

FIRST - TIER TRIBUNAL

**PROPERTY CHAMBER (RESIDENTIAL PROPERTY)**

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| **Case Reference** | **:** | CHI/00HB/HMF/2024/0005 |
| **Property** | **:** | First Floor Flat, 140 Wells Road, Totterdown, Bristol, BS4 2AG |
| **Applicants** | **:** | Anna West, Nia Vines, Isabelle Clarke and Madeleine Day |
| **Representative** | **:** | Justice for Tenants (James McGowan) |
| **Respondents** | **:** | Carol Jackson and Josephine Collins |
| **Representative** | **:** | Michael Field (Counsel) |
| **Type of Application** | **:** | Rent repayment order – application by Tenant.  Sections 40, 41, 42, 43 & 45 of the Housing and Planning Act 2016 (the Act) |
| **Tribunal Members** | **:** | Judge C A Rai (Chairman)  Mr M C Woodrow MRICS Chartered Surveyor  Mr M R Jenkinson |
| **Date type and venue of Hearing** | **:** | 25 September 2024  Remote by CVP before the Tribunal Members sitting at Keble House, Southernhay Gardens, Exeter. EX1 1NT |
| **Date of Decision** | **:** | 13 October 2024 |

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| DECISION |

**Summary of Decision**

# The Respondents admitted that they had let the first floor flat at 140 Wells Road, Totterdown, Bristol. BS4 2AG (the Property) to the Applicants without having an house in multiple occupation (HMO) licence during a period when it was a legal requirement for the Property to be licensed.

# The Respondents sought to rely on the defence of reasonable excuse, broadly based on their honest belief that the Bristol City Council Website was misleading. They said their interaction with the website led them to conclude that an HMO licence was not required.

1. Having considered the submissions made by Mr Field for the Respondents and the submissions made by Mr McGowan for the Applicants, the Tribunal decided that the reasonable excuse defence was not proven.
2. The Tribunal advised the Applicants that the amount claimed by them, exceeded 12 months’ rent, which is the maximum amount of the rent repayment order it could make. This was accepted by the Applicants. Mr McGowan agreed that the maximum amount of any order which could be made by the Tribunal with regard to this application is £15,600.
3. Having considered the submissions made by the Applicants and the Respondents as to the amount of the rent repayment order, the Tribunal concluded that the offence committed by the Respondents was at the lower end of the scale of offences listed in the table in section 40(3) of the Act.
4. The Tribunal orders that the Respondents repay the Applicants 55% of £15,600 (12 months rent) being £8,580.
5. Having considered the Applicants’ application for the repayment of its fees, the Tribunal orders that the Respondents pay £165 to the Applicants which is 55% of the total fees paid to the Tribunal by the Applicants.
6. The sums referred to in paragraphs 6 & 7 are payable by the Respondents within 28 days of the date of receipt of this decision and may be paid, subject to it obtaining written authority from each Applicant, into one nominated bank account.
7. The reasons for the Tribunal’s decision are set out below.

**Background**

1. The Property is a three bedroom self-contained first floor flat within a terrace block. Historically the building was a community/shopping centre which has subsequently been split into separate units. The leaseholders of the units own shares in the Management Company which owns and manages the freehold. The Respondent owns two ground floor flats in addition to the Property but does not own the basement.
2. The Property has its own entrance door, but access from the street to the building is via a communal external door. The bundle of documents, received by the Tribunal, included copies of two tenancy agreements dated 25 February 2022 and 25 February 2023 respectively. The application refers to the rent paid by each of the Applicants during various periods of the tenancy and contains written evidence of payment of the rent to the Landlord’s agent.
3. The Property was owned by Roy Jackson, until his death in May 2020. Thereafter it was transferred to Mrs Collins. It was one of a portfolio of properties, inherited by the Respondents, who are mother and daughter.
4. Bespoke Lettings and Management Limited (Bespoke) managed the Property between February 2021 and February 2023 and signed both tenancy agreements for the Respondents. Mr Collins managed the Property alongside the letting agent, but he and his wife did not live in or near Bristol. The Tribunal was told that they had visited the Property infrequently during the tenancies because of movement restrictions during the Covid-19 pandemic.
5. Bristol City Council gave notice it intended to designate an area of central Bristol as requiring Additional HMO Licensing on 2 April 2019. The designation came into force on 8 July 2019 and lasted for five years. The Respondents accepted that Property was within the area which required an HMO licence, if occupied by more than one household (which it was) for the duration of both tenancies.
6. The Respondents obtained an HMO licence for the Property on 23 October 2023. The application for a Rent Repayment Order is dated 14 February 2024.
7. The Tribunal received a single bundle of documents comprising 1,148 pages. References, in this decision, to numbers in square brackets are to the pdf page numbers of the documents in the bundle.
8. The Applicants were represented at the Hearing by Mr McGowan (from an organisation called Justice for Tenants) and the Respondents were represented by their Counsel, Mr Field. All the Applicants attended the hearing remotely as did Mr and Mrs Collins and Ms Terri Calcagno of Bespoke.

