FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/26UH/HMG/2023/0005**
Property	**:**	**47 Conifer Walk, Stevenage, Hertfordshire SG2 7QR**
Applicant	**:**	**Adam Grehan**
Respondent	**:**	**John Hooker**
Type of application	**:**	**Application by tenant for a Rent Repayment Order under section 41 Housing and Planning Act 2016**
Tribunal members	**:**	**Judge K. Saward** **Mr R. Thomas MRICS**
Date of hearing	**:**	**22 January 2024**
Date of decision	**:**	**30 January 2024**

DECISION AND REASONS

Description of hearing

This has been a remote hearing consented to by the parties. The form of remote hearing was CVP Video. The Applicant provided a bundle of 34 pages. The Respondent's bundle comprised 35 pages. The Tribunal has noted the content of all these documents.

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

Decisions of the Tribunal

(1) The Tribunal is satisfied beyond reasonable doubt that the Respondent landlord committed an offence under section 72(1) of the Housing Act 2004 ("the 2004 Act").

(2) The Tribunal has determined that it is appropriate to make a rent repayment order ("RRO").

(3) The Tribunal makes a RRO against the Respondent in favour of the Applicant in the sum of £1,296.16 to be paid within 28 days of this Decision.

(4) The Tribunal makes an order under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that the Respondent shall pay to the Applicant £300 within 28 days of this Decision, in reimbursement of the Tribunal fees paid by the Applicant.

REASONS

The application

1. By an application dated 11 April 2023, the Applicant applied for a RRO under section 41 of the Housing and Planning Act 2016 ("the 2016 Act"). The Applicant is a former tenant of the Respondent who rented a room in the property at 47 Conifer Walk, Stevenage. It is claimed that the property was an unlicensed house in multiple occupation ("HMO").

2. An application was also made by another previous tenant of the same property under Case reference: CAM/26UH/HSD/2023/0001. By Directions dated 4 October 2023, the Tribunal ordered that both applications be heard at the same time. In accordance with those Directions, this Tribunal has heard the applications together. As they are separate applications and raise some different points, the Tribunal has issued separate Decisions.

3. There was some mix up with the two applications presented in the bundles. By taking short adjournments, the Tribunal was able to clarify the material applicable to each application. It was evident from the Respondent's written response that he had seen the full content of each Applicant's case.

The hearing

4. The hearing took place remotely using the CVP platform as requested by the Respondent landlord who lives in Spain.

5. As things stand, oral evidence cannot be taken from abroad unless permission has been obtained from the country where evidence would be given from, and the Tribunal also gives permission. Oral evidence includes the answering of questions from another party and the Tribunal. In light of this, the Tribunal informed the Respondent in advance of the hearing that he would either need to travel to the UK if he wished to give oral evidence or observe and make submissions on legal arguments only.

6. Both parties attended the remote hearing. As the Respondent joined the hearing from Spain, the Tribunal reiterated that he could make legal submissions only and that the Tribunal would otherwise rely upon his written evidence.

7. As the Applicants were unrepresented, the Tribunal took the approach of hearing their live evidence by posing a series of questions and giving them opportunity to refer to other points raised in their respective applications.

The Tribunal's determination

8. The Tribunal has considered the application in four stages –

   (i) Whether the Tribunal is satisfied beyond reasonable doubt that the Respondent had committed an offence under section 72(1) of the 2004 Act.

   (ii) Whether the qualifying criteria is met.

   (iii) Whether the Tribunal should exercise its discretion to make a RRO.

   (iv) Subject to the above, determination of the amount of any RRO.

Control or management of unlicensed HMO

9. The property is a detached house containing 5 bedrooms. The Applicant was sole occupant of bedroom 5, with use of shared kitchen and bathroom facilities, pursuant to an assured shorthold tenancy agreement. The Applicant was in occupation between 16 August 2021 and 14 March 2023 when the tenancy ended at his instigation. Rent was paid throughout. During that time each of the other 4 rooms were in sole occupancy by unrelated individuals, apart from short gaps between tenancy changeovers.

10. Throughout the entirety of the Applicant's occupation the Respondent was a person who controlled or managed an HMO that was required to

be licensed under Part 2 of the 2004 Act.

