

UPPER TRIBUNAL (LANDS CHAMBER)



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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

HOUSING – RENT REPAYMENT ORDERS – no conviction – whether reasonable to order repayment of all housing benefit received (less utilities and council tax) – relevant considerations – appellant’s poor mental health – procedural irregularity – s.73-74, Housing Act 2004 – appeal allowed

IN THE MATTER OF AN APPEAL AGAINST A DECISION
OF THE FIRST TIER TRIBUNAL (PROPERTY CHAMBER)

BETWEEN:

A.B.

Appellant

and

THE LONDON BOROUGH OF NEWHAM

Respondent

Martin Rodger QC, Deputy Chamber President

The Royal Courts of Justice

28th June 2017

The appellant, in person
Mr Jeff Hardman, for the respondent

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No cases are referred to in this decision

Introduction

1. This appeal is against the making of a rent repayment order under section 73, Housing Act 2004 following a failure by the appellant to obtain a licence from the respondent local housing authority in respect of her home which was required to be licensed by section 61 of the 2004 Act because it was an HMO to which Part 2 of the Act applied.
2. At a hearing on 29 June 2016 the First-tier Tribunal (Property Chamber) (FTT) made an order under section 73(5) of the Act requiring the appellant to repay to the respondent £5,928.58 which she had received as housing benefit in respect of the occupation of the upper floors of her home by two tenants and their families in the period from 5 March 2014 to 11 December 2014. The repayment period began on the date which was 12 months before the date of a notice of intended proceedings given by the authority under section 73 informing the appellant of its intention to apply for the order and inviting her to make written representations. The period ended on the date on which the appellant had applied for a licence under Part 2 of the Act.
3. In response to the notice of intended proceedings the appellant had provided detailed representations explaining why she considered a rent repayment order ought not to be made against her. These included information concerning difficulties she had experienced in her employment during 2012 and 2013 which had precipitated a deterioration in her mental health. The representations were accompanied by copies of the appellant's medical history which included details of the accounts of her condition which she had given to her own GP and to a consultant psychiatrist between 2011 and 2014. The material which the appellant supplied to the authority was of a sensitive and personal nature.
4. When the authority applied to the FTT for the rent repayment order it included a copy of the representations it had received from the appellant in response to the notice of intended proceedings, as it was directed to do by instructions on the FTT's standard form of application. The documents filed with the application therefore included all of the medical records which the appellant had supplied to the authority in support of her representations.
5. The appellant became extremely concerned and upset when she appreciated that personal information about her health had been forwarded to the FTT without her consent. She wrote to the FTT objecting to the respondent's actions. In response to that objection the FTT directed that no information about the appellant's mental health should be included in the documents provided for the hearing except those which the appellant herself provided for that purpose.
6. In the event, the appellant did not provide copies of her medical records to the FTT although she did explain some of the difficulties she had experienced in a statement of case. The appellant also chose not attend the hearing.

7. In its decision of 16 July 2016 the FTT referred to the assertions made by the appellant in her statement of case about her poor health but made no findings of fact concerning those assertions. It considered that it was reasonable to make a rent repayment order and that there were no exceptional circumstances sufficient to justify a refusal to do so. Having made deductions in respect of utilities and council tax, the costs of which had been borne by the appellant, the FTT ordered that she should repay the balance of the housing benefit she had received during the period in issue.

8. The appellant sought permission to appeal the repayment order but was refused by the FTT. She was granted permission by this Tribunal on the grounds that it was not clear from the decision of the FTT that it had considered the issue of her health when it decided that there were no circumstances justifying a reduction in the sum to be repaid, nor had the FTT explained what findings it made about her health or why it was not considered relevant.

The mandatory licensing of houses in multiple occupation

9. With limited exceptions section 61(1), Housing Act 2004 requires every HMO to which Part 2 of the Act applies to be licensed by the relevant local housing authority. Section 72(1) provides that a person having control of or managing an HMO which is required to be licensed but is not licensed commits an offence, unless an application has been made for a licence or for temporary exemption. Such a house is referred to in the Act as an “unlicensed HMO”.

10. The criminal sanction for failing to obtain a licence is supplemented by the scheme of civil penalties known as rent repayment orders for which provision is made by sections 73 and 74. Subject to transitional provisions, the Housing and Planning Act 2016 replaced the legislation relating to rent repayment orders in England from 6th April 2017 (although the original provisions continue to apply in Wales).

