FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**MAN/00BY/HMF/2023/0042**
Property	**:**	**Flat 1804 Horizon Heights, Skelhorne St, Liverpool L3 5GH**
Applicant	**:**	**Mr Chris Tadd**
Representative	**:**	**Mr George Penny (counsel) instructed by Flat Justice CIC**
Respondent	**:**	**Unite Accommodation Management Ltd**
Representative	**:**	**Mr Paul Whatley (counsel) instructed by Walker Morris LLP, Solicitors**
Type of application	**:**	**Application for a Rent Repayment Order under the Housing and Planning Act 2016**
Tribunal member	**:**	**Judge C Goodall** **Mr J Elliott MRICS**
Date and place of hearing	**:**	**13 May 2024 by Video hearing**
Date of decision	**:**	**10th June 2024**

DECISION

Background

1. Mr Tadd ("the Applicant") has applied to the Tribunal for a rent repayment order in respect of his tenancy of a studio apartment at Flat 1804 Horizon Heights ("the Property") in Liverpool. This is a modern purpose built block of student flats housing around one thousand students in Liverpool.

2. The application form was dated 19 July 2023. Directions were issued requiring both parties to file written statements of case, and allowing the Applicant to provide a second statement in response to the Respondents statement. The Tribunal has received all three documents.

3. The application was listed for oral hearing, which took place on 13 May 2024 by video. Mr George Penny represented the Applicant, and Mr Paul Whatley the Respondent.

4. During the hearing, the Tribunal heard oral evidence from the Applicant and from Ms Louise Redfern,

5. This decision sets out the Tribunal's determination on the application and the reasons for our determination.

Basis of the application and agreed facts

6. The basis of the application was that the Respondent had committed an offence of having control of a house which is required to be licensed but is not so licensed, under section 95 of the Housing Act 2004 ("the 2004 Act").

7. The requirement to licence was claimed to be derived from a selective licensing order made by the local authority, Liverpool City Council ("the Council"), for the area in which the Property is located under section 80 of the 2004 Act on 7 December 2021 ("the Order"), which came in to force on 1 April 2022. The Order required (under section 85 of the 2004 Act) that the Property be licensed with the Council.

8. It was not in dispute, and we find, that:

    a. The Applicant took a tenancy of the Property for the period 10 January 2022 to 27 August 2022 at a rent of £220.00 per week;

    b. The Order required that the Property be licensed from 1 April 2022;

    c. The period during which the Applicant claimed the Respondent was committing the offence under section 95 of the Act was therefore 1 April 2022 to 27 August 2022 (date of vacation);

    d. The Property was not licensed during that period;

    e. The total rent paid during that period was £4,682.85;

f. There was no reasonable excuse for the Respondent's failure to licence the Property;

g. An offence under section 95 of the Act had therefore been made out beyond any reasonable doubt between 1 April and 27 August 2022;

h. The tenancy included supply of heat, light and power, internet access, and property and contents insurance;

i. The assessment of what rent repayment order to make should be based upon the four stage test set out by Upper Tribunal Judge Cooke in *Acheampong v. Roman* [2022] UKUT 239 (LC) ("*Acheampong*");

j. There were no issues concerning the Applicant's conduct;

k. The financial circumstances of the Respondent were not relevant;

l. The Respondent had not been convicted of any offence to which Chapter 4 of the Housing and Planning Act 2016 ("the 2016 Act") applied.

The issues

9. The issues which were not agreed were:

a. What deduction to make in respect of utility costs;

b. How comparatively serious the offence was as against other offences for which rent repayment orders can be made;

c. How serious the offence was of itself;

d. Whether any account should be taken of the making of a rent repayment order against this particular respondent in view of it having previously been made the subject of a rent repayment order in the case of *LDC (Ferry Lane) GP3 Ltd. v. Garro & Ors.* [2024] UKUT 40 (LC);

e. Whether any account should be taken of apparent disregard by this Respondent of its licensing obligation in respect of other unrelated properties across the country;

f. The extent to which the Respondent's position as a subsidiary of a large national quoted company and its apparent resources should affect the amount of the award.

Evidence

10. Both the Applicant and Ms Louise Redfern, for the Respondent gave oral evidence. To the extent that it is material, we have included in paragraph 54 the relevant evidence provided by the Applicant. The relevant detail of

Ms Redfern's evidence is given in the paragraphs below in this section of the decision.