11. By letter addressed to the tenants on 14 March 2023, Stevenage Borough Council confirmed that on 24 February 2023 a Civil Penalty Notice was served on the Respondent, as landlord and the person managing the property. The property was found to be let as an unlicensed HMO, which is required to be licensed under section 72(1) of the 2004 Act. The letter states that the landlord admitted the offence and confirmed, under caution, that the property had been let as an HMO "for 5+ years".

12. The Respondent did not apply for an HMO licence for the property until 3 December 2022. The application was granted, and whilst the licence did not come into force until 28 March 2023, section 95(3) of the 2004 Act provides a landlord with a defence once a licence application is made. Moreover, under section 73 of the 2004 Act, an HMO is not "unlicensed" if a licence application has been duly made under section 63, and the application is still effective. As a licence was subsequently issued for the property, the application must have been valid. Thus, it has not been proved beyond reasonable doubt that the offence continued after 2 December 2022.

13. The Tribunal is satisfied beyond reasonable doubt that the Respondent committed the offence of being a person having control of and/or managing an HMO which was required to be licensed but was not so licensed, for the period from 16 August 2021 to 2 December 2022, contrary to section 72(1) of the 2004 Act.

Qualifying criteria

14. The offence relates to housing that, at the time of the offence, was let to the Applicant. The offence was committed in the 12-month period prior to the application being made. Accordingly, the qualifying criteria within section 41 of the 2016 Act are met.

Exercise of the Tribunal's discretion

15. The Respondent listed reasons in his written response why the Tribunal should not make a RRO. These are considered in turn.

16. Before a local housing authority applies for a RRO it must give the landlord notice of intended proceedings under section 42 of the 2016 Act. There is no equivalent requirement on tenants. Therefore, the Applicant did not need to give the landlord advance notification.

17. The Council imposed a financial penalty of £7,500.00 which the landlord paid after admitting the offence. Whilst this may be a considerable sum, the Tribunal does not consider that payment of such

penalty warrants refusal of a RRO when the grounds to make an award under separate legislative provisions have been met. Where an offence is established, it would be exceptional not to order a RRO (*London Borough of Newham v Harris* [2017] UKUT 264 (LC)).

18. Directions were issued by the Tribunal on 4 October 2023. Amongst other matters, the directions required the Applicant to produce a bundle of relevant documents in hard copy, and also electronic format (if practicable) by 1 November 2023. The Respondent submits that the Applicant failed to adhere to the timescales, and also failed to provide Land Registry official copies of the freehold title as directed or to provide details of the Hearing arrangements.

19. Non-compliance with the Tribunal's directions can result in an Applicant's case being struck out in whole or part pursuant to Rule 9(3)(a) of the 2013 Rules. Here, a bundle was produced, and the Respondent plainly knew details of the case being made against him given the points taken in response. Official copies of the title were provided in the conjoined proceedings and so this information was before the Tribunal. It is unclear how the Respondent may have been disadvantaged, if at all, by any missing information regarding the hearing arrangements. He had confirmed receipt of the relevant documents from the Applicant.

20. The overriding objective within Rule 3 is to deal with cases fairly and justly. Neither party is legally represented and dealing fairly and justly includes seeking flexibility in the proceedings. The overriding objective would not be served by striking out the Applicant's case when sufficient information is before the Tribunal on which to consider the RRO application and the Applicant attended the Hearing to answer the Tribunal's questions.

21. The Tribunal finds no procedural basis on which it should decline to exercise its discretion to order a RRO. Indeed, having found that the Respondent committed the offence of control or management of an unlicensed HMO, the Tribunal considers that this *is* a case in which it should exercise its discretion under section 43 of the 2016 Act to make an RRO in favour of the Applicant. The offence being admitted, there would be no proper basis on which the Tribunal could refuse to do so.

The amount of the Order

22. Section 44(4) provides that in determining the amount of the RRO, 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 Chapter 4 of the 2016 Act applied.

Relevant caselaw

23. *Williams v. Parmar* [2021] UKUT 0244 (LC) provides guidance as to the approach which the Tribunal should take to assessing the amount of an RRO awarded under section 44 (not being a case where the maximum amount provisions apply).

