**FIRST-TIER TRIBUNAL**
**PROPERTY CHAMBER (RESIDENTIAL PROPERTY)**

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| **Case Reference** | **:** | **LON/00BJ/HMK/2020/0025** |
| **HMCTS code (paper, video, audio)** | **:** | **V - Video** |
| **Property** | **:** | **29 Wroughton Road, Battersea London SW11 6BE** |
| **Applicants** | **:** | **(1) Mr. Joshua Thomas**<br>**(2) Ms. Katherine Mcdonald**<br>**(3) Mr. Richard Smith**<br>**(4) Ms. Lauren Mcdonald**<br>**(5) Mr. David Stevens**<br>**(6) Ms. Alice Collins** |
| **Representative** | **:** | **Mr. G. Penny of Flat Justice Community Interest Company** |
| **Respondent** | **:** | **Mrs. Hazel May Barton** |
| **Representative** | **:** | **Mr. Paul Barton (Respondent's son)** |
| **Type of Application** | **:** | **Application for a rent repayment order by tenants** |
| **Tribunal** | **:** | **Tribunal Judge S.J. Walker**<br>**Tribunal Member A. Fonka MCIEH, CEnvH, M.Sc.** |
| **Date and Venue of Hearing** | **:** | **18 June 2021 - video hearing** |
| **Date of Decision** | **:** | **10 July 2021** |

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**DECISION**

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**(1) The Tribunal makes a Rent Repayment Order under section 43 of the Housing and Planning Act 2016 requiring the Respondent to pay the Applicants the sum of £41,000.**

**(2) The application for an order under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the re-imbursement by the Respondent of the fees of £300 paid by the Applicants in bringing this application is granted. Payment is to be made within 28 days.**

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: Video Remote. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the Tribunal was referred to are set out below, the contents of which were noted. The Tribunal's determination is set out below.

## Reasons

### The Application

1. The Applicants seek a rent repayment order pursuant to sections 43 and 44 of the Housing and Planning Act 2016 ("the Act") for a period of 12 months beginning on 17 April 2019.

2. The application was made on 30 June 2020, so is in time, and alleges that the Respondents have committed an offence under section 72(1) of the Housing Act 2004 ("the 2004 Act") – having control or management of an unlicensed House in Multiple Occupation ("HMO"). It was originally made against the Respondent and her husband Mr. Robert Daniel Barton.

### Procedural Background and Issues

3. This application has a complicated procedural background. After the application was made directions were issued on 8 December 2020. Among other things these required the parties to prepare bundles of documents.

4. In response to those directions the Applicants produced a bundle of documents consisting of 96 pages. Page references in what follows are to this bundle unless otherwise stated.

5. The application was first listed for hearing on 23 March 2021. That hearing was adjourned at the request of Mr. Paul Barton, the Respondents' son, on the following grounds. The First Respondent had died over 5 years ago, the Second Respondent, now aged 82, was currently living in Jamaica and was prevented from returning to the UK by the Covid-19 travel restrictions, and neither he nor the Second Respondent were aware of the application until 19 March 2021.

6. On 23 March 2021 the Tribunal made further directions. Mr. Robert Barton was removed as a respondent to the application. Mr. Paul Barton was to provide confirmation from his mother of his

appointment as her representative, his contact details and proof of his father's death. The Respondent was to provide a hearing bundle by 4 May 2021.

7. On 25 May 2021 the application was considered by Judge Carr. The Tribunal noted that although Mr. Paul Barton had provided proof of his father's death, the other directions referred to above had not been complied with.

8. The Tribunal them made an order pursuant to rules 9(1), (3)(a), (7) and (8) of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 ('the Rules') requiring the Respondent to confirm that she wished her son to represent her and to provide a bundle of documents by 4pm on 4 June 2021 failing which she would be automatically debarred from any further participation in the proceedings. The directions also allowed the Respondent until 4pm on 5 July 2021 to apply to lift the bar on her further involvement pursuant to rules 9(5) and (6) of the Rules.

9. On 3 June 2021 Mr. Paul Barton sent an e-mail to the Tribunal which had a number of documents attached to it including a document which was described as the Respondent's bundle. This e-mail was seen by Judge Vance who, on 4 June 2021 made the following further directions.

