FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AL/HMF/2023/0136**
Property	**:**	**6 Wilberforce Court, Byron Close, Thamesmead, London SE28 8AB**
Applicants	**:**	**Oscar Ighodalo** **Innocent Akowuibe**
Representative	**:**	**Adam Bernard solicitors**
Respondent	**:**	**Esther Makunde** **Oladapo Odebunmi**
Type of Application	**:**	**Application for a rent repayment order by tenant**
Tribunal	**:**	**Judge Nicol** **Mr SF Mason BSc FRICS**
Date and Venue of Hearing	**:**	**6th October 2023;** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**9th October 2023**

DECISION

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1) **The First Respondent, Esther Makunde, shall pay Rent Repayment Orders in the following amounts:**
   a. **£3,600 to the First Applicant, Oscar Ighodalo; and**
   b. **£2,880 to the Second Applicant, Innocent Akowuibe.**

2) **The First Respondent shall reimburse the Applicants their Tribunal fees of £300.**

3) **The application against the Second Respondent, Oladapo Odebunmi, is dismissed.**

Relevant legislative provisions are set out in an Appendix to this decision.

Reasons

1. The Applicants lived at the subject property at 6 Wilberforce Court, Byron Close, Thamesmead, London SE28 8AB, a 2-bedroom flat with shared kitchen and bathroom/WC facilities.

2. The Applicants seek a rent repayment order ("RRO") against the Respondent in accordance with the Housing and Planning Act 2016 ("the 2016 Act").

3. The hearing of this matter was in person and took place on 5th October 2023. It was attended by:

   - The Applicants;
   - Mr Khan, solicitor advocate, representing the Applicants, assisted by Mr Ali, the caseworker from Adam Bernard solicitors; and
   - The Respondents, representing themselves.

4. The documents before the Tribunal consisted of:

   - The Applicants' bundle of 197 pages;
   - The Respondent's bundle of 142 pages;
   - The Applicants' Response; and
   - Some authorities from Mr Khan.

The offence

5. The Tribunal may make a RRO when a landlord has committed one or more of a number of offences listed in section 40(3) of the 2016 Act. The Applicants alleged that the Respondents were guilty of having control of and managing an HMO (house in multiple occupation) which was required to be licensed but was not so licensed, contrary to section 72(1) of the Housing Act 2004 ("the 2004 Act").

6. The Applicants brought a previous application to the Tribunal alleging that the Respondents had committed a different offence, namely unlawful eviction and harassment contrary to section 1 of the Protection from Eviction Act 1977. In its decision, the Tribunal summarised the background facts as follows:

   7. The property is a two-bedroom flat located at 6 Wilberforce Court, Byron Close, Thamesmead, London SE28 8AB. The respondent rented the property in February 2009. About a year later the property was sold at auction to a Mr Robert Harrison (hereinafter referred to as "Mr Harrison"). The respondent said that Mr Harrison and the respondent agreed that he would give her first refusal if he decided to sell the property in the future. The respondent also asserted that they agreed the same terms that she had with her former landlord about the respondent paying for any repairs/home improvements and letting out rooms in the property. The respondent went on to say that in 2013, her Aunty came to live

with her. She informed Mr Harrison and the respondent asserted that he had no objections.

8. The respondent says she met Oladapo Odebunmi, her husband, in 2014 and he moved in with her and lived in the property until they moved into a bigger property in Dartford in August 2019. Again, Mr Harrison was informed. She said she agreed with Mr Harrison that she would continue to rent the property from him and could let the other room to a lodger in order for her Aunty to remain at the property. It was further agreed that the respondent would continue to be personally responsible for all the outgoing utility bills.

9. To that end the First Applicant moved in on 11 September 2019 at an agreed rental of £600 which was inclusive of all utility bills. He took occupation of the living room/dining room which was upstairs. The Second Applicant moved into the property on or around 28 September 2019. He took occupation of the second bedroom. The parties agreed a monthly rent of £480.

