



**PROPERTY CHAMBER (RESIDENTIAL  
PROPERTY)**

**Case reference** : **LON/00AN/HMF/2023/0233**

**Property** : **18 West Kensington Court, Edith Villas, London  
W14 9AA**

**The Applicants** : **Ms F Khangar, Ms R Ahmed, Ms Z Nurmamodo**

**Representative** : **Ms F Khangar**

**Respondents** : **Dr S Siddiqui  
Ms H Siddiqui**

**Representative** : **Adam Bernhard solicitors**

**Type of application** : **Application for a Rent Repayment Order by  
tenants**  
Sections 40, 41, 42, 43 and 45 Housing and Planning Act  
2016.

**Tribunal members** : **Judge Pittaway  
Mr A Lewicki FRICS**

**Date of Hearing** : **12 July 2024**

**Date of decision** : **17 August 2024**

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**DECISION**

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## **Decisions of the Tribunal**

1. **The Tribunal finds that the correct Respondent is Ms H Siddiqui**
2. **The Tribunal finds that the Respondent committed an offence under section 72(1) of the Housing Act 2004 without reasonable excuse, but did not commit an offence under section 1(2),(3) or (3A) of the Protection from Eviction Act 1977.**
3. **The Tribunal makes a Rent Repayment Order against the Respondent in the sum of £6,726.37.**
4. **The Tribunal orders the repayment to the Applicants of application and hearing fees of £300.**
5. **The reasons for the Tribunal decisions are given below.**

## **The Hearing**

6. Ms Khanjar represented the Applicants and Ms S Taylor-Waller of counsel represented the Respondent at the Hearing.
7. The Tribunal had before it at the start of the Hearing the Applicants' bundle of 220 pages, and a Respondent's bundle of 90 pages. It had received a skeleton argument from Ms Taylor-Waller on the day before the Hearing but a corrected version of this was handed to the Tribunal at the start of the Hearing.
8. The Tribunal heard evidence from each of the Applicants, and from Dr Siddiqui and Ms Siddiqui.
9. The Tribunal heard submissions from Ms Khanjar and Ms Taylor-Waller.
10. Given the time at which the hearing ended the Tribunal reconvened (without the parties) to reach its decision on 6 August 2024.

## **The background**

11. The Tribunal received an application from the Applicants dated 31 August 2023 under section 41 of the Housing and Planning Act 2016 ("**the 2016 Act**") for a rent repayment order in the sum of £21,870 in respect of 18 West Kensington Court, Edith Villas, London W14 9AA ('the **Property**').
12. Ms Khanjar was claiming rent for the period from 2 April 2022 to 3 April 2023 of £8,160. Ms Ahmed was claiming rent for the period from 2 April 2022 to 3 April 2023 of £8,800. Ms Nurmamodo was claiming rent for the period from 3 September 2022 to 28 April 2023 of £4,830.

13. The application alleged that the Respondents had committed the offence of managing/controlling an unlicensed HMO property contrary to s72 of the 2004 Act. It also alleged that the Respondents committed the offence of harassment against all three Applicants and the offence of unlawful eviction against Ms Khanjar and Ms Ahmed contrary to section 1(2),(3) or (3A) of the Protection from Eviction Act 1977 (the '**1977 Act**') (eviction or harassment of the occupiers)
14. The Application, and the Directions issued on 17 November 2023, named both Dr Siddiqui and Ms H Siddiqui as Respondents.

### **The Property**

15. The Property is described in the Application as a self-contained maisonette flat (ground and first floor) in a purpose-built block of flats with a small front yard. It consists of four bedrooms, 1 living room, 1 bathroom and 1 kitchen..
16. No party requested an inspection and the tribunal did not consider that one was necessary.
17. The relevant local housing authority is the London Borough of Hammersmith and Fulham, who had operated two additional licensing schemes, one from 5 June 2017 to 4 June 2022 and one from 5 June 2022 which is to continue until 4 June 2027. These effectively extended licensing to all HMOs occupied by three or more persons.
18. The tenancy agreements in the bundle before the Tribunal named Ms Hana Siddiqui as the landlord. They state that she is the owner of the property, legally entitled to grant the tenancy. The agreements also contain an acknowledgement that the tenancy is not an assured shorthold tenancy because it is granted by a resident landlord. Each agreement is stated to a periodic tenancy continuing on a month-to-month basis after the original term has expired until terminated by either party, on one month's notice.
19. The agreements state that the landlord is responsible for the following utilities, electricity, water/sewer, internet and telephone.
20. The agreement states that amendments or modifications must be by written document.