**The Hearing**

1. The Tribunal asked Mr McGowan to reconsider the total of the claim suggesting that the figure referred to in the application exceeded the maximum order it could make.
2. Mr McGowan stated, which was admitted by the Respondents, that they should have had an HMO licence for the Property during the entire period of the claim.
3. Mr Field stated that the Respondents denied having committed an offence in reliance upon the defence of “reasonable excuse”.

**The Applicants’ case.**

1. Mr McGowan said that the Respondents have admitted the offence. The Applicants do not accept the defence of reasonable excuse has been proven.
2. Mr McGowan said that the seriousness of the offence, which he described as being at the upper end of the scale of offences listed in section 40 of the Act, was exacerbated by the conduct of the landlord with regard to other matters which had affected the Property during the Applicants’ occupation. He referred in particular to the persistent leaks and the lack of security when the outer door could not be locked.
3. Whilst Mr McGowan accepted that the offence, committed by the Respondents, is not the most serious in the list of offences in section 40 of the Act, he considered that it still merited the Tribunal making an Order for repayment of between 60% and 100% of the maximum penalty.
4. Mr McGowan explained why, in the Applicants’ view, the reasonable excuse put forward on behalf of the Respondents did not constitute a defence.
5. He said that the Respondents owned several properties. He referred the Tribunal to examples of “landlord’s conduct which he stated should both influence the tribunal’s assessment of the seriousness of the offence and impact on the amount of any order.
6. He distinguished the facts in these proceedings from the facts in **D’Costa** (on which Mr Field sought to rely).
7. He also referred the tribunal to the **Marigold** case which contains Upper Tribunal guidance on the way in which a tribunal should assess the reasonable excuse defence.
8. Mr McGowan sought to distinguish the decision in **D’Costa** because he said in the current application there was no recorded interaction with an employee of Bristol City Council, nor was it suggested that the Respondent had relied upon specific guidance obtained from Bristol City Council. He said that Mr Collins’ statement is uncorroborated. He said there is no guarantee that Mr Collins had input the correct information when using the interactive tool on the Bristol City Council website.
9. Mr McGowan told the Tribunal that he wished it to consider the Respondent’s conduct (as landlords) and suggested some issues that he believed should influence the Tribunal’s decision with regard to the quantum of any order it might make.
10. Mr McGowan said that the leaks which had affected the Applicants throughout their occupation were never satisfactorily resolved and that this had seriously impacted on their enjoyment of the Property.
11. Furthermore, the Respondents had not responded quickly enough, or adequately to the Applicants’ complaints about a lack of the security, following the removal of the lock on the outer door. Evidence in the bundle referred to the removal of the outer door lock following external works albeit no reason was ever provided. It was accepted that there was a delay on the part of the Respondent in replacing the lock to the external door. The Respondents suggested this was connected to the installation of an intercom system (installed in response to the Applicants’ request to improve security). Mr McGowan suggested that the Respondents had not been diligent enough in responding to the Applicants’ and Bespoke’s emails.
12. Mr Collins told the Tribunal that it had been difficult to find contractors during the Covid pandemic. He said that he had done as much as he was able but was hampered by being geographically remote and dependent on receiving co-operation from his contractors. He also suggested that it had been important to endeavour to work within an acceptable budget.
13. Another “conduct issue” raised by Mr McGowan related to the fact that it was alleged, and not denied, that the Applicants’ electricity bill included the cost of communal lighting which was not separately metered. Eventually an allowance was made towards the bills, but the Applicants suggested that this had not been enough because the amount was not adjusted upwards following the subsequent sharp increase in utility costs after Russia invaded Ukraine.
14. Mr McGowan established, after questioning Mrs Collins, that the Respondents had inherited several properties, some of which are commercial, the majority of which are residential, and all of which are currently let.
15. Mr McGowan also confirmed that the Applicants sought the repayment of both the application fee and the hearing fee paid by the Applicant to the Tribunal.

