FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AY/HMF/2023/0307 (1)** **LON/00AY/HMF/2024/0002 (2)**
Property	**:**	**3 Mandalay Road, London SW4 9ED**
Applicants	**:**	**Lusia Rokitta (1)** **Matthieu Ivan Wayne Blazevic (2)**
Respondent	**:**	**Olayinka Osuntuyi**
Type of Application	**:**	**Application for a rent repayment order by tenant**
Tribunal	**:**	**Judge Nicol** **Mrs L Crane MCIEH** **Miss J Dalal**
Date and Venue of Hearing	**:**	**6th June 2024;** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**6th June 2024**

DECISION

The Respondent shall pay Rent Repayment Orders:

(1) To the First Applicant in the sum of £7,892.37; and

(2) To the Second Applicant in the sum of £10,000.

Relevant legislation is set out in the Appendix to this decision.

Reasons

1. The Applicants were tenants at 3 Mandalay Road, London SW4 9ED:

(a) The First Applicant from 7th November 2022 to 10th June 2023; and
(b) The Second Applicant from 5th November 2022 to 5th September 2023.

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2. The Respondent was their landlord. Although the Applicants paid rent direct into a bank account held by the Respondent, management was in the hands of Mr Michael Emuchay and Ms Chantelle Davis, acting as agents for the Respondent.

3. The Applicants seek rent repayment orders ("RROs") against the Respondent in accordance with the Housing and Planning Act 2016 ("the 2016 Act").

4. The Tribunal issued directions on 21st February 2024. There was a face-to-face hearing of the application at the Tribunal on 6th June 2024, attended by the Applicants.

5. The documents available to the Tribunal consisted of:

- A bundle of 145 pages from the Applicants;
- Public Notice of the Designation of an Area of Additional Licensing by the London Borough of Lambeth; and
- The Tribunal's directions dated 21st February 2024.

Respondent's non-attendance

6. The Respondent did not attend the hearing and has not responded to any of the Tribunal's communications to him by email or post. The Tribunal was concerned as to the extent to which the Respondent was aware of the proceedings or the hearing. Under rule 34 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, if a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal—

   (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
   (b) considers that it is in the interests of justice to proceed with the hearing.

7. The Tribunal's records show the following:

   (a) The First Applicant submitted an application form which had critical information missing and she was asked to re-provide this, including, if known, a direct email address for the Respondent as the default protocol for administration by the Tribunal is digital correspondence.
   (b) The application form had details under Section 4 of an address for the Respondent as 57 Thorncliffe Road, Birmingham West Midlands B44 9DB. However, the "address for correspondence" was given as 20-22 Wenlock Road, London N1 7GU and, therefore, the Wenlock address was registered on the Case Management System. As no email address had been provided at that point, the standard notification of an application pending letter was posted to the Respondent at 20-22 Wenlock Road.
   (c) When the First Applicant re-submitted her application, she provided an email address for the Respondent, Osunhomes@gmail.com. The Case Management System was updated and all correspondence henceforth was emailed to the Respondent.

(d) The Tribunal then received the Second Applicant's application form which reaffirmed both the Respondent's "address for correspondence" as 20-22 Wenlock Road and the email as Osunhomes@gmail.com.

(e) In early May, the Tribunal case officer was concerned that no correspondence had been received from the Respondent for either application and that potentially, both Applicants may have provided an incorrect email address and/or correspondence address for the Respondent. Therefore, she posted an enquiry letter to the Respondent at both addresses.

(f) Nothing was forthcoming from the Respondent. A hearing reminder was therefore sent to the Respondent once again to their correspondence and email address.

8. The Applicants were notified of the Tribunal's concerns the day before the hearing. They told the Tribunal that they had obtained the Wenlock Road address through their own researches – it was the given address at Companies House for the Respondent as the sole director of Osun Homes Ltd and also the business address for Secret Society from whose website they downloaded their tenancy agreements.