11. We need to consider particularly, the evidence on utility costs (to deal with Issue 9(a)), the reasons for the failure to licence the Property (to deal with Issue 9(c)), and the Respondent's national compliance with its licensing obligations (to deal with Issue 9(e)). The other issues in paragraph 9 were dealt with by submissions.

Utility costs

12. The rent payable included the provision of light, heat, water, internet access, and contents insurance.

13. The Respondent calculated those costs internally through its head office finance function and reported them to Louise Redfern as £414.00 for electricity heat and water and a total for all the utility costs of £448.17 for the period of the Applicants occupation of the Property. The apportioned sum for the period of the section 95 offence is £182.95. Tables to that effect are provided in the bundle of documents.

14. The Applicant is critical of reliance upon unsupported (in the sense that no documents such as invoices have been provided in support) internal calculations. His case is that in the absence of appropriate support for the Respondents figures, the Tribunal should not allow any deduction, or if it does wish to do so, should allow around £60.00 as a deduction as that is the figure used in the only reported case on utility costs in purpose built student accommodation (*Kediyal v SC Osney Lane Management Ltd* CAM/38UC/HMK/2021/0002).

15. Our view is that the Respondent's figure is a reasonable sum to reflect utility costs for Horizon Heights. We are not tempted to use a figure for a building of which we have no knowledge. The Respondent's figure calculates down to a sum of around £9.00 per week, and is in our view reasonable. We note that in the case of *LDC (Ferry Lane) GP3 Ltd. v. Garro & Ors.* [2024] UKUT 40 (LC) ("*Garro*"), the FTT adopted a figure of £40.00 per month for utilities.

Reasons for failure to licence

16. The Respondent called evidence from Louise Redfern, who is Regional General Manager for the North-West area for Unite. Her evidence is recounted in the following paragraphs.

17. At the time shortly before the coming into force of the Liverpool Selective Licensing Scheme, Ms Redfern's evidence was that licensing was managed regionally by the Respondent. The first document which she was able to find which mentioned the Order was an email on 16 March 2022 from Liverpool Student Homes ("LSH") (essentially a university run accreditation organisation) but she says that she did not in fact see, or realise the significance of that email, at the time.

18. In January 2022, the Respondent had announced a large scale restructuring of its business. Around 60 redundancies were made. The period March to May was a particularly difficult time. Ms Redfern had to apply for and be interviewed for her own job. She has no recollection of receiving the 16 March 2022 email from LSH, but discovered it when preparing for this case. Her evidence is therefore that she was unaware of the Order when it came into force.

19. A new team for the management of the Respondent's North West region was formed in around May 2022. Ms Redfern was the Regional Manager and two other employees reported to her as General Managers for respectively Liverpool South and North. No-one in the new team was aware of the new licensing scheme affecting Horizon Heights.

20. In November 2022, an employee engaged as Student Experience Manager contacted LSH as he was responsible for accreditation with that organisation. He was told of the need to licence Horizon Heights. He contacted the Council accordingly and began the process of arranging licences for licensable properties operated by Unite in the area by trying to establish which were already licensed. The task was significant as Unite own a number of halls in Liverpool.

21. The problem then returned to Ms Redfern's desk. She contacted the Council in December 2022, who were relaxed about the delayed licensing applications and told her that there would be no issue as long as an application was submitted by April 2023.

22. The application process began, but the Respondent encountered problems, including the Council web-site being down in December 2022 for what Ms Redfern described as substantial amount of time. More significantly, there were problems using the Council's computer system to process around 1,400 applications in an efficient and timely manner. The Respondent's view was that the computer system was mis-matched to large scale applications. Attempt to engage with the Council on the administrative requirements continued through March 2023 to the end of April 2023.

23. Eventually, Ms Redfern sought the intervention of the Respondent's legal function. Its Legal Counsel contacted the Council on 17 May 2023 to explain the difficulties being experienced, and they eventually spoke and managed to develop a template licence application process that worked. From then, the local team worked tirelessly to complete the applications and submitted 1,469 applications by 15 June 2023. Internal emails on that date confirm completion of the task.

24. A screen shot from the Council's website (page 82 of the Respondent's bundle) confirms that a licensing application for Flat 1804 Skelthorne St on 15 June 2023 was "submitted" on that date.

25. The Applicant has challenged whether the licensing application was in fact submitted on 15 June 2023. It agrees that an application has been submitted, but says the submission date was 5 September 2023, relying on an email from the Council dated 15 December 2024 stating that the application was "received into our service" on that date.

