FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AE/HMF/2023/0019**
Type of Hearing	:	**Remote - Video**
Property	:	**36, Doyle Gardens, London NW10 3DA.**
Applicants	:	**(1) Lewis Brandon** **(2) Michele Canali** **(3) Chloe Auclair** **(4) Bhanuja Sanghavi**
Representative	:	**Justice for Tenants**
Respondents	:	**(1) Shailesh "Shaileshkumar" Bhailalbhai Patel** **(2) Carole Anne Cobain-Patel**
Representative	:	**Mr. H. Ronan of counsel instructed by Hodge Halsall Solicitors Ltd.**
Type of Application	:	**Application for a rent repayment order by tenant**
Tribunal	:	**Tribunal Judge S.J. Walker** **Tribunal Member Mr. C. Gowman BSc MCIEH**
Date and Venue of Hearing	:	**24 October 2023 – remote video**
Date of Decision	:	**13 December 2023**

DECISION

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(1) The Tribunal makes a Rent Repayment Order under section 43 of the Housing and Planning Act 2016 requiring the Respondents to pay the Applicants the sum of £14,160.

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(2) The application for an order under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the re-imbursement by the Respondents of the fees of £300 paid by the Applicants in bringing this application is granted. Payment is to be made within 28 days.

Reasons

The Application

1. The Applicants seek a rent repayment order pursuant to sections 43 and 44 of the Housing and Planning Act 2016 ("the Act") for the period from 1 October 2021 to 30 September 2022 as set out in their application.

2. The application is signed by the applicants and dated 5 December 2022 and so is in time. It alleges that the Respondents have committed an offence contrary to section 72(1) of the Housing Act 2004 ("the 2004 Act") - having control or management of an unlicensed House in Multiple Occupation ("HMO").

The Hearing

3. The hearing was conducted remotely by video link. All parties attended. The Applicants were represented by Mr. Neilson and the Respondents by Mr. Ronan. The First Applicant and the First Respondent both gave evidence, which the Tribunal took into account. In order to avoid calling all the Applicants in order to be cross-examined the parties agreed that it was not necessary for the remaining Applicants to give evidence on the basis that what was said by Mr. Brandon in his evidence would stand as the evidence for all the Applicants.

4. The Tribunal had before it the following document bundles, which were all read and taken into account when reaching its decision;
   (a) the Applicant's indexed and paginated bundle comprising 671 pages (bundle A);
   (b) the Respondent's bundle which comprises the First Respondent's witness statement followed by 88 numbered pages (bundle R);
   (c) the Applicant's response comprising 7 pages (bundle AR);and
   (d) a skeleton argument from Mr. Ronan

   There was also an audio recording of a conversation between the parties.

5. In what follows references to documents in particular bundles will be, where those bundles are paginated, by reference to the printed page numbers. Where the bundles are not paginated they will be by reference to the electronic page number. References will bear the prefix for each bundle set out above. Thus, for example, page 20 of the Respondent's bundle will be page R20.

6. At the beginning of the hearing the Respondents sought to introduce further evidence in the form of a witness statement from the Second Respondent. Although Mr. Neilson objected to its late inclusion in the evidence, the Tribunal agreed to admit it. It was relevant only to the issue of reasonable excuse – about which more will be said below – and did not raise anything new or controversial. The Tribunal considered that its inclusion did not significantly prejudice the Applicants and that it was in the interests of fairness and justice for the statement to be included.

The Legal Background

7. The relevant legal provisions are partly set out in the Appendix to this decision.

8. The Tribunal may make a rent repayment order when a landlord has committed one or more of a number of offences listed in section 40(3) of the Act. An offence is committed under section 72(1) of the 2004 Act if a person has control or management of an HMO which is required to be licensed but is not. By section 61(1) of the 2004 Act every HMO to which Part 2 of that Act applies must be licensed save in prescribed circumstances which do not apply in this case.

