FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**BIR/44UF/HMK/2023/0006**
Properties	**:**	**18 Willes Terrace, Leamington Spa, CV31 1DL**
Applicant	**:**	**Mr Matthew Funnell**
Representative	**:**	**None**
Respondent	**:**	**Mr Benjamin Huggan**
Representative	**:**	**Mr Timothy Huggan**
Type of application	**:**	**Application for a rent repayment order under the Housing and Planning Act 2016**
Tribunal member	**:**	**Judge C Goodall** **Mr R Chumley-Roberts MCIEH, J.P.**
Date and place of hearing	**:**	**30 September 2024 at Leamington Spa Combined Court Centre**
Date of decision	**:**	**7 October 2024**

DECISION

Background

1. On 2 July 2023 the Applicant made an application to this Tribunal for a rent repayment order on the basis that within the period of 12 months prior to the application the Respondent had committed an offence of having control of or managing a house in multiple occupation ("HMO") at 18 Willes Terrace, Leamington Spa, CV31 1DL ("the Property") which was required to be licensed but was not so licensed.

2. The amount sought to be ordered to be repaid is £6,376.00.

3. The parties have provided written statements of their case and supporting documents. The Tribunal conducted an oral hearing of the application on 30 September 2024 at Leamington Spa Combined Court Centre. The Applicant appeared on his own behalf. The Respondent was assisted by his brother, Mr Timothy Huggan.

4. This is the Tribunal's determination of the application together with our reasons for our decision.

Law

5. Provisions concerning obligations to licence properties and rent repayment orders are contained in the Housing Act 2004 ("the 2004 Act") and the Housing and Planning Act 2016 ("the 2016 Act").

6. The relevant provisions of the 2004 Act, so far as this application is concerned are as follows-

> **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.

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.

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.

…

(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 be effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1) … 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), …

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");

…

(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.

7. The relevant provisions of the 2016 Act, so far as this application is concerned, are as follows –

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 …

(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
5	Housing Act 2004	Section 72(1)	control or management of unlicensed HMO

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.

...

43 Making of rent repayment order

(1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).

(2) A rent repayment order under this section may be made only on an application under section 41.

(3) The amount of a rent repayment order under this section is to be determined in accordance with—

(a) section 44 (where the application is made by a tenant);

...

44 Amount of order: tenants

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

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

If the order is made on the ground that the landlord has committed	***the amount must relate to rent paid by the tenant in respect of***
an offence mentioned in row ...5... 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.

8. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 provides, at paragraph 4:

Description of HMOs prescribed by the Secretary of State

4. 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;

…

9. In *Acheampong v Choudhury* [2022] UKUT 239 (LC) ("*Acheampong*"), Judge Cooke commended the following approach to Tribunals when considering how much to award on a rent repayment application:

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).

Facts

10. The Property is a five bedroom two storey semi-detached house in a Residential area in Leamington Spa. The attic space has been converted into living space, which can be used as a sixth bedroom. The Respondent has owned the Property for twenty five years; it is where he brought up his children.

11. The Respondent took in one or two lodgers after his children left home, which he describes as "several years ago". On the facts as they emerged, this was prior to 2020. In early 2020, he already had two lodgers at the Property, "Luke" and "Jas".

12. On 11 March 2020, Warwick District Council ("the Council") were conducting house to house surveys in the area. One of their environmental health personnel, a Ms Bali Gill, spoke to the Respondent on his doorstep on that date. Her record of that conversation, contained in an email dated 10 May 2023, was that:

"I cold called the property on 11/3/2020 and after having a conversation with the landlord the property was identified as a HMO, I then worked with the landlord to bring the property up to the legal standard and there was a delay in getting works completed due to Covid-19. At that time the property was identified as an 'Unlicensed HMO' as there were only 4 households including the resident landlord, he advised me that there was a vacant room that he was looking to occupy, and he was advised that once occupied it would then become a ' Licensable HMO'."

13. On 24 September 2020, a third lodger, "James", started to live at the Property. There were thus four households at that time, including the Respondent.

14. On 21 October 2020, Bali Gill conducted an inspection of the Property as the Respondent had confirmed to her that he wished to increase the number of lodgers in the Property. From that inspection, the Council produced a list of works required to bring the property up to HMO

standard in letter form. The letter was not supplied to the Tribunal. The works were upgrading doors to fire door standard, provide a hard wired, interlinked fire alarm system, board the cellar soffit, install a WHB in one bedroom, provide window restraints, and supply and fit a handrail.

