FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**TW/LON/00AG/HMA/2016/0014**
Property	**:**	**2 Hurdwick Place London NW1 2JE**
Applicants	**:**	**(1) Yaniv Garber** **(2) Monica Armenta** **(3) David Paulden** **(4) Krista Whitehead**
Representative	**:**	**Yaniv Garber**
Respondent	**:**	**Kingscroft Estates LLP**
Representative	**:**	**None**
Type of Application	**:**	**Applications (4No.) for a Rent Repayment Order under section 73 (5) Housing Act 2004**
Tribunal Members	**:**	**Mr N Martindale**
Date and venue of Hearing	**:**	**28 February 2017** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**28 February 2017**

DECISION

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Decision

1. The tribunal orders the Respondent, Kingscroft Estates LLP to repay to the applicants the sum of £6,363 in respect of rent and including other periodical payments made in connection with the occupation of rooms 2, 3, 14, 9 (4), at No.2 Hurdwick Place, London NW1 2JE.

Background

2. These are four parallel applications (dealt with at the same time), for a rent repayment order ("RRO") pursuant to section 73(5) of the Housing Act 2004 ("the Act"). The applications, all dated 12 December 2016, relate to various rooms at 2 Hurdwick Place London NW1 2JE ("the Property").

3. This property was variously let out as individual rooms with shared facilities. These applications are from four of the tenants. Mr Garber, one of the tenants, was appointed to act for all applicants.

4. The four applicants entered into individual shorthold tenancies (without paying rent deposits) with the respondent landlord, as follows:
   Y. Garber, room 2, 6 months from 20 September 2015 at £475 pcm;
   M. Armenta, room 14, 6 months from 10 November 2015 at £530 pcm;
   D. Paulden, room 3, 6 months from 26 November 2014 at £560 pcm;
   K. Whitehead, room 4, 6 months from 8 April 2015 at £600 pcm (changed by agreement from room 4 to room 9 in August 2015 and payment reduced to £530 pcm).

5. The rents payable included utility bills, council tax, and communal cleaning.

6. On 8 December 2016, at Highbury Corner Magistrates Court, the respondent was convicted of being a person having control of or managing a house in multiple occupation at 2 Hurdwick Place NW1 2JE for failure to license the Property as a House in Multiple Occupation ("HMO") under section 61(1) Housing Act 2004 and was fined £1,500.

7. He was also ordered to pay further fines totalling £2,700 of for offences related to the standard of accommodation under the Management of Houses in Multiple Occupation (England) Regulations 2006. Although only brief details were provided, one of these concerned the hazard which might arise to occupiers from the failure to provide locks to windows from which flat roof areas might be accessed by them.

8. The tribunal gave directions on 22 December 2016. The applicant was required to file a bundle giving details, including: That of the conviction; of the four tenancies; of the names of the tenants; of the rents due and paid. The respondent was required to file a bundle setting out: Their reasons for opposing the application and enclosing a statement as to any circumstances that could affect the amount of any RRO which could include their conduct

and financial circumstances. They were directed to include in the bundle any documents to be considered by the tribunal. Bundles were to be received by the tribunal on or before 10 February 2017 and both submitted these on or before 31 January 2017. Neither party requested a hearing and were content for the matter to dealt with on the papers.

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

The Applicants' Case

10. Mr Garber, one of the tenants, acted for himself and the other three in seeking a RRO against the respondent. In each case the applicant sought the maximum repayment either back to the start of their individual tenancies or otherwise of a period of 12 months back from the date of their application to the tribunal.

11. It was reported from details in the applicants bundle that the property had been a five storey mid terrace regency townhouse, formerly a hostel, which had more recently used as 14 bed-sitting rooms, with access to shared kitchen, bathroom and WC facilities.

12. Each tenant provided a copy of their assured shorthold tenancy of their individual room, issued by the respondent. Each confirmed; the address, the start date, the period, the inclusive rent due, and that there was no rent deposit. In the case of K. Whitehead, the applicant acknowledged the subsequent change of room (from No.4 to No.9) and the reduction of rent payable and therefore of the repayment sought.