10. On 17 May 2022 the First Applicant messaged the respondent regarding an eviction notice instituted by Peabody Trust. The letter was addressed to Mr Harrison and all other Occupants. Judgement had been granted in favour of the Peabody Trust and the Property was being repossessed and all occupants had until by 1 June 2022 to vacate the Property. Prior to this date, the respondent asserted that she had no knowledge that Peabody Trust had commenced proceedings against Mr Harrison for his failure to pay ground rent and other charges from when he purchased the Property in 2010.

11. The respondent says she was distressed by this information and in order to assist immediately offered to give the applicants their deposits back. The respondent's Aunty was also still residing at the Property, so the respondent says she had to seek alternative accommodation for her too.

12. The respondent says she made several attempts to contact Mr Harrison but to no avail. These attempts were made by email and telephone. The respondent drove to his last known address, but it appeared to be vacated and there was an eviction notice on the door.

7. The Applicants were extremely distressed by their eviction at such short notice, having been unaware that there was a superior landlord, let alone one whose troubles could endanger their home. They applied to the county court for the Respondents to reinstate them. When that didn't work, they brought the previous application for a RRO.

8. Understandably on the facts as found, the Tribunal were not satisfied to the criminal standard of proof that the Respondents were guilty of unlawful eviction or harassment. There was simply no evidence that the Respondents knew about, let alone were complicit, in the events leading up to the Applicants' eviction. The Tribunal gets the impression that the Applicants' animus towards the Respondents remains. Having said that, the offence alleged now is completely different and must be separately considered.

9. There is no dispute that there were three people at the property, at least two of whom were tenants paying rent. This brought the property within the requirements of the Royal Borough of Greenwich's additional licensing scheme for HMOs.

10. The Respondents' principal defence was that they were not the Applicants' landlord and neither were in control of nor managed the property. Although they didn't say so in their oral submissions, in their written representations they appeared to be suggesting that they had operated as Mr Harrison's agents.

11. Mr Khan took the Tribunal through the evidence and, in particular, the Respondent's own evidence. It is clear that the First Respondent was Mr Harrison's tenant and obtained his permission to sub-let the property. The Respondents protested that they only did so out of the goodness of their hearts because the First Applicant was an alumnus of the same school as that of the Second Respondent and the Second Applicant was the First Applicant's friend. However, this is irrelevant because it does not stop the Applicants being tenants in the same way as tenants who have no connection with their landlord or with each other.

12. With all due respect to the parties themselves, they appear not to know or understand what makes someone a landlord (this comment does not apply to Mr Khan whose submissions on the law were correct and helpful). The First Respondent was the tenant of Mr Harrison – the Second Respondent joined her at the property after she was already the tenant and there is no evidence that the tenancy was changed to a joint one. Both parties seemed to think that this meant that Mr Harrison was the only "real" landlord. However, it is entirely legal and proper for a tenant to sub-let a property so that they become the landlord to their sub-tenants while remaining the tenant of the superior landlord. And that is what happened here.

13. With Mr Harrison's express consent, and with the assistance of the Second Respondent, the First Respondent let rooms to each of the Applicants, thus becoming the landlord to each of them. When the Applicants said they needed a written agreement, the Second Respondent obtained some template forms and wrote out written tenancy agreements with the First Respondent named as landlord.

14. This case has been brought against both Respondents because the Applicants have dealt even more with the Second Respondent than with the First Respondent. However, the evidence is clear that the First Respondent was Mr Harrison's sole tenant with the power to sub-let and anything the Second Respondent did was as an agent for his wife, hence why he put her name but not his on the Applicants' tenancy agreements.

15. The Respondents suggested that the Applicants' written tenancy agreements were somehow not tenancies and that they were only

provided because the Applicants needed official documents to establish their status with other organisations. However, the Tribunal is satisfied that the written agreements were created after the Applicants' tenancies had started and accurately reflected their existing status.