15. The Respondent's evidence was that he progressed the works requested, though they took some time not least due to Covid-19 disruption. He says that in June 2021, he informed the Council that he would take in additional lodgers. There is no contemporaneous written evidence to that effect.

16. On 15 June 2021, a fourth lodger, Charlotte, arrived, so from that date there were five households at the Property.. On 15 July 2021, a fifth lodger, Kieran arrived, but Jas left. On 2 August 2021 the Applicant arrived. At that point there were six households at the Property, including the Respondent.

17. Between the summer of 2021 and March 2022, works at the Property as requested by the Council continued. The Tribunal has seen a series of emails between the Respondent and the Council in which it is clear the Respondent is keeping the Council informed about the progress of the works, with occasional responses from the Council. It appears that some residents in the Property were affected by Covid-19 the early part of 2022 which delayed the works.

18. On 29 November 2021, a planning enforcement officer from the Council called Kalvarn emailed the Respondent. This was in response to an email to him from the Respondent, but we were not supplied with a copy. In the email, Kalvarn said:

    "If you are a live in landlord and have lodgers then the maximum permitted without having to apply for planning permission is 2, and more than 2 and the property is classed as an HMO.

    Am I right I thinking that currently you have 5 lodgers?

    When there are 5 present in a property sharing facilities then a licence is required. Baljinder will be able to advise you on this.

    …"

19. On 22 March 2022, Ms Gill carried out a further inspection. Her follow-up email, dated 24 March 2022, said:

    "Following my visit on 22nd of March 2022, I can confirm that works were completed to a good standard in the property. …

    At inspection you confirmed that were now five people plus yourself living in the property creating a licensable HMO (5 or more households), I have arranged for a HMO licence application to be sent to you.

When I first wrote to you on 8/10/20 I advised that you would need to obtain planning permission, I have been advised that this has not been obtained …

A new policy came into force on 1st April 2021 to link planning permission and HMO Licensing.

The new policy means that Private Sector Housing will not be able to process new or renewal HMO licence applications where planning permission is required but has not been obtained. In addition, landlords will face enforcement action where they do not make a valid application for planning permission within set timescales, when a new or renewal HMO licence is required. …"

20. Following receipt of that email, and despite having carried out the works requested so that the Property was up to licensable standard, the Respondent had a change of heart. At the time, he said he had "long Covid", the administrative burden of applying both for a licence and for planning permission seemed complex. He looked more carefully at the financial implications of running an HMO, and was advised that he needed to create a limited company. He therefore decided that the challenges were not for him, and he did not want to change the status of the Property to an HMO.

21. On 31 July 2022, the Respondent emailed the Council to inform them of this decision. He said he would reduce the number of lodgers by giving three of them six months notice. There was an immediate response, to point out that there were 5 lodgers living in the Property when Ms Gill visited on 22 March 2022. The Property at that point should have had a licence, and the Respondent had therefore been committing an offence.

22. Some negotiations with the Council then followed. These included an email to the Respondent dated 31 August 2022, in which the Private Sector Housing Manager pointed out that it seemed the Respondent was operating an HMO without a licence and without planning permission. He informed the Respondent that "failure to licence is a serious offence and you can be liable to an unlimited fine". On perusal of the lodging agreement, the Manager required the Respondent to give the three lodgers who would have to leave 5 weeks notice to terminate their occupancy.

23. This resulted in reducing the notice period to terminate to 5 weeks. Three lodgers (including the Applicant) were therefore given notice in early September 2022 to terminate their tenancies on 9 October 2022. All three then moved out on that date, having found accommodation to share together.

24. The Applicant therefore lived at the Property from 2 August 2021 until 9 October 2022. The written contractual arrangements between the Respondent and the Applicant are contained in house share agreements under which the Applicant paid a rent of £527.00 per calendar month from 2 August 2021 until 1 September 2022 and £579.00 per calendar month from 2 September 2022 until he vacated.