24. In summary, the guidance in that case was as follows (with reference to paragraph numbers of that decision):

    (i) The terms of section 46 show that in cases where that section does not apply, there is no presumption that the amount ordered is to be the maximum that the Tribunal could order under s.44 [23];

    (ii) S.44(3) specifies that the total amount of rent paid is the maximum amount of an RRO, and section 44(4) requires the Tribunal in determining the amount of the RRO to have particular regard to the three factors specified in that sub-section. However, the words of that sub-section leave open the possibility of there being other factors that, in a particular case, may be taken into account and affect the amount of the order [24];

    (iii) The RRO must always "relate" to the amount of the rent paid in the period in question. It cannot be based on extraneous considerations or tariffs. It may be a proportion of the rent paid, or the rent paid less certain sums, or a combination of both. But the amount of the rent paid is not a starting point in the sense that there is any presumption that that sum is to be the amount of the order in any given case nor even the amount of the order subject only to the factors specified in s.44(4) [25].

25. Among recent authorities, the Upper Tribunal in *Acheampong v Roman; Choudhary v Razak* [2022] UKUT 239 (LC) (as confirmed in *Dowd v Martins & Ors* [2022] UKUT 249 (LC)) set out that when considering an award for an RRO, the Tribunal must take the following steps:

    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, e.g., gas, electricity and internet access.

    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 light of the other factors set out in section 44(4).

The relevant period

26. Section 44 of the 2016 Act provides that where the Tribunal decides to make an RRO against a landlord in favour of a tenant, the amount is to be determined in accordance with that section. In a case concerning an offence under section 72(1) of the 2004 Act, the amount must relate to rent paid during a period, not exceeding 12 months, during which the landlord was committing the offence (section 44(2)).

27. The Applicant seeks a RRO for rent paid over the last 12 months of the tenancy i.e., ending 14 March 2023. The Respondent argues that the claim cannot go beyond 3 December 2022 being the date an HMO licence was applied albeit not in force until 28 March 2023.

28. It is correct that the relevant period would have come to an end once the HMO licence application was made on 3 December 2022

29. The relevant period is subject to a limit of 12 months during which the offence was committed, and rent was paid. For this type of offence, the relevant 12-month period does not need to be the period ending with the date of the offence. The Applicant can apply for *any* period of up to 12-months during which the offence was committed and rent was paid under the tenancy.

30. Although the Applicant had completed the application form with reference to the last 12 months of the tenancy, he made plain at the hearing that the application was not confined to that specific period. The application was for whatever 12-month period was claimable. The Tribunal sees no reason to reduce the relevant period to less than 12-months when rent was paid throughout the 12-month period preceding the HMO licence application when an offence was occurring.

31. It leaves a relevant 12-month period from 3 December 2021 to 2 December 2022. Rent was payable in advance by the 16th day of each month. Up until 15 October 2022, rent of £365 per month was paid, equating to £12 per day. From 16 October 2022 the rent had increased to £395 per month, equating to £12.99 per day. Therefore, the rent paid

over the relevant period totalled £4,427.52 (317 days at £12 per day and 48 days at £12.99 per day).

32. Having control of or managing an unlicensed HMO is not an offence described in section 46(3) to require a RRO to be the maximum amount that the Tribunal has power to order.

33. No universal credit (or housing benefit) was paid to the Applicant which needs to be deducted pursuant to section 44(3)(b).

34. Accordingly, the maximum RRO which could be ordered in favour of the Applicant is £4,427.52.

Relevant factors and the appropriate award

35. The rent included the cost of utilities for water charges, gas, electricity, television licence and broadband. It is also included Council Tax. Account must be taken of the benefit derived to the tenant for the inclusion of these facilities within the rent. Mortgage repayments payable by the landlord are not benefits to the tenant to be deducted. Similarly, maintenance and replacement electrical items are not sums encompassed within the rent to warrant deduction in calculation of the amount of the RRO.

36. The Applicant did not know how much of the rent was for utilities and Council Tax. The Respondent produced various bills and receipts covering October 2021 to September 2022. These do not encompass the whole period under consideration between 3 December 2021 to 2 December 2022, but they do cover the majority. In the judgement of the Tribunal, the figures are within the likely range of expenditure applicable for the relevant period.

37. As there were 5 occupants at any one time, the amounts are to be divided by five. The total amount per tenant for utilities and Council Tax was in the region of £1,187.12 over the whole 12-month period. After subtracting this sum from the maximum RRO, it leaves £3,240.40.

38. Consideration turns to the seriousness of the offence. Two points are raised by the Applicant; the fact that the HMO was unlicensed and the room size of bedroom 5 rented to him. The Applicant confirmed at the hearing that he is not pursuing a health and safety argument as indicated on the application form.