9. Section 55 of the 2004 Act explains which HMOs are subject to the terms of Part 2 of that Act. An HMO falls within the scope of Part 2 if it is of a prescribed description (a mandatory licence) or if it is in an area for the time being designated by a local housing authority under section 56 of the 2004 Act as subject to additional licensing, and it falls within any description of HMO specified in that designation (an additional licence).

10. To be an HMO of any description the property must meet the standard test under section 254(2) of the 2004 Act. A building meets the standard test if it;

> "*(a) consists of one or more units of living accommodation not consisting of a self-contained flat or flats;*
> *(b) the living accommodation is occupied by persons who do not form a single household …;*
> *(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it;*
> *(d) their occupation of the living accommodation constitutes the only use of that accommodation;*
> *(e) rents are payable or other consideration is to be provided in respect of at least one of the those persons' occupation of the living accommodation; and*
> *(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.*"

11. By virtue of section 258 of the 2004 Act persons are to be regarded as not forming a single household unless they are all members of the same family. To be members of the same family they must be related, a couple, or related to the other member of a couple.

12. With regard to additional licensing, there was no dispute that the property was in the London Borough of Brent and that the whole of that borough was subject to an additional licensing scheme which designated all HMOs other than those requiring a mandatory licence as requiring a licence (see page A348).

13. An offence under section 72(1) can only be committed by a person who has control of or manages the property in question. The meaning of these terms is set out in section 263 of the 2004 Act as follows;

> "(1) *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.*
>
> *(2) In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.*
>
> *(3) 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.*

14. It is a defence to a charge of an offence under section 72(1) of the 2004 Act that a person had a reasonable excuse for committing it (section 72(5)).

15. By virtue of the decision of the Court of Appeal in the case of Rakusen -v- Jepsen and others [2023] UKSC 9 an order may only be made against the immediate landlord of a tenant.

16. An order may only be made under section 43 of the Act if the Tribunal is satisfied beyond reasonable doubt that an offence has been committed.

17. By section 44(2) of the Act the amount ordered to be paid under a rent repayment order must relate to rent paid in a period during which the landlord was committing the offence, subject to a maximum of 12 months. By section 44(3) the amount that a landlord may be required to repay must not exceed the total rent paid in respect of that period.

18. Section 44(4) of the Act requires the Tribunal to have regard to the conduct of the landlord and tenant, the financial circumstances of the landlord and whether or not the landlord has been convicted of a relevant offence when determining the amount to be paid under a rent repayment order.

Has an Offence Been Committed?

The Applicants' Case

19. The Applicants' case, as set out at in their statement of case at pages A2 to 4, is simple and is as follows. The property is a 2-storey mid-terrace house with a shared kitchen and bathrooms and is in the London Borough of Brent. The four Applicants were all in occupation of the property throughout the period in question as tenants of the Respondents. This was their only or main home, and they were occupying the property solely as a dwelling. The Applicants each occupied their own bedroom and so they formed 4 households. The property was, therefore, an HMO requiring an additional licence. No such licence was in place nor had one been applied for. The Respondents were persons managing and/or persons in control of the property and so have committed an offence contrary to section 72(1) of the 2004 Act.

The Respondents' Case

20. The Respondents do not take issue with any aspect of the Applicants' case that an offence has been committed save that they argue that they have a reasonable excuse defence as allowed for by section 72(5) of the 2004 Act (see paras 17 to 19 and 27 to 44 of Mr. Ronan's skeleton argument). The reasonable excuse defence put forward is that the Respondents were unaware of the need for a licence and that this lack of knowledge came about because of, or at least in the context of, the two of them being senior clinicians on the frontline of the NHS during the extremely challenging times of the Covid pandemic. The details of their work and the effects of it on the Respondents is summarised in Mr. Ronan's submissions at paras 31 to 36.

The Tribunal's Decision

21. Given the parties' case statements as set out above the only question for the Tribunal in determining whether or not an offence has been committed was whether or not the reasonable excuse defence has been established on the balance of probabilities.