**The Respondents’ case.**

1. Mr Fieldacknowledged that the Respondents failed to obtain an HMO licence during the period of the Tenancy. However, he said that the Respondents had a reasonable excuse because Mr Collins had been misled by the inadequacy of the Bristol City Council website.
2. Mr Field submitted that the alleged conduct of the Respondents was not a factor which should influence the Tribunal with regard to its assessment of the amount of the order.
3. Mr Field stated that the evidence provided by Mr Collins during the Hearing, and in his witness statement, demonstrated that he was open and honest. His statement needed no further corroboration. It was a statement of truth and should be accepted as such.
4. If the Tribunal did not accept that the Respondents could rely upon the defence of reasonable excuse, it should make an order for the repayment of between 25% – 50% of the rent claimed.
5. In response to the application for reimbursement of the fees paid for to the Tribunal Mr Field said it was for the Tribunal to decide what was fair.
6. Mr Field referred the Tribunal to various decisions in cases included within the bundle and in particular to the decision by the Upper Tribunal in **D’Costa v D’Andrea and others** as being relevant. He said that Mr Collins had checked the Bristol City Council website and used the interactive tool, which resulted in his forming the view that the Property did not require an HMO Licence. He was unable to confirm when, or how often Mr Collins had checked the website, but it was suggested that Mr Collins had checked the website a few times during the period of the Applicants’ claim [522]. Mr Collins confirmed to the Tribunal that he had never telephoned Bristol City Council. He also said that he did not discuss whether or not an HMO licence was required for the Property with Bespoke.
7. Although Mr Collins referred to his having carried out a recent check on the website on 24 August 2024, the 5 year Additional Licensing designation made by Bristol City Council in 2019, had expired before that date. However, two new licensing schemes came into effect on 6 August 2024, a citywide Additional Licensing scheme for HMOs and a Selective Licensing scheme covering most other privately rented properties in specified wards.
8. Responding to Mr McGowan’s submissions regarding the Applicant’s meter being connected to the landlord’s electricity supply, Mr Collins stated that the Landlord had voluntarily made an allowance to the Applicant for an amount, which he had been advised, was in excess of the cost of the communal electricity. There was therefore no reason or justification for doubling that allowance. He suggested that the Applicants had accepted that their electricity bills were not significantly impacted by the small amount of communal lighting. He said that the requested increase in agreed allowance would have been unreasonable, and the arrangement was not an illustration of bad conduct within the framework of the Act. It was impossible to provide any breakdown of electricity usage between the Applicants and the landlord.
9. Mr Collins addressed the history of the leaks in the Property. He said that there were leaks in 2020, before the commencement of the first tenancy agreement. Mr Jackson had been his father in law. He and his wife live in Woking which is approximately 100 miles from the Property. It had not been possible to visit the Property regularly during Covid lockdowns. The weather had been very poor which resulted in the flat roof leaking. Eventually he was able to employ a roofer who replaced the flat roof. His usual mode of addressing repair issues would have been to commission a temporary fix to alleviate the problem and then try to obtain a more permanent long term solution. He referred the Tribunal to various invoices for repairs to the Property disclosed in the bundle which demonstrated that the Respondents had undertaken, and paid for, substantial works to the Property during the tenancies. This included replacement of the flat roof, re-rendering the front elevation of the Property and fixing other leaks. The Respondents are not solely responsible for the repair of all roofs which serve the building, but Mr Collins admitted that because it was difficult to obtain any engagement from the Management Company, the Respondents tended to undertake their own repairs to those parts of the structure which affected their flats.
10. He acknowledged that there had been issues with water penetration and said that the Landlords had supplied dehumidifiers to the Applicants in an effort to alleviate problems. He referred the Tribunal to various invoices in the bundle and said that the persistent issues with water damaging the Property had been frustrating. He said he believed that he had tried to respond to all the Applicants’ complaints and works were undertaken as soon as he was able to arrange for them to be done. He conceded that the amount of the rent was not adjusted to reflect this and suggested that the Applicants had been aware of the potential issues with the Property when they signed the tenancy agreements implying, without stating, that the amount of the rent and the condition of the Property were linked.
11. He said that he believed that the evidence in the bundle confirmed that the Respondents regularly carried out works to the Property for the duration of the Tenancy agreements.
12. Mr Field made no specific submissions with regard to the Respondents’ financial circumstances or their ability to comply with any order which the Tribunal might make.