The Application

25. As a rent repayment order can only relate to rent paid during a period not exceeding 12 months, the Applicant is seeking repayment of rent for the period 2 October 2021 to 1 October 2022. The Respondent accepts that during that period, he received 11 monthly payments of £527.00 and one payment of £579.00. The amount of rent which the Applicant is requesting should be repaid is therefore (£527.00 x 11) + £579.00 = £6,376.00.

26. The Applicant agreed that the rent included payments of council tax, water rates, wi-fi, and gas and electricity. However, as the Respondent had not provided copies of the invoices for these utilities, he said no deductions for them should be allowed.

27. On the question of whether the Respondent had a reasonable excuse for not licensing the Property, the Applicant provided copies of his correspondence with the Council, in which its Private Sector Housing Manager stated that the Council only became aware that there were five occupants of the Property in March 2022. It was not arguable, he submitted, that the Respondent could consider the Council had in effect given him reason to believe he was not committing an offence if they did not even have information until that date that an offence was being committed.

28. The Applicant also submitted that the Respondent's conduct should be taken into account. Specific criticisms were:

    a. Only turning on the heating in the Property for a few hours at a time, meaning the occupants were cold;

    b. Not being provided with a copy of a gas safety certificate, nor an electrical inspection report;

    c. That no right to rent check had been undertaken when lodgers came to live in the Property;

    d. Not obtaining planning permission to operate an HMO;

    e. Deciding to accept additional lodgers before the works needed to improve the Property to HMO standard were finished;

    f. Taking too long to choose which fire doors to install, as the Respondent wished to order doors which aesthetically fitted the characteristics of the Property;

    g. Lacking a clear focus on management of the project he was undertaking of changing the Property to an HMO and failing to research it properly;

    h. Converting the loft without building control approval;

i. Failing to install adequate loft insulation – 200mm thickness was installed whereas the Council standard was 250mm.

29. In short, the Applicant's case on conduct was that the Respondent had flawed judgement, and didn't really know what he was doing.

30. The Applicant asked the Tribunal to make a rent repayment award of the whole of the rent paid for the statutory period in the sum of £6,376.00.

Respondent's case

31. The Respondent did not dispute that for the period 2 October 2021 to 1 October 2022 there were five or more households occupying the Property, and that for that period there was no licence in force. He claimed that he had a reasonable excuse for failure to licence as he considered he had an implied temporary licence, as the Council knew perfectly well how many occupants there were, and turned a blind eye to this.

32. The Respondent put the point in this way in his written statement:

> "I placed reliance on input and guidance from WDC. I was under the impression that I was taking all the steps required in accordance with requirements to become an HMO and it was acceptable to have additional tenants at the time although a full application would be required on completion of works. "

33. The Respondent says he was reinforced in this view because there was no hint in the Council's email on 24 March 2022 (see paragraph 22 above) of concern or that an offence was being committed, despite the reference in that email to the Council being aware that there were five households at the Property. He believed the Council were untroubled by the situation in March 2022 and their attitude only changed following his email of 31 July 2022 (see paragraph 21 above).

34. So far as the condition of the Property is concerned, the Respondent's case is that it was provided and maintained to a high standard.

35. The Respondent asked the Tribunal to take his health into account. He previously worked as a landscape designer but due to severe anxiety has not been able to work since June 2023. A short report from a Clinical Psychologist was provided to the Tribunal (and read to the Applicant), which confirmed symptoms of anxiety over a long period of time.

36. References from "Luke", "Kieran", and a subsequent lodger called "Natasha", were provided to the Tribunal. They speak well of the Respondent, describing the Property as being of a high standard, and the Respondent as a very good landlord.

37. The Respondent provided information about his financial position. He has sufficient savings to be able to meet a rent repayment award. He informed us that his outgoings for the Property consisted of utility costs for

electricity and gas of £300 – 350 per month, wi-fi of £60 per month, council tax of £2,200 per annum, and water rates of c£700 per annum.

Discussion

38. The Tribunal's first task in any rent repayment order case, is to decide whether the offence on which the application is made is established beyond reasonable doubt. The offence in this case is breach of section 72 of the Act, namely managing or having control of an HMO which is required to be licensed, but is not so licensed.

39. We have no doubt that the Respondent is the manager or the person having control of the Property. Nobody has suggested otherwise.

40. We also have no doubt that the Property is an HMO as it is defined in section 254 of the Act, as it meets all elements of the standard test set out in that section.

