



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

<b>Case References</b>	<b>:</b>	<b>BIR/00FY/HMF/2022/0020 and others: see Schedule</b>
<b>Subject Properties</b>	<b>:</b>	<b>Flats at Cotton Mills: see Schedule Radford Boulevard Nottingham NG7 3BR</b>
<b>Applicants</b>	<b>:</b>	<b>Former tenants of the flats: see Schedule</b>
<b>Respondents</b>	<b>:</b>	<b>(1) Clarendon Cotton Mill Limited (2) Cotton House Management Company Limited (3) Glyn Watkin Jones (4) Watkin Property Ventures Residential Limited (5) Former landlords of flats: see Schedule</b>
<b>Type of Application</b>	<b>:</b>	<b>Applications under section 41(1) of the Housing and Planning Act 2016 for rent repayment orders</b>
<b>Date of Hearing</b>	<b>:</b>	<b>9 June 2023</b>
<b>Tribunal Members</b>	<b>:</b>	<b>Deputy Regional Judge Nigel Gravells Mr Robert Chumley-Roberts MCIEH, JP</b>
<b>Date of Decision</b>	<b>:</b>	<b>18 July 2023</b>

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**DECISION**

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## **Introduction**

- 1 This is a Decision on thirteen applications for rent repayment orders under section 41 of the Housing and Planning Act 2016 ('the 2016 Act'). Details of the applications and the parties are set out in the Schedule to this Decision.
- 2 Part 2 of the Housing Act 2004 ('the 2004 Act') introduced licensing for certain houses in multiple occupation (HMOs) and for other residential accommodation. First, licensing is mandatory for all HMOs which are occupied by five or more persons forming two or more households. (The former additional requirement that the property must have three or more storeys was removed in October 2018.) Second, pursuant to section 56 of the 2004 Act, local housing authorities may designate areas in their district as subject to additional licensing in relation to other HMOs not otherwise required to be licensed. Third, pursuant to Part 3 of the 2004 Act, local housing authorities may designate areas in their district as subject to selective licensing in relation to other rented houses not otherwise required to be licensed.
- 3 Under section 72 of the 2004 Act a person who has control of or manages a HMO that is required to be licensed but is not so licensed commits an offence. Under section 95 of the 2004 Act a person who has control of or manages a house that is required to be licensed under Part 3 but is not so licensed commits an offence
- 4 Commission of an offence under section 72 or section 95 may lead to criminal prosecution and conviction or to the imposition by the local housing authority of a financial penalty pursuant to section 249A of the 2004 Act. Furthermore, under section 43 of the 2016 Act the Tribunal may make a rent repayment order in favour of the (former) occupier if it is satisfied beyond reasonable doubt that the landlord has committed an offence under section 72 or section 95 of the 2004 Act, *whether or not the landlord has been convicted of that offence*.

## **Background**

- 5 The subject properties are contained within multi-bedroom flats in a building (known variously as Cotton Mill(s) and Cotton House), which has been converted to provide student accommodation. According to the schedule accompanying the Temporary Exemption Notice served by Nottingham City Council in August 2022, the building contains 49 flats.
- 6 The flats containing the subject properties comprise four, five or six en-suite bedrooms with a shared living room and kitchen.
- 7 The ownership of the building and the flats containing the subject properties is not entirely clear, although the determinations of the Tribunal render a complete and definitive account unnecessary. To summarise the position during the period covered by the present applications –
  - (i) Until 31 March 2021 it appears that the freeholder of the building was Glyn Watkin Jones and Jennifer Anne Watkin Jones. From 31 March 2021 to 10 March 2022 the freeholder of the building was Watkin Property Ventures Residential Limited ('WPVR').