26. In their reply to the Respondent's statement, the Applicant speculates that the status of the word "submitted" is unclear. It may be the start of the application process, or conditional upon payment of a fee or receipt of further documents.

27. We accept the Respondent's evidence on this point and find that an application was "duly made" for a licence in respect of the Property on 15 June 2023. We see no reason why Mr Redfern would have provided untrue evidence of her actions to licence the Property, all of which are supported by the email exchanges exhibited to her witness statement.

28. So far as the reason for delay in making the application is concerned, we find that delay between 1 April and November 2022 was inexcusable. Essentially, as Mr Whately described it at the hearing, this was a cock-up, and one which should never have been allowed in a large and experienced corporate organisation, which should understand the regulatory environment in which it operates.

29. We have some sympathy with the Respondent with regard to delay between November 2022 and June 2023. The task of applying for the licenses was very considerable and would have been very time consuming. We accept that the Council were somewhat relaxed about the delay, and we accept that its computer system is likely to have contributed to making the application process cumbersome and time consuming. Bearing in mind the volume of work involved and the need to negotiate arrangements for making the applications with the Council, we find that the Respondent did not unduly delay in making the applications during this period.

National compliance with licensing obligations

30. The Applicant presented a table of properties owned by the Respondent or its subsidiaries which it had identified from the Respondent's web-site. There were 128 properties in the table.

31. The process of identifying which of these properties were licensable required the Applicant to review discretionary licensing schemes put in place by local authorities. Some schemes exempted private company members from needing to licence under discretionary schemes if the property owner had adopted the National Code of Standards for Larger Developments approved under section 233 of the Housing Act 2005 in February 2006. The Respondent is a member of ANUK (Accreditation Network UK) and has adopted the standards set out in the Code.

32. The conclusion from the Applicant's review was that it believed 55 of these 128 properties were licensable but it had only found evidence of applications for licences in respect of 14 of these properties.

33. The Applicant's evidence then commented on specific properties in specific areas, being in particular Southwark, Oxford, Camden, Brent, Newham, and Liverpool, suggesting that all in all these areas, the Respondent had properties that required to be licensed but were not so licensed.

34. The Respondent has not responded to the evidence on this question. Their position is that it is irrelevant. It cannot be taken into account in the decision on the application because only conduct that is relevant to the tenancy in question should be considered. We discuss this question below.

35. In so far as findings of fact on the evidence presented by the Applicant on national compliance with licensing obligations is concerned, the evidence is sufficiently persuasive as to the likelihood that the Respondent has some unlicensed properties nationally. We are unwilling to make any further finding to the effect that Unite is committing an offence of failing to license any of the allegedly unlicensed properties. To make such findings would require us to be provided with evidence of the commission of offences. The detail provided is wholly inadequate to allow us to reach that conclusion, not least as to whether there might be a defence to any claim of the commission of an offence in respect of those properties.

Law

36. We have set out the main provisions of the 2004 and 2016 Acts in the Appendix to this decision so as not to interrupt the flow of the narrative.

Submissions and Discussion

37. As recorded in paragraph 8 above, it is not in dispute that between 1 April 2022 and 27 August 2022 the Respondent had control of and was managing the Property whilst it was occupied by the Applicant, that there was no selective licence in place even though the Property was subject to a requirement to be licensed, that there was no reasonable excuse for failure to licence, and that accordingly an offence under section 95 of the Act is established.

38. The power for the Tribunal to make a rent repayment order under section 43 of the Housing and Planning 2016 Act ("the 2016 Act") is therefore engaged.

39. Both counsel considered that the Tribunal should approach the question of the amount to be ordered to be repaid by using the approach advised in *Acheampong*. We agree.

40. The stages are:

    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).

41. The first stage requires identification of the maximum sum that can be ordered to be repaid. That is agreed as being £4,682.85.

42. The second stage requires a deduction from the maximum sum if utilities are included in the rent. The evidence is that they are, in respect of light, heat, water, internet, and contents insurance. We determined the amount to be attributed to these outgoings is £182.95. This reduces the maximum sum that can be ordered to £4,499.90.

43. Stage 3 requires assessment of the seriousness of the offence, both in relation to the types of offences for which rent repayment orders can be made, and in relation to other types of failure to licence offences.

44. As to the first question, Mr Whatley's submission is that this offence is at the lower end to the scale. Mr Penny accepted that it is not the most serious type of offence, though his client's statement of case asserts that licensing offences "should be considered as amongst the most serious of all RRO offences".

45. 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.