22. When addressing this question, the Tribunal had regard to a number of authorities. In particular the Tribunal were referred to the cases of Awolaja & Rodriguez [2021] UKUT 274 (LC), and Marigold -v- Wells [2023] UKUT 33 (LC), the latter of which also refers approvingly to the case of Perrin -v- HMRC [2018] UKUT 156 (TCC).

23. In the former case, which deals with reasonable excuse based on ignorance, it was accepted that ignorance may be relevant to a reasonable excuse defence, though unless that ignorance was reasonable in all the circumstances, it will not be sufficient.

24. The case of Perrin, a tax case, sets out a useful framework in which to assess whether or not a reasonable excuse defence is made out. It comprises three steps. Firstly, the Tribunal must establish what facts are relied upon in order to establish the defence, secondly, the Tribunal must decide which of those facts are proven on the balance of probabilities, and then thirdly, it must

> *"decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so, it should take into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times. It might assist the FTT, in this context, to ask itself the question "was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?"*

25. The Tribunal accepted that the Respondents were unaware of the need to obtain an additional licence. However, it was not satisfied that during the period in question that ignorance was objectively reasonable. In reaching that conclusion it bore in mind the following. Firstly, it accepted entirely the factual background put forward by the Respondents with regard to their heavy involvement in the NHS during the Covid crisis. Details of their commendable work and the efforts they had to employ in that work are clearly set out in both their witness statements.

26. However, that factual background cannot be viewed in a vacuum. The First Respondent's oral evidence, which was consistent with his witness statement, was that the property had been let out to various tenants – mainly single family units – since 2005 and since 2008 they had been relying on Winkworths to deal with the rental agreements from whom they had received some guidance in the past, for instance they were at one time advised that the property was not an HMO as it did not have more than 4 occupants. Indeed, on one occasion they refused to accept a rental from 5 tenants as they understood that this would require a licence (see page R3). This shows both an awareness of the existence of licensing regimes affecting rental properties and awareness of the availability of advice from managing agents such as Winkworths. Indeed, the First Respondent states at paragraph 8 of his witness

statement that from the outset advice was obtained from Winkworths. Indeed, his oral evidence was that at some time before the Applicants moved into the property he received an e-mail from Winkworths informing him that Westminster were introducing an additional licensing scheme. It was not suggested by Mr. Ronan that the Respondents had any reasonable excuse based on a failure by Winkworths to provide proper advice, but this evidence makes two things clear. Firstly, it is clear that advice on licensing matters would have been available to the Respondents from the people who they already used to let their property had they sought it. Secondly, it shows that the Respondents were aware of the existence of additional licences, albeit in a different local authority. This is not a case of a landlord who is completely ignorant of any regulatory control of renting or unaware of how to obtain advice if needed. In the view of the Tribunal, in normal circumstances, it should have been obvious to the Respondents that they would need to keep abreast of the licensing requirements as there was a possibility that they would come within their scope.

27. The Tribunal also bore in mind that the period with which the application is concerned was from 1 October 2021 to 30 September 2022. It therefore had to decide whether it was objectively reasonable for the Respondents to be managing or in control of an unlicensed property during that period. It is possible for a reasonable excuse defence to apply for a period of time and then no longer to do so because of a change in the objective state of affairs. The beginning of this period coincides with a period during which the seriousness of the Covid emergency had significantly reduced. According to the timeline provided with the Second Respondent's witness statement on 19 July 2021, most legal limits on social contact had been removed and the final closed sectors of the economy such as nightclubs had been reopened. The beginning of this period is also before the renewed problems arising from the omicron variant.

28. In the course of his submissions the Tribunal asked Mr. Ronan a number of questions about the reasonable excuse defence. In particular, he was asked whether or not a reasonable landlord faced with significant work pressures should have taken steps to appoint someone else to deal with management of their property. He agreed that normally a busy landlord would reasonably be expected to do this. However, he argued that in the very particular and exceptional circumstances which applied during the pandemic it was reasonable not to have taken that step. However, in the context of that argument, he conceded that the Respondents would have a stronger argument if the Tribunal were considering the situation as it was in 2020 rather than in 2021.