- (ii) The flats containing the subject properties (with the exception of flat 52) were subject to long leases granted in December 2005 for a term of 150 years from 1 September 2005. The parties to those leases were (i) Glyn Watkin Jones and Jennifer Anne Watkin Jones, (2) Cotton House Management Company Limited ('Cotton House Management') and (3) the relevant long leaseholder.
  - (iii) In December 2008 the then long leaseholders granted underleases of the flats for a term of 150 years less 10 days from 1 September 2005 to Enda Hunston, Brendan Igoe, John Nugent and Fintan Shortall. The purpose of those underleases is not clear.
  - (iv) On various dates in September and October 2021 the then long leaseholders (listed in the Schedule) apparently granted assured shorthold tenancies for varying lengths to the Applicants. However, it appears that one of the named long leaseholders of flat 38C (Patrick McGrath) and the named long leaseholder of flat 40E (John Duffy) were deceased at the date of the grants.
  - (v) In circumstances that are unclear, on 11 March 2022 Clarendon Cotton Mill Limited ('Clarendon') acquired the freehold of the building together with the long leases and underleases of the flats containing the subject properties (which were merged with the freehold) but subject to the assured shorthold tenancies.
- 8 It will be apparent from the above summary that each of the Applicants' tenancies comprised two periods – (i) the first period from the commencement of the tenancy to 10 March 2022, during which the immediate landlord appears to have been the then long leaseholder (or the freeholder in the case of flat 52) and (ii) the second period from 11 March 2022 to the termination of the tenancy, during which the immediate landlord was Clarendon.
- 9 By applications made on various dates between June and September 2022, the Applicants applied for rent repayment orders under section 41 of the 2016 Act. The basis of the applications, although not fully articulated, was that throughout the duration of their tenancies the respective immediate landlords were persons having control of or managing the flats containing the subject properties, which were required to be licensed pursuant to Part 2 or Part 3 of the 2004 Act but were not so licensed.
- 10 On 24 August 2022 the Tribunal issued initial Directions for the determination of the applications. The Tribunal issued further Directions on 8 September 2022, 22 September 2022, 18 October 2022, 18 November 2022 and 6 January 2023.
- 11 During the case management of the applications, pursuant to rule 9 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, several other applications were struck out and the long leaseholders of the flats were barred from taking further part in the proceedings.
- 12 On 9 June 2023 the Tribunal held a hybrid hearing. The members of the Tribunal attended at Centre City Tower in Birmingham. The following parties joined by video link: (i) Shalon Stafford, Sunil Singh, Danylo Chumachenko, Kieran McGarry, Lewis Dytrych, Jack Cakebread, Hardik Ganesh, Emerson

Darwin, Sami Ozay and Michael Kubi (Applicants), (ii) James Perkin and Daniel Stalder (representing Clarendon and Cotton House Management) and (iii) Sior Hayward (representing Glyn Watkin Jones and WPVR).

### **Statutory regime**

13 The applicable statutory regime is set out in Chapter 4 of Part 2 of the 2016 Act. So far as relevant to the present application, the Act provides as follows –

#### **40 Introduction and key definitions**

(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—

(a) repay an amount of rent paid by a tenant, or ...

(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 by that landlord.

	Act	Section	General description of offence
...			
5	Housing Act 2004	section 72(1)	control or management of unlicensed HMO
		section 95(1)	control or management of unlicensed house
...			

#### **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.

...

### **43 Making of 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 has 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 in accordance with—

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

...

### **44 Amount of order: tenants**

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

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

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
...	
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 paid in respect of that period, less

(b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

(4) In determining the amount the tribunal must, in particular, take into account—

(a) the conduct of the landlord and the tenant,

(b) the financial circumstances of the landlord, and

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

### **Determination of the Tribunal**

14 The Tribunal considered the application in five stages –

(i) Whether (any of) the named Respondents was the immediate landlord under the Applicants' assured shorthold tenancies.

- (ii) Whether the Tribunal is satisfied beyond reasonable doubt that the immediate landlords committed offences under section 72(1) or section 95(1) of the 2004 Act in that at the relevant time they were persons who had control of or were managing an HMO or house that was required to be licensed under Part 2 or Part 3 of the 2004 Act but was not so licensed.
- (iii) Whether the Applicants were entitled to apply to the Tribunal for rent repayment orders.
- (iv) Whether the Tribunal should exercise its discretion to make rent repayment orders.
- (v) Determination of the amount of any orders.