46. How serious is this offence in relation to other types of section 95 offence? All cases are different and it is not possible to adopt the conclusion in any other cases for this one. The factors that have generally played a part in other cases in determining how serious a particular offence was against other section 95 offences have included:

    a. The reason for the failure to licence;

    b. The quality of the accommodation;

    c. The size and nature of the offender – professional or amateur landlord;

    d. The impact upon the Applicant;

    e. The need for an RRO to be a deterrent to rogue landlords.

47. On the para 46a point, we have reached findings on this issue above. Clearly, part of the period of delay in applying for the licence was inexcusable, and that is a serious failure. Part of the delay was much more understandable as we have set out.

48. There are two subsidiary points to consider, in that the Applicant alleges that the Respondent deliberately avoids applying for licences in order to evade the obligation to pay a licensing fee for the whole duration of a licensing scheme. By the same token, the Respondent has asked the Tribunal to take account of the fact that by applying late for a licence, the Respondent has lost the opportunity to pay a discounted licence fee.

49. We understand and accept that the Respondent paid one fee for its licence which will last for the whole duration of the selective licensing scheme affecting the Property. To that extent, it has not derived any benefit from the late licence application. It could only derive a benefit if it failed to licence at all during the whole currency of the scheme. There is no evidence that it ever considered this possibility for this scheme. It seems to us extremely unlikely that it could succeed in evading its licensing obligation, not least because its membership of ANUK would have been likely to have resulted in the default being audited at some point. We do not therefore give any weight to the Applicant's allegation that there was deliberate delay in order to obtain a financial benefit.

50. In similar vein, we are not willing to be sympathetic to the Respondent's argument that payment of the full fee rather than a discounted sum should go to its credit. It should not derive any credit from a regulatory failure.

51. So far as quality of accommodation is concerned (46b), our view is that the accommodation provided at Horizon Heights is high quality, from the photographs we have reviewed in the hearing bundle. That factor should also impact our view of seriousness.

52. On the size and nature of the offender (46c), it is apparent that the Respondent is a large professional operator of student accommodation. Mr Whatley drew our attention to paragraph 52 of *Daff*, which says:

> "The circumstances in which a landlord lets property and the scale on which they do so, are relevant considerations when determining the amount of a rent repayment order but the temptation to classify or caricature a landlord as "professional" or "amateur" should be resisted, particularly if that classification is taken to be a threshold to an entirely different level of penalty. … The penalty appropriate to a particular offence must take account of all of the relevant circumstances. …"

53. We should resist the temptation (offered to us by Mr Penny), to make our award significantly greater (or as Mr Whatley put it, for there to be a paradigm shift in the amount ordered) just because the Respondent is a large commercial organisation. We must not ignore that fact, but it is only one of the factors at play.

54. The impact upon the Applicant of the failure to licence (46d) is sometimes relevant, particularly where a tenant has had a bad experience of the landlord or the property. The Applicant's evidence was that he had no complaints about the condition of the Property, he obtained what he had bargained for when he rented the Property, and it had met his expectations. He had not been affected by the failure to obtain a licence.

55. On deterrence (46e), we note these paragraphs from *Hallett v Parker* [2022] UKUT 165:

> "25. This explanation of the purpose of Part 2, with its battery of measures against "rogue landlords", suggests that the power to make rent repayment orders should be exercised with the objective of deterring those who exploit their tenants by renting out substandard, overcrowded or dangerous accommodation. The differential treatment of licensing offences and more serious offences in section 46, and the greater flexibility given to tribunals when ordering rent repayment in the former category, are likely to be a reflection of that objective.
>
> 26. Tribunals should also be aware of the risk of injustice if orders are made which are harsher than is necessary to achieve the statutory objectives."

56. Our view is that the Respondent is not in the category of rogue landlords identified in this extract. We should not feel that there is a need to impose a harsher penalty in order to deter the Respondent from renting out substandard, overcrowded or dangerous accommodation, because it doesn't, at least not at Horizon Heights.

57. We need to take all the factors discussed from paragraph 46 into account when we make our determination of the appropriate penalty, but before

discussing the award, we finally need to deal with the fourth stage of the *Acheapong* factors, namely the section 44(4) factors.

58. There are no complaints about the conduct of the Applicant. The Respondent has not asked for its financial circumstances to be taken into account. This leaves consideration of the Respondent's conduct and consideration of whether the Respondent has been convicted of an offence to which the 2016 Act applies.