11. So far as is material to this appeal Part 2 of the 2004 Act provides as follows:

73 Other consequences of operating unlicensed HMOs: rent repayment orders

(1)-(2) ...

(3) No rule of law relating to the validity or enforceability of contracts in circumstances involving illegality is to affect the validity or enforceability of—

(a) any provision requiring the payment of rent or the making of any other periodical payment in connection with any tenancy or licence of a part of an unlicensed HMO, or

(b) any other provision of such a tenancy or licence.

(4) But amounts paid in respect of rent or other periodical payments payable in connection with such a tenancy or licence may be recovered in accordance with subsection (5) and section 74.

(5) If–

- (a) an application in respect of an HMO is made to the appropriate tribunal by the local housing authority or an occupier of a part of the HMO, and
- (b) the tribunal is satisfied as to the matters mentioned in subsection (6) or (8),

the tribunal may make an order (a ‘rent repayment order’) requiring the appropriate person to pay to the applicant such amount in respect of the housing benefit paid as mentioned in subsection (6)(b), or (as the case may be) the periodical payments paid as mentioned in subsection (8)(b), as is specified in the order (see section 74(2) to (8)).

(6) If the application is made by the local housing authority, the tribunal must be satisfied as to the following matters–

- (a) that, at any time within the period of 12 months ending with the date of the notice of intended proceedings required by subsection (7), the appropriate person has committed an offence under section 72(1) in relation to the HMO (whether or not he has been charged or convicted),
- (b) that housing benefit has been paid (to any person) in respect of periodical payments payable in connection with the occupation of a part or parts of the HMO during any period during which it appears to the tribunal that such offence was being committed, and
- (c) that the requirements of subsection (7) have been complied with in relation to the application.

(7) Those requirements are as follows–

- (a) the authority must have served on the appropriate person a notice (a ‘notice of intended proceedings’)–
 - (i) informing him that the authority are proposing to make an application under subsection (5),
 - (ii) setting out the reasons why they propose to do so,
 - (iii) stating the amount that they will seek to recover under that subsection and how that amount is calculated, and
 - (iv) inviting him to make representations to them within a period specified in the notice of not less than 28 days;
- (b) that period must have expired; and
- (c) the authority must have considered any representations made to them within that period by the appropriate person.

(8)-(9) ...

(10) In this section—

‘the appropriate person’, in relation to any payment of housing benefit or periodical payment payable in connection with occupation of a part of an HMO, means the person who at the time of the payment was entitled to receive on his own account periodical payments payable in connection with such occupations; ...

(11)

74 Further provision about rent repayment orders

(1) This section applies in relation to rent repayment orders made by residential property tribunals under section 73(5).

(2) Where, on an application by the local housing authority, the tribunal is satisfied—

(a) that a person has been convicted of an offence under section 72(1) in relation to the HMO, and

(b) that -

(i) [universal credit cases], or

(ii) housing benefit was paid (whether or not to the appropriate person) in respect of periodical payments payable in connection with occupation of a part or parts of the HMO

during any period during which it appears to the tribunal that such an offence was being committed in relation to the HMO, the tribunal must make a rent repayment order requiring the appropriate person to pay to the authority the amount mentioned in subsection (2A).

This is subject to subsections (3), (4) and (8).

(2A) The amount referred to in subsection (2) is –

(a) [universal credit cases]

(b) an amount equal to the total amount of housing benefit paid as mentioned in subsection (2)(b)(ii)

(3) ...

(4) A rent repayment order made in accordance with subsection (2) may not require the payment of any amount which the tribunal is satisfied that, by reason of any exceptional circumstances, it would be unreasonable for that person to be required to pay.

(5) In a case where subsection (2) does not apply, the amount required to be paid by virtue of a rent repayment order under section 73(5) is to be such amount as the tribunal considers reasonable in the circumstances.

This is subject to subsections (6) to (8).

(6) In such a case the tribunal must, in particular, take into account the following matters –

- (a) the total amount of relevant payments paid in connection with occupation of the HMO during any period during which it appears to the tribunal that an offence was being committed by the appropriate person in relation to the HMO under section 72(1);
- (b) the extent to which that total amount –
 - (i) consisted of, or derived from, payments of housing benefit, and
 - (ii) was actually received by the appropriate person;
- (c) whether the appropriate person has at any time been convicted of an offence under section 72(1) in relation to the HMO;
- (d) the conduct and financial circumstances of the appropriate person; and
- (e) where the application is made by an occupier, the conduct of the occupier.