#### Status of the Respondents

15 Rent repayment orders can only be made against the immediate landlord: see section 40(1) of the 2016 Act and *Rakusen v Jepson* [2023] UKSC 9. The Tribunal determines the status of the named Respondents as follows –

- (i) Clarendon was the freeholder of the building from 11 March 2022. Since the long leases and the underleases of the flats containing the subject properties were merged with the freehold on its acquisition by Clarendon, from that date, and (with one qualification: see paragraphs 18-19 below) during the second period of the tenancies, Clarendon was the immediate landlord of the Applicants under their assured shorthold tenancies.
- (ii) Cotton House Management was a party to the long leases but, as indicated, those leases were merged with the freehold on 11 March 2022. Although Cotton House Management is named as agent on the assured shorthold tenancy summary sheets, Cotton House Management is not otherwise referred to in the terms of those tenancies. It appears therefore that, whatever the practical arrangements for the management of the subject properties, Cotton House Management was not formally a party to those tenancies and is not an appropriate Respondent to the present applications.
- (iii) Glyn Watkin Jones is named as landlord on the assured shorthold tenancy summary sheets for the three subject properties in flat 52. However, he asserts that he sold his interest in flat 52 to WPVR on 31 March 2021, before the assured shorthold tenancies were granted. The Tribunal concludes – as Mr Watkin Jones asserts – that, since flat 52 was not subject to any long lease or underlease, the immediate landlord under the assured shorthold tenancies of flat 52 was WPVR, the freeholder of the flat from the commencement of the tenancies until Clarendon acquired the freehold on 11 March 2022 and became the immediate landlord. It follows that Glyn Watkin Jones is not an appropriate Respondent to the present applications.
- (iv) The long leaseholders listed in the Schedule were the immediate landlords during the first period (up to and including 10 March 2022) under the assured shorthold tenancies (subject to the issue relating to flats 38 and 40 identified in paragraph 7(iv) above).

Offence under section 72(1) or section 95(1) of the 2004 Act

*Did the flats require to be licensed?*

- 16 The Tribunal is satisfied beyond reasonable doubt that, subject to paragraphs 18-19 below, the flats containing the subject properties required to be licensed. The flats were HMOs, meeting the conditions of the standard test in section 254(2) of the 2004 Act. As such the flats were probably subject to mandatory licensing because each flat was occupied by five or more persons in two or more households. However, even if the number of occupiers fell below five, the flats were subject to additional licensing or selective licensing pursuant to schemes introduced by Nottingham City Council with effect from 1 January 2019.
- 17 Although Clarendon argued that from 5 July 2022 the maximum number of occupiers in any of the flats was four and that the flats were therefore no longer subject to mandatory licensing, its representatives acknowledged that their argument took no account of the additional and selective licensing schemes operating in the area containing Cotton Mills.
- 18 Pursuant to an application made by Cotton House Management on 22 June 2022, on 18 August 2022 Nottingham City Council served a Temporary Exemption Notice, exempting the building from the requirement to be licensed for three months.
- 19 At that date only one of the assured shorthold tenancies (that of Flat 3E) was continuing; but, as a consequence of the Notice, with effect from 18 August 2022 flat 3 no longer required to be licensed.

*Were the flats licensed?*

- 20 The Applicants allege that the flats were not licensed during the two periods of the assured shorthold tenancies. However, the only evidence submitted by the Applicants were emails from Nottingham City Council in response to enquiries made by some of the Applicants. Those emails are dated between 27 May 2022 and 22 July 2022 and simply state that flats 4, 8, 28, 44 and 52 did not *currently* (emphasis added) have licences in place. Although the Tribunal is of the view that the flats containing the subject properties were probably not licensed throughout the tenancies, the emails clearly do not establish beyond reasonable doubt that that was indeed the position.
- 21 On the other hand, Clarendon does not dispute – and the Tribunal finds - that from 11 March 2022, when Clarendon became the Applicants' immediate landlord, the flats containing the subject properties were not licensed (subject to paragraphs 18-19 above).