16. As for whether the Respondents had control of or managed the HMO, section 263 of the 2004 Act defines these terms, including as follows:

- "person having control" means the person who receives the rack-rent of the premises (i.e. a rent which is not less than two-thirds of the full net annual value of the premises).
- "person managing" means the person who, being a lessee of the premises, receives rents from tenants of parts of the premises.

17. The First Respondent was a tenant of the property and received rents from the Applicants as their landlord. She did not pass these rents on to Mr Harrison, instead paying a monthly rent of £870, subject to deductions from time to time to account for maintenance or improvements the Respondents carried out to the property.

18. The First Respondent says that she had a conversation with Mr Harrison in 2019, not long after the Second Applicant came to the property. Mr Harrison said he knew about HMOs, licensing and other local authority requirements from other properties in which he had an interest and he would sort things out himself. While the First Respondent did not gain any significant knowledge from this conversation as to what those requirements might be, she was clearly aware that there were some requirements and they needed to be complied with. She decided to trust Mr Harrison and leave it to him as he appeared to know what he was doing.

19. The Tribunal accepts that this was a rational response by the First Respondent in 2019. However, in the nearly 3 further years that the Applicants remained at the property, she did nothing to chase Mr Harrison to find out what was happening on this issue nor to improve her knowledge. A simple Google search would have provided her with some knowledge, possibly including the fact that she shared the responsibility with Mr Harrison to comply with licensing requirements, but she didn't even do that.

20. The Respondent argued that leaving matters to Mr Harrison constituted a reasonable excuse for having control of and managing a property which should have been licensed but was not and, therefore, that she had a defence under section 72(5) of the 2004 Act. However, her failure to do anything in the following 3 years to follow up on Mr Harrison's promise means that her approach was wholly insufficient.

21. Although not having raised the question previously, the Second Respondent asked at the hearing how the Applicants knew that Mr Harrison had not obtained an HMO licence without either the Respondents or the Applicants knowing. From its own knowledge and

experience, the Tribunal finds this highly unlikely. Any licensing process would have involved the local authority obtaining information about the letting and occupation of the property from the Respondents and/or the Applicants and/or notifying them of the outcome. Moreover, the Respondents could have found out about the licensing situation themselves if they had wanted to use this as a defence. However, if there were a licence, it would exculpate the First Respondent. Judge Nicol took less than one minute to locate Greenwich's HMO licence register from their website and it showed that no licence or Temporary Exemption Notice had been granted in respect of the subject property at any time.

22. For these reasons, the Tribunal is satisfied so that it is sure that the First Respondent committed the offence of having control of and managing an HMO which was required to be licensed but was not and, as the Applicants' landlord, is subject to the potential award of a RRO. The Tribunal is not so satisfied that the Second Respondent either committed the offence or is a joint landlord and so he is not liable to pay a RRO.

Rent Repayment Order

23. For the above reasons, the Tribunal is satisfied that it has the power under section 43(1) of the 2016 Act to make a RRO on this application against the First Respondent. The Tribunal has a discretion not to exercise that power but, as confirmed in *LB Newham v Harris* [2017] UKUT 264 (LC), it will be a very rare case where the Tribunal does so. This is not one of those very rare cases. The Tribunal cannot see any grounds for exercising their discretion not to make a RRO.

24. The RRO provisions were considered by the Upper Tribunal (Lands Chamber) in *Parker v Waller* [2012] UKUT 301 (LC). Amongst other matters, it was held that an RRO is a penal sum, not compensation. The law has changed since *Parker v Waller* and was considered in *Vadamalayan v Stewart* [2020] UKUT 0183 (LC) where Judge Cooke said:

> 14. … under the current statutory provisions the restriction of a rent repayment order to the landlord's profit is impossible to justify. The rent repayment order is no longer tempered by a requirement of reasonableness; and it is not possible to find in the current statute any support for limiting the rent repayment order to the landlord's profits.
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> 53. The provisions of the 2016 Act are rather more hard-edged than those of the 2004 Act. There is no longer a requirement of reasonableness and therefore, I suggest, less scope for the balancing of factors that was envisaged in *Parker v Waller*. The landlord has to repay the rent, subject to considerations of conduct and his financial circumstances. …