### **Issues**

21. The Respondent accepts that the property was one which required an additional HMO licence while let to the Applicants. Failure to have such a licence is an offence under section 72 (1) of the Housing Act 2004 (the '**2004 Act**') (controlling or managing an unlicensed HMO)
22. The issues before the tribunal to determine were

- The correct Respondent against whom the RRO should be made.
- The relevant period for the purposes of the application.
- During the period during which an offence had been committed under s72(1) of the 2004 Act did the Respondent have a defence to the commission of the offence under section 72(4) of the 2004 Act?
- Had the Respondent committed an offence under section 1(2),(3) or (3A) of the Protection from Eviction Act 1977 (the '1977 Act') (eviction or harassment of the occupiers)
- If the Respondent had committed an offence under the 1977 Act did she have reasonable grounds for doing the acts or withdrawing or withholding the services in question
- If an offence has been committed the amount of any RRO that can be ordered under section 44(3) of the 2016 Act.

### **The Tribunal's decision and reasons**

23. The Tribunal reached its decision after considering the witnesses' oral and written evidence and the oral and written submissions, including documents referred to in that evidence and submissions and taking into account its assessment of the evidence.
24. As appropriate, and where relevant to the tribunal's decision these are referred to in the reasons for the tribunal's decision.
25. This determination does not refer to every matter raised by the parties, or every document the Tribunal reviewed or took into account in reaching its decision. However, this doesn't imply that any points raised or documents not specifically mentioned were disregarded. If a point or document was referred to in the evidence or submissions that was relevant to a specific issue, it was considered by the Tribunal.
26. The relevant legal provisions are set out in the Appendix to this decision

### **The Respondent**

27. The Applicants submitted that that the correct Respondent was Dr Syeda Siddiqui as she was the person who had significant control over the property and collected the rent, but they also accepted that Ms Hana Siddiqui might be the correct respondent as owner of the property.
28. Ms Taylor-Waller submitted that the person entitled to possession and who is the leaseholder of the property is Ms Hana Siddiqui.

### **The Tribunal's decision**

29. The Tribunal find the respondent to Ms Hana Siddiqui.

30. Pursuant to its power under Rule 10 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 the Tribunal **directs** that Dr S Siddiqui be removed as a respondent.

### **Reasons for the Tribunal's Decision**

31. All the tenancy agreements in the bundle are between Ms Hana Siddiqui and the respective applicants. The bank statements of the applicants included in the bundle indicate that the rent was paid to Hana Siddiqui.
32. When L B Hammersmith and Fulham imposed a Financial Penalty in respect of the property it was addressed to Ms Hana Siddiqui. The Property Licence granted by L B Hammersmith and Fulham on 28 September 2023 was granted to Hannah (sic) Siddiqui.
33. On the evidence before it the Tribunal finds the correct respondent to be Ms Hana Siddiqui

### **The relevant periods**

34. The applicants on 15 January 2024, in their bundle, corrected the period for which the RRO was claimed and the amount of rent claimed by each applicant to the following;

Ms Khanjar	2 April 2022 to 3 April 2023	£8,100
Ms Ahmed	2 April 2022 to 3 April 2023	£8,880
Ms Nurmamodo	3 September 2022 to 3 April 2023	£4,830