(7) In subsection (6) ‘relevant payments’ means –

- (a) in relation to an application by a local housing authority, payments of housing benefit or periodical payments payable by occupiers;
- (b) in relation to an application by an occupier, periodical payments payable by the occupier, less any amount of housing benefit payable in respect of occupation of the part of the HMO occupied by him during the period in question.

(8) A rent repayment order may not require the payment of any amount which–

- (a) (where the application is made by a local housing authority) is in respect of any time falling outside the period of 12 months mentioned in section 73(6)(a); or
- (b) (where the application is made by an occupier) is in respect of any time falling outside the period of 12 months ending with the date of the occupier’s application under section 73(5);

and the period to be taken into account under subsection (6)(a) above is restricted accordingly.

(9)-(15) ...

(16) Section 73(10) and (11) apply for the purposes of this section as they apply for the purposes of section 73.”

12. Part 2 of the Act is concerned with the compulsory licensing of HMO’s to which that Part applies. Part 3 of the Act comprises a very similar scheme for the selective licensing of residential accommodation. Under Part 3 a local authority may designate an area as subject to selective licensing and require that all landlords of residential premises hold an appropriate licence. Such a scheme was introduced in the London Borough of Newham by the authority with effect from 1 January 2013.

13. There appears to have been some confusion in the mind of the respondent over the particular regime under which it was taking action against the appellant (who at one stage disputed that her property was an HMO). Nevertheless, it is clear that the procedure was initiated by a notice of intended proceedings given under section 73(5) and that the subsequent proceedings were always brought under Part 2.

The relevant facts

14. As the FTT found, the appellant's property (a semi-detached house on three floors including an attic room on the top floor) was an HMO. From March to December 2014 (at least) the appellant herself lived on the ground floor and the upper floors were occupied by two separate households under agreements with the appellant. The appellant subsequently disputed that the property was an HMO but permission has not been granted for an appeal on that issue.

15. As the person in control of the property the appellant was required to obtain a licence from the authority. She did not do so, as the FTT found, until 12 December 2014.

16. Although it was not a necessary ingredient of its application for a rent repayment order the authority gave evidence to the FTT, which it accepted, that letters warning the appellant of the need to apply for a licence (albeit under Part 3 of the Act) had been sent to her in February and August 2014. The authority's decision to introduce a selective licensing scheme in its borough with effect from 1 January 2013 was the subject of a publicity campaign in 2012 designed to draw the attention of all landlords to the need to apply for a licence. The FTT found that, as a result of this information campaign and the warning letters sent to her the appellant "was or should have been aware of the need to apply for a licence in 2012".

17. On 22 April 2015 the appellant was convicted of the offence under section 72(1) of the 2004 Act of being in control of an unlicensed HMO. The conviction was subsequently quashed on appeal on 29 June 2015. For that reason, when the FTT came to make its determination on the application for a rent repayment order it had regard to the provisions of section 74(5), which apply where the local housing authority is unable to show that a person has been convicted of an offence under section 72(1)).

18. The authority served its notice of intended proceedings as required by section 73(7) on 4 March 2015. The notice invited the appellant to make representations within a period of not less than 28 days which the authority was required to have considered before applying for a rent repayment order. The material supplied by the appellant in response to that invitation has been described in paragraph 3 above. The authority was not deterred by those representations and made its application to the FTT for an order on 30 November 2015 including with that application not only the appellant's representations but also the medical records which the appellant had provided in support of them.

19. The FTT gave directions for consideration of the application on 16 December. The procedural judge identified a list of issues to be considered including among them the question whether there were any exceptional circumstances which would make it unreasonable for the FTT to order the appellant to repay some of all of the housing benefit she had received. It directed her to provide documents including a statement for use at the hearing explaining her reasons for opposing the application. The authority was directed to file a bundle of documents which was to include a copy of the representations received following the notice of intended proceedings. The authority complied with that direction on 1 February 2016 by filing a further copy of the appellant's representations and supporting medical evidence.

20. At this stage the appellant became distressed. Experience in her previous employment led her to believe that documents received by the FTT would be scanned and recorded electronically on a computer database which she referred to as "CMS" (a "content management system"). She feared that, as a result, the paper copies of her own confidential medical records which had now been supplied to the FTT might be more widely disseminated in electronic form.

