FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AG/HMF/2024/0623**
Property	**:**	**Flat C, 17 Richmond Road, Ealing, London W5. 5NS**
Applicant	**:**	**Hannah Aisling Carbery.** **Mia Terra St Hill**
Representative	**:**	**Mr Leacock, Justice for Tenants**
Respondent	**:**	**Terence Michael Hillman**
Representative	**:**	**Mr Kilcoyne of counsel**
Type of Application	**:**	**Application for a rent repayment order by a tenant**
Tribunal Members	**:**	**Tribunal Judge Prof R Percival** **Mr M Cairns**
Date and venue of Hearing	**:**	**22 April 2025** **10 Alfred Place**
Date of Decision	**:**	**7 May 2025**

DECISION

Orders

(1) The Tribunal makes rent repayment orders against the Respondent to each of the Applicants in the following sums, to be paid within 28 days, which, in default of payment, may be recovered as if payable under an order of the County Court:

Ms Carbery: £4,680

Ms St Hill: £4,680

(2) The Tribunal orders under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 13(2) that the Respondent reimburse the Applicants together the application and hearing fees in respect of this application in the sum of £320.

The application

1. On 11 August 2024, the Tribunal received an application under section 41 of the Housing and Planning Act 2016 ("the 2016 Act") for Rent Repayment Orders ("RROs") under Part 2, Chapter 4 of the Housing and Planning Act 2016. Directions were given on 1 November 2024.

2. In accordance with the directions, we were provided with an Applicant's bundle of 291 pages. The Respondent did not provide a bundle in accordance with the directions.

The hearing

Introductory

3. Mr Leacock of Justice for Tenants represented the Applicants, both of whom attended. Mr Kilcoyne of counsel represented the Respondent.

4. The property is a three bedroom flat or maisonette in a four storey semi-detached apparently late Victorian or Edwardian house. The flat is on the first floor and second floors. The entrance is at the bottom of the stairs from the ground to first floors, so there were two staircases within the property.

Preliminary application

5. Mr Kilcoyne applied to introduce a witness statement of Mr Hattersley. We saw it for the first time at 9.40 am on the morning of the hearing. Mr Hattersley's name appears in the Applicant's bundle as someone acting on behalf of the Respondent with whom the Applicants corresponded. We were told that Mr Hillman, the Respondent, is 92

years old and does not take an active part in the management of his properties. Mr Hattersley, who is in his 80s, has done so on his behalf for a number of years. Mr Hattersley was not present to be cross-examined.

6. On behalf of the Applicants, Mr Leacock objected to the admission of the witness statement. It was very late, the Respondent had already been given an extension of time in which to provide a bundle, and had not done so, had not responded to enquiries from the Tribunal as to he provision of material, and the witness was not here.

7. Mr Kilcoyne explained the delay as a result of his instructing solicitors having had trouble securing instructions from the Respondent himself. First, Mr Hattersley was the right person to provide evidence, as the person managing the properties, rather than the Respondent himself, who would not have been able to assist the Tribunal. Secondly, Mr Kilcoyne argued that the issues were reasonably confined such that it was unlikely that cross-examination would make a great deal of difference. The relationship with the Respondent and his responsibilities were clear. It was accepted that it was lack of knowledge that had resulted in the failure to licence, so there was no dispute there. The information in the witness statement was useful and necessary, and overcame what prejudice there may be to the Applicants.

8. We adjourned for consideration, and rejected the application. We said we would give reasons in our written decision, which we do now.

9. The document is very late indeed, and we do not accept that there was a valid reason for that. The Respondent had had every opportunity, whether acting for himself, through Mr Hattersley, solicitors or otherwise, to comply with the directions, which were given over five months ago. We do not accept that age is a reasonable explanation for failing to engage, whether of Mr Hillman or Mr Hattersley. It may be that being old reduces one's capacity to undertake business activities subject to regulatory requirements and litigation, but if that is the case, it is incumbent on a party to make other arrangements to ensure compliance.