41. We also have no doubt that between 2 October 2021 and 1 October 2022, there were five lodgers at the Property. By virtue of the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018, it was at that point a licensable HMO. We find that (subject to the reasonable excuse defence), we are satisfied that the offence was committed during that time period.

42. When assessing whether there is a reasonable excuse, the starting point is to establish what facts give rise to the reasonable excuse (see paragraph 48 of *Marigold v Wells* [2023] UKUT 33 (LC)).

43. This is not a case where the Respondent was unaware of the obligation to licence the Property. The Respondent did not challenge the account of Ms Gill's conversation with him on 11 March 2020 and we find that during it he was informed of the obligation to licence the property if it was occupied by five households.

44. Rather, it appears to us that the Respondent's case is based on establishing that the Council represented to him that he could allow five or more households to occupy the Property whilst works were ongoing to improve the Property to HMO standard and before he needed to apply for a licence.

45. The evidence to support this defence can only come from the communications from the Council to the Respondent, and his oral evidence.

46. There are three pieces of evidence alluding to the Council's knowledge of the number of occupants at the Property. They are the conversation on the street on 11 March 2020, Kalvarn's email of 29 November 2021, and Ms Gill's email of 24 March 2022. Even though it is clear from Kalvarn's email that the Council (or at least the planning department) had a suspicion there were 5 occupants, there is inadequate evidence to establish that the Council were aware that the number of occupants at the Property had

reached five until 22 March 2022, at which point they clearly expected an application for a licence to be provided. There is no evidence that the Respondent was told he need not apply for a licence until then.

47. We also note that whilst the Respondent gave oral evidence to the effect that he told Ms Gill there were five lodgers in July 2021, there is no documentary evidence to support that. There is documentary evidence to confirm that the Respondent kept Ms Gill up to date with the progress of the works he had embarked on bring the Property up to HMO standard. None of those emails refer to occupancy levels. The Tribunal therefore is not able to accept the Respondent evidence that the Council were aware of the number of occupants between July 2021 and March 2022.

48. In our view, the Respondent has not proved that he has a reasonable excuse defence to the offence under section 72 of the Act.

49. We therefore turn to assessment of what financial penalty we should impose. The 2016 Act does not compel us to make an order, but we consider the circumstances would need to be wholly exceptional for us to decline to make any order at all, and those circumstances do not apply here.

50. We therefore follow the methodology set out in *Acheampong* to assess the award.

51. The whole of the rent for the relevant period is £6,376.00.

52. We must deduct any payments for utilities from which the Applicant benefitted. It is true that the Respondent has not provided written evidence of these bills, but we are permitted to make a reasonable estimate. We consider that the costs the Respondent told us of in his oral evidence are in the right region, based upon our knowledge and experience. We found the Respondent to be open and honest when giving his evidence. We therefore find that the outgoings for the Property were as set out in paragraph 37 above, which total £7,220.00 (taking gas and electricity at the lower figure). There were six occupants during the relevant period, so we apportion that between them. We deduct £1,203.33 from the whole rent figure giving a residual sum of £5,172.67.

53. The next element of a rent repayment order requires us to assess the seriousness of the offence (both against the seriousness of other types of offence for which rent repayment orders can be made, and in terms of the seriousness of the offence against other offences falling within that category of offence) and then decide what proportion of the residual maximum sum that might be ordered is appropriate.

54. In *Newell v Abbott* [2024] UKUT 181 (LC), the Upper Tribunal reviewed a number of recent cases. It can be seen that appropriate percentages range between 10% and 90%, and the assessment is highly fact specific.

55. In *Daff v Gyalui and Aiach-Kohen* [2023] UKUT 134 (LC) ("*Daff*"), the Deputy President, Martin Rodger KC, explained (in paragraphs 48 and 49) that of the licensing offences listed in section 40(3) of the Act, the three offences in lines 1, 2, and 7 of that table were "at the upper end of the range of seriousness". His view was that the licensing offences were "of a less serious type". We accept and adopt that formulation. This offence is a less serious type of offence.