**The Law**

1. Section 40 of the Act confers power on the Tribunal to make a RRO if it is satisfied that a landlord has committed an offence to which the Chapter applies.
2. The Tribunal may make a rent repayment order if it is satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted of an offence).
3. On a tenant’s application, the amount of rent to be repaid is to be determined in accordance with section 44 of the Act and that amount must not exceed the rent paid within a period of 12 months less any award of universal credit received by a tenant (s. 44(3))
4. A person who commits an offence may rely upon a defence of reasonable excuse set out in section 73(5) of the Housing Act 2004.
5. Section 43(4) of the Act requires that:-

“(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.”

1. In these proceedings both parties agree that the Respondents have not been previously convicted of an offence to which the relevant Chapter of the Act applies.
2. Relevant extracts from the Act and the Housing Act 2004 are set out in the Schedule to this decision together with the full case references.
3. Rule 13(2) of **The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013** states that “The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor”.

**Reasons for the Tribunal’s decision**

1. The Respondents have admitted that during the entire period of the Applicants’ claim they did not have an HMO Licence for the Property.
2. The Respondents sought to rely upon the defence that there was a reasonable excuse for their omission.
3. Mr Field said that if the Tribunal did not accept that the defence of reasonable excuse was proven, it should still consider making an order at the lower end of the scale i.e. for less than 100% of the maximum amount. He suggested that upwards of 25% of that amount would be reasonable because the offence was not the “most serious” offence.
4. The parties made conflicting submissions. Mr McGowan stated that the offence should be considered to be serious because it was criminal. The Respondents let other properties. Their submissions regarding their reasonable defence were uncorroborated. There was no evidence that the Bristol City Council website is or was misleading. There is no evidence whether Mr Collins navigated the website properly when he checked if the Property needed to be licensed. The evidence he had provided tended to suggest that the tool on the website is effective, not that it is misleading.
5. Furthermore, he said the Tribunal should take account of the Respondent’s conduct during the tenancy. The Property had been subject to persistent leaks which were never entirely rectified. Mr McGowan suggested that the Landlord and its agent had not dealt with the Applicants’ complaints regarding the dampness quickly enough or effectively, if at all. He also said that the Respondents had taken too long to replace the lock on the outer door which had compromised the Applicants’ security.
6. Mr McGowan considered that the Respondents had failed to adequately compensate the Applicants for the costs of the communal electricity for which they had paid.
7. Having considered all of this evidence, the Tribunal concluded that although repairs may have taken longer to carry out and complete than the Applicants desired, the evidence revealed that there was a continuing dialogue between the parties throughout the tenancies. The Applicants chose to renew the first tenancy and negotiated payment of the same rent during the second tenancy. The Landlord had made improvements by installing an intercom system. For those reasons the Tribunal does not accept that the landlord’s conduct should influence its decision.
8. The Respondents sought to rely upon the decision in **D’Costa** to assist its defence. In that case a Landlord had relied upon assurances provided by a council employee who had offered to update the Landlord by email, but who had not. Mr McGowan sought to distinguish that case from the facts in these proceedings. He said there is no suggestion that the Respondents relied upon anything, other than their own conclusions, following Mr Collins checking the Bristol City Council website.