35. Ms Hana Siddiqui gave evidence that the property is the only property that she owns and that she used it together with her mother Dr Siddiqui. At the hearing she said she had used her room at the property alot during the period it was occupied by the Applicants, tending to use it at weekends. The Tribunal heard evidence that at the time she was a final year veterinary student living in halls of residence.
36. The Tribunal heard evidence from Ms Nurmamodo that she had sublet the room from the previous occupant, Samaira Saleem, with the knowledge and agreement of Dr Siddiqui, prior to entering into an agreement directly with the Respondent on 5 September.2022.
37. Ms Taylor-Waller submitted that the first and second applicants claims exceeded twelve months (based on a claim for the period from 2 April 2022 to 28 April 2023). Ms Taylor-Waller also submitted that Ms Nurmamodo only started to reside at the property on 5 September, being the commencement date stated in her agreement, and that if she was residing there before that date it was without the consent of the Respondent. Ms Taylor-Waller submitted that the relevant period for calculation of

the RRO should be from 5 September 2022 by reference to a schedule in the bundle. Ms Taylor-Waller submitted that before then the property did not require an Additional HMO Licence because it fell within the exception to licence in Schedule 14 of the 2004 Act, which applies where a building are occupied by a resident landlord and there are only two other occupants.

### **The Tribunal's decision**

38. The relevant period for Ms Khanjar and Ms Ahmed is 2 April 2022 to 1 April 2023.

39. The relevant period for Ms Nurmamodo is 5 September 2022 to 4 April 2023.

### **Reasons for the Tribunal's decision**

40. On the evidence before it the Tribunal finds that the Respondent was a resident landlord although she did not occupy her room in the property all the time.

41. The bundle before the Tribunal includes evidence (in the form of bank statements) that before Ms Nurmamodo moved into the property there was a third occupant, other than the first and second applicants and the Respondent, at the property, namely Ms Samaira Saleem, from whom Ms Nurmamodo sublet the room until 5 September.

42. The only period of occupation challenged by Ms Taylor-Waller was the period between 3 and 5 September 2024.

43. The Tribunal finds on the evidence before it that there were three occupants other than the Respondent at the property from April 2022, including during the period between 3 and 5 September. Accordingly the property did not fall within the exception to licence in Schedule 14 of the 2004 Act, which applies where a building are occupied by a resident landlord and there are only two other occupants. The property required an Additional HMO during the whole of the period from April 2022. Even if the Respondent had not consented to Ms Nurmamodo's occupation before 5 September she was in occupation and the exception to the requirement for an Additional HMO is by reference to the number of occupants.

44. Accordingly the Tribunal finds that the relevant period for the first and second Applicants commenced on 2 April 2022.

45. Ms Khanjar had corrected the period in respect of which the RRO was claimed to 2 April 2022 to 3 April 2023 for herself and Ms Ahmed. In fact this results in a period of twelve months and 2 days. The Tribunal finds that it was not Ms Khanjar's intention to claim for more than twelve months for herself and Ms Ahmed as all her calculations are based on twelve months rent with no additional days. The Tribunal have therefore treated the relevant period so far as Ms Khanjar and Ms Ahmed are concerned as being from 2 April 2022 to 1 April 2023.

46. The Tribunal accept Ms Taylor-Waller's submission that until 5 September 2022 the Respondent was not Ms Nurmamodo's immediate landlord.

47. The relevant period for Ms Nurmamodo therefore commences on 5 September 2022. While the claim is stated to be to 3 April the evidence before the tribunal is that Ms Nurmamodo paid seven months' rent, in total £4,830. The Tribunal have therefore taken the relevant period for her to be until 4 April 2023.

#### **Reasonable excuse to offence under section 72(1) Housing Act 2004**

48. The parties agreed that the property was one which required an Additional Licence.

49. Ms Taylor-Waller submitted that the Respondent was unaware of the need for an Additional Licence as the property had previously fallen within the exception in Schedule 14 to the 2004 Act. She submitted that the Respondent was a first-time landlord, who had delegated management of the property to her mother while she was studying, she had not deliberately attempted to evade the obligation to licence the property and had no previous history of contravening licencing requirements. On learning that she should have had an Additional Licence she applied for one on 27 June 2023 which was granted on 31 August 2023.

#### **The Tribunal's Decision**

50. The Tribunal finds that the Respondent did not have a reasonable excuse for not obtaining an Additional Licence.

#### **Reasons for the Tribunal's Decision**

51. Responsible landlords should inform themselves of the statutory requirements relating to letting property to individuals not forming part of the same household.

52. Prior to 5 September 2022 there were already three occupants at the property in addition to the Respondent, so that the exception in Schedule 14 to the 2016 Act does not apply.