*Were the immediate landlords persons having control of or managing the flats containing the subject properties?*

- 22 Strictly speaking it is not necessary for the Tribunal to determine this question in relation to the immediate landlords during the first period of the assured shorthold tenancies since the Tribunal is not satisfied beyond reasonable doubt that the flats were unlicensed.
- 23 However, for the sake of completeness the Tribunal again notes that the Applicants did not address this question and thus did not establish beyond reasonable doubt that the immediate landlords during the first period of the

tenancies (up to and including 10 March 2022) were persons having control of or managing their respective flats. In any event, on the evidence available – not least the evidence that the rent for all the subject properties (except those in flat 52) was paid to Cotton House Management and then, after the deduction of costs, paid to some person other than the immediate landlords – the Tribunal is of the view that it would be difficult to show that those landlords satisfied the test of ‘person having control’ or ‘person managing’ in section 263(1) or (3) of the 2004 Act.

- 24 It is arguable that WPVR was the person managing flat 52; but, as noted, the Applicants did not address the question.
- 25 On the other hand, Clarendon does not dispute – and the Tribunal finds – that during the second period of the assured shorthold tenancies (from 11 March 2022 until 18 August 2022), when Clarendon was the Applicants’ immediate landlord, Clarendon was managing the flats within the meaning of section 263(3) of the 2004 Act.
- 26 Clarendon did not seek to argue either expressly or by implication that they had a reasonable excuse for managing unlicensed HMOs or houses, pursuant to sections 72(5) or 95(4) of the 2004 Act,

#### *Summary*

- 27 The Tribunal therefore determines (i) that it is not satisfied beyond reasonable doubt that the immediate landlords in the first period of the assured shorthold tenancies (up to and including 10 March 2022) committed any of the offences listed in section 40(3) of the 2016 Act and (ii) that the Applicants cannot therefore apply for rent repayments orders in respect of rent paid in respect of those periods.
- 28 The Tribunal determines (i) that Clarendon, the immediate landlord in the second period of the assured shorthold tenancies (from 11 March 2022 until 18 August 2022), committed the offence of managing HMOs or houses required to be licensed but not so licensed, contrary to section 72(1) or 95(1) of the 2004 Act.

#### Entitlement of the Applicants to apply for rent repayment orders

- 29 The Tribunal determines that the Applicants were entitled to apply for rent repayment orders pursuant to section 41(1) of the 2016 Act in respect of the second period of their assured shorthold tenancies (from 11 March 2022 until 18 August 2022). In accordance with section 41(2), Clarendon committed the relevant offence at a time when the subject properties were let to the Applicants; and the offence was committed in the period of 12 months ending with the day on which the applications were made (June to September 2022).

#### Discretion to make rent repayment orders

- 30 Where a relevant offence has been committed, the Upper Tribunal has stated that it would be exceptional not to make an order: see *Wilson v Campbell* [2019] UKUT 363 (LC). The Tribunal is satisfied that there is no ground on which it could be argued that it is not appropriate to make rent repayment orders against Clarendon in the circumstances of the present case.



Amount of rent repayment order

- 31 In accordance with section 44(2) of the 2016 Act, the amount of an order must relate to rent paid in a period, not exceeding 12 months, during which the landlord was committing an offence under section 72(1) or section 95(1) of the 2004 Act. It is not disputed that the Applicants' claims satisfy that condition.
- 32 In accordance with section 44(3) of the 2016 Act, the amount that the landlord is required to repay in respect of a period must not exceed the rent paid by the tenant in respect of that period less any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.
- 33 There are some discrepancies between the stated rent on the Applicants' tenancy summary sheets and the payments made to Cotton House Management as evidenced by copies of the Applicants' bank statements. Moreover, in some cases the tenancy summary sheets refer to a non-refundable 'booking deposit' of £250.00, comprising a utilities contribution of £100.00 and an advanced rent payment of £150.00 to be credited to the tenant's rental account. However, the bank statement evidence provided by the Applicants shows that only three of the Applicants paid the 'booking deposit' and there is no consistent application of the suggestion that the first rental payment would be reduced by £150.00.
- 34 The Tribunal takes the view that, in the light of section 44(3), the appropriate approach is to use as the starting point the rental payments for which each Applicant has provided bank statement evidence.
- 35 The Tribunal apportioned the total rent payments made by each Applicant between the first and second periods of the assured shorthold tenancies. The following table sets out the calculations –