9. Mr Collins was unable to say when or how many times he checked that website. He accepted that he had not relied upon assurances from his letting agent. The video evidence which he supplied to the Tribunal relates to a check of the website by him on 24 August 2024, by which date the original Additional Licensing 5 year designation made by Bristol City Council in 2019 had expired. However, two new licensing schemes came into effect on 6 August 2024 being a citywide Additional licensing scheme for HMOs and a selective licensing scheme covering most other privately rented properties in specified wards.
10. Having checked the Bristol City Council website after the Hearing, the Tribunal found that it currently contains a clear statement that “Additional Licensing includes a house or flat that is occupied by 3 or 4 unrelated people who live together and share some facilities including kitchens and/or bathrooms. [[Check if you need a property licence and apply (bristol.gov.uk)](https://www.bristol.gov.uk/business/licences-and-permits/property-licences/check-if-you-need-a-property-licence-and-apply)].
11. To some extent this information conflicts with evidence from Mr McGowan who suggested that the new licensing regime was not in place on 24 August 2024.
12. However, the Tribunal have not given any weight to its own findings because there is no evidence that the result of a current search of the Bristol City Council website would deliver the same result as Mr Collins’s search on the date he recorded his video.
13. The Tribunal concluded, having made an objective analysis of the facts before it, that it does not accept that the Respondent has a defence of reasonable excuse.
14. The property was subject to the Additional Licensing Regime on 25 February 2022 (the start of the 2022 Tenancy).
15. Although Mr Collins stated that when he checked the Bristol City Council website “the website told me this address did not require any licence” and “I am certain that I did check a few times during the period of this claim”, the Respondents used a letting agent to manage the Property albeit it is accepted that Bespoke acted alongside Mr Collins. Mr Collins has not suggested that he relied on that agent to inform him about the landlords legal in relation to the tenancy of the Property.
16. The Respondents had recently inherited a property portfolio so presumably would have been aware of their own “novice status” as landlords during the two years the Property was occupied by the Applicants.
17. The Tribunal has decided that the Respondents and their agent, either acting together or independently of each other, should and/or could have made other enquiries in addition to occasional checks of the website to update themselves of the legal requirements associated with letting residential property.
18. The 2023 tenancy ended on 24 August 2023. The Respondents obtained an HMO licence on 23 October 2023. The Respondents have not offered any explanation to the Tribunal what prompted them to make the Application for a licence in October 2023, save but to say, which is noted and accepted, that it predated the Application.
19. Having determined that the Respondents cannot rely upon a defence of reasonable excuse for the offence (which they have already admitted), the Tribunal is satisfied beyond reasonable doubt that the Respondents have committed the offence so it may make a Rent Repayment Order.
20. The next step is for the Tribunal to decide the amount of the order it should make. The Applicants have accepted that the maximum amount is 12 months rent amounting to £15,600.
21. The Tribunal acknowledges that the bundle contains sufficient evidence that the Applicants paid their rent. They confirmed during the hearing that none was in receipt of universal credit. Neither party suggested that the rent includes payment for utilities. Neither party suggested that any compensatory adjustment made for the communal electricity supply should be taken into account (save and except as evidence of the landlords conduct).
22. Having ascertained the maximum amount of the order, the Tribunal needs to satisfy itself as to the seriousness of the offence, compared with both the other offences, in the table of offences, in section 40 and also other examples of the same type of offence.
23. Although Mr McGowan insisted that the offence of failing to licence the Property was at the top end of the scale the Tribunal do not agree. Mr Mc Gowan referred the Tribunal to **Hancher v David and others** In that decision Judge Elizabeth Cooke stated that the offence under section 72(1) of the Housing Act 2004 is not one of the most serious offences.