> *"1. Paragraph 1(i) of Judge Carr's order of 25 May 2021 has not been complied with because the Respondent has not provided email confirmation that she wishes her son, Mr Paul Barton, to represent her in these proceedings. Because of that non-compliance the automatic debarring provisions of paragraph 1 of the Order takes effect . The Respondent is automatically debarred from any further participation in these proceedings without further order. The Tribunal need not go on to consider any response or submission made by her and may go on to determine all matters against her, pursuant to rule 9(1), (3)(a), (7) and (8) of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013.*
>
> *2. The hearing listed for 18 June 2021 at 10 am will proceed.*
>
> *3. At that hearing the tribunal will decide whether to have regard to the documents attached to Mr Barton's email of 3 June 2021 and what evidential weight should be attributed to those documents.*
>
> *4. Mr Barton may attend the hearing and the tribunal will decide whether or not he is to be permitted to make any representations on behalf of the Respondent or if he is to attend as an observer only*

5. *At the hearing, the tribunal will also wish to consider whether the Respondent has had proper notification of this application and the tribunal's directions.*

6. *It remains open to the Respondent to apply to lift (i.e. remove) the debarring order. I vary paragraph 3 of Judge Carr's order of 25 May 2021 so that any application to lift the debarring order must be made by* ***17 June 2021****. I curtail the time limit specified in Rule 9(6) of the 2013 Rules pursuant to my power under Rule 3(a). This is because an any such application needs to be made prior to the hearing of the application. If an application is made, it will be decided as a preliminary issue at the hearing on 18 June 2021.*"

**The Hearing**

10. All the Applicants attended the hearing and they were represented by Mr. G. Penny of Flat Justice. The Respondent did not attend but Mr. Paul Barton did.

11. The Tribunal initially considered the procedural issues set out above. Mr. Barton argued that the unless order should not have been made and that the Respondent should not, in any event, be debarred from resisting the application. He drew attention to the document described as the Respondent's bundle. In that he stated that his mother, the Respondent, had sent an e-mail to the Tribunal on 24 March 2021 stating that she wished to be represented by her son and that this was acknowledged by the Tribunal the following day. Unfortunately, the Tribunal Clerk was unable to confirm whether or not this was the case.

12. Mr. Barton applied for permission to make representations on behalf of the Respondent and to rely on the documents he had provided with his e-mail of 3 June 2021. This was not opposed by the Applicants and the Tribunal considered that it was appropriate, in the absence of evidence to the contrary and without being able to inspect all the e-mails received, to accept what Mr. Barton said about his authority to act on behalf of his mother. It therefore concluded that there was no longer any basis for debarring the Respondent from participating in the proceedings.

13. The Tribunal bore in mind that the Respondent was not present at the hearing and the requirements of rule 34 of the Rules dealing with hearings in the absence of parties. It was satisfied that notice of the hearing had been sent to the last known address for the Respondent, namely 69, Gracefield Gardens, London SW16 2TS, and that her appointed representative, her son, was aware of and present at the hearing. It was satisfied that reasonable steps had been taken to make her aware of the hearing and considered that in the circumstances it was in the interests of justice to proceed with the hearing.

14. The Tribunal was also satisfied that the previous directions in this case had also been sent to the Respondent's last known address and that, in any event, her representative was aware of them. There was no doubt that Mr. Barton was aware of the directions made on 23 March 2021 which were made at the hearing he had himself attended, and he accepted that he had received those directions.

15. In the course of the hearing the Applicants adopted their respective witness statements, which Mr. Barton accepted were true. Mr. Thomas was tendered for cross-examination, but Mr. Barton had no questions for him and he indicated that he did not wish to ask questions of any of the Applicants.

16. The Tribunal explained to Mr. Barton that he had a choice of simply addressing the Tribunal as a representative for the Respondent and making submissions based on the documents before the Tribunal or of giving evidence of matters of fact, in which case he would be open to crops-examination. Mr. Barton chose to give evidence and was asked questions by Mr. Penny and by the Tribunal.

**The Law**

17. The relevant legal provisions are set out in the Appendix to this decision.

18. The Tribunal may make a rent repayment order when a landlord has committed one or more of a number of offences listed in section 40(3) of the Act. An offence is committed under section 72(1) of the 2004 Act if a person has control or management of an HMO which is required to be licensed but is not. By section 61(1) of the 2004 Act every HMO to which Part 2 of that Act applies must be licensed save in prescribed circumstances which do not apply in this case.

19. Section 55 of the 2004 Act explains which HMOs are subject to the terms of Part 2 of that Act. An HMO falls within the scope of Part 2 if it is of a prescribed description. Those prescribed descriptions are to be found in the Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2018. Under that Order an HMO falls within the prescribed description if it is occupied by five or more people, and is occupied by people living in two or more single households, and, among other things, it meets the standard test under section 254(2) of the 2004 Act.