21. On 23 or 24 February 2016, having spoken to a tribunal clerk, the appellant sent an email to the FTT saying that she was "concerned about everything" and requesting that "the medical and associated documentation that was sent must all be deleted from the court system". That email was accompanied by a longer letter headed "Request – remove from and delete all medical information and associated documents from CMS" in which the appellant objected to her medical history being relied on by the authority in support of its application without her consent. She requested that the documents received by the FTT on 4 December 2015 be removed "from CMS" and concluded her letter:

"Please remove the information from your CMS as this is an abuse by LB Newham position and also please can you check with IT to see who may have looked at this case electronically as part of your security measures."

22. In a second undated letter to the FTT the appellant explained that she was concerned to avoid details of her medical records being made available on the database of the authority where she feared they might be inappropriately disseminated to or by its employees. In the same letter under the heading "medical information" the appellant provided the FTT with information about her condition. She told the tribunal that she had "an acute severe adjustment disorder" which had an impact on how she reacted to everyday events and to contact with external agencies. She explained the difficulties she experienced in general terms and mentioned that for a long time she had received no treatment, but had more recently consulted her GP and been told she must wait for five or six months for admission for specialist attention.

23. In response to the appellant's requests the FTT issued a further direction on 25 February 2016 in which it advised her to take independent advice and directed that her personal medical information should not be before the final tribunal and should be redacted from the documents previously supplied by the authority. The appellant was

instructed to provide her own bundle of documents as previously directed and to omit from it any personal information she did not want the tribunal or the authority to see.

24. In compliance with the FTT's directions a revised hearing bundle was prepared by the authority for use at the final hearing which did not include any of the medical records which the appellant had supplied to the authority with her original representations. The representations themselves were heavily redacted to remove all reference to her poor mental health.

25. The appellant complied with FTT's direction that she file a bundle of documents of her own containing the material which she wished the FTT to consider. The material she supplied was extensive but did not include any of her personal medical records. She also provided a lengthy witness statement in which she referred to a number of the documents in her bundles.

26. The appellant's witness statement made repeated reference to her poor mental health. In paragraph 2 she recounted how experiences at work since September 2011 had caused her to suffer "a psychiatric injury" from which she was recovering. In paragraph 4 she specifically attributed her offence to her condition:

"In 2013 January in the London Borough of Newham the law that all property must be licensed came into force; as I was not aware due to being traumatised in 2012 all roads lead to perdition."

In paragraph 5 she referred to herself as having become "hyposensitive" as a way of coping with events that had happened to her and explained that this manifested itself in behaviour including "bagging post, not remembering what I was meant to be doing, and then not doing what I needed to do as I was just doing what I could." In paragraph 13 of her statement she referred to "damage to my mind and health" as "irreversible."

27. In her witness statement for the FTT the appellant relied on her mental health to explain her failure to license her property as she ought to have done. She also appeared to blame the authority for aggravating her condition by its ultimately unsuccessful prosecution. What the appellant did not do, however, was to support her own account of her illness by providing further copies of the medical records which she had asked the FTT to remove from its database.

28. The appellant did not attend the hearing of the application before the FTT to explain in greater detail the difficulties to which she had alluded in her witness statement.

The FTT's decision

29. In its decision of 16 July 2016 the FTT recorded the evidence of both parties in summary form including the appellant's assertion that she "suffers from poor health exacerbated by the criminal proceedings and the application for a RRO." It is clear,

therefore, that the FTT had not overlooked the contents of the appellant's witness statement.

30. In paragraph 9 of its decision the FTT made a number of findings of fact going to the essential statutory conditions for the making of a rent repayment order. Additionally in paragraph 9(4) the FTT found that the appellant "was or should have been aware of the need to apply for a licence in 2012 due to the [authority's] extensive information campaign and advertising and by warning letters sent to her in February 2014 and August 2014 but failed to apply for a licence until 12/12/2014."

31. The FTT made no finding of fact concerning the appellant's mental health or the extent, if at all, to which it had contributed to her failure to obtain a licence. It may be implicit in paragraph 9(iv) that it did not accept that her poor health (to which it had referred when recounting her evidence) was a justification for her failure to obtain a licence, but it made no express findings.