13. None of the tenants were able to provide receipts for any of the rents that they stated they had paid to the landlord. Although the landlord and all of the tenants had bank accounts, the respondent required rent to be paid to their representative in cash, rather than directly by BACS between accounts. The landlord's agent ("Danish") would call in person at the property regularly and collect the money in an envelope from each tenant. The tenants instead relied on a series of redacted bank statements which they said showed that each of them had removed an amount of cash identical to, or very similar to, the amount of their rent, on or just before the due date.

14. Some of the applicants also provided a screen shot of a string of text messages apparently between themselves and Danish at or around the date of each month's rent payment. These texts referred to the exact arrangement for collection of the envelopes from their rooms in their absence, or by hand, to the landlord's representative. They also included reference to routine matters of management and maintenance at the Property for the attention of the landlord's agent. It appears that neither Danish nor the landlord provided receipts for the cash.

15. The applicants provided a copy of the HMLR title entries confirming that Kingscroft Estates LLP was the registered proprietor with effect from and including 23 April 2012.

16. The applicants included a copy of a letter dated 9 December 2016 from the Private Sector Housing Team at LB Camden to Mr Garber. It confirmed that the property was a "…House in Multiple Occupation which was unlicensed on the 30th June 2016, but required a licence and that therefore an offence under Part 2 of the Housing Act 2004 section 61 (1) and 72 (1) occurred." It further confirmed that "Kingscroft Estates LLP… being a person having control of or managing a house in multiple occupation at 2 Hurdwick Place… who did fail to licence the said house in multiple occupation which is required to be licensed under Part 2 of the Housing Act 2004, but was not so licensed pleaded guilty to a charge under the Housing Act 2004 section 61(1) and 72(1) on 8 December 2016…at Highbury Corner Magistrates Court. They were ordered to pay £1500 for offence." The letter confirmed that "A valid HMO application was submitted on the 10th July 2016."

17. The applicants provided schedules of payments made by each of the four, each month, for rent, to the respondent; running from the start of each respective tenancy up until at least the date of their applications for a RRO.

18. The applicants referred to a Mr Cooper, Environmental Health Officer at LB Camden. A copy of his signed statement dated 7 October 2016, with some photographs was included. The statement concerned the "Failure of Kingscroft Estates LLP… and Mr Danish Zafar (Manager) to apply for a mandatory Housing in Multiple Occupation (HMO) License under part 2 of the Housing Act 2004." He prepared and presented this to the magistrates court, which gave an account on what he had found at the property after attending with police officers, locksmith and a magistrates court order for entry, on 30 June 2017, having failed to gain access by agreement earlier.

19. Mr Cooper described the property as a five storey mid-terrace Regency townhouse which has been converted from 1 family dwelling into 14 units of bedsit accommodation. There was access to shared bathing, WC and cooking facilities. There was a shared kitchen on the ground floor and shared bathing and WC facilities on the lower ground, first, second and third floors.

20. Mr Cooper noted that there was one housing benefit claimant - Mr Garber. He referenced 'Exhibit CC/06' to confirm but the applicants' representative Mr Garber, did not provide a copy.

21. Mr Cooper provided background to the recent history of the property: That it had first been identified as a licensable HMO on 10 December 2012 and an application form sent to the manager Danish Zafar, for the landlord. The property had already at the time apparently been converted without planning consent from a 'care home' to an HMO.

22. Mr Cooper confirmed that a further application form had been sent on 8 January 2013 for the landlord's completion and return and further reminders on 13 February 2013 and 12 March 2013 and finally on 23 April 2013 with a 7 day deadline to comply. On 30 April 2013 the landlord had sought a delay to comply with licensing until a pending planning application to convert the

property into 5 self-contained flats had been expected at the end of May 2013. Planning consent was duly granted on 7 May 2013 for 4 self-contained flats.

23. Mr Cooper set out that on 5 September 2013 the local planning authority served an enforcement notice on the landlord requiring it be returned to its former hostel use or converted to the four self-contained flats.

24. Mr Cooper confirmed that a year later, on 19 August 2014 'Fire Officer', a Mr Patterson alerted him to continuing use as an HMO and raised concerns over fire safety and the means of escape, however there appeared to be no further enforcement action by the Council at that time.