10. Further, we consider that, contrary to Mr Kilcoyne's submissions, there was very considerable scope for cross examination, and if necessary questions from the Tribunal, on relevant matters. These included (as Mr Leacock argued) the nature and terms of Mr Hattersley's agency arrangement with Mr Hillman, Mr Hattersley's experience, qualifications and approach to property management, and, in particular, what if any arrangements he had to keep himself informed of legislative and other regulatory requirements on landlords.

11. We were prepared to accept that Mr Hattersley did act for the Respondent (which in any event is evident from the correspondence we

referred to above). We are also prepared to accept the evidence of the ages of both Mr Hattersley and the Respondent.

The alleged criminal offence

12. The Applicants allege that the Respondent was guilty of the having control of, or managing, an unlicensed house in multiple occupation contrary to Housing Act 2004 ("the 2004 Act"), section 72(1). The offence is set out in Housing and Planning Act 2016, section 40(3), as one of the offences which, if committed, allows the Tribunal to make a rent repayment order under Part 2, chapter 4 of the 2016 Act.

13. The Applicants case is that the property was situated within an additional licensing area as designated by London Borough of Ealing ("the Council"). The relevant scheme came into force on 1 April 2022, expires on 31 March 2027 and covers the whole area of the Council. We were provided with email correspondence between the Applicants' representative and the private rented sector licensing section of the Council indicating that, as at 17 November 2023, the Council had not received an application for an HMO licence, and the property had never been licenced.

14. The relevant period in respect of the application is 15 August 2022 to 14 August 2023. The Applicants' evidence was that Ms Carbery lived at the property from 15 November 2021 until 14 November 2023, Ms St Hill lived there from the same start date until 15 August 2023, and a third person, Ms Paraskevi Zachou (who was referred to by the Applicants as Viviana), also lived in the property from 15 November 2021 until 14 November 2023.

15. The Applicants were friends before entering into the tenancy. A third friend was originally going to join them, but had to drop out before they took up residence, and the Applicants found Viviana via the Spareroom website to replace the third friend.

16. The Respondent is the owner of the freehold interest, and signed the Applicants' tenancy agreements.

17. Both applicants submitted individual witness statements, were cross examined by Mr Kilcoyne and asked questions by the Tribunal. Rather than set out what they said in evidence in extenso, we draw on their evidence as necessary as we consider the steps we take in each phase of our decision.

18. Mr Kilcoyne did not contest that the property was an unlicensed HMO. He did argue, however, that the Respondent had a reasonable excuse.

19. Mr Kilcoyne submitted that we had no evidence that the Respondent himself had any knowledge of the licensing regime, and that it was Mr

Hattersley who was responsible for the ordinary management of the property. The evidence of the Applicants was that they had never met him or had any contact with him. Given his age, we should infer that he is reliant on Mr Hattersley to manage the property.

20. Mr Kilcoyne, in reliance on *Marigold v Wells* [2023] UKUT 33 (LC), [2003] HLR 27 submitted that the test was whether (in this case) a state of ignorance was objectively reasonable. He referred to paragraph [47], where the Deputy President, relying on the tax chamber case of *Perrin*, said that "in deciding whether an excuse was objectively reasonable it was necessary to have regard to all relevant circumstances, including those of the individual taxpayer". The "experience, knowledge and other attributes of the taxpayer should be taken into account".

21. It was, Mr Kilcoyne argued, objectively reasonable for someone of that age to be ignorant of licensing requirements, not just because of his age, but also because he was not himself managing the property. It was Mr Hattersley who was managing the property, and he should have known himself about the licensing requirements, and should have informed the Respondent of them.

22. We put to Mr Kilcoyne the approach to claims by a landlord that he was ignorant of the licensing requirements because he had not been alerted to them by a managing agent in *Aytan v Moore* [2022] UKUT 27 (LC), [2022] HLR 29 at paragraph 40

> "We would add that a landlord's reliance upon an agent will rarely give rise to a defence of reasonable excuse. At the very least the landlord would need to show that there was a contractual obligation on the part of the agent to keep the landlord informed of licensing requirements; there would need to be evidence that the landlord had good reason to rely on the competence and experience of the agent; and in addition there would generally be a need to show that there was a reason why the landlord could not inform themself of the licensing requirements without relying upon an agent …".