32. In paragraph 10 of its decision the FTT went on to conclude:

"Consequently, the Tribunal finds that the [authority's] case for a RRO is made out and that it is reasonable to make a RRO. The Tribunal finds that no exceptional circumstances exist sufficient for it to decline to make a RRO."

Although the FTT referred in this passage to "exceptional circumstances", that expression appears only in section 74(4) and is not relevant to the question whether a rent repayment order should be made or not. Whether there are "exceptional circumstances" is relevant only to the amount it is reasonable to require a recipient of housing benefit to repay and then only in a case where that recipient has been convicted of an offence under section 72(1). Where there has been no conviction the jurisdiction to make a rent repayment order under section 73(5) is not subject to the requirement's imposed by section 74(2) and (2A) which make mandatory an order for repayment in full unless exceptional circumstances would make that unreasonable. In a case not falling within section 74(2) (i.e. where there has been no conviction) the question for the FTT to determine under section 74(5) is what sum it considers it "reasonable in the circumstances" that the appellant should be required to repay. In such a case the FTT was required "in particular" to take into account the matters listed in section 74(6).

The appeal

33. The facts set out above give rise to three separate issues. The first is whether the FTT applied the correct test and took account of the matters it was required by section 74(6) to take into account. The second is whether the FTT's decision dealt adequately or at all with the appellant's case, explained in her witness statement, that she had been suffering from "a psychiatric injury" which had an effect on her behaviour including her ability to appreciate or comply with her obligation to obtain a licence for her property. The third issue is whether, by an inadvertent misunderstanding, the FTT was denied access to documents which the appellant believed it would have available to it because hard copies had been attached to the original application, and if so whether that misunderstanding undermines the fairness of the decision.

Mandatory consideration of relevant matters

34. In paragraph 10 of its decision the FTT used the language of section 74(4) when it referred to the absence of “exceptional circumstances” sufficient to make it “decline to make a RRO”. In a case where a recipient of housing benefit has been convicted of the offence of being in control of an unlicensed HMO the effect of section 74(2) and (2A) is that the amount which the recipient will be required to repay will be “equal to the total amount of housing benefit paid”. Only if there are exceptional circumstances making it unreasonable to require repayment in full is the FTT entitled to substitute a lesser sum.

35. This was not a case in which the appellant had been convicted of the statutory offence (she had been acquitted on appeal to the Crown Court). Where there has been no conviction there is no presumption of full repayment, and the amount of the repayment falls to be determined under section 74(5) and (6) and is to be “such amount as the tribunal considers reasonable in the circumstances”.

36. In this case the FTT did not refer specifically to the matters which it was required by section 74(6) to take into account “in particular”. Those matters included the conduct and financial circumstances of the appellant. By omitting to make any assessment of those circumstances the FTT was in error and its decision cannot stand.

Sufficiency of the FTT's reasons

37. As to the second issue I sympathise with the FTT's predicament. The material provided by the appellant in support of the case explained in her witness statement fills two lever arch files. Although there were documents in those files which alluded to her mental health, including her witness statement, those documents were all prepared by the appellant herself. I have no doubt that the FTT carefully read the material supplied by the appellant but having done so it would have found no independent verification of the appellant's assertion that she had sustained a psychiatric injury which was material to her case. Nevertheless, it was apparent from the correspondence with the FTT in February 2016 that medical records existed recounting the appellant's medical history. It was also clear from the correspondence that the appellant was extremely sensitive about the use of that information and had required that it be removed from the FTT's “CMS.”

38. Given the appellant's own rather general description of her condition and in the absence of independent confirmation, it is difficult to see what specific findings the FTT could have made about the appellant's medical history or its effect on her behaviour. I also think it possible that the FTT's omission to deal specifically with the appellant's own evidence about her medical condition was intended to be respectful of her desire for privacy.

39. Nevertheless, although I appreciate why the FTT may have been reluctant to make any more definite findings of fact, I do not think it was sufficient for it to have dealt with a central element of the appellant's defence by inference in paragraph 9(4) of its decision. In my judgment, if that finding was intended to be a rejection of the appellant's explanation for her failure to obtain a licence, it was ambiguous and

insufficient. I am satisfied that it would not have been clear to the appellant when she read the FTT's decision why it had made no findings about her medical condition or what conclusion it had reached about the effect of that condition (if its existence was accepted) on her behaviour.

40. Had this to be the only ground of appeal I would have remitted the decision to the FTT to it to enable it to provide additional reasons dealing specifically with the appellant's contentions about her medical condition.