20. A building meets the standard test if it;

> "*(a) consists of one or more units of living accommodation not consisting of a self-contained flat or flats;*
> *(b) the living accommodation is occupied by persons who do not form a single household …;*
> *(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it;*

*(d) their occupation of the living accommodation constitutes the only use of that accommodation;*

*(e) rents are payable or other consideration is to be provided in respect of at least one of the those persons' occupation of the living accommodation; and*

*(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities."*

21. By virtue of section 258 of the 2004 Act persons are to be regarded as not forming a single household unless they are all members of the same family. To be members of the same family they must be related, a couple, or related to the other member of a couple.

22. It is a defence to a charge of an offence under section 72(1) of the 2004 Act that a person had a reasonable excuse for committing it.

23. An order may only be made under section 43 of the Act if the Tribunal is satisfied beyond reasonable doubt that an offence has been committed.

24. By section 44(2) of the Act the amount ordered to be paid under a rent repayment order must relate to rent paid in a period during which the landlord was committing the offence, subject to a maximum of 12 months. By section 44(3) the amount that a landlord may be required to repay must not exceed the total rent paid in respect of that period.

25. Section 44(4) of the Act requires the Tribunal to have regard to the conduct of the landlord and tenant, the financial circumstances of the landlord and whether or not the landlord has been convicted of a relevant offence when determining the amount to be paid under a rent repayment order.

**Findings**

26. The Tribunal was satisfied that the property is owned by the Respondent. Evidence of title is at page 92. The Tribunal accepted that Mr. Robert Barton is dead and so the Respondent is the sole owner by survivorship.

27. The Tribunal was satisfied that the Respondent entered into a tenancy agreement with the 6 Applicants on 16 April 2018 under which the property was let to them all for a period of 21 calendar months from 17 April 2018 at a rent of £3,400 per month (see page 70). This was accepted by Mr. Barton. This tenancy therefore expired on 16 January 2020. It is clear from the tenancy agreement that the rent did not include any payments towards utilities or similar charges (see clauses 2.5 and 2.6 at page 71) and this was accepted by Mr. Barton.

28. It is worth stating at this point that the Tribunal raised with Mr. Penny an issue as to the form of the order sought. The application originally

sought separate orders in respect of each of the households occupying the property. However, it was clear that there was one single tenancy agreement to which all the Applicants were a party. The Tribunal invited Mr. Penny to consider whether any order made should be a single order made in favour of all the Applicants jointly. Mr. Penny agreed that that was more appropriate.

29. The Tribunal was satisfied that the tenancy was extended for a further 3 months until 16 April 2020 and that for the final two months the rent was increased to £3,500. This is on the basis of the unchallenged witness statements of the Applicants together with the evidence of text messages exchanged between the Applicants and Mr. Barton on behalf of the Respondent showing the negotiation for an extension of the lease (pages 40 to 42).

30. The Tribunal was satisfied that the Applicants paid the agreed rent to the Respondent for the period in question. This is shown by the bank statements at pages 80 to 91. Although Mr. Barton said that the rent was paid to an agent it is clear that the rent was paid to the Respondent personally. The statements also show the increase in the rent for the final 2 months. The Tribunal was satisfied that the total sum paid in rent for the period in question was £41,000.

31. On the basis of the unchallenged witness statements of the Applicants and the supporting schedule of occupancy provided by them (pages 29 and 30) and on Mr. Barton's own admission, the Tribunal was satisfied that the Applicants, six in number, occupied the property for the whole of the period in question, that this was their only residence at that time, that the Applicants formed four separate households, that they shared facilities including the kitchen, living areas, bathrooms and toilets, and that none of the Applicants were in receipt of Housing Benefit or Universal Credit. There was no suggestion that the property was used for any purpose other than as living accommodation for the Applicants, and any other use was prohibited by the terms of the lease (clause 2.18 at page 71).

32. Taking all this into account the Tribunal was satisfied beyond reasonable doubt that the property was, during the period in question, an HMO which was required to be licensed under Part 2 of the 2004 Act. It was occupied by more than 5 people in more than two households and met the standard test in section 254(2) of the 2004 Act. This was also accepted by Mr. Barton.

33. The Tribunal also accepted that the property was not licensed as an HMO from 27 February 2019 until after the Applicants vacated it. This is on the basis of an e-mail from Mr. Paul Aitken an environmental health officer working for the London Boroughs of Merton, Richmond Upon Thames and Wandsworth which states that the property had a licence which expired on 26 February 2019 (page 31).

34. Although Mr. Barton was at pains to stress to the Tribunal that he was seeking to obtain more information from the local authority about communications sent from them to the Respondent, his own evidence was that he had been told by them that the licence expired on the same day.