25. In *Williams v Parmar* [2021] UKUT 0244 (LC) Fancourt J held that there was no presumption in favour of awarding the maximum amount of an RRO and said in his judgment:

> 43. … "Rent Repayment Orders under the Housing and Planning Act 2016: Guidance for Local Authorities", which came into force on 6 April 2017 … is guidance as to whether a local housing authority should exercise its power to apply for an RRO, not guidance on the approach to the amount of RROs. Nevertheless, para 3.2 of that guidance identifies the factors that a local authority should take into account in deciding whether to seek an RRO 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.
>
> 50. I reject the argument … that the right approach is for a tribunal simply to consider what amount is reasonable in any given case. A tribunal should address specifically what proportion of the maximum amount of rent paid in the relevant period, or reduction from that amount, or a combination of both, is appropriate in all the circumstances, bearing in mind the purpose of the legislative provisions. A tribunal must have particular regard to the conduct of both parties (which includes the seriousness of the offence committed), the financial circumstances of the landlord and whether the landlord has at any time been convicted of a relevant offence. The tribunal should also take into account any other factors that appear to be relevant.

26. In *Acheampong v Roman* [2022] UKUT 239 (LC) the Upper Tribunal sought to build on what was said in *Williams v Parmar*. At paragraph 15, Judge Cooke stated,

> it is an obvious inference both from the President's general observations and from the outcome of the appeal that an order in the maximum possible amount would be made only in the most serious cases or where some other compelling and unusual factor justified it.

27. The current Tribunal finds it difficult to follow this reasoning. Although RROs are penal, rather than compensatory, they are not fines. Levels of fines for criminal offences are set relative to statutory maxima which define the limit of the due sanction and the fine for each offender is modulated on a spectrum of which that limit defines one end – effectively the maximum fine is reserved for the most serious cases. In this way, the courts ensure that there is consistency in the amount of any fine – each person convicted will receive a fine at around the same level as someone who committed a similar offence in similar circumstances.

28. However, an RRO is not a fixed amount. The maximum RRO is set by the rent the tenant happened to pay. It is possible for a landlord who has conducted themselves appallingly to pay less than a landlord who has conducted themselves perfectly (other than failing to obtain a licence) due to the levels of rent each happened to charge for their respective properties.

29. For example, in *Raza v Anwar* (375 Green Street) LON/00BB/HMB/2021/0008 the Tribunal held that, as well as having control of and managing an HMO which was required to be licensed but was not so licensed, the landlord was guilty of using violence to secure entry to a property contrary to section 6 of the Criminal Law Act 1977 and unlawful eviction and harassment contrary to section 1 of the Protection from Eviction Act 1977. Nevertheless, the RRO was for only £3,600 because the rent was so low at £300 per month. The Tribunal commented at paragraph 57 of their decision:

> The maximum amount of the RRO is in no way commensurate with the seriousness of [the landlords'] behaviour. A larger penal sum would be justified, if the Tribunal had the power to make it.

30. In the Tribunal's opinion, there is nothing wrong with or inconsistent in the statutory regime for RROs if a particular RRO can't be increased due to a landlord's bad conduct. It is the result which inevitably follows from using the repayment of rent as the penalty rather than a fine. The maximum RRO, set by the amount of the rent, is a cap, not the maximum or other measure of the gravity of the parties' conduct. A landlord's good conduct or a tenant's bad conduct may lower the amount of the RRO and section 44(3) finds expression in that way. Further, the Tribunal cannot find anything in Fancourt J's judgment in *Williams v Parmar* to gainsay this approach.