56. Within the scale of section 72 offences, we also adopt the view that this offence is of a less serious type, for the following reasons:

    a. There is no evidence or submission by the Applicant that the Property was not of a good standard. It seems to us that it was a comfortable home, and the Applicant was not exposed to poor or dangerous conditions;

    b. The Respondent does not operate a professional business. This is his only let property and he is a resident landlord;

    c. Our view is that the commission of the offence came about due to naivety and lack of experience in property management, rather than being an intentional, and so more blameworthy activity;

    d. There is clear evidence that the Respondent sought to co-operate with the Council regarding his management of the Property in so far as he did carry out the works required to bring it up to HMO standards;

    e. The Respondent's poor health;

    f. Lack of any apparent interest on the part of the Council to take proceedings against the Respondent.

57. Our view is that the proper proportion of the maximum sum that might be ordered to be repaid is £1,810.43, being 35% of the residual maximum sum of £5,172.67.

58. We then have to make any adjustments to the award arising from consideration of the section 44 factors, being the conduct of the parties, the financial circumstances of the landlord, and whether the landlord has been convicted of an offence to which that Chapter of the Act applies.

59. The Respondent has not raised any issues of conduct in relation to the Applicant. We do not intend to make any adjustments to the award arising from his financial circumstances. We are satisfied that he can afford the award we make. There is no evidence that the Respondent has been convicted of any of the offences listed in section 40.

60. The only section 44 issue we have to consider is therefore the alleged conduct of the Respondent. The complaints made in that respect by the Applicant, are summarised in paragraph 28 above.

61. Consideration of the Respondent's conduct has to be undertaken within the framework of sections 40 – 46 of the 2016 Act. We have to consider whether the amount of the rent repayment order we make should be affected by the Respondent's conduct. In our view, this means we are not looking at conduct in isolation; we only look at conduct as it affects a financial award in the Applicant's favour.

62. This approach strongly suggests that any conduct we take into account should be conduct that had a direct impact upon the Applicant. Our view is that neither we, nor the Applicant has a general responsibility to further penalise the Respondent for any proven misdemeanours that it is the responsibility of others to police. We have to be mindful of the fact that any Applicant for a rent repayment order is not being compensated for harm; he or she is receiving a windfall.

63. Conduct, however, that directly harms or disadvantages the Applicant is properly to be taken into account in determining a rent repayment award. Examples might be failure to provide accommodation that is up to standard, abuse, or anti-social behaviour.

64. Using this yardstick, our view is that none of the conduct alleged by the Applicant should be taken into account in fixing the rent repayment amount, as:

    a. (Para 28a) - We cannot agree that limiting the timings during which the heating was on can be misconduct. The Respondent was paying for all electricity, meaning the Applicant could have used secondary heating (at the Respondent's cost) to alleviate the cold. In theory, the Respondent might have sought a supplementary payment as he was contractually entitled to enforce an excessive use clause in the contract, but he did not;

    b. (Para 28b and c) – There is no evidence that the Applicant was remotely disadvantaged or harmed. He did not claim that he ever asked to see the documents or that he wished to be subject to right to rent checks. These complaints (if proven – we make no findings) have in our view been identified with hindsight in an attempt to extract as high a rent repayment order as possible, rather than having any impact at all on the Applicant;

    c. (Para 28d) – Enforcement of planning law is the responsibility of the Council, not the Applicant nor the Tribunal. There was no impact upon the Applicant;

    d. (Para 28e) – Effectively, this criticism is the basis upon which the offence itself arose. We consider that the acts which resulted in the commission of the offence are taken into account through the mechanism of the rent repayment order itself. The Tribunal cannot penalise the Respondent again by adding to an award for the very conduct which constituted the offence;

e. (Para 28f and g) – These criticisms essentially criticise the Respondent's management skills and decision making process as he allegedly made unwise decisions and exercised flawed judgement. In our view, these criticisms are not far from the mark, but we do not consider that these criticisms fall even close to the type of conduct which we should consider in relation to the amount of the rent repayment award;

f. (Para 28h and i) - Any issue about the loft conversion or the adequacy of its insulation, which in his evidence the Respondent told us took place in the 1990's, is in our view irrelevant and is an example of the error the Applicant has fallen into in seeking to find any past misdemeanours which he can turn to his advantage to increase his financial award.

65. We therefore make no adjustment for the Respondent's conduct.

66. We make a rent repayment order in the sum of £1,810.43.

Appeal

67. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
First-tier Tribunal (Property Chamber)