35. It follows that the Tribunal was satisfied so that it was sure that an offence had been committed under section 72(1) of the 2004 Act subject only to the possibility of a defence of reasonable excuse under section 72(5). Although not expressly raised by the Respondent the Tribunal went on to consider whether such a defence arose, and, in doing so, bore in mind that the burden lies with the Respondent to establish such a defence on the balance of probabilities.

36. It was clear to the Tribunal that a licence had been obtained previously, which shows that the Respondent was aware of the need to obtain such a licence. Although in the submissions made on her behalf it was stated that she did not deal with the Council when the licence was obtained and this was done by the managing agents, it is clear that she knew that a licence was needed and was being obtained. This is shown by what follows in the statement, where it states;

> "*When the HMO was first applied for, the landlord was insistent that the work would be done to the highest standard. As the landlord knew that there would be young people living in the property, she wanted to make sure that they would be fully protected whilst in the property. When the initial inspection for the HMO was completed an HMO, minimum standards was sent. She made it clear that if the property was going to be an HMO it had to meet the maximum standards.*"

37. The Tribunal was satisfied that the Respondent knew of the need for a licence.

38. In his oral evidence Mr. Barton explained that he acted as the contact between the Applicants and the Respondent and the Tribunal was satisfied that he was acting on her behalf.

39. Mr. Barton suggested in his evidence that at the time the Applicants were living in the property he had no idea that the HMO licence was about to expire. The Tribunal did not accept that account. In reaching this conclusion it relied on an exchange of text messages between the First Applicant and Mr. Barton (see pages 39 and 40). In that correspondence the First Applicant enquired in September 2019 about the possibility of extending the lease. Mr. Barton stated as follows;

> "*the landlord does not want to continue as an HMO, I can discuss your request with her.*"

This clearly shows again that the Respondent was aware of the fact that the property was an HMO. The First Applicant then responded by asking how long was left on the licence. Mr. Barton's reply was;

> "*the licence is up for renewal but the landlord does not want to renew. It is a complicated process and much simpler for her to let as a family dwelling*"

This shows that Mr. Barton had indeed discussed the request with the Respondent and she had said that she does not wish to renew the licence. Mr. Barton's explanation for this statement was that he knew that the licence must expire at some point in the future but that he had no idea that this had either already happened or was imminent.

40. In the view of the Tribunal that explanation is inherently incredible. It is obvious from the wording used that Mr. Barton was aware either that the licence had already expired and so needed to be renewed or would need to be renewed in the near future – hence the use of the phrase "*up for renewal"*.

41. This view is strengthened by a passage in the submissions on the Respondent's behalf as follows;

> "*It appears that during the tenancy the HMO licence had expired, the landlord said that even though the licence may have expired, the property would still have the same HMO standard, this would not disappear when the licence expired. The tenants were still protected with the fire/gas alarms, fire doors and extinguishers*"

In the view of the Tribunal this shows the Respondent was aware that the licence had expired and yet was happy to continue to let the property.

42. In any event, whether or not the Respondent knew that the licence had expired makes no difference. She clearly knew that a licence was needed. Any failure to renew can, at best, only be due to a failure to find out how long the licence originally granted lasted for. Such a failure is hardly the basis for a defence of reasonable excuse. That is so even if, as the Tribunal accepts, the Respondent was living in Jamaica and had little day-to-day involvement with the property.

43. It was also suggested on behalf of the Respondent that she was prevented from attending properly to the property because of reasons of ill-health. However, insufficient evidence of this was produced. The only evidence provided was a list of medication prepared in August 2020 and a letter dated 6 May 2021 which sets out the results of an X-Ray examination of the Respondent's chest and which refers to a history of wheezing, shortness of breath and congestive cardiac failure. There was insufficient evidence to show that the Respondent was in ill health at the time in question such as to prevent her from managing the property.

44. The proper management of residential property is a task which requires a degree of responsibility. Whilst the Tribunal can understand that personal and technical problems may have made things difficult for the Respondent at the time, this does not amount to an excuse for failing to licence the property.

45. Taking all the submissions on behalf of the Respondent into account, the Tribunal was satisfied that no defence of reasonable excuse arose in this case. The Tribunal was, therefore, satisfied so that it was sure that an offence had been committed.

46. It follows that the Tribunal has the power to make an order under section 43 of the Act. The maximum sum which can be ordered is the rent paid over the 12-month period in question which, as already explained, amounts to £41,000.

47. The only matter remaining for the Tribunal to consider was the question of what sum the Tribunal should order to be paid, having regard to the provisions in section 44(4) of the Act referred to above.