25. Mr Cooper then set out the background to the attempted access on 15 June 2016 and on refusal, his eventual entry by means of a court order, effected on 30 June 2016 when he carried a detailed inspection of the interior and interviews with tenants in occupation. In a letter dated 4 July 2016 to the landlord, he listed 23 offences in all, against the HMO management regulations, committed under S.72 and S.234 (3) of the Housing Act 2004 and gave a caution.

26. Mr Cooper confirmed that on 11 July 2016, Messrs Brechers solicitiors had contacted him on behalf of the landlord. An application for an HMO licence had been submitted to LB Camden on 10 July 2016. Brechers supplied a copy of a purported completed application for an HMO licence back in 2014, but no received file copy was traced by Mr Cooper.

27. Mr Cooper's statement listed 14 tenants, all 14 units apparently being in use, and rents totalling £6,910 pcm (£82,920 pa) being recorded as due to the landlords at the date of its preparation.

28. Lastly the applicants provided one signed statement dated 30 June 2016, from Ms Whitehead produced for the magistrates' court's proceedings. There were no signed statements from the other three applicants concerning the recent history of the condition or occupation of the property.

The Respondent's Case

29. The respondent provided a written, albeit unsigned witness statement from Mr Issac Mocton on behalf of Kingscroft Estates LLP. The respondent opposed any RRO.

30. The respondent had already served Notices to quit under S.21 on all tenants, prior to their application for an HMO Licence on 10 July 2016. Indeed one of the tenants was unknown to them by the given name, though this argument was not pursued.

31. The respondents stated that; "the Applicants have failed to produce receipts for payments they allege were made whilst our records show some arrears of rent owing."

32. The respondents stated that the offence of "not being registered an HMO ceased on 10th July 2016 when we applied for a Licence…" and that a period of any RRO be limited to one from 13 December 2015 until 9th July 2016, 209 days in all.

33. The rent paid was all inclusive of water rates, gas, electricity, council tax, cleaning, management, insurance and maintenance were made by the respondents.

34. The respondents had incurred large costs from 13 December 2015 to 13 December 2016, including those arising from the prosecution by LB Camden, which eroded any gains by the respondent.

35. The respondents believed that they had only incurred a loss in this period and had "not gained through *proceeds of* crime", which they described as "the basis of the Applicants case".

36. The respondents argued that the conviction was "relatively minor in nature as evidenced by the relatively low fines imposed. For the lack of a Licence the Respondents were fined £1500", when under the current regime there was no limit to the level of fine. The £1500 fine was part of a total fine of £4,200,a further £2000 of which had been for failure to secure windows to an accessible but hazardous flat roof. There were in addition, costs of £4,430.

37. The respondents stated that "at no time did any of the Applicants complain in writing or otherwise as to the accommodation notwithstanding the length of time some of the Applicants were occupiers. Indeed the Respondents were considered good landlords with good landlord/tenant relations." The tenants were happy with accommodation taking into account the low rent being charged for a Central London location a relatively low figure. Two signed witness statements, one from each of two other former tenants at the property were provided.

38. The respondents, whilst pointing out their earlier attempts to apply for an HMO licence, acknowledged that they had not been successful and accepted that they should have followed this up in earlier years. The respondents highlighted that the HMO licence, had, on application, been granted without difficulty and that there was no question over their suitability as a manager.

39. The respondents referred to the financial hardship which any RRO could cause them. They mentioned other substantial costs incurred during the relevant period, legal fees as well as architects fees arising from the need to reconfigure the building "to comply with HMO/Hostel usage". They stated that the building had now been all but emptied with only two tenants remaining as at 1 February 2017. A list of expenses and invoices "including management, running costs and professional fees" was included.

40. The respondent quoted a full occupancy rent from the property of £82k pa, or some £47k over the period in question, excluding voids and arrears. The respondent argued that they were in fact, making a substantial revenue loss.

Mention was also made, in passing to the general decline in capital values and that any RRO would simply add to the hardship to the respondent.