39. The Applicant described the property as “fine”. The furnishings were a bit old and tired, particularly the bed, but the accommodation was neither good nor bad. A cupboard door kept coming off and the gas hob would not light, but the Applicant was not concerned enough to alert

the landlord to these issues. There was no problem with the heating or windows.

40. In his written statement, the Respondent described the property as "a comfortable, nice and clean house" and a "very well provisioned" home.

41. The Tribunal finds no notable complaints about the condition of the property and how it was maintained. In our view the most serious aspect of the offence is the inadequate room size of bedroom 5 let to the Applicant. Since 2018, national minimum room sizes have applied to all newly issued HMO licences. Had the property been licensed as required then the mandatory minimum sleeping room area prescribed within paragraph 1A of Schedule 4 to the 2004 Act is 6.51 square metres for one person over 10 years of age. The Applicant was uncertain how far below this figure the room size fell but drew our attention to the dimensions recorded on a sketched drawing within the Respondent's bundle for the related application.

42. The room is incorrectly marked on the sketch as 'bedroom 2' and the layout does not fully correspond with the Applicant's recollection. However, it appears that the intended purpose of the sketch was to capture the bedroom measurements. Based on those measurements, the room was 4.45 sqm or possibly 5.18 sqm if a small area 0.3m wide should be excluded from the overall width of 1.83m. Whichever is correct, the deficit has more significance when the room is so small.

43. The Respondent argues that the Applicant was looking for a cheap, small single bedroom as he only needed to sleep in it, coming home late at night from Monday to Thursday and away at weekends. The Applicant says he stayed in the house every day for the majority of his time at the property. Whatever his precise level of presence, it does not negate the fact that the room size fell beneath the required threshold.

44. It is notable that in deciding to impose a financial penalty, the Council recorded the harm experienced by the tenants as "slight". Even so, with bedroom accommodation of that size, the HMO could not be licensed. Changes had to be made to secure the HMO licence. Furthermore, it cannot have provided satisfactory living conditions however limited the time in actual occupation. It is no justification that the Applicant was paying less rent to reflect a substandard sized room.

45. In terms of the quality of the accommodation, the licensing offence is at the lower end of the scale. Most impact was upon the Applicant as occupant of the substandard sized room.

46. According to the Council's findings, the Respondent is an experienced landlord having owned and operated the property since 2012. He owns another licensed property as well as other privately rented houses in

Stevenage. In the circumstances, the Respondent would be expected to know of the requirement for an HMO licence. He did not apply for a licence until contacted by the Council in December 2022 by which time he had owned and managed the unlicensed HMO for many years. The omission is unexplained. These factors increase the seriousness of the offence for which allowance in the RRO should be made.

47. All things considered the Tribunal concludes that a 60% reduction (after the deduction for utilities above) is a fair reflection of the seriousness of the offence. In arriving at this percentage, a 10% allowance is made in favour of the Applicant for his undersized room. The 60% proportion could be adjusted up or down depending on the other specific matters it is to take into account under section 44(4), and other matters it considers relevant.

48. No specific complaints about the Respondent's conduct are drawn to the Tribunal's attention by the Applicant. There appeared to be minimal contact between landlord and tenant. The Respondent points to maintenance works having been expedited. On the face of it, this could demonstrate good conduct but details are scant. From the accounts given, the property appeared to be in no more than fair condition.

49. The Applicant disputes the accuracy of the Respondent's complaints now directed at him. The Respondent claims there were numerous contractual tenancy infringements and damage caused by the Applicant. He seeks £350 to be compensated for the condition of the property and building, yet upon the property being vacated, the Respondent landlord returned the Applicant's deposit in full.

50. There is no evidence that the Respondent ever raised concerns over the Applicant neglecting to participate in the cleaning rota for communal areas. Nor is there any evidence of a breach of the tenancy with regard to garden maintenance.

51. The Respondent is critical of the Applicant leaving the keys in the door upon his departure contrary to instruction. This is hardly a matter of significance in terms of tenant conduct. The Respondent also complains of the condition in which the room was left. It occurs to the Tribunal that the cleaning described and washing of curtains would be required at the termination of any tenancy. It is also inconsistent with the full return of the Applicant's deposit if there had indeed been excessive cleaning required or costs in removal of a shelving unit.

52. Two rental payments were late in April and October 2022 by 1 and 3 days respectively. This cannot be regarded as anything more than a very minor breach.