24. The Respondents have obtained an HMO licence for the Property. The Applicants have not suggested that the actual condition of the Property would or might have been an impediment to the application for a licence. It has not been submitted that the Landlord omitted to have regard for the safety of the tenants. The impact of the complaints made by the tenant regarding conduct are considered below.
25. The Tribunal has however noted that the offence continued for the entire period of both tenancies (two years).
26. Mr Collins explained that the Respondents became a landlord following an inheritance rather than because of any positive action by them to become landlords. It accepts that Mr Collins was a credible witness.
27. The Tribunal has also considered whether matters of conduct – on the part of the landlord – should be taken into account in relation to the adjustment of the amount of the rent repayment order.
28. It is accepted that the period of the tenancies coincided with the Covid-19 pandemic during which it is likely that it would have been more difficult to manage the Property and arrange for repairs to be carried out.
29. In the recent case of **Newell v Abbott**, Martin Rodger KC, the Deputy President of the Upper Tribunal, provided some useful guidance about the quantum of a Rent Repayment Order
30. He reminded the tribunal that it is not a condition of section 44 that a tenant specify any period in their application. The starting point for the amount of a Rent Repayment Order for an offence under section 72(2) of the 2004 Act is rent for a period not exceeding 12 months during which the landlord was committing the offence. The parties and the Tribunal have agreed that this is a maximum of £15,600.
31. In determining the amount to be repaid, Martin Rodger said that the FTT is required by section 44(4) to take into account (a) conduct of the landlord and tenant (b) the financial circumstances of the Landlord and (c) past convictions of offences to which Chapter 4 of the Act applies.
32. This Tribunal has considered those matters. It does not accept that there is evidence of conduct on the part of the landlord which makes the offence in this case more serious. It found that the landlord responded as best that they could to the tenants requests and complaints relating to the condition of the Property and the failure to rectify the leaks suffered by the Tenant is not a factor which will influence its calculation of the amount of the order.
33. Mr McGowan suggested that the Tribunal consider Judge Cooke’s conclusions in **Acheampong v Roman.** Judge Cooke emphasised that the Tribunal should consider the seriousness not only of other examples of similar offences but also other types of offences in relation to which it may make a Rent Repayment Order.
34. In its decisions in both **Acheampong** and **Newell,** the Upper Tribunal emphasise the parameters within which this Tribunal should make its decisions as to quantum.
35. Applying that guidance, having considered conduct and noted that the Landlords have not been convicted of any other offences, the Tribunal determines that the Respondent must pay 55% of £15,600, being £8,580 to the Applicants. That percentage takes specific account of the fact that the offence continued for the whole of the period during which the Applicants occupied the Property which was two years. The amount should be shared between the Applicants, but it is not possible for the Tribunal to calculate the proportion that should be repaid to each Applicant.
36. Section 44(2) of the Act states that the maximum amount which can be claimed is rent for a period of 12 months during which the Landlord was committing the offence. The Application form referred to different periods of claim for each of four tenants, two of which had occupied the Property throughout both tenancies and two of which had been tenants during one of the tenancies. For those reasons, the Tribunal has insufficient information to determine the sums to be repaid to each tenant.
37. Following the substantive hearing the Tribunal considered the application for the return of the Application and Hearing Fee which together total £300. Taking account of the amount of the Rent Repayment Order, the Tribunal orders that the Respondents repay 55% of that fee, being £165 to the Applicants.
38. The sums ordered to be paid in paragraphs 90 and 92 above shall be paid within 28 days of the date of this decision.