59. The Applicant's case is that the Respondent's behaviour nationally in failing to apply for licences when required should be taken into account as conduct relevant to the determination of the amount of the rent repayment award. We have summarised the evidence and offered our view on this point above. Evidentially, we were not persuaded that we could make a finding that the Respondent had committed offences (let alone how many and when).

60. But if we are wrong, we need to record Mr Whatley's submissions on this question. He urged us to take the view that the conduct that we may take into account through section 44(4)(a) must only be conduct that speaks to the tenancy and the property under consideration in this case. It is wrong in law for the Tribunal to be influenced by tenancies in other properties and other boroughs. Extraneous conduct not directly relating to the offence in question is not to be taken into account.

61. We largely agree with Mr Whatley. The Tribunal must in particular take into account the landlords conduct when determining the amount of the award. There is no express limitation in section 44(4) along the lines of the restriction that Mr Whatley suggested, suggested, but it cannot be the case that conduct by the Respondent that is unrelated to the case in question can be taken into account. The obligation is to take the Respondent's conduct into account, not its character.

62. For these reasons we do not consider that there are issues relating to the Respondent's conduct, apart from those we have already discussed in the related discussion on seriousness, that we should take into account.

63. The final issue then is whether the Respondent has committed any offences to which Part 2 of the 2016 Act applies. In his submissions, Mr Penny accepted that the Respondent did not have any previous convictions. However, he suggested that it was relevant that previous rent repayment orders had been made against the Respondent, particularly in *Garro*.

64. Mr Whately urged us not to take the rent repayment orders made in that case into account because of the timing issues in this case and that. The rent repayment orders made in *Garro* were made on 11 May 2023. He said those orders could not have had any influence on the commission of the offence in this case.

65. As the dates of the offence in this case are 1 April 2022 to 15 June 2023, there is a small overlap, but we do agree with Mr Whatley that publication of the making of RRO's against another Unite company would have had no real impact upon the Respondent's behaviour. Their applications to licence, according to the evidence in this case were well advanced by the publication date.

Determination

66. There are a wide range of competing factors at play in this case, as discussed above. We must reach a judgement as to what proportion of the maximum rent repayment we may make should be awarded.

67. Some of the factors at play are factors that would justify a fairly high award. Some operate to reduce the amount that should be awarded.

68. Mr Penny contended for an award of 70 – 80% of the maximum. Mr Whately argued for a low award of around 25%.

69. In our view, no one factor is so persuasive that it dominates the decision.

70. Balancing them all together, our view is that we should make a rent repayment order of 50% of the maximum sum we may award, which is £2,249.95. We so order.

Appeal

71. 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)

Appendix - The Law

2004 Act

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

79 Licensing of houses to which this Part applies

(1) This Part provides for houses to be licensed by local housing authorities where—

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

(b) they are required to be licensed under this Part (see section 85(1)).

(2) This Part applies to a house if—

(a) it is in an area that is for the time being designated under section 80 as subject to selective licensing, and

(b) the whole of it is occupied either—

(i) under a single tenancy or licence that is not an exempt tenancy or licence under subsection (3) or (4)…

85 Requirement for Part 3 houses to be licensed

(1) Every Part 3 house must be licensed under this Part unless—

(a) it is an HMO to which Part 2 applies (see section 55(2)), or

(b) a temporary exemption notice is in force in relation to it under section 86, or…

(c) a management order is in force in relation to it under Chapter 1 or 2 of Part 4.

95 Offences in relation to licensing of houses under this Part

(1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.

(2) 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 86(1), or

(b) an application for a licence had been duly made in respect of the house under section 87, and that notification or application was still be effective (see subsection (7)).

(3) In proceedings against a person for an offence under sub-section (1) it is a defence that, at the material time-

...

(b) an application for a licence had been duly made in respect of house under section 87,

and that ... application was still effective.

(4) In proceedings against a person for an offence under subsection (1) or (2) 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 failing to comply with the condition, as the case may be.

2016 Act

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

6	Housing Act 2004	Section 95(1)	control or management of unlicensed house

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 an offence mentioned in row 3, 4, 5, 6, or 7 of the table in section 40(3)	*the amount must relate to rent paid by the tenant in respect of a period, bot exceeding 12 months, during which the landlord*

	was committing the offence
an offence mentioned in row ...6... 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.

51 Housing benefit: inclusion pending abolition

(1) In this Chapter a reference to universal credit or a relevant award of universal credit includes housing benefit under Part 7 of the Social Security Contributions and Benefits Act 1992.