53. None of the matters either individually or collectively are of sufficient seriousness to justify a reduction in the proportion of rent to be awarded to the Applicant.

54. The Tribunal bears in mind that the Respondent has paid a financial penalty of £7,500 and has been incurring charges on an interest only mortgage. However, there are insufficient details before the Tribunal to indicate that the Respondent would suffer any financial hardship if a RRO is made or to warrant the amount being capped. In the circumstances, the Respondent's financial circumstances are not found to be relevant.

55. The Respondent has not been convicted of an offence to which Chapter 4 of the 2016 Act applies. As far as the Tribunal is aware, the Respondent does not have any such previous convictions. However, the Council imposed a financial penalty on him under section 249A of the 2004 Act demonstrating the seriousness of the matter. This is a relevant factor weighing against the Respondent.

56. Having considered the factors in section 44(4) and weighing everything up, the Tribunal makes no further adjustments to the amount of the RRO. The Tribunal finds it appropriate to make a reduction of 60% from the maximum amount that could be awarded after deduction of utility charges as discussed above. This results in a figure of £1,296.16.

Conclusion

57. The Tribunal awards the Applicant a RRO in the sum of **£1,296.16.**

58. In view of its findings, and the fact that the Applicant could not actually have obtained relief without pursuing this application, the Tribunal further makes an order under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that the Respondent shall within 28 days reimburse the application fee of £100 and the hearing fee of £200 paid by the Applicant.

Name: Judge K. Saward Date: 30 January 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

Housing Act 2004

55 Licensing of HMOs to which this Part applies

(1) This Part provides for HMOs to be licensed by local housing authorities where–

(a) they are HMOs to which this Part applies (see subsection (2)), and

(b) they are required to be licensed under this Part (see section 61(1)).

(2) This Part applies to the following HMOs in the case of each local housing authority–

(a) any HMO in the authority's district which falls within any prescribed description of HMO, and

(b) if an area is for the time being designated by the authority under section 56 as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in the designation.

(3) The appropriate national authority may by order prescribe descriptions of HMOs for the purposes of subsection (2)(a).

(4) The power conferred by subsection (3) may be exercised in such a way that this Part applies to all HMOs in the district of a local housing authority....

61 Requirement for HMOs to be licensed

(1) Every HMO to which this Part applies must be licensed under this Part unless–

(a) a temporary exemption notice is in force in relation to it under section 62, or

(b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.

(2) A licence under this Part is a licence authorising occupation of the house concerned by not more than a maximum number of households or persons specified in the licence.

(3) Sections 63 to 67 deal with applications for licences, the granting or refusal of licences and the imposition of licence conditions.

(4) The local housing authority must take all reasonable steps to secure that applications for licences are made to them in respect of HMOs in their area which are required to be licensed under this Part but are not.

(5) The appropriate national authority may by regulations provide for–

(a) any provision of this Part, or

(b) section 263 (in its operation for the purposes of any such provision), to have effect in relation to a section 257 HMO with such modifications as are prescribed by the regulations. A "section 257 HMO" is an HMO which is a converted block of flats to which section 257 applies.

(6) In this Part (unless the context otherwise requires)–

(a) references to a licence are to a licence under this Part,

(b) references to a licence holder are to be read accordingly, and

(c) references to an HMO being (or not being) licensed under this Part are to its being (or not being) an HMO in respect of which a licence is in force under this Part.

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.

(8) 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.

(9) 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.

(10) 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.

(2) 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.

(3) 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).

(4) 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.

(5) 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.

(6) 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.

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

(8) 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.

258 HMOs: persons not forming a single household

(1) This section sets out when persons are to be regarded as not forming a single household for the purposes of section 254.

(2) Persons are to be regarded as not forming a single household unless–

(a) they are all members of the same family, or

(b) their circumstances are circumstances of a description specified for the purposes of this section in regulations made by the appropriate national authority.

(3) For the purposes of subsection (2)(a) a person is a member of the same family as another person if–

(a) those persons are married to [, or civil partners of, each other or live together as if they were a married couple or civil partners]1;

(b) one of them is a relative of the other; or

(c) one of them is, or is a relative of, one member of a couple and the other is a relative of the other member of the couple.

(4) For those purposes–

(a) a "couple" means two persons who fall within subsection (3)(a);

(b) "relative" means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin;

(c) a relationship of the half-blood shall be treated as a relationship of the whole blood; and

(d) the stepchild of a person shall be treated as his child.