Procedural mishap

41. In support of her appeal the appellant said that her concern in February 2016 had been to ensure that copies of her medical records were not placed on an electronic information management system from which, she feared, they might be widely disseminated. Her previous employment history included employment by local authorities and housing associations whose practice it was to scan documents sent to them and to keep electronic copies on their databases, and she feared that documents treated in this way would be vulnerable to misuse. The appellant explained that her acute concern about digital security did not mean that she objected to the FTT itself having access to her medical history.

42. Some support for the appellant's case that her particular concern was the risk of dissemination of material stored electronically and that she had nevertheless wanted the FTT to be aware of her medical history can be found in her first undated letter probably sent on 24 February 2016. After stating that she understood that her medical information would not be copied and passed to a third party she said that "I consider that you will be able to get a health professional to interpret the information as it could be misunderstood and misrepresented."

43. What is puzzling is why, even after the FTT's direction requiring that documents provided in the bundles for the hearing should not contain her personal medical information unless she provided it, the appellant nevertheless considered that the FTT would be in the position to make an assessment based on that information. The appellant's answer, as she explained in her submissions on the appeal, was that she was aware that the authority's original application to the FTT for a rent repayment order had been accompanied by hard copies of her medical records. She had assumed that this material would be part of the FTT's own file to which it would have access. It was therefore her understanding, she told me, that the information required to support her assertions about her own mental health would be available to the FTT.

44. I have to say this is a rather surprising construction to place on the FTT's procedural direction. The more natural reading, as Mr Hardman pointed out on behalf of the authority, was that none of the material to which the appellant had objected would be made available to the FTT when it determined the application, and only material she herself chose to submit would be referred to. Nevertheless, the appellant pointed out those parts of her letters which refer specifically to the removal of her data from the "CMS" and highlighted the distinction she had made between electronically stored data

and original documents in hard copy. Having considered the material excluded from the hearing bundles available to the FTT, and having heard the appellant's own explanation, I am satisfied that, being in an anxious frame of mind, the appellant may very well have made unwarranted assumptions about the use which the FTT would feel entitled to make of documents which had accompanied the original application but which had been removed from the hearing bundle.

45. The FTT no doubt believed that it was respecting the appellant's wish for privacy by leaving it to her to provide copies of the documents which she wished to be taken into consideration, but I am nevertheless satisfied that the appellant and the tribunal were at cross purposes, and that the appellant wrongly believed that the FTT would have access to information to which in fact it did not have access.

46. It was acknowledged by Mr Hardman on behalf of the authority that the mental health of a person in control of an HMO could be a relevant consideration for a tribunal asked to determine under section 74(5) the amount that it would be reasonable in the circumstances to require that person to repay. Although the state of a person's health is not specifically referred in section 74(6) as one of the matters which must "in particular" be taken into account by the FTT, there is no reason to exclude other circumstances which are relevant to determining the reasonable sum to be repaid.

47. Mr Hardman nevertheless submitted that the FTT had clearly been right to make the order it made even making allowances for the appellant's mental health. She had chosen not to rely specifically on any cogent evidence and had only herself to blame for the FTT's inability to refer to it. Moreover she had had ample opportunity to obtain a licence and, were it to have been the case that she was incapable of discharging her obligation, it would have been reasonable for her to use the services of a managing agent. The correspondence between the appellant and the authority in 2014 and subsequently demonstrates that she was perfectly able to argue her own case.

48. This is not the sort of case in which the Tribunal, having reviewed the decision of the FTT and found some grounds on which to allow an appeal, can go on to make a final decision of its own. I bear in mind that the appellant chose not to be present at the hearing before the FTT; had she done so any misunderstanding over the extent of the documents to which the tribunal had access would have been dispelled. I bear in mind also that the evidence before me, which was not before the FTT, goes some way to supporting the appellant's account of her health problems. In my judgment it would be fair for the effect of the appellant's condition on her ability to think clearly about what was required of her to be the subject of consideration by the FTT with the benefit of proper evidence.

Disposal

49. I will therefore allow the appeal and set aside the decision of the FTT to the extent that it deals with the amount to be repaid by the appellant (but not so far as it concerns

the principle that a rent repayment order is to be made in this case). I will remit the application for further consideration by the FTT.

Martin Rodger QC

Deputy Chamber President

27 July 2017