53. Ms Siddiqui's response when learning that a licence was required may be taken into account when considering her conduct in relation to the amount of the RRO.

#### **Offence under section 1(2),(3) or (3A) of the Protection from Eviction Act 1977 ('PEA 1977')**

54. The applicants allege that they were harassed by Dr Siddiqui who managed the property for her daughter by her pressurising them to move out before their tenancies had been ended legally, allowing letting agents to attend the property without notice, seeking to increase the rent paid and ignoring requests to install heaters in the bedrooms of the property.

55. Ms Khanjar and Ms Ahmed allege that they were unlawfully evicted from the property by the Respondent, in particular by giving them an invalid notice terminating their tenancies and changing the locks on the front door of the property and denying them access.
56. In cross-examination Ms Khanjar accepted that a landlord has a right to request an increased rent but that she expected such a demand to be dealt with formally, which had not happened here.
57. Ms Khanjar and Ms Ahmed explained that the applicants had received notice dated 31 March 2023 terminating their tenancies on one months' notice. They had taken advice from Shelter who told them that the notice was not valid and a section 21 notice was required. Ms Khanjar and Ms Ahmed decided to stay, Ms Nurmamodo moved out on 28 April 2023.
58. Ms Khanjar and Ms Ahmed were on holiday between 29 April 2023 and 8 May 2023. On 3 May they received an e mail from Dr Siddiqui asking for the keys to the property. Ms Khanjar responded stating that she had not yet found alternative accommodation and would let Dr Siddiqui know when she had decided to leave. On 4 May 2023 the Ms Khanjar and Ms Ahmed were advised by a solicitor, Mahfuz Ahmed of Adam Bernhard, that they had been legally evicted. On their return to the property, and on advice from the police, given on the basis that they were legal tenants, they called a locksmith to obtain access to the property and to change the front door lock. Ms Khanjar and Ms Ahmed decided to leave the property on 16 May 2023.
59. Ms Ahmed gave evidence that Dr Siddiqui and her family would come and stay at the property.
60. Dr Siddiqui gave evidence that she managed the property for her daughter. The decision to terminate the tenancies with the Applicants had been because there had been a breakdown in the relationship with the Applicants, in a property that was also occupied by her daughter. The notice to terminate the tenancies had been given on legal advice. She had not been aware that Ms Khanjar and Ms Ahmed were going to be on holiday on the date given for the tenancies to end..
61. Ms Hana Siddiqui gave evidence that the property is the only property that she owns and that she used it together with her mother Dr Siddiqui. At the hearing she said she had used her room at the property a lot during the relevant period, tending to use it at weekends. Ms Siddiqui confirmed that she was now living in Cheshire. She regretted the breakdown in communication with the Applicants.
62. The Respondent's bundle included the letters sent from Adam Bernard solicitors dated 4 May 2023 to Ms Khanjar and Ms Ahmed confirming that they had been given one month's notice to vacate the property and that as they had not vacated the property the Respondent had changed the locks of the property and lawfully evicted them. They were given until 11 May 2023 to collect their belongings and return their keys.



63. Ms Taylor-Waller submitted that the property was the Respondent's principal home at the time the agreements were entered into and when it came to an end. It was not necessary for the Respondent to live at the property continuously, or to have only one home. At the time the Respondent was occupying student halls, which she submitted was further evidence that the property was the Respondent's principal home.
64. Ms Taylor-Waller submitted that as the property was not an AST the Respondent was not obliged to serve a s21 Notice if she wished the tenants to vacate and that the actual notice served was correctly and reasonably worded. She submitted that there was no evidence to suggest undue harassment or pressure was placed on the Applicants to cause them to leave.
65. On whether the Applicants' deposits had been protected Ms Taylor-Waller submitted that there was no requirement to comply with s21 given the Applicants' status.
66. As to any possible breach of The Management of Houses in Multiple Occupation (England) Regulations Ms Taylor-Waller submitted that no evidence of any breach had been provided by the Applicants.

