paid as mentioned in subsection (8)(b), as is specified in the order (see section 74(2) to (8)).

(6) If the application is made by the local housing authority, the tribunal must be satisfied as to the following matters—

(a) that, at any time within the period of 12 months ending with the date of the notice of intended proceedings required by subsection (7), the appropriate person has committed an offence under section 72(1) in relation to the HMO (whether or not he has been charged or convicted),

[(b) that—

(i) one or more relevant awards of universal credit have been paid (to any person); or

(ii) housing benefit has been paid (to any person) in respect of periodical payments payable in connection with the occupation of a part or parts of the HMO,

during any period during which it appears to the tribunal that such an offence was being committed,] and

(c) that the requirements of subsection (7) have been complied with in relation to the application.

[(6A) In subsection (6)(b)(i), “relevant award of universal credit” means an award of universal credit the calculation of which included an amount under section 11 of the Welfare Reform Act 2012, calculated in accordance with Schedule 4 to the Universal Credit Regulations 2013 (housing costs element for renters) (SI 2013/376) or any corresponding provision replacing that

Schedule, in respect of periodical payments payable in connection with the occupation of a part or parts of the HMO.]

(7) Those requirements are as follows—

(a) the authority must have served on the appropriate person a notice (a "notice of intended proceedings")—

(i) informing him that the authority are proposing to make an application under subsection (5),

(ii) setting out the reasons why they propose to do so,

(iii) stating the amount that they will seek to recover under that subsection and how that amount is calculated, and

(iv) inviting him to make representations to them within a period specified in the notice of not less than 28 days;

(b) that period must have expired; and

(c) the authority must have considered any representations made to them within that period by the appropriate person.

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

(a) that the appropriate person has been convicted of an offence under section 72(1) in relation to the HMO, or has been required by a rent repayment order to make a payment in respect of[—

(i) one or more relevant awards of universal credit, or

(ii) housing benefit paid in connection with occupation of a part or parts of the HMO,]

(b) that the occupier paid, to a person having control of or managing the HMO, periodical payments in respect of occupation of part of the HMO during

any period during which it appears to the tribunal that such an offence was being committed in relation to the HMO, and

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

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

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

(9) Where a local housing authority serve a notice of intended proceedings on any person under this section, they must ensure—

(a) that a copy of the notice is received by the department of the authority responsible for administering the housing benefit to which the proceedings would relate; and

(b) that that department is subsequently kept informed of any matters relating to the proceedings that are likely to be of interest to it in connection with the administration of housing benefit.

(10) In this section—

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

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

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

["periodical payments" means—

(a) payments in respect of which an amount under section 11 of the Welfare Reform Act 2012 may be included in the calculation of an award of universal credit, as referred to in paragraph 3 of Schedule 4 to the Universal Credit Regulations 2013 ("relevant payments") (SI 2013/376) or any corresponding provision replacing that paragraph; and

(b) periodical payments in respect of which housing benefit may be paid by virtue of regulation 12 of the Housing Benefit Regulations 2006 or any corresponding provision replacing that regulation].

(11) For the purposes of this section an amount which—

(a) is not actually paid by an occupier but is used by him to discharge the whole or part of his liability in respect of a periodical payment (for example, by offsetting the amount against any such liability), and

(b) is not an amount of [universal credit or] housing benefit,

is to be regarded as an amount paid by the occupier in respect of that periodical payment.

74 Further provisions about rent repayment orders

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

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

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

[(b) that—

(i) one or more relevant awards of universal credit (as defined in section 73(6A)) were paid (whether or not to the appropriate person), or

(ii) housing benefit was paid (whether or not to the appropriate person) in respect of periodical payments payable in connection with occupation of a part or parts of the HMO,

during any period during which it appears to the tribunal that such an offence was being committed in relation to the HMO in question,]

the tribunal must make a rent repayment order requiring the appropriate person to pay to the authority [the amount mentioned in subsection (2A)].

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

[(2A) The amount referred to in subsection (2) is—

(a) an amount equal to—

(i) where one relevant award of universal credit was paid as mentioned in subsection (2)(b)(i), the amount included in the calculation of that award under section 11 of the Welfare Reform Act 2012, calculated in accordance with Schedule 4 to the Universal Credit Regulations 2013 (housing costs element for renters) (SI 2013/376) or any corresponding provision replacing that Schedule, or the amount of the award if less; or

(ii) if more than one such award was paid as mentioned in subsection (2)(b)(i), the sum of the amounts included in the calculation of those awards as referred to in sub-paragraph (i), or the sum of the amounts of those awards if less, or

(b) an amount equal to the total amount of housing benefit paid as mentioned in subsection (2)(b)(ii), (as the case may be).]

(3) If the total of the amounts received by the appropriate person in respect of periodical payments payable as mentioned in paragraph (b) of subsection (2) ("the rent total") is less than the [amount mentioned in subsection (2A)], the amount required to be paid by virtue of a rent repayment order made in accordance with that subsection is limited to the rent total.

(4) A rent repayment order made in accordance with subsection (2) may not require the payment of any amount which the tribunal is satisfied that, by

reason of any exceptional circumstances, it would be unreasonable for that person to be required to pay.

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

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

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

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

(b) the extent to which that total amount—

(i) consisted of, or derived from, payments of [relevant awards of universal credit or] housing benefit, and

(ii) was actually received by the appropriate person;

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

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

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

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

(a) in relation to an application by a local housing authority, payments of [relevant awards of universal credit,] housing benefit or periodical payments payable by occupiers;

(b) in relation to an application by an occupier, periodical payments payable by the occupier, less[—

(i) where one or more relevant awards of universal credit were payable during the period in question, the amount mentioned in subsection (2A)(a) in respect of the award or awards that related to the occupation of the part of the HMO occupied by him during that period; or

(ii) any amount of housing benefit payable in respect of the occupation of the part of the HMO occupied by him during the period in question].

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

(a) (where the application is made by a local housing authority) is in respect of any time falling outside the period of 12 months mentioned in section 73(6)(a); or

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

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

(9) Any amount payable to a local housing authority under a rent repayment order—

(a) does not, when recovered by the authority, constitute an amount of [universal credit or] housing benefit recovered by them, and

(b) until recovered by them, is a legal charge on the HMO which is a local land charge.

(10) For the purpose of enforcing that charge the authority have the same powers and remedies under the Law of Property Act 1925 (c 20) and otherwise as if they were mortgagees by deed having powers of sale and lease, and of accepting surrenders of leases and of appointing a receiver.

(11) The power of appointing a receiver is exercisable at any time after the end of the period of one month beginning with the date on which the charge takes effect.

(12) If the authority subsequently grant a licence under this Part or Part 3 in respect of the HMO to the appropriate person or any person acting on his behalf, the conditions contained in the licence may include a condition requiring the licence holder—

(a) to pay to the authority any amount payable to them under the rent repayment order and not so far recovered by them; and

(b) to do so in such instalments as are specified in the licence.

(13) If the authority subsequently make a management order under Chapter 1 of Part 4 in respect of the HMO, the order may contain such provisions as the authority consider appropriate for the recovery of any amount payable to them under the rent repayment order and not so far recovered by them.

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

(15) The appropriate national authority may by regulations make such provision as it considers appropriate for supplementing the provisions of this section and section 73, and in particular—

(a) for securing that persons are not unfairly prejudiced by rent repayment orders (whether in cases where there have been over-payments of [universal credit or] housing benefit or otherwise);

(b) for requiring or authorising amounts received by local housing authorities by virtue of rent repayment orders to be dealt with in such manner as is specified in the regulations.

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