9. The Applicants also obtained a letter dated 5th June 2024 from Ms Adele Thatcher which ended with a statement of truth, signed by her. In the letter, Ms Thatcher said she was a mutual friend of the Applicants and Mr Emuchay and Ms Davis and had met the Respondent several times socially. She spoke to Ms Davis in December 2023 to try to mediate the dispute. Ms Davis told her that the Respondent had received the case papers and had referred them to his solicitor.

10. On the day of the hearing, at 10:19am, the Tribunal phoned the Respondent's mobile phone and got a voice message saying that the party is on another call, asking the caller to leave a message. A message was left stating that the hearing was going ahead today, asking the Respondent to reply to the phone call within the next 10 minutes. There was no response during the remainder of the hearing which lasted until 11am or at any later time before the issue of this decision.

11. The evidence is not ideal but the Tribunal is satisfied on at least the balance of probabilities that the Respondent is both aware of the proceedings and has been notified of the hearing. There is no reason to doubt the addresses, both postal and electronic, used by the Tribunal. Ms Thatcher's evidence is inherently credible and internally consistent and indicates that the Tribunal's methods of communication were effective.

12. Further, it is in the interests of justice to proceed with the hearing. The Respondent should not be rewarded, just as the Applicants should not be punished, for his failure to engage with the Tribunal. Any further adjournment is unlikely to produce a different outcome and would only cause further delay to the Applicants' properly-constituted applications.

The offences

13. The Tribunal may make a rent repayment order when the landlord has committed one or more of a number of offences listed in section 40(3) of the Housing and Planning Act 2016. The Applicants alleged that the Respondent was guilty of the following offences:

   (a) Having control of or managing an HMO (House in Multiple Occupation) which is required to be licensed but is not so licensed, contrary to section 72(1) of the Housing Act 2004 ("the 2004 Act"); and

   (b) Harassment contrary to section 1 of the Protection from Eviction Act 1977.

HMO Licensing

14. The local authority, the London Borough of Lambeth, designated its entire area for additional licensing of HMOs with effect from 9th December 2021 until 8th December 2026. It applies to all HMOs that are privately rented and occupied by three or more persons forming two or more households under one or more tenancies or licences unless it is an HMO that is subject to mandatory licensing under section 55(2)(a) of the 2004 Act.

15. The Applicants provided ample evidence, including witness statements from and the tenancy, of the residence of each of the three tenants at the property, namely the two Applicants and a Mr James Wright, throughout the relevant period. They each occupied their own separate room and shared the kitchen, bathroom and dining room.

16. The Tribunal is satisfied that the property was an HMO and that the Respondent managed it and/or was in control of it at all relevant times. The unchallenged evidence was that it was licensable but never licensed – in particular, the Applicants provided the results of their searches on Lambeth's Landlord licence public register from October 2023 and March 2024 which showed that the address was not registered.

17. There are two defences under section 72 of the 2004 Act. Firstly, under sub-section (4)(b), it is a defence that an application had been duly made for a licence. There is no evidence that the Respondent has ever made such an application.

18. Secondly, under sub-section (5), it is a defence if the accused "had a reasonable excuse for having control of or managing the property" when it was unlicensed. The Respondent has not put forward any argument, and the Tribunal has not seen any evidence, that he has an excuse or that could constitute an excuse.

19. Therefore, the Tribunal is satisfied so that it is sure that the Respondent committed the offence of managing and/or having control

of the property when it was let as an HMO despite not being licensed. Neither of the statutory defences has been made out.

Harassment

20. The Applicants complained that Mr Emuchay and contractors acting for the Respondent would let themselves in at random times and without warning. This happened once when the First Applicant was in the shower. The visits were to deliver missing furniture or carry out repairs but the Applicants felt intimidated by the uncertainty as to when or if they would have privacy in their own home.