### **The Tribunal's decision**

67. The Respondent is not guilty of an offence under section 1(2) PEA 1977 during the relevant period.
68. The Respondent is not guilty of an offence under section 1(3A) PEA 1977. Dr Siddiqui, as the Respondent's agent, is not guilty of an offence under section 1(3) PEA 1977.

### **Reasons for the Tribunal's decision**

69. From the evidence before it the Tribunal finds that the Respondent changed the front door lock in or around 4 May 2023. This is outside the period in respect of which the Applicants claim the RRO.
70. The Tribunal finds that the Respondent and her mother both believed that the correct period of notice to terminate the tenancy was one month, based on legal advice which they had obtained. Accordingly it finds that the giving of such notice does not amount to an act of harassment.
71. The Tribunal finds on the evidence before it that the Applicants' complaints against Dr Siddiqui and/or Ms Siddiqui, of seeking to increase the rent paid, allowing letting agents to attend the property without notice and ignoring requests to install heaters in the bedrooms of the property were not acts done with the intention of causing the Applicants to give up occupation of the property. It is open to the Respondent and/or her agent to seek to increase the rent, and to allow letting agents

to attend the property, particularly when they were expecting the Applicants to vacate the property. The Applicants did not notify them that they disputed the one month notice. The bedrooms did not have heaters when the rooms were let so there was no question of the withholding of a service reasonably required for the occupation of the property as a residence.

### **Amount of the RRO**

### **The Tribunal's decision**

72. The Tribunal makes a Rent Repayment Order against the Respondent in the sum of £6,726.37 made up as follows

- Ms Khanjar                    £2,507.57
- Ms Ahmed                    £2,731.57
- Ms Nurmamodo            £1,487.23

### **Reasons for the Tribunal's decision**

73. In its decision in *Acheampong v Roman and others* [2022] UKUT 239 (LC), the Upper Tribunal recommended a four-stage approach to determining the amount to be repaid, which may be summarised as follows

(a) ascertain the whole of the rent for the relevant period;

(b) subtract any element of that sum that represents payment by the landlord for utilities that only benefited the tenant;

(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 compared to other examples of the same type of offence; and

(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).

74. The Tribunal have adopted the approach recommended in *Acheampong v Roman and others*

75. The Respondent did not challenge the correctness of the amount of rent that the Applicants stated they had paid during the relevant period. Accordingly the Tribunal has taken the whole of the rent for the respective relevant periods to be £21,790, made up as follows

- Ms Khanjar                    £8,160
- Ms Ahmed                    £8,800
- Ms Nurmamodo            £4,830

76. The Respondent's bundle contained a schedule of the utilities for which the Respondent paid in the period from 31 August 2022 to 20 June 2023. These sums were not challenged by the Applicants. The period evidenced by the schedule is not the relevant periods for the Applicants. From the schedule the Tribunal finds that the monthly charges were as follows;

- Thames water £59.60 rising to £66.77 on 20 April 2023
- TV licence £26.50
- Broadband £22
- EDF £59

77. The Respondent gave a global charge of £1,500.34 for council tax for the period from 1 September 2022 to 16 May 2023. That equates to a monthly charge in the region of £176.51.

78. The charge for the TV Licence is too high and the Tribunal has reduced it to £169.50, the annual charge for a TV licence in 2022/23. This gives the following annual totals

- Thames water £722.37
- TV licence £169.50
- Broadband £264
- EDF £708
- Council tax £2,118.12

And a monthly average of £331.83.

79. The utilities were shared with the Respondent so the Tribunal deducts one quarter of the monthly total from the monthly rent (£82.96) for each Applicant, deducting 12 months for Ms Khanjar and Ms Ahmed, and 7 Months for Ms Murnamodo, resulting in the following figures of rent net of utilities;

- Ms Khanjar £8,160 - £995.52 = £7,164.48
- Ms Ahmed £8,800 - £995.52 = £7,804.48
- Ms Nurmamodo £4,830 - £580.72 = £4,249.22

80. As to the seriousness of the offence, the Tribunal has taken into account that that proper enforcement of licensing requirements against all landlords, good and bad, is necessary to ensure the general effectiveness of licensing system and to deter evasion, and the seriousness of the offence.