29. It is not necessary for the Tribunal to determine whether or not the Respondents had a reasonable excuse for managing an unlicensed property in 2020, though it accepted that their arguments were indeed stronger during that time. However, it concluded that by October 2021 it certainly was not reasonable, given the extent of their knowledge and

experience, for the Respondents not to have taken any steps to obtain advice or management assistance in dealing with their property. In reaching that conclusion the Tribunal bore in mind the point made by Mr. Ronan at para 43 of his skeleton argument that things did not return to normal in hospitals and people continued to be hospitalised. However, the situation in hospitals was nowhere near as critical in October 2021 as it had been throughout 2020. As a result, the Tribunal was not satisfied that the Respondents had a reasonable excuse for the period from 1 October 2021 onwards. Whilst the Covid situation worsened again thereafter, that is of no assistance as the Respondents should by then already have taken the necessary steps to avoid committing an offence, which they had not done.

30. It follows, therefore, that the statutory defence did not apply and, therefore, that an offence contrary to section 72(1) of the 2004 Act had been committed by the Respondents throughout the period in question.

Jurisdiction to Make an Order

31. There was no doubt that the Respondents were the Applicants' immediate landlord – as is made clear in the tenancy agreement (page A41). It follows that the Tribunal has jurisdiction to make an order against them.

Amount of Order

32. The Tribunal therefore went on to consider the amount, if any, which it should order the Respondents to pay. In doing this it had regard to the approach recommended by UT Judge Cooke in the decision of Acheampong -v- Roman and others [2022] UKUT 239 (LC) @ para 20. The first step is to ascertain the whole of the rent for the relevant period.

Rent

33. The First Respondent at para 12 of his witness statement agrees that the rent paid by the Applicants for the period in question was £35,400. It follows that this is the maximum amount which may be awarded.

Seriousness of Offence

34. As required by the approach recommended in the case of Acheampong the Tribunal then considered the seriousness of the offence both as compared to other types of offence and then as compared with other examples of offences of the same type. From that it determined what proportion of the rent was a fair reflection of the seriousness of the offence.

35. The offence in question is one contrary to section 72(1) of the 2004 Act. This is, when compared with offences such as unlawful eviction, a more minor offence. This alone would justify a reduction of 25%.

36. The Tribunal also concluded that this was far from being a serious offence of its kind. Firstly, it considered the impact on the tenants of the absence of a licence. This was not a case where the Applicants had

shown that there were any significant safety risks at the property. Although it was asserted in the Applicants' statement of case that the property did not have appropriate fire doors, insufficient evidence was presented to establish this. It was argued that the bedroom and kitchen doors were old and flimsy and did not close properly. The evidence contained in the inventory prepared on behalf of the Respondents by Belfore Property Services shows that the kitchen door was in good order, tested and working (page A519), as were the doors to the bedrooms (pages A488, 554, 564 and 577). It was also argued by the Applicants that the external doors presented a fire hazard because they operated by key only. However, the inventory showed that there was an external porch door which was fitted with two white metal lever handles with integrated Yale locks and through the porch there was a main entrance door which was fitted with a Yale lock and a Chubb lock. All were tested and working (see pages A470 and 478). An issue also arose as to whether the fire extinguisher in the kitchen was properly pressurised – the photograph at page A447 shows the needle to be on the borderline of the red zone. No mention of fire safety was made by the First Applicant in his oral evidence. In fact, when pressed in cross examination about their overall impression of the property, he agreed that it was "perfectly acceptable".

37. In reaching its conclusion about seriousness the Tribunal bore in mind the arguments and policy considerations put forward by Mr. Neilson at some length in the Applicants' statement of case (see pages A5 to 15).

38. The Tribunal also considered the culpability of the Respondents. In doing so it bore in mind that they were not in fact aware of the need for a licence. It also bore in mind that the factors relied on in support of the failed reasonable excuse defence should, nevertheless, be taken into account when assessing culpability. It also bore in mind the fact that an application for a licence was in fact made the day after the Respondents received notice of this application, when they first realised that a licence was required.

