



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

**Case Reference** : **LON/00AE/HMK/2017/0017**

**Property** : **1 Edenham Way  
London W10 5XA  
Rosie Woodward  
Alex Gambardella & Maria Assunta  
Rumolo**

**Applicants** : **Francesca Moauro & Laura Di Stefano  
Gregorio Davico  
Brian Bertola  
Davide Emili  
Alessandro Florio  
Nina Durdevic**

**Respondent** : **Bewel Property Ltd**

**Type of Application** : **Rent Repayment Order**

**Tribunal** : **Judge Nicol  
Mr H Geddes JP RIBA MRTPI**

**Date and Venue of  
Hearing** : **10<sup>th</sup> May 2018;  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **10<sup>th</sup> May 2018**

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**DECISION**

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**Decisions of the Tribunal**

The Tribunal makes the following rent repayment orders requiring the Respondent to pay the following amounts to each of these Applicants:

- |   |        |
|---|--------|
| (a) Rosie Woodward                          | £5,862 |
| (b) Alex Gambardella & Maria Assunta Rumolo | £5,362 |
| (c) Francesca Moauro & Laura Di Stefano     | £823   |

(d) Gregorio Davico	£5,118
(e) Brian Bertola	£3,537.50
(f) Davide Emili	£4,462.50

### **The Proceedings**

1. The Applicants used to be tenants of the Respondent at 1 Edenham Way, London W10 5XA, a three-storey, seven-bedroom house used as a house in multiple occupation (“HMO”). Their unchallenged evidence was that they lived at the property over the following periods paying the following monthly rents:

(a) Rosie Woodward	May 2016-June 2017	£866
(b) Alex Gambardella & Maria Assunta Rumolo	Dec 2016-June 2017	£823
(c) Francesca Moauro & Laura Di Stefano	Aug-Nov 2016	£823
(d) Gregorio Davico	Dec 2016-June 2017	£823
(e) Brian Bertola	Aug 2016-June 2017	£606.50
(f) Davide Emili	Feb 2016-June 2017	unknown

2. The Applicants originally included Alessandro Florio and Nina Durdevic, as recorded in the title of this case. However, their parts of the application have not been pursued.

3. A certificate of conviction showed that, at Westminster Magistrates’ Court on 7<sup>th</sup> September 2017, the Respondent was convicted of one count of failure to licence an HMO, five counts of failure to comply with fire safety regulations, one count of failure to provide a gas appliance test certificate and one count of failure to provide an electrical test certificate. The Respondent was fined a total of £50,000. Mr Jeffrey Hu, also named in the application, is apparently the Respondent company’s sole director.

4. On 16<sup>th</sup> November 2017 the Applicants applied to the Tribunal for Rent Repayment Orders (“RRO”), to require the Respondent to pay back to them the rent they paid while they were in occupation of an unlawfully unlicensed HMO.

5. The application was originally due to be heard on 23<sup>rd</sup> February 2018. Ms Woodward had said she was going to attend but did not. The Respondent also did not attend. In the absence of any explanation for their non-attendance, and also of certain essential information, the Tribunal issued further directions.

6. In accordance with paragraphs 8 and 9(a) of the Tribunal’s further directions, Ms Woodward sent a letter dated 26<sup>th</sup> February 2018 apologising for her absence and explaining that it was because she had gone down with the Norovirus. The letter also purported to provide answers to the questions the Tribunal had raised in paragraph 5.

7. The Tribunal was still dissatisfied with the Applicants' information and issued yet further directions by letter dated 5<sup>th</sup> March 2018. On 20<sup>th</sup> March 2018 Ms Woodward compiled a statement and attachments with the further required details, albeit again neither bound, paginated nor indexed.
8. In accordance with Ms Woodward's request on behalf of the Applicants, the Tribunal set the application down for a further hearing on 10<sup>th</sup> May 2018. However, by letter dated 22<sup>nd</sup> March 2018 she said she would be in Mexico on that date. She did not explain why one of the other Applicants or a representative could not have attended in her place.
9. The Tribunal is seriously concerned with the Applicants' failure to appear at the hearing, particularly given that they requested it, despite being given the alternative of a determination on the papers. Members of the Tribunal are part-time; they are specifically called in for each hearing. It can waste the Tribunal's time, at taxpayer expense, not to attend. Ms Woodward suggested she was available by phone but this is not how courts or Tribunals work – it is for the parties to present their cases, not to invite the Tribunal to chase them for it.
10. If the Respondent had participated or if the Applicants had still failed to provide all the necessary information, the Tribunal would have had no hesitation in striking out the application. Any similar failure in any future proceeding may well have that effect. However, against the Applicants' procedural defaults must be weighed the Respondent's own defaults. The Tribunal has served the relevant documents at the correct address but they have been returned – it is for the Respondent to ensure any necessary mail forwarding to ensure their business continues to be conducted. Further, on the substantive issues, the Respondent has been convicted of numerous serious offences.
11. Therefore, the Tribunal decided that, rather than strike out the application, it would proceed to a determination.