Flat	Dates of tenancy and duration (D)	Payments evidenced on bank statements (P)	Duration of tenancy to 10/03/2021 (days) (T1)	Duration of tenancy from 11/03/2021 (days) (T2)	Rent apportioned to Clarendon (P x T2/D)
3E	4/9/21-3/9/22 365 days	£4749.99	188	160 (until TEN issued)	£2082.19
4F	17/10/21-28/06/22 255 days	£4102.00	145	110	£1769.49
8B	21/09/21-26/07/22 309 days	£4356.00	171	138	£1945.40
8F	13/09/21-18/07/22 309 days	£4707.99	179	130	£1980.71
28B	11/09/21-16/07/22 309 days	£4179.99	181	128	£1731.52

38C	20/09/21- 11/07/22 295 days	£4942.00	172	123	£2060.56
40E	15/09/21- 20/07/22 309 days	£4206.00	177	132	£1796.72
44A	10/09/21- 15/07/22 309 days	£4179.99	182	127	£1717.99
48A	01/09/21- 23/07/22 326 days	£4356.00	191	135	£1803.87
48C	11/09/21- 16/07/22 309 days	£4927.98	181	128	£2041.36
52A	26/10/21- 12/07/22 260 days	£4059.00	136	124	£1935.83
52D	01/09/21- 29/06/22 302 days	£4317.32	191	111	£1586.83
52E	20/09/21- 25/07/22 309 days	£4456.00	172	137	£1975.64

- 36 The figures in the final column provide the starting point for the rent repayment orders, being the whole of the rent paid during the period when Clarendon was committing the relevant offence.
- 37 In accordance with section 44(4) of the 2016 Act, in determining the amount of any rent repayment order, the Tribunal must, in particular, take into account the conduct of the parties, the financial circumstances of the landlord and whether the landlord has been convicted of any of the offences listed in section 40 of the 2016 Act.
- 38 The proper approach that the Tribunal is required to take at the final stage of the determination of the amount of any rent repayment order has been considered by the Upper Tribunal (Lands Chamber) in a series of recent decisions: see *Vadamalayan v Stewart* [2020] UKUT 183 (LC), *Ficcara v James* [2021] UKUT 38 (LC), *Awad v Hooley* [2021] UKUT 55 (LC), *Williams v Parmar* [2021] UKUT 244 (LC), *Aytan v Moore* [2022] UKUT 27 (LC), *Acheampong v Roman and others* [2022] UKUT 239 (LC), *Dowd v Martins and others* [2022] UKUT 249 (LC), *Fashade v Albustin* [2023] UKUT 40 (LC).
- 39 The Upper Tribunal has on a number of occasions endorsed the approach summarised in paragraph 21 of the decision in *Acheampong v Roman and others* –
- The FTT should:
- (a) Ascertain the whole of the rent for the relevant period.

(b) Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate.

(c) Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step.

(d) Consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4).

40 Applying steps (a) to (d) above to the present case, the Tribunal has already determined step (a): see paragraph 35 above.

41 Step (b) requires a deduction for the cost of utilities included in the rent. Clause 3.5 of the Applicants' tenancy agreements states that the rent includes the cost of providing electricity and water. The electricity costs are subject to a maximum allowance (after which the tenant is required to pay any excess) of £9.00 per week. The (notional) cost of water is not quantified. Moreover, the Applicants confirmed that wifi was provided at no further cost to themselves. In the absence of any further evidence, the Tribunal made an 'informed estimate' of utility costs of £600.00 per tenant per year (£450.00 for electricity, £75.00 for water and £75.00 for wifi).