**Judge C A Rai**

Chairman

**Appeals**

1. A person wishing to appeal this decision to the Upper Chamber must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

1. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. Where possible you should send your further application for permission to appeal by email to **rpsouthern@justice.gov.uk** as this will enable the First-tier Tribunal to deal with it more efficiently.

1. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

1. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the person making the application is seeking.

**Schedule**

**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 by that landlord

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|  | **Act** | **Section** | **general description of offence** |
| 1 | [Criminal Law Act 1977](https://uk.westlaw.com/Document/I6040AAD1E42311DAA7CF8F68F6EE57AB/View/FullText.html?originationContext=document&transitionType=DocumentItem&ppcid=d9589b504249458b873e384045e3cd31&contextData=(sc.Search)) | [section 6(1)](https://uk.westlaw.com/Document/IA00F8C51E44911DA8D70A0E70A78ED65/View/FullText.html?originationContext=document&transitionType=DocumentItem&ppcid=d9589b504249458b873e384045e3cd31&contextData=(sc.Search)) | violence for securing entry |
| 2 | [Protection from Eviction Act 1977](https://uk.westlaw.com/Document/I60425880E42311DAA7CF8F68F6EE57AB/View/FullText.html?originationContext=document&transitionType=DocumentItem&ppcid=d9589b504249458b873e384045e3cd31&contextData=(sc.Search)) | [section 1(2)](https://uk.westlaw.com/Document/I9FF79781E44911DA8D70A0E70A78ED65/View/FullText.html?originationContext=document&transitionType=DocumentItem&ppcid=d9589b504249458b873e384045e3cd31&contextData=(sc.Search)), [(3) or (3A)](https://uk.westlaw.com/Document/I9FF79781E44911DA8D70A0E70A78ED65/View/FullText.html?originationContext=document&transitionType=DocumentItem&ppcid=d9589b504249458b873e384045e3cd31&contextData=(sc.Search)) | eviction or harassment of occupiers |
| 3 | [Housing Act 2004](https://uk.westlaw.com/Document/I5F9353D0E42311DAA7CF8F68F6EE57AB/View/FullText.html?originationContext=document&transitionType=DocumentItem&ppcid=d9589b504249458b873e384045e3cd31&contextData=(sc.Search)) | [section 30(1)](https://uk.westlaw.com/Document/I44889070E45311DA8D70A0E70A78ED65/View/FullText.html?originationContext=document&transitionType=DocumentItem&ppcid=d9589b504249458b873e384045e3cd31&contextData=(sc.Search)) | failure to comply with improvement notice |
| 4 |  | [section 32(1)](https://uk.westlaw.com/Document/I448953C1E45311DA8D70A0E70A78ED65/View/FullText.html?originationContext=document&transitionType=DocumentItem&ppcid=d9589b504249458b873e384045e3cd31&contextData=(sc.Search)) | failure to comply with prohibition order etc |
| 5 |  | [section 72(1)](https://uk.westlaw.com/Document/I449A91D0E45311DA8D70A0E70A78ED65/View/FullText.html?originationContext=document&transitionType=DocumentItem&ppcid=d9589b504249458b873e384045e3cd31&contextData=(sc.Search)) | control or management of unlicensed HMO |
| 6 |  | [section 95(1)](https://uk.westlaw.com/Document/I44A51920E45311DA8D70A0E70A78ED65/View/FullText.html?originationContext=document&transitionType=DocumentItem&ppcid=d9589b504249458b873e384045e3cd31&contextData=(sc.Search)) | control or management of unlicensed house |
| 7 | This Act | [section 21](https://uk.westlaw.com/Document/IE2F30310222511E6872D9505B57C9DD6/View/FullText.html?originationContext=document&transitionType=DocumentItem&ppcid=d9589b504249458b873e384045e3cd31&contextData=(sc.Search)) | breach of banning order |

(4)  For the purposes of subsection (3), an offence under [section 30(1)](https://uk.westlaw.com/Document/I44889070E45311DA8D70A0E70A78ED65/View/FullText.html?originationContext=document&transitionType=DocumentItem&ppcid=d9589b504249458b873e384045e3cd31&contextData=(sc.Search)) or [32(1)](https://uk.westlaw.com/Document/I448953C1E45311DA8D70A0E70A78ED65/View/FullText.html?originationContext=document&transitionType=DocumentItem&ppcid=d9589b504249458b873e384045e3cd31&contextData=(sc.Search)) of the [Housing Act 2004](https://uk.westlaw.com/Document/I5F9353D0E42311DAA7CF8F68F6EE57AB/View/FullText.html?originationContext=document&transitionType=DocumentItem&ppcid=d9589b504249458b873e384045e3cd31&contextData=(sc.Search)) 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).

**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](https://uk.westlaw.com/Document/I468B1340222611E6872D9505B57C9DD6/View/FullText.html?originationContext=document&transitionType=DocumentItem&ppcid=37348af5d7ef4846aeb31cb407d186b9&contextData=(sc.DocLink)).

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

**(a)**[**section 44**](https://uk.westlaw.com/Document/IF6AD84C0222511E6872D9505B57C9DD6/View/FullText.html?originationContext=document&transitionType=DocumentItem&ppcid=37348af5d7ef4846aeb31cb407d186b9&contextData=(sc.DocLink))**(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 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 |

1. 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

**Case References**

Acheampong v Roman [2022]UKUT 239 LC

D’Costa v D’Andrea and others [2021] UKUT 0144 (LC)

Hancher v David and others [2022] UKUT 277 (LC)

Marigold v Wells [2023] UKUT 33 LC

Newell v Abbott [2024] UKUT 181 (LC)