23. He argued that we should nonetheless have at the front of our minds the ultimate test in *Marigold*.

24. We are prepared to accept that Mr Hillman was indeed ignorant of the licensing requirements. Mr Kilcoyne had also argued that the same was true for Mr Hattersley, and we are also prepared to accept that that is the case. We accept that the proper ultimate test is that laid down in *Marigold*. However, we do not consider that what was said in *Marigold* about the overall test was meant to undermine the specific guidance in relation to reliance on an agent set out in *Aytan v Moore*. The tests in *Aytan*, rather, set out the considerations that will guide the Tribunal in

coming to its conclusion on the ultimate question of objective reasonableness. A key point in *Perrin*, adopted in *Marigold*, was that it was not enough for a person claiming a reasonable excuse to have a genuine and honest belief in a (false) state of affairs. The reasonableness of the excuse requires to be tested objectively. It seems to us evident that the steps set out in *Aytan* go to whether an excuse in *objectively* reasonable in the context of reliance on an agent.

25. In this case, the considerations urged by Mr Kilcoyne go to whether the Respondent had a good reason to rely on his agent, although whether that was really a good reason to rely on Mr Hattersley's competence and experience is not something that has been tested, and is doubtful if, as Mr Kilcoyne suggested, he too was ignorant of the licensing requirements. In addition, the Respondent's age and lack of engagement could well constitute a reason why he could not inform himself of the requirements without relying on Mr Hattersley.

26. But there is nothing at all to show that Mr Hattersley was under a contractual obligation to inform the Respondent of the licensing requirements. There is, indeed, nothing to show that they had any contract at all, either written or not. And this is the requirement upon which the Upper Tribunal puts particular stress ("[a]t the very least" …).

27. In these circumstances, we do not consider that the agreed ignorance of the Respondent of these legal requirements on his business amounted to an objectively reasonable excuse.

28. As a result, we find the criminal offence made out.

The amount of the RRO

29. In considering the amount of an RRO, the Tribunal will take the approach set out in *Acheampong v Roman and Others* [2022] UKUT 239 (LC) at paragraph 20:

> "The following approach will ensure consistency with the authorities:
> (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. …
> (c) Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made … and compared to other examples of the same type of offence. 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)."

30. In respect of the relationship between stages (c) and (d), in *Acheampong* Judge Cooke went on to say at paragraph [21]

> "I would add that step (c) above is part of what is required under section 44(4)(a) [conduct of the parties]. It is an assessment of the conduct of the landlord specifically in the context of the offence itself; how badly has this landlord behaved in committing the offence? I have set it out as a separate step because it is the matter that has most frequently been overlooked."

31. As to stage (a), by sections 44(2) and (3) of the 2016 Act, the maximum possible RRO is the rent paid during a period of 12 months, minus any universal credit (or Housing Benefit – section 51) paid during that period.

32. Ms Carbery paid the rent on behalf of herself and Ms St Hill, the total sum paid being £14,400. Their evidence was that neither of them had been in receipt of the relevant benefits during this period.

33. The Applicants were responsible for paying for utilities under the tenancy agreement.

34. In assessing the seriousness starting point under stage (c), there are two axes of seriousness. The first is the seriousness of the offence, compared to the other offences specified in section 41 of the 2004 Act. The offence under section 72(1) is significantly less serious than those in rows 1, 2 and 7 in the table in section 40 of the 2016 Act, and we take that into account (see *Ficcara v James* [2021] UKUT 38 (LC), paragraphs [32] and [50]: *Hallet v Parker* [2022] UKUT 239 (LC), paragraph [30]; *Daff v Gyalui* [2023] UKUT 134 (LC), paragraphs [48] to [49] and the discussion in *Newell v Abbott and Okrojeck* [2024] UKUT 181 (LC), paragraphs [34] to [39]).