42 The Tribunal calculates the proportion of that figure attributable to the second period of the tenancies as follows –

Flat 3E: £263.01  
Flat 4F: £180.82  
Flat 8B: £226.85  
Flat 8F: £213.70  
Flat 28B: £210.41  
Flat 38C: £202.19  
Flat 40E: £216.99  
Flat 44A: £208.77  
Flat 48C: £210.41  
Flat 52A: £203.84  
Flat 52D: £182.47  
Flat 52E: £225.21

43 The tenants of flats 4F, 38C and 52E paid £100.00 towards utilities costs as part of the 'booking deposit'. For those tenants the deduction for utilities should be reduced by £100.00.

44 Turning to step (c), the Upper Tribunal has made it clear that in applying section 44(4)(a) of the 2016 Act the conduct of the Respondent landlord also embraces the seriousness of the offence committed by the Respondent landlord that is the pre-condition for the making of a rent repayment order.

The offence of managing an unlicensed HMO is a serious offence, although it is clear from the scheme and detailed provisions of the 2016 Act that it is not regarded as the most serious of the offences listed in section 40(3).

- 45 Moreover, this is not a case where the landlord simply failed to apply for a licence. Clarendon states that after an initial misunderstanding as to the licensing requirements for Cotton Mills it engaged in discussions with Nottingham City Council in order to regularise the licensing position. Clarendon intended to close the building temporarily for refurbishment and it applied for (and was granted) a Temporary Exemption Notice. In the meantime, measures were taken to remove the flats from the mandatory licensing scheme (although Clarendon failed to appreciate that those measures did not remove the flats from the additional and selective licensing schemes): occupancy of flats was reduced below five persons and tenants moved to other flats were given compensation; and tenants were offered early termination of their tenancies with appropriate rent refunds. On the other hand, it is clearly arguable that, as a matter of due diligence, an undertaking such as Clarendon should have fully investigated the potential licensing requirements of a large residential block such as Cotton Mills prior to its purchase.
- 46 The Tribunal determines that the matters outlined in paragraphs 44-45 above should be reflected in a deduction from the net amount of the rent repayment order identified in paragraphs 35 and 42 above.
- 47 Turning to step (d), although a small number of Applicants in their written representations raised some negative issues as to the conduct of Cotton Mill Management, the Applicants did not pursue those matters at the hearing. Clarendon raised no issues in relation to the conduct of the Applicants. The Tribunal determines that it would not be appropriate to make any further adjustment to the amount of the rent repayment orders by reason of the conduct of the parties.
- 48 Section 44(4)(b) of the 2016 Act requires the Tribunal to take into account the financial circumstances of the landlord. However, Clarendon declined to make any representations in relation to its financial circumstances.
- 49 Section 44(4)(c) of the 2016 Act requires the Tribunal to take into account whether the landlord has at any time been convicted of any of the offences listed in section 40(3). Clarendon has no such convictions.
- 50 As Sir Timothy Fancourt stated in *Williams v Parmar* (at paragraph 24), the wording of section 44(4) leaves open the possibility of there being factors other than those expressly referred to in paragraphs (a) to (c) that, in a particular case, may be taken into account and affect the amount of the rent repayment order. Neither party raised any factors other than those referred to above.
- 51 However, the Tribunal notes (i) the reminder from Sir Timothy Fancourt (at paragraph 43) that *Rent Repayment Orders under the Housing and Planning Act 2016: Guidance for Local Authorities* identifies the factors that a local authority should take into account in deciding whether to seek a rent repayment order as being the need to: punish offending landlords; deter the particular landlord from further offences; dissuade other landlords from breaching the law; and remove from landlords the financial benefit of

offending; and (ii) the clear indication (at paragraph 51) that the factors identified in the Guidance will generally justify an order for repayment of at least a substantial part of the rent.