48. The decision in *Vadamalayan v Stewart* [2020] UKUT 0183 (LC) makes it clear that when the Tribunal has the power to make a rent repayment order, it should be calculated by starting with the total rent paid by the tenant within the time period allowed under section 44(2) of the Act, from which the only deductions should be those permitted under sections 44(3) and (4).

49. In *Ficcara v James* [2021] UKUT 38 (LC) the Upper Tribunal judge, Martin Rodger QC, expressed concerns (at paragraphs 49-51) whether it is correct to use the full amount of rent paid as the "starting point" in the sense that it is used in criminal proceedings, not least because, unlike in criminal proceedings, the amount cannot go up in aggravated cases, but can only come down. Although in the case of *Awad v Hooley* [2021] UKUT 0055 (LC) Judge Cooke said that this issue may be a matter for a later appeal, at present the Tribunal must follow the guidance in *Vadamalayan*. Moreover, in the light of the matters considered below, the Tribunal doubts that any change in approach could have resulted in a different outcome in the circumstances of this particular case.

50. This is not a case where the rent paid by the Applicants includes any element of a contribution towards utilities. There is, therefore, no basis for any deduction from the amount to be paid under the terms of the order to reflect the provision of utilities.

51. In relation to the question of the Respondent's conduct, the Tribunal bears in mind the following. The Respondent was aware that the property had to have a licence and, indeed, she had previously obtained one which expired on 26 February 2019. The Tribunal would expect a responsible landlord to be aware when such a licence would expire. Despite this, the Respondent continued to let the property to the Applicants either knowing that the licence had expired or, at best, recklessly as to whether the licence was still in force or not.

52. The reality of the situation is that, at best, the Respondent, having obtained a licence, failed to inform herself as to how long it lasted for and, by reason of that failure, allowed it to expire and continued to let the property without a licence. In the view of the Tribunal this could be regarded as more culpable conduct that that of a landlord who is completely unaware of the need for a licence at all.

53. The Respondent failed to provide the Tribunal with any information about her financial circumstances and there is, therefore, no basis for reducing the amount ordered to be paid by reason of these.

54. In the submissions on behalf of the Respondent it was alleged that the Applicants had left rubbish outside the property when they vacated it, that there had been some damage to furniture, and that there was a leak in the ceiling. However, no evidence was provided to support any of these allegations and the Tribunal was not satisfied that they formed a sufficient basis for making any deductions from the amount that should be ordered to be paid.

55. There was no evidence that the Respondent had any convictions.

56. Taking all the matters set out above into account, the Tribunal was satisfied that there was no basis for deducting any amounts from the maximum amount which the Tribunal may order. It therefore decided to make a rent repayment order for the benefit of the Applicants in the sum of £41,000.

57. The Applicants also sought an order under rule 13(2) of the Rules for the re-imbursement of the fees paid for bringing the Application. The Tribunal concluded that, given that the Applicants had succeeded in their application, it was just and equitable to make such an order.

**Name:** Tribunal Judge S.J. Walker **Date:** 10th July 2021

## ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.

- If a party wishes to appeal against this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

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

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

- The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

## Appendix of relevant legislation

## Housing Act 2004

### Section 72 Offences in relation to licensing of HMOs

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

(2) A person commits an offence if–

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) A person commits an offence if–

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

(b) he fails to comply with any condition of the licence.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time–

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse–

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.

(7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(1) For the purposes of subsection (4) a notification or application is "effective" at a particular time if at that time it has not been withdrawn, and either–

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(2) The conditions are–

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or

(b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(3) In subsection (9) "relevant decision" means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

**263 Meaning of "person having control" and "person managing" etc.**

(1) In this Act "person having control", in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the

premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act "person managing" means, in relation to premises, the person who, being an owner or lessee of the premises–

(a) receives (whether directly or through an agent or trustee) rents or other payments from–

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.

(4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).

(5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

## Housing and Planning Act 2016

### Chapter 4 RENT REPAYMENT ORDERS

### Section 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.

| | 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 |
| 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).

**Section 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.

**Section 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);

(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).

**Section 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 |

(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.

**Section 52 Interpretation of Chapter**

(1) In this Chapter—

"offence to which this Chapter applies" has the meaning given by section 40;

"relevant award of universal credit" means an award of universal credit the calculation of which included an amount under section 11 of the Welfare Reform Act 2012;

"rent" includes any payment in respect of which an amount under section 11 of the Welfare Reform Act 2012 may be included in the calculation of an award of universal credit;

"rent repayment order" has the meaning given by section 40.

(2) For the purposes of this Chapter an amount that a tenant does not pay as rent but which is offset against rent is to be treated as having been paid as rent.