31. Judge Cooke went on in *Acheampong* to provide guidance on how to calculate the RRO:

> 20. The following approach will ensure consistency with the authorities:
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> a. Ascertain the whole of the rent for the relevant period;
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> 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).

32. The Applicants each seek a RRO of the maximum amount, being the rent they each paid for the 12 months prior to their eviction on 1st June 2022:

(a) Ighodalo Oscar £7,200
(b) Innocent Akowuibe £5,760

33. In relation to utilities, the Tribunal again finds it difficult to understand Judge Cooke. It is common, for a landlord to include the utility charges within the rent. However, this does not only benefit the tenant. Landlords do not include such services in the rent out of charitable goodwill but for sound commercial reasons such as increasing the chances of achieving a letting, attracting and retaining desirable tenants, and maintaining control of the identity of suppliers to the property. The same reasoning applies to the provision of furnishings, including white goods, but Judge Cooke does not extend her reasoning to such matters. Obviously, tenants control the rate of consumption of such services but this is necessarily built in to the landlord's calculations when offering them within the rent.

34. Further, the Tribunal cannot identify any support within the statute for this approach to utility charges. Nor does Judge Cooke. On the contrary, the legislation refers to "the rent" and not "the net rent". "Rent" has a clearly defined meaning in the law of landlord and tenant, namely "the entire sum payable to the landlord in money" (see *Megarry on the Rent Acts*, 11th Ed at p.519 and *Hornsby v Maynard* [1925] 1 KB 514). It is also stated in *Woodfall: Landlord and Tenant* at paragraph 7.015 that, "At common law, the whole amount reserved as rent issues out of the realty and is distrainable as rent although the amount agreed to be paid may be an increased rent on account of the provision of furniture or services or the payment of rates by the landlord." Parliament would have had this in mind in enacting the legislation.

35. The First Respondent was liable under her tenancy with Mr Harrison for the costs of the utilities (gas, water and electricity) and council tax but she did not require the Applicants to contribute separately to them. Effectively, the Applicants' rent included those elements. However, the Respondents had provided no evidence of the actual costs. When asked by the Tribunal, they estimated they spent a total of over £500 per month on utilities and council tax and more than that during the winter. Mr Khan submitted that this was too high but, in fact, the Tribunal has no basis on which to assess how accurate that estimate may be. Given the lack of relevant evidence and the apparent lack of

support within the statute for making any deduction for utilities or council tax, the Tribunal decided not to make any specific deduction in relation to them.

36. The next step is to consider the seriousness of the offence. Judge Cooke referred to the maximum fine for any relevant offences but more significant are the various matters referred to in this decision.

37. It is important to understand why a failure to licence is so serious. The Respondents feel like they fell into the role of landlord with the best of intentions and not in order to make any money – they pointed to how little, if anything, would have been left from the Applicants' rent after paying their rent to Mr Harrison and the aforementioned utilities and council tax. However, becoming a landlord is a serious undertaking, bringing with it responsibility for the health and safety of their tenants. The Respondents have chosen to take on that responsibility when they had other choices. There are consequences to doing so.

38. The process of licensing effectively provides an audit of the safety and condition of the property and of the landlord's management arrangements, supported wherever and whenever possible by detailed inspections by council officers who are expert in such matters. Owners and occupiers are not normally expert and can't be expected to know how to identify or remedy relevant issues without expert help. It is not uncommon that landlords are surprised at how much a local authority requires them to do to bring a property up to the required standard and, in particular, object to matters being raised about which the occupiers have not complained. In the absence of comprehensive expert evidence or evidence that the local authority has inspected and is satisfied, a Tribunal will rarely, if ever, be able to assure itself that a property meets the relevant licensing standards.

39. If a landlord does not apply for a licence, that audit process never happens. As a result, the landlord can save significant sums of money by not incurring various costs which may cover, amongst other matters:

(a) Consultants – surveyor, architect, building control, planning

(b) Licensing fees

(c) Fire risk assessment

(d) Smoke or heat alarm installation

(e) Works for repair or modification

(f) Increased insurance premiums

(g) Increased lending costs

(h) Increased lettings and management costs.