21. When the First Applicant was coming up to her departure from the property on 10th June 2023, she had a text exchange with Mr Emuchay which included the following:

> I dont want to behave in a way that will have a permanently stain on our friendship and other around us.
>
> If you persist in not paying anymore, We will take it as your moving to your own interest only. Viewings will start later this week, but we will not take you into consideration. We will simply conduct viewings as and when tenants are available to view. Also we will be getting the new tenant in for the 2nd of June so we will expect you to have moved out by that date ….

22. In the event, the First Applicant left on 10th June 2023 and there was no attempt to evict her or install another tenant before that date.

23. Under section 1 of the Protection from Eviction Act 1977, it is an offence if:

(a) Any person, with intent to cause the residential occupier of any premises to give up the occupation of the premises or any part thereof does acts likely to interfere with the peace or comfort of the residential occupier.

(b) The landlord of a residential occupier or an agent of the landlord does acts likely to interfere with the peace or comfort of the residential occupier or members of his household and knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises.

24. There is no doubt that the conduct of the Respondent and his agents fell short of what was required, which is relevant to the quantum of the RRO as discussed further below. However, the Tribunal is not satisfied so that it is sure that the Respondent's actions constitute harassment as defined in the 1977 Act. The visits were not aimed at causing the Applicants to leave or to restrict the exercise of their rights while Mr Emuchay's threat was an isolated event and there is no evidence he ever really intended to carry it out.

Rent Repayment Order

25. For the above reasons, the Tribunal is satisfied that it has the power under section 43(1) of the Housing and Planning Act 2016 to make Rent Repayment Orders on this application. The Tribunal has a discretion not to exercise that power. However, 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.

26. The RRO provisions have been considered by the Upper Tribunal (Lands Chamber) in a number of cases and it is necessary to look at the guidance they gave there. 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:

> 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. ...

27. 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.

28. 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.

29. The current Tribunal finds it difficult to follow Judge Cooke's 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 the same offence in similar circumstances.

30. 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.

31. 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.

32. 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.

33. 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:

        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).

34. The Applicants seek RROs for the full amount of rent they paid at the property:

    (a) The First Applicant paid rent of £1,100 per month for 7 months, and then a part payment of £192.37 for the last part-month of occupation, for a total of £7,892.37.
    (b) The Second Applicant paid rent of £1,000 per month for 10 months for a total of £10,000.

35. 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 did 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.

36. 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 when enacting the legislation.

37. In this case, the utility bills were supposed to be included in the rent but it seems that the Respondent never assumed responsibility for them, let alone paid them. The bills for energy, water and the internet connection came to the property but they were all addressed to a Mr Richard King who the Applicants eventually found out from neighbours was a previous occupant of the property. In the circumstances, the Tribunal declines to make any deduction in relation to utilities.

38. The next step is to consider the seriousness of the offence. The Respondent has no explanation, let alone any excuse, for his failure to licence the property. It is clear that the property was not up to the standards required for a licensed property. There is one battery-operated fire alarm in the communal hall. None of the internal doors are fire-rated.

39. It is important to understand why a failure to licence is so serious. 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.

40. 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.

41. 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.

42. Taking into account all the circumstances, the Tribunal concluded that this was a serious and deliberate default which warranted a proportionate sanction.

43. Further, under section 44(4) of the 2016 Act, in determining the amount of the RRO the Tribunal must, in particular, take into account the conduct of the respective parties, the financial circumstances of the landlord, and whether the landlord has at any time been convicted of any of the relevant offences. The Respondent has not provided any information on his financial circumstances and the Applicants are not aware of any previous convictions, so neither of these factors is relevant.

44. As referred to above, the Respondent's conduct has been short of the appropriate standard. The property was devoid of any furniture at the commencement of the Applicants' tenancies and furniture only arrived in stages over the next couple of weeks. Beds were delivered still wrapped in plastic which the Applicants were loath to unpack themselves. The Second Applicant was also not actually allowed into the property until two days after the start of his tenancy and had to stay with a friend in Reading.