81. The Tribunal has found the only offence in this application is operating an HMO without an Additional Licence.

82. The Tribunal finds that the offence is not the most serious type of offence for which a RRO may be sought, as recognised in the decision in *Daff v Gyalui* [2023]

UKUT 134 (LC), which case also recognised that there can be more or less serious offences within each category.

83. Factors that may be relevant in assessing how serious an offence is within its category may include failure to keep abreast of legal obligations, the length of the offence, whether deposits were protected and breach of The Management of Houses in Multiple Occupation (England) Regulations
84. The Tribunal, in assessing the seriousness of the offence within the category of operating an HMO without an additional licence, has had regard to the fact that once the Respondent submitted an application a licence was granted. The Respondent may not have protected the Applicants' deposits, as she did not believe it was necessary given the type of tenancy, but they were repaid promptly.
85. The Applicants made no specific submissions on the seriousness of the offence of operating an HMO without an Additional Licence.
86. Ms Taylor-Waller submitted that the offence was a less serious offence within the category of operating an HMO without an Additional Licence and that an RRO of 25% of the net rent would be appropriate.
87. Section 44(4) provides that in determining the amount of the RRO there are various factors which the Tribunal should take into account, namely the conduct of the landlord and the tenant, the financial circumstances of the landlord and whether the landlord has at any time been convicted of an offence to which that Chapter of the 2016 Act applies.
88. All parties agreed that until Dr Siddiqui suggested a rent increase the relationship between them had been good.
89. The Respondent submitted that the late payment of rent by the Applicants was conduct to which the Tribunal should have regard.
90. The Applicants submitted that the Respondent changing the locks so that they could not get access to the property was conduct to be taken into account.
91. There is no evidence before the Tribunal as to the financial circumstances of the Respondent. It heard evidence that at the time she was a final year veterinary student with an outstanding student loan and that this is her only property.
92. The Tribunal finds that, as to the conduct of the Applicants it is also appropriate to consider that they did not advise the Respondent that they challenged her notice terminating their tenancies, and that they changed the front door lock of the property without notifying the Respondent, so that she and her agent were unable to gain access to the property.

93. Having regard to the total net rent for the relevant periods, the severity of the offence and the deductions that it considers should be made in light of the factors to which the Tribunal must have regard under s44(4) of the 2016 Act the Tribunal makes a Rent Repayment Order against the Respondent in the sum of £6,726.37, being 35% of the net rent paid for the relevant periods.

94. **Fees**

95. The Applicants sought repayment of their application and hearing fees under Rule 13(2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

96. The Tribunal finds it appropriate, in light of its decision to make an RRO, to reimburse the application and hearing fees, a total of £300.

**Name:** Judge Pittaway

**Date:** 17 August 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**

#### **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.

### **Housing Act 2004**

## **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.

## **Housing and Planning Act 2016**

### **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 to that landlord.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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).

#### **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.
- (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.

**43 Making of a 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 had 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 with –
- (a) section 44 (where the application is made by a tenant);

**44 Amount of order: tenants**

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

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

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

(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.

**SCHEDULE 14 BUILDINGS WHICH ARE NOT HMOs FOR PURPOSES OF THIS ACT  
(EXCLUDING PART 1)**

***Introduction: buildings (or parts) which are not HMOs for purposes of this Act (excluding Part 1)***

1(1) The following paragraphs list buildings which are not houses in multiple occupation for any purposes of this Act other than those of Part 1.

(2) In this Schedule “building” includes a part of a building.

***Buildings occupied by owners***

6(1) Any building which is occupied only by persons within the following paragraphs—

(a) one or more persons who have, whether in the whole or any part of it, either the freehold estate or a leasehold interest granted for a term of more than 21 years;

(b) any member of the household of such a person or persons;

(c) no more than such number of other persons as is specified for the purposes of this paragraph in regulations made by the appropriate national authority.

**The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006**

**6.**—(1) A building is of a description specified for the purposes of paragraph 3 of Schedule 14 to the Act (buildings regulated otherwise than under the Act which are not HMOs for purposes of the Act (excluding Part 1)) where its occupation is regulated by or under any of the enactments listed in Schedule 1.

(2) The number of persons specified for the purposes of paragraph 6(1)(c) of Schedule 14 to the Act is two.