### **The Law**

12. The provisions in the Housing Act 2004 relating to RROs are set out in an Appendix to this decision.<sup>1</sup> Those provisions were considered by George Bartlett QC, the President of the Upper Tribunal (Lands Chamber) in *Parker v Waller* [2012] UKUT 301 and he made the following statements of principle:

20. Any consideration of the exercise of the RPT's power to make a rent repayment order in favour of an occupier must in my view start from an identification of the purpose for which the

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<sup>1</sup> The Housing Act 2004 provisions have been replaced by different provisions in the Housing and Planning Act 2016 but, under reg.5 of the Housing and Planning Act 2016 (Commencement No. 5, Transitional Provisions and Savings) Regulations 2017, not in relation to offences committed or started by the landlord before 6<sup>th</sup> April 2017, as here.

power is given. Section 74(5) provides that the amount to be paid to an occupier by virtue of such an order is to be “such amount as the tribunal considers reasonable in the circumstances”. Under subsection (6) the tribunal must in particular take account of five specified matters. What amount, taking account of those matters, would be reasonable can only be determined in the light of the purpose underlying the provisions, and this is nowhere stated. Is the purpose to punish the landlord by adding a second financial penalty to the one to which he is liable in respect of the offence under section 72(1)? Is it to deprive him of some or all of the profit that he made from the letting during the 12 months preceding the date of the tenant’s application to the RPT (see section 74(8))? Is it to provide the tenant with a statutory substitute for any common law right he might have to treat the rent as not payable as having been agreed under an illegal contract? Is it to compensate the tenant for having paid rent to occupy premises that were unprotected by an HMO? Clearly, what amount would be “reasonable in the circumstances” might be very different if the purpose was one of these rather than the others.

21. In the absence of any express indication the purpose of the power is to be sought in the provisions themselves. I have set out in full sections 73 and 74. They are lengthy provisions, made more difficult to follow by the fact that they provide, in different terms, for two types of RRO – on the one hand in favour of a housing authority in respect of housing benefit and on the other in favour of an occupier in respect of periodical payments (to which I am referring as rent). The power to make an RRO is contained in section 73(5), which relates both to applications made by a housing authority in respect of housing benefit and to applications made by an occupier in respect of rent. It provides that, if the conditions relating to applications by a housing authority and or to those relating to applications by an occupier (subsections (6) and (8)) are satisfied the tribunal “may make an order”. There is then a divergence between the two types of RRO in section 74, which makes further provision for such orders.

22. Claims by housing authorities are dealt with in section 74(2), which provides that, if conditions relating to conviction and the payment of housing benefit are satisfied, the tribunal “must make a rent repayment order...equal to the total amount of housing benefit paid”. Subsection (4) then provides that such an RRO “may not require the payment of any amount which the tribunal is satisfied that, by reason of exceptional circumstances, it would be unreasonable for that person to pay”.

23. By contrast the amount payable by virtue of an RRO in favour of an occupier is, under section 74(5) to be “such amount as the tribunal considers reasonable in the circumstances”.

Subsection (6) then requires the tribunal to take into account for this purpose “in particular” the five matters that it sets out. They include the conduct and financial circumstances of the landlord (matter (d)) and the conduct of the occupier (matter (e)). (Puzzlingly (e) is prefaced by the words “where the application is made by an occupier”: but under sections 73(5) applications can only be made by a local housing authority or an occupier, and under section 74(5) that subsection and subsection (6) apply in cases where the application is one that is not made by a local housing authority. All the subsection (6) matters, it would appear, thus apply, and apply only, where the application is by an occupier.)