41. The respondent referred to the housing benefit being paid to one of the applicants, the applicants' representative, Mr Garber, arguing that any money from that source should if anything, be returned to the local housing authority rather than to the individual claimant. Appendix G of their submission included a copy of a record of the quantity of such housing benefits during some of the relevant period accruing to that individual.

42. The respondents referred the tribunal to their schedule of rent arrears which showed that two of the four applicants were in arrears when their tenancies ended and such sums remained outstanding. There were also apparently considerable other void periods as well as substantial arrears owed to the respondent by another tenant. This latter person had also provided one of the witness statements in support of the respondent.

43. The respondents concluded by asking the tribunal not to grant any RRO, because, in summary: 1 Their action in not licensing the HMO was not that serious: 2 They were already suffering considerable consequential financial hardship from the situation at the property: 3 The applicants had never complained but had instead benefited from cheap accommodation in central London.

Decision and Reasons

44. Before making a Rent Repayment Order ("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' tenancies. The tenancy agreements were entered into by the respondent. The tribunal is therefore satisfied that they were, at all times, the Appropriate Person for the purpose of section 73(8)(a)of the Act. The tribunal is also satisfied that the respondent was convicted on 8 December 2016 of an offence under section 72(1) of the Act in relation to the Property as they were a person having control of an HMO which was required to be licensed but was not so licensed.

45. It was agreed by the parties that periodical payments by way of rent were paid by the applicants throughout terms of the tenancies (thereby meeting the requirements of section 73(8)(b) of the Act and that the tenants' applications were made within 12 months of the date of respondent's conviction as required by section 73(8)(c).

46. The relevant repayment period is determined by the tribunal, as one of 210 days (2016 is a leap year) starting from and including 13 December 2015 (one year back from the date of the RRO applications), until and including 9 July 2017 (the day before the property was HMO licensed).

47. The tribunal is 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 the quantum of RRO's was provided in *Parker v Waller* [2012] UKUT 301 (LC), [2013] JPL 568, and *Fallon v Wilson* [2014] UKUT 0300 (LC) and we have had regard to that guidance.

48. The tribunal takes, as our starting point the conclusion reached at paragraph of the decision in *Parker v Waller* that it would be inappropriate to impose on the respondent an RRO amount that exceeded his profit in the relevant period. We therefore need to calculate his profit.

49. The tribunal noted that whilst all four tenants provided evidence of functioning bank accounts and that the respondent had itself made many and varied payments to a range of professionals, contractors and service providers, by BACS other direct banking methods; yet for reasons that were not clear to the tribunal, it had chosen instead to collect all rent from tenants in cash, often it was said, in envelopes left in rooms in the property at the request of the landlord's agent for collection on diverse days, but without ever providing receipts. There was no evidence of widespread payment arrears or history of bad debts involving these four tenants that might have made such arrangement necessary for the landlord, and instead it served simply to obscure any income audit trail.

50. There was a slight conflict between the number of payments and their size and the presence of absence of any arrears; the applicants' case supported by a large number of bank statements showing relevant cash withdrawals; the respondents showing a short table of payments and outstanding arrears. On balance the tribunal prefers the applicants' evidence because the uncertainty in what was paid arises largely from the respondent's particular practice of collecting rent in cash, to the disadvantage of both parties when the landlord fails to provide receipts. For the purposes of assessing the maximum sums under an RRO, the tribunal concludes that there were no rent arrears for any of the applicant's tenancies.

51. The tribunal however notes and accepts the evidence provided by the statements from Mr Cooper and from the respondent concerning the housing benefit apparently paid to Mr Garber, something the latter does not mention. The tribunal has no information on whether or not the Housing Authority (LB Camden) as sought repayment of this. Although it is unclear whether it is paid throughout the relevant period, or at the same level, the tribunal, using what information is provided in Appendix G of the respondents case, must assume this to have been paid to Mr Garber at the rate of £57 per week (£8.14 per day), fixed, and it therefore deducts this from any RRO sum to Mr Garber.