40. The prospect of such savings is a powerful incentive not to get licensed. Not getting licensed means that important health and safety requirements may get missed, to the possible serious detriment of any occupiers. RROs must be set at a level which disincentivises the

avoidance of licensing and disabuses landlords of the idea that it would save money.

41. Landlords also need to be incentivised to take their own responsibilities seriously. There is nothing wrong in relying on third parties, such as professional agents or superior landlords with greater knowledge, but not to the extent that a landlord abdicates all responsibility. A minimum level of engagement is still required, without which circumstances may arise, as in this case, in which nothing was done to achieve compliance with HMO licensing requirements.

42. The Tribunal is required to consider whether any deductions should be made in accordance with section 44(4) of the 2016 Act. Mr Khan accepted that the Applicants had no evidence of poor conduct by the Respondents other than in their failure to comply with HMO licensing. While the Applicants still feel bitter about their eviction, the Tribunal cannot see any basis for criticising the Respondents' conduct at the time.

43. As to the Applicants' conduct, the Respondents resent the fact that the Applicants have dragged them to court and tribunal previously without having a case against them in relation to their eviction. They also alleged at the hearing that the Applicants had broken into the facility at the property where the Respondents had stored some of their belongings but also that they had changed the locks so that they could not retrieve those belongings before the eviction process excluded them altogether.

44. The Respondents did not provide any information in relation to their financial circumstances, despite the issue being mentioned in the Tribunal's guidance attached to the directions issued on 28th June 2023. They said that they were agency workers or contractors, effectively working on zero hours contracts, and could not afford a barrister, but this falls well short of the information needed for their financial circumstances to impact the Tribunal's decision as to what the amount of the RRO should be.

45. The First Respondent's failure to comply with HMO licensing or even to attempt to take any steps towards compliance is reprehensible. However, she appears, with her husband, to have maintained the property to the best of her ability, having come into the role of landlord with no greater intention than to provide her aunt with a place to live which would mostly fund itself.

46. Taking into account all the circumstances, the Tribunal concluded that the First Respondent's control and management of the property while it was unlicensed was a serious default which warrants a proportionate sanction but that there is mitigation which justifies a reduction of 50% from the maximum amount.

47. Therefore, the amounts awarded to each Applicant are:

(a) Ighodalo Oscar £3,600
(b) Innocent Akowuibe £2,880

48. The Applicants paid £300 in Tribunal fees. The Tribunal has the power to order the Respondents to reimburse them. The application has been largely successful and, therefore, the Tribunal so orders.

Name: Judge Nicol **Date:** 9th October 2023

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 of relevant legislation

Housing Act 2004

Section 72 Offences in relation to licensing of HMOs

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

(2) A person commits an offence if–

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

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

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

(3) A person commits an offence if–

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

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

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time–

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse–

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

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

(c) for failing to comply with the condition,

as the case may be.

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

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

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

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

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

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

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

(b) The conditions are–

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

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

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

<u>Section 263</u> Meaning of "person having control" and "person managing" etc.

- In this Act "person having control", in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.
- In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.
- In this Act "person managing" means, in relation to premises, the person who, being an owner or lessee of the premises–

  (a) receives (whether directly or through an agent or trustee) rents or other payments from–

  (i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

  (ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

  (b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

  and includes, where those rents or other payments are received through another person as agent or trustee, that other person.
- In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).
- References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

Housing and Planning Act 2016

Chapter 4 RENT REPAYMENT ORDERS

Section 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

(b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.

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

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

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

Section 41 Application for rent repayment order

(1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.

(2) A tenant may apply for a rent repayment order only if —

(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and

(b) the offence was committed in the period of 12 months ending with the day on which the application is made.

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

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

(b) the authority has complied with section 42.

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

Section 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);

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

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

Section 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.

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

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

(a) the rent 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.