35. We turn to the seriousness of the offence committed by the Respondents compared to other offences against section 72(1). In doing so, we also consider the conduct of the landlord, for the reasons indicated in the quotation from *Acheampong* set out above.

36. We do so mindful of the strictures in *Newell* at paragraph [61]:

> "When Parliament enacted Part 2 of the 2016 Act it cannot have intended tribunals to conduct an audit of the occasional defaults and inconsequential lapses which are typical of most

> landlord and tenant relationships … Tribunals should not feel that they are required to treat every such allegation with equal seriousness, or to make findings of fact on them all. The focus should be on conduct with serious or potentially serious consequences, in keeping with the objectives of the legislation. Conduct which, even if proven, would not be sufficiently serious to move the dial one way or the other, can be dealt with summarily and disposed of in a sentence or two."

37. We consider first those issues which we do not think "move the dial".

38. The Applicants complained of repeated "power outages". These were in fact occasions on which the electrical consumer unit relating to the flat tripped, particularly when the third occupant, Viviana, plugged in a number of appliances. They complained about this, and as a result someone checked the electrical system, but there was no long term solution. However, the Applicants were able to operate the switch in the consumer unit. We accept this must have been an irritant, but we do not consider that it had "serious or potentially serious consequences".

39. Relations between Ms St Hill and Viviana became poor, so that Ms Hill wished to leave the property before the end of the then-current tenancy. There was some delay with her application to the landlord, such that when a decision was made as to whether she could sub-let (or, it appears, informally substitute another tenant), there was less than six months to run on the tenancy, and the landlord refused consent.

40. We agree that in these circumstances, it was not unreasonable for the Respondent to decline to consent. Indeed, it is a decision which we imagine most landlords would take. We do not think that a landlord simply choosing to persist with a tenancy agreement, within his or her legal rights, can properly be said to "move the dial".

41. When the tenancy came to an end, the Respondent failed to engage with the process for the return of the deposit, with the result that Ms St Hill, who acted as lead tenant in relation to financial matters, had to submit a statutory declaration, the default procedure operated by the Tenancy Deposit Scheme where a landlord fails to engage. We appreciate that this caused the Applicants some difficulty, and it was certainly poor conduct on the part of the Respondent, but there was no evidence that it stemmed from a deliberate policy of obstruction rather than mere inadvertence or negligence. It is not the sort of poor conduct that "moves the dial".

42. We turn to disrepair. There was a particular problem with the window in Ms Carbery's room. As she described it in her oral evidence, the frame of the window itself was distorted, such that there was a gap of an inch or two either at the top or the bottom of the window aperture. The problem persisted from the time that she moved in in November 2021

until it was repaired about three months later. During that time, her room was cold because of the draft caused by the ill-fitting window frame, which prejudiced her use of the room during that period.

43. While we do not think that this defect is an example of the sort of serious disrepair that the Tribunal finds in some HMOs, it was not trivial, and did have an impact for a significant period on Ms Carbery's enjoyment of the property. So we accept that we should take it into account in assessing seriousness, but, while it moves the dial, it does not move it a great deal. We take it into account, but it is not necessary for us to quantify its effect in percentage terms.

44. The more serious matter was fire safety.

45. As to provision, at the end of the evidence, we were satisfied that there were mains-wired smoke alarms in the living room and the upstairs (ie second storey) hallway. There were also smoke alarms on both staircases. Photographs taken for inventory purposes were exhibited in the Applicants' bundle. From these, it seems likely that the two staircase alarms were battery-only operated, as there is no obvious surface trunking taking a mains wire to them, as there is in those that are visibly mains-wired. While we accept that this observation is not conclusive, but consider it more likely than not that they were not mains-wired.

46. There was also a mains-wired alarm in the kitchen, which we are prepared to accept was a heat detector. A second, battery-only operated alarm was also present in the kitchen, which may have been a smoke alarm. There was no fire blanket in the kitchen.