52 Moreover, in the recent decision of *Kowelek v Hassanein* [2022] EWCA Civ 1041 Newey LJ summarised the legislative intent of the 2016 Act in these terms (at [23]):

Consistently with the heading to Part 2, Chapter 4 of Part 2 of the 2016 Act, in which section 44 is found, has in mind ‘rogue landlords’ and, as was recognised in *Jepsen v Rakusen* [2021] EWCA Civ 1150, ‘is intended to deter landlords from committing the specified offences’ and reflects a ‘policy of requiring landlords to comply with their obligations or leave the sector’: see paragraphs 36, 39 and 40. ‘[T]he main object of the provisions, as the Deputy President had observed in the UT (*Rakusen v Jepsen* [2020] UKUT 298 (LC), at paragraph 64; reversed on other grounds), ‘is deterrence rather than compensation’. In fact, the offence for which a rent repayment order is made need not have occasioned the tenant any loss or even inconvenience (as the Deputy President said in *Rakusen v Jepsen*, at paragraph 64, ‘an unlicensed HMO may be a perfectly satisfactory place to live’) and, supposing damage to have been caused in some way (for example, as a result of a failure to repair), the tenant may be able to recover compensation for it in other proceedings. Parliament’s principal concern was thus not to ensure that a tenant could recoup any particular amount of rent by way of recompense, but to incentivise landlords. The 2016 Act serves that objective as construed by the Deputy President. It conveys the message, ‘a landlord who commits one of the offences listed in section 40(3) is liable to forfeit every penny he receives for a 12-month period’. Further, a landlord is encouraged to put matters right since he will know that, once he does so, there will be no danger of his being ordered to repay future rental payments.

53 The Tribunal determines that, in order to reflect the factors discussed in paragraphs 44-52 above, the net amount of the rent repayment order identified in paragraphs 35 and 42 above should be discounted by 30 per cent.

54 The result of those determinations is set out in the following table -

Applicant	Flat	Rent apportioned to Clarendon (R)	Deduction for utilities (U)	Rent minus utilities	Net rent repayment after 30 per cent discount
Shalom Stafford	3E	£2082.19	£263.01	£1819.18	£1273.43
Sunil Singh	4F	£1769.49	£80.82	£1688.67	£1182.07
Danylo Chumachenko	8B	£1945.40	£226.85	£1718.55	£1202.99
Kieran McGarry	8F	£1980.71	£213.70	£1767.01	£1236.91
Jack Cakebread	28B	£1731.52	£210.41	£1521.11	£1064.78
Nana Fynn	38C	£2060.56	£102.19	£1958.37	£1370.86
Hardik Ganesh	40E	£1796.72	£216.99	£1579.73	£1105.81
Lewis Dytrych	44A	£1717.99	£208.77	£1509.22	£1056.45
Emerson Darwin	48A	£1803.87	£221.91	£1581.96	£1107.37
Sami Ozay	48C	£2041.36	£210.41	£1830.95	£1281.67
Muhamud Aslam	52A	£1935.83	£203.84	£1731.99	£1212.39
Michael Kubi	52D	£1586.83	£182.47	£1404.36	£983.05
Matas Vertelka	52E	£1975.64	£125.21	£1850.43	£1295.30

55 The Tribunal orders under section 43(1) of the 2016 Act that Clarendon repay to the Applicants the sums set out in the final column.

- 56 Refunds totalling £436.28 already paid to Nana Fynn (Flat 38C) should be deducted from any repayment by Clarendon.
- 57 The Tribunal further orders under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that Clarendon should be required to reimburse each of the Applicants £50.00, being 50 per cent of the application fee, and to reimburse Danylo Chumachenko a further £100.00, being 50 per cent of the hearing fee (which he paid on behalf of the Applicants).
- 58 The Tribunal therefore orders that Clarendon pay to the Applicants the sums set out in the following table –