24. The contrast between what the RPT may or must order in respect of the two types of RRO is marked. In the case of an application by a housing authority it is obliged to make an order for the full amount of housing benefit unless by reason of exceptional circumstances this would be unreasonable. In the case of an application by an occupier, on the other hand, the amount to be repaid under the RRO is the amount that is reasonable in the circumstances, and the circumstances include the conduct and means of the landlord and the conduct of the tenant. The underlying purpose of the provisions as they relate to housing authorities is reasonably clear. As a matter of public policy it is considered unacceptable that a landlord should receive any of the proceeds of housing benefit when he has failed to obtain an HMO licence, so that he is required to repay the full amount that he has received. No such clarity attaches to the provisions as they relate to an occupier. Moreover subsections (3) and (4) of section 73 are to be noted. Subsection (3) disapplies any rule of law that might make the payment of rent or any other provision of a tenancy or licence invalid or unenforceable by reason of illegality; and subsection (4) goes on to provide that amounts paid as rent may be recovered under the RRO provisions. Those provisions could have a purely mechanical purpose – to enable the RRO provisions to operate free from rules of law relating to contracts tainted by illegality – or they could suggest that the purpose of occupier RROs is to produce some “fair” substitute for the effect of those rules, or they may have some other or additional purpose.

25. The purpose of occupier RROs remains obscure after considering the provisions of sections 73 and 74, and in my judgment it is appropriate to seek assistance in resolving the ambiguity in section 74(5) by applying the rule in *Pepper v Hart* [1993] AC 593. It appears that the provisions were inserted by Government amendment on the Third Reading of the Bill in the House of Lords; and HL Hansard 3 Nov 04 vol 666 col 329 records the Government spokesman, Lord Bassam of Brighton, as explaining them as follows:

“The amendments recognise the widespread concern expressed about the practical application of the provisions, in particular, the absence of clear decision-making procedures and responsibilities, as well as the potential retaliatory action by landlords for occupants withholding rent. We all agreed on Report that those potential problems could be solved by amending existing provisions to produce the effect that rent is payable but that a landlord who receives rent while operating an unlicensed HMO or other rented property could be liable to a penalty equivalent to any rent received during the period of the offence.

The residential property tribunal will be given the power to make a rent repayment order, imposing that penalty where it determines that an offence has been committed under Clauses 72(1) or 93(1)... A local housing authority will be entitled to make an application for such an order where it discovers that a landlord or managing agent is committing an offence and where housing benefit has been paid to that landlord during any period when such an offence was being committed. Such applications would not be restricted to cases where prosecution had been brought under Clause 72 or 93, but could also take place where the RPT was satisfied that an offence had been committed.

Tenants would also be permitted to make an application to the RPT for a rent repayment order where an order had already been granted to the local housing authority in respect of the same property, or where the landlord had been convicted of the offence. Such rent will be recoverable as an ordinary civil debt. The sanction proposed will help prevent a landlord from profiting from renting properties illegally, including cases where that would be at the expense of the public purse through housing benefit. It will also provide a civil sanction through the residential property tribunal for cases where potentially slow and resource-intensive action through the courts is impractical or not considered appropriate.”

26. It can be concluded from this statement that the occupier RRO provisions have a number of purposes – to enable a penalty in the form of a civil sanction to be imposed in addition to the fine payable for the criminal offence of operating an unlicensed HMO; to help prevent a landlord from profiting from renting properties illegally; and to resolve the problems arising from the withholding of rent by tenants (sc on the basis of illegality). What amount it would be “reasonable in the circumstances” for an RPT to order to be repaid under an RRO must be considered in relation to these purposes. The following points, in my view, should be borne in mind:

(i) Since the RRO provisions are in their nature penal, an RPT must be satisfied on every matter that is determinative of the tenant's entitlement to an order or its amount. It must be satisfied of the matters set out in section 73(8), and it must take into account the particular matters set out in section 74(6) as well as any other matters that may be material.

(ii) Since the landlord is liable to suffer two penalties – a fine and an RRO – it will be necessary to take this into account. An RPT should have regard to the total amount that the landlord would have to pay by way of a fine and under an RRO. There may be a tension between the imposition