47. Mr Kilcoyne invited us to infer that the mains-wired alarms were interlinked. We decline to make a positive inference to that effect. Interlinking and mains-wiring are potentially independent features of alarms, and the presence of the latter does not necessarily imply the former. However, we accept that we have no positive evidence that they were not interlinked. The battery-only alarms would not be interlinked.

48. Mr Laycock submitted that this provision was well below that which would be required by the Council's HMO licence conditions, which were provided. These required, he argued, smoke detectors in every bedroom (as well as the alarms in the escape routes and kitchen), and they must all be mains-wired and interlinked. The conditions also required a fire blanket in the kitchen.

49. The Tribunal had consulted the relevant LACORS guidance, and our professional member put to the parties that, so far as alarms went, the property was at least close to the LACORS standard at letting (although, as noted above, the Council's discretionary HMO standards required

extra alarm provision). The LACORS standard required mains-wired interlinked alarms in a communal room and along an escape route, and an interlinked heat detector in the kitchen. To the extent that the two battery-only alarms were on the escape route, that was not fully compliant, and we have no evidence one way or the other as to interlinking.

50. The property also fell below the LACORS standard in not having a fire blanket in the kitchen.

51. We also noted that in general, a local authority would not require all of the requirements in their standard local conditions to be met before a licence was issued, but conditions would require them to be met within a specified time.

52. Alarms and fire blankets do not, however, exhaust the fire safety requirements on HMOs. In particular, there would be a requirement that a fire risk assessment be carried out. Such an assessment would also deal with fire doors (about which we had no evidence at all), and a multitude of other fire-related issues (such as structural fire separation/compartmentalisation, combustible finishes, signage, lighting and emergency lighting etc). We have not been provided with a fire risk assessment for the property. The Respondent has had every opportunity to provide one. The presence in the property of battery-only alarms suggests that there was no assessment, or no implementation of one, as we would expect a fire risk assessment to require a full suite of interlinked mains-wired alarms, with no place for battery-only alarms. So we conclude on the balance of probabilities that either no fire risk assessment was ever commissioned, or that if one was, its recommendations had not been implemented.

53. Our conclusion from these facts is, first, that the failure to adhere to Ealing's "gold-plated" requirements was primarily relevant in that it meant that by not being licenced, the Respondent was evading (negligently rather than intentionally) the expense of achieving those standards. While this failure does also have an effect on fire safety per se, the lesser LACORS requirements provide a concrete benchmark for fire safety, which it is appropriate for us to take into account.

54. For the reasons we give above, it is not the case that the LACORS standards were fully met, although there was some apparently appropriate provision. However, we regard the failure to provide a safety blanket in the kitchen as a particularly serious matter. Kitchens are the highest fire risk area in any domestic dwelling, and the deployment of a fire blanket to a cooking accident can make a very great difference to whether a risk of serious injury or death and property damage eventuates.

55. We also take a serious view of the failure to either commission a fire risk assessment or, if commissioned, to put its recommendations into effect. The fire risk assessment process is a key part of the fire safety system now to be found in the Regulatory Reform (Fire Safety) Order 2005.

56. Our overall conclusion is that, while there was some appropriate provision, fire safety was a significant issue at the property. Given the provision that there was, this is not as serious a defect as is found in some of the reported cases, but nonetheless does significantly move the dial upwards.

57. The nature of a landlord has been held to be relevant to the seriousness of the offence. In some cases, it has been argued that there is a distinction to be drawn between "professional" and "non-professional" landlords, seriousness being aggravated in the case of the former. The proper approach is as set out by the Deputy President in *Daff v Gyalui* [2023] UKUT 134 (LC), at paragraph 52:

> "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."

58. In this case, it was not contested that the Respondent owned and let at least the other two properties in this building, and that he had operated as a landlord on a commercial basis for a substantial number of years. He is not an accidental, amateur or occasional landlord. He cannot benefit from the mitigation that might be provided, had he fallen into one of those categories.