52. The tribunal notes in the respondent's Appendix 3 the statement from Jan Softa (room 11) made in support of the management actions of the respondent and their agent; that it is also from a tenant who owes, according to the respondent over £4000 in rent arrears. It also notes the comments from the applicants that the witness statement from Pia Jensen (room 10), is also from someone who now works for the respondent as an employee or contractor. The suggestion might be that such comments are less than objective, but the tribunal finds little substantial criticism of the respondent from the applicants

either. With such little material to go on it concludes that the respondent was providing low priced, if deficient accommodation, but which was acceptable, though no more than that, to most of the occupiers. This conclusion is supported by the magistrates court's earlier findings which centred on the failure to license the property and to secure windows to a dangerous flat roof, but nothing more substantial; and therefore the relatively small fines they imposed as a result. However the fact that the tenants enjoyed the use of such, albeit basic, accommodation for the period in question, is not a reason to reduce any sum under an RRO.

53. The tribunal concludes that the received during the period of the tenancies was:

Mr Garber £3269.70 (-£1709.40 (210 days @ £8.14 HB)) = £1560.30 (12.3%).
Ms Armenta £3649.80 (28.7%)
Mr Paulden £3855.60 (30.3%)
Ms Whitehead £3649.80 (28.7%)
TOTAL maximum RRO = £12,716 (100%).

54. The respondent's Appendix D, headed 'Balance Sheet of Costs' implies that these are matters of capital expenditure and many do fall under that head. However the tribunal finds that a considerable number might be properly described as revenue expenditure which would have to be met in any event by the landlord whether the property was fully or partly occupied. Such items provide no benefit to the landlord and their costs still have to be met. Hence a measure of this can be considered in mitigation of the quantum of any RROs to be made as a result of the four applications.

55. The tribunal determines that where such costs are to be taken account of, it considers it reasonable in the circumstances to apply them in proportion to the applications made. There are said to be 14No. bed sitting rooms in the property and applications from 4No. such. The tribunal therefore determines that any of these costs which it regards as relevant be applied at the rate of 4/14ths against the rents paid over.

56. The tribunal determines that the relevant respondent's cost list approximates for the relevant period, which would have become due in any case during this period using the figures provided (albeit for 209 days) as:
Water £402; Electricity £1446; Gas £1244; Council Tax £1543; Mortgage interest £10084; Court fine (HMO licence only) £1500; Cleaning £1489; Management fees £1718; Insurance £1388; Fire test £288; Pest control £174; HMO application £960. Total, £ 22,236. At 4/14ths provides a figure of £6,353 of costs to apply in mitigation of any hardship arising from the award of the RRO's here. With a maximum total RRO award of £12,716 - £6,353 = £6,363, as a final sum to be divided proportionately by claim. All other items listed by the respondent are considered either related to capital expenditure; and/or to future issues at the property; and/or arise from the actions or omissions of the respondent and their chosen form and level of expenditure in response to the enforcement action of the statutory authority. The tribunal does not consider that it is reasonable in the circumstances to include apply

any of these costs in mitigation of any financial hardship to the respondent arising from the RROs.

57. In the tribunal's view it is appropriate to have regard to the fine that they have had to pay for failure to license the house as a HMO, but not the fines associated with the other offences, including in case, the window safety. These additional relate primarily to defects in the property. In *Parker v Waller* it was suggested that when considering the conduct and financial circumstances of the landlord regard should be had to his intimidation and harassment of the tenants and his failure to carry out repairs in the Property. At paragraph 39 of the decision in the Upper Tribunal rejected that argument. It did not think that conduct on the part of a landlord that is unrelated to the offence under section 72(1) that underlies the RRO could entitle the tribunal to increase the amount of the RRO above the level that would otherwise be justified. At the subject property there was of course no suggestion of any such misconduct on the part of the respondent landlord.

58. Consequently the tribunal is satisfied that it is entitled, pursuant to section 73, to make a rent repayment order in respect of each of the four applications. Further, pursuant to section 74(2), it is obliged to make such orders. In respect of each application, the amount that the tribunal considers reasonable in the circumstances to be repaid to each of the tenant applicant, is as follows:

Mr Garber £783 (12.3%).
Ms Armenta £1,826 (28.7%)
Mr Paulden £1,928 (30.3%)
Ms Whitehead £1,826 (28.7%)

TOTAL RROs = £6,363 (100%).

Neil Martindale **28 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.