(5) Regulations under subsection (2)(b) may, in particular, secure that a group of persons are to be regarded as forming a single household only where (as the regulations may require) each member of the group has a prescribed relationship, or at least one of a number of prescribed relationships, to any one or more of the others.

(6) In subsection (5) "prescribed relationship" means any relationship of a description specified in the regulations.

Housing and Planning Act 2016, Chapter 4

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.

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 the 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.

46 Amount of order following conviction

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 and both of the following conditions are met, the amount is to be the maximum that the tribunal has power to order in accordance with section 44 or 45 (but disregarding subsection (4) of those sections).

(2) Condition 1 is that the order—

(a) is made against a landlord who has been convicted of the offence, or

(b) is made against a landlord who has received a financial penalty in respect of the offence and is made at a time when there is no prospect of appeal against that penalty.

(3) Condition 2 is that the order is made—

(a) in favour of a tenant on the ground that the landlord has committed an offence mentioned in row 1, 2, 3, 4 or 7 of the table in section 40(3), or

(b) in favour of a local housing authority.

(4) For the purposes of subsection (2)(b) there is "no prospect of appeal" , in relation to a penalty, when the period for appealing the penalty has expired and any appeal has been finally determined or withdrawn.

(5) Nothing in this section requires the payment of any amount that, by reason of exceptional circumstances, the tribunal considers it would be unreasonable to require the landlord to pay.

1 Conditions to be included in licences under Part 2 or 3

(1) A licence under Part 2 or 3 must include the following conditions.

(2) Conditions requiring the licence holder, if gas is supplied to the house, to produce to the local housing authority annually for their inspection a gas safety certificate obtained in respect of the house within the last 12 months.

(3) Conditions requiring the licence holder–

(a) to keep electrical appliances and furniture made available by him in the house in a safe condition;
(b) to supply the authority, on demand, with a declaration by him as to the safety of such appliances and furniture;
(c) where the house is in England, additionally—

(i) to ensure that every electrical installation in the house is in proper working order and safe for continued use; and
(ii) to supply the authority, on demand, with a declaration by him as to the safety of such installations;

(d) for the purposes of paragraph (c) "electrical installation" has the meaning given in regulation 2(1) of the Building Regulations 2010.

(4) Conditions requiring the licence holder–
(za) where the house is in England—
(i) to ensure that a smoke alarm is installed on each storey of the house on which there is a room used wholly or partly as living accommodation, and
(ii) to keep each such alarm in proper working order;

(4A) Where the house is in England, conditions requiring the licence holder—
(a) to ensure that a carbon monoxide alarm is installed in any room in the house which is used wholly or partly as living accommodation and contains a fixed combustion appliance other than a gas cooker ;
(b) to keep any such alarm in proper working order; and
(c) to supply the authority, on demand, with a declaration by him as to the condition and positioning of any such alarm.

(5) Conditions requiring the licence holder to supply to the occupiers of the house a written statement of the terms on which they occupy it.

(6) In sub-paragraph (4A) “room” includes a hall or landing.

(7) For the purposes of sub-paragraphs (4) and (4A), a bathroom or lavatory is to be treated as a
room used as living accommodation.

1A.— Additional conditions to be included in licences under Part 2: floor area etc
(1) Where the HMO is in England, a licence under Part 2 must include the following conditions.
(2) Conditions requiring the licence holder—
(a) to ensure that the floor area of any room in the HMO used as sleeping accommodation by one person aged over 10 years is not less than 6.51 square metres;
(b) to ensure that the floor area of any room in the HMO used as sleeping accommodation by two persons aged over 10 years is not less than 10.22 square metres;
(c) to ensure that the floor area of any room in the HMO used as sleeping accommodation by one person aged under 10 years is not less than 4.64 square metres;

(d) to ensure that any room in the HMO with a floor area of less than 4.64 square metres is not used as sleeping accommodation.

Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018/221

4. Description of HMOs prescribed by the Secretary of State

An HMO is of a prescribed description for the purpose of section 55(2)(a) of the Act if it—

(a) is occupied by five or more persons;
(b) is occupied by persons living in two or more separate households; and
(c) meets—

(i) the standard test under section 254(2) of the Act;
(ii) the self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or
(iii) the converted building test under section 254(4) of the Act.