45. There is no case for setting the RROs below the maximum amounts referred to above. Therefore, the Tribunal has decided to award each Applicant a RRO in the maximum amount, namely £7,892.37 and £10,000 respectively.

Name: Judge Nicol **Date:** 6th June 2024

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Protection from Eviction Act 1977

Section 1 Unlawful eviction and harassment of occupier

(1) In this section "residential occupier", in relation to any premises, means a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession of the premises.

(2) If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.

(3) If any person with intent to cause the residential occupier of any premises—

(a) to give up the occupation of the premises or any part thereof; or

(b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;

does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.

(3A) Subject to subsection (3B) below, the landlord of a residential occupier or an agent of the landlord shall be guilty of an offence if—

(a) he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or

(b) he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,

and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.

(3B) A person shall not be guilty of an offence under subsection (3A) above if he proves that he had reasonable grounds for doing the acts or withdrawing or withholding the services in question.

(3C) In subsection (3A) above "landlord", in relation to a residential occupier of any premises, means the person who, but for—

(a) the residential occupier's right to remain in occupation of the premises, or

(b) a restriction on the person's right to recover possession of the premises,

would be entitled to occupation of the premises and any superior landlord under whom that person derives title.

(4) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to a fine not exceeding the prescribed sum or to imprisonment for a term not exceeding 6 months or to both;

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both.

(5) Nothing in this section shall be taken to prejudice any liability or remedy to which a person guilty of an offence thereunder may be subject in civil proceedings.

(6) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager or secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

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.

(c) 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.

(d) 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.

(e) 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).

254 Meaning of "house in multiple occupation"

(1) For the purposes of this Act a building or a part of a building is a "house in multiple occupation" if–

- (a) it meets the conditions in subsection (2) ("the standard test");
- (b) it meets the conditions in subsection (3) ("the self-contained flat test");
- (c) it meets the conditions in subsection (4) ("the converted building test");
- (d) an HMO declaration is in force in respect of it under section 255; or
- (e) it is a converted block of flats to which section 257 applies.

(1) A building or a part of a building meets the standard test if–

- (a) it 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 (see section 258);
- (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 (see section 259);
- (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 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.

(2) A part of a building meets the self-contained flat test if–

(a) it consists of a self-contained flat; and
(b) paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).

(3) A building or a part of a building meets the converted building test if–

(a) it is a converted building;
(b) it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);
(c) the living accommodation is occupied by persons who do not form a single household (see section 258);
(d) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
(e) their occupation of the living accommodation constitutes the only use of that accommodation; and
(f) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.

(4) But for any purposes of this Act (other than those of Part 1) a building or part of a building within subsection (1) is not a house in multiple occupation if it is listed in Schedule 14.

(5) The appropriate national authority may by regulations–

(a) make such amendments of this section and sections 255 to 259 as the authority considers appropriate with a view to securing that any building or part of a building of a description specified in the regulations is or is not to be a house in multiple occupation for any specified purposes of this Act;
(b) provide for such amendments to have effect also for the purposes of definitions in other enactments that operate by reference to this Act;
(c) make such consequential amendments of any provision of this Act, or any other enactment, as the authority considers appropriate.

(6) Regulations under subsection (6) may frame any description by reference to any matters or circumstances whatever.

(7) In this section–

"basic amenities" means–

(a) a toilet,
(b) personal washing facilities, or
(c) cooking facilities;

"converted building" means a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed;

"enactment" includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30);

"self-contained flat" means a separate set of premises (whether or not on the same floor)–

(a) which forms part of a building;
(b) either the whole or a material part of which lies above or below some other part of the building; and
(c) in which all three basic amenities are available for the exclusive use of its occupants.

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.

<u>Housing and Planning Act 2016</u>

Chapter 4 RENT REPAYMENT ORDERS

<u>Section 40</u> 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).

<u>Section 41</u> 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.

<u>Section 43</u> 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).

<u>Section 44</u> 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.