39. Bearing these mitigating factors in mind the Tribunal concluded that the total amount payable should be reduced further. It considered that the reduction should be of a further 35%, meaning a reduction to 40% of the maximum.

Section 44(4)

40. The Tribunal then considered whether any decrease – or increase – was appropriate by virtue of the factors set out in section 44(4) of the Act.

41. The Applicants sought to raise a number of faults with the property. When considering these, the Tribunal bore in mind that it was considering questions of conduct rather than condition. In the Tribunal's experience problems often arise in properties which are in no way the fault of the landlord. What is important is how the landlord responds to those problems.

42. In this case the Respondent had arranged for an extremely detailed inventory to be prepared showing the condition of the property at the time the Applicants moved in – see pages A448 to 616. This clearly showed the property to be in generally good condition (see in particular the summary at pages A453-454.)

43. Specific complaint was made about the following;
(a) a seized water stopcock;
(b) poor drainage of toilets;
(c) a leak to the conservatory ceiling;
(d) blocked guttering;
(e) a leaking pipe under the kitchen sink;
(f) the washing machine broke down;
(g) faults with the gas boiler and the immersion heater;
(h) the property was unclean when the Applicants moved in;
(i) mice present at the property

44. In reply to these complaints the Respondents drew attention to the fact that they had obtained a Home Care insurance policy with British Gas which covered all problems with central heating and also repairs to plumbing, drains and home electrics (see page R24). The Tribunal accepted that the Applicants were made aware of this policy. Indeed, in his oral evidence the First Applicant referred to the fact that he was liaising with British Gas in relation to problems with the boiler.

45. More specific responses to the issues raised are also set out in the First Respondent's witness statement, which the Tribunal accepted.

46. Overall, taking the evidence as a whole, the Tribunal concluded that the Applicants had overstated the extent of the problems at the property and those problems which were present were all relatively minor. It was satisfied that generally the Respondents had responded appropriately to problems as and when they arose and when notice of those problems was given to them.

47. The Respondents raised no issues in respect of the conduct of the Applicants.

48. In the light of the above, the Tribunal concluded that there was no reason to further alter the proportion of the maximum amount which should be paid by the Respondents to take account of the conduct of the parties.

49. At para 40 of his witness statement the First Respondent stated that he did not consider that his or his wife's financial position was relevant to the Tribunal's decision. However, having been informed that in the absence of any evidence to the contrary, the Tribunal would be likely to conclude that the Respondents would be able to pay any sum the Tribunal may impose, the First Respondent put his finances in issue.

50. On the basis of what he told the Tribunal, and, in particular the fact that the Second Respondent owned her parents' home, which was in the process of being sold for about £200,000, the Tribunal was satisfied that the Respondents would be able to pay the sum awarded. There was no evidence of any previous convictions.

51. Taking all this together the Tribunal concluded that no further change in the amount of the order was justified under section 44(4).

52. It follows, therefore, that the amount of the order payable by the Respondents to the Applicants is £35,400 x 40% = £14,160.

53. The Applicants also sought an order under rule 13(2) of the Rules for the re-imbursement of the fees paid for bringing the Application. The Tribunal concluded that, given that the Applicants had succeeded in their application, it was just and equitable to make such an order.

Name: Tribunal Judge S.J. Walker **Date:** 12 December 2023

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.

- If a party wishes to appeal against this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

- The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

- If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

- The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

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.

(1) 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.

(2) 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.

(3) 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).

263 Meaning of "person having control" and "person managing" etc.

(1) 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.

(2) In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) 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.

(4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).

(5) 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.

Section 52 Interpretation of Chapter

(1) In this Chapter—

"offence to which this Chapter applies" has the meaning given by section 40;

"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;

"rent" includes any payment 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;

"rent repayment order" has the meaning given by section 40.

(2) For the purposes of this Chapter an amount that a tenant does not pay as rent but which is offset against rent is to be treated as having been paid as rent.