59. In assessing the quantum of the RROs at this point, we have taken account of the guidance provided by the Upper Tribunal, including particularly where the Upper Tribunal has substituted percentage reductions in making a redetermination. The key cases are set out in (with respect) a most helpful manner in the course of the re-determination in *Newell v Abbott and Okrojeck* [2024] UKUT 181 (LC) from paragraph [47] to [57]. We do not repeat that material here, but have been guided by it.

60. In the light of that material, we conclude that this case does not fall into the higher category identified in paragraph [57] of *Newell*, but neither does it come close to the very low end, in cases like *Hallett v Parker* [2022] UKUT 165 (LC) and *Daff v Gyalui* [2023] UKUT 134 (LC). Our seriousness/conduct of the landlord assessment relies principally on

the fire safety issues we have identified above, which do weigh heavily. However, the only other feature to be taken into account is the minor issue with Ms Carbery's window.

61. While the facts of both are very different, in terms of overall seriousness, we consider this case to be significantly more serious than *Newell* itself (60%, of which 10% was due to the very lengthy period during which the offence committed), and very broadly on a par with *Hancher v David* [2022] UKUT 277 (LC).

62. Accordingly, we assess the starting point at stage (c), plus (d) as it relates to the landlord, at 65%.

63. At stage (d), we consider the conduct of the tenants and the financial circumstances of the landlord. Mr Kilcoyne did not assert that there was any significant poor conduct by the Applicants that should affect our determination. In relation to the financial circumstances of the landlord, we asked Mr Kilcoyne if any issue arose, and he confirmed that it did not.

64. We conclude that the RRO should be set at 65% of the maximum possible.

Reimbursement of Tribunal fees

65. The Applicant applied for the reimbursement of the application and hearing fees paid by the Applicants under Rule 13(2) of the Rules. In the light of our findings, we allow that application.

Rights of appeal

66. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the London regional office.

67. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

68. If the application is not made within the 28 day time limit, the application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

69. The application for permission to appeal must identify the decision of the Tribunal to which it relates, give the date, the property and the case

number; state the grounds of appeal; and state the result the party making the application is seeking.

Name: Tribunal Judge Professor Richard Percival **Date:** 7 May 2025

Appendix of Relevant Legislation

Housing Act 2004

72 Offences in relation to licensing of HMOs

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

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 and committed an offence to which this Chapter applies.

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to –

(a) repay an amount of rent paid by a tenant, or

(b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.

(3) A reference to "an offence to which this Chapter applies" is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let to that landlord.

	Act	*section*	*general description of offence*
1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house

	Act	*section*	*general description of offence*
7	This Act	section 21	breach of banning order

(4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

41 Application for rent repayment order

(1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.

(2) A tenant may apply for a rent repayment order only if –

(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and

(b) the offence was committed in the period of 12 months ending with the day on which the application is made.

(3) A local housing authority may apply for a rent repayment order only if –

(a) the offence relates to housing in the authority's area, and

(b) the authority has complied with section 42.

(4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

42 Notice of intended proceedings

(1) Before applying for a rent repayment order a local housing authority must give the landlord a notice of intended proceedings.

(2) A notice of intended proceedings must—

(a) inform the landlord that the authority is proposing to apply for a rent repayment order and explain why,

(b) state the amount that the authority seeks to recover, and (c) invite the landlord to make representations within a period specified in the notice of not less than 28 days ("the notice period").

(3) The authority must consider any representations made during the notice period.

(4) The authority must wait until the notice period has ended before applying for a rent repayment order.

(5) A notice of intended proceedings may not be given after the end of the period of 12 months beginning with the day on which the landlord committed the offence to which it relates.

43 Making of a rent repayment order

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

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

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

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

(b) section 45 (where the application is made by a local housing authority);

(c) section 46 (in certain cases where the landlord has been convicted etc).

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 this table.

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

(3) The amount that the landlord may be required to repay in respect of a period must not exceed –

(a) the rent 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,

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.