Applicant	Flat	Net rent repayment	Deduction for refunds already paid	Application/hearing fee reimbursement	Total sum to be repaid
Shalom Stafford	3E	£1273.43		£50.00	£1323.43
Sunil Singh	4F	£1182.07		£50.00	£1232.07
Danylo Chumachenko	8B	£1202.99		£150.00	£1352.99
Kieran McGarry	8F	£1236.91		£50.00	£1286.91
Jack Cakebread	28B	£1064.78		£50.00	£1114.78
Nana Fynn	38C	£1370.86	£436.28	£50.00	£984.58
Hardik Ganesh	40E	£1105.81		£50.00	£1155.81
Lewis Dytrych	44A	£1056.45		£50.00	£1106.45
Emerson Darwin	48A	£1107.37		£50.00	£1157.37
Sami Ozay	48C	£1281.67		£50.00	£1331.67
Muhamud Aslam	52A	£1212.39		£50.00	£1262.39
Michael Kubi	52D	£983.05		£50.00	£1033.05
Matas Vertelka	52E	£1295.30		£50.00	£1345.30

## Summary

- 59 In relation to the first period of the Applicants' assured shorthold tenancies the Tribunal makes no repayment orders.
- 60 In relation to the second period of the Applicants' assured shorthold tenancies the Tribunal orders Clarendon not later than 15 August 2023 to pay to the Applicants the sums set out below –
- |                               |          |
|-------------------------------|----------|
| Shalom Stafford (Flat 3E):    | £1323.43 |
| Sunil Singh (Flat 4F):        | £1232.07 |
| Danylo Chumachenko (Flat 8B): | £1352.99 |
| Kieran McGarry (Flat 8F):     | £1286.91 |
| Jack Cakebread (Flat 28B):    | £1114.78 |
| Nana Fynn (Flat 38C):         | £984.58  |
| Hardik Ganesh (Flat 40E):     | £1155.81 |
| Lewis Dytrych (Flat 44A):     | £1106.45 |
| Emerson Darwin (Flat 48A):    | £1157.37 |
| Sami Ozay (Flat 48C):         | £1331.67 |
| Muhamud Aslam (Flat 52A):     | £1262.39 |
| Michael Kubi (Flat 52D):      | £1033.05 |
| Marta Vertelka (Flat 52E):    | £1345.30 |

## **Appeal**

- 61 If a party wishes to appeal this Decision, that appeal is to the Upper Tribunal (Lands Chamber). However, a party wishing to appeal must first make written application for permission to the First-tier Tribunal at the Regional office which has been dealing with the case.
- 62 The application for permission to appeal must be received by the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- 63 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(s) for not complying with the 28-day time limit. The Tribunal will then consider the reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- 64 The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking.

18 July 2023

Professor Nigel P Gravells  
Deputy Regional Judge

## SCHEDULE

Applicant	Flat	Case reference rent repayment	Immediate landlord during first period	Immediate landlord during second period
Shalom Stafford	3E	BIR/00FY/HMF/2022/0020	Michael Moylett	Clarendon
Sunil Singh	4F	BIR/00FY/HMJ/2022/0016	Mark Treacy	Clarendon
Danylo Chumachenko	8B	BIR/00FY/HMJ/2022/0014	Louis O'Connell	Clarendon
Kieran McGarry	8F	BIR/00FY/HMJ/2022/0028	Louis O'Connell	Clarendon
Jack Cakebread	28B	BIR/00FY/HMF/2022/0028	John Nugent	Clarendon
Nana Fynn	38C	BIR/00FY/HMF/2022/0009	P & A McGrath	Clarendon
Hardik Ganesh	40E	BIR/00FY/HMJ/2022/0024	John Duffy	Clarendon
Lewis Dytrych	44A	BIR/00FY/HMJ/2022/0020	Patrick King	Clarendon
Emerson Darwin	48A	BIR/00FY/HMK/2022/0014	K & B Wryne	Clarendon
Sami Ozay	48C	BIR/00FY/HMJ/2022/0011	K & B Wryne	Clarendon
Muhamud Aslam	52A	BIR/00FY/HMJ/2022/0008	WPVR	Clarendon
Michael Kubi	52D	BIR/00FY/HMJ/2022/0010	WPVR	Clarendon
Matas Vertelka	52E	BIR/00FY/HMJ/2022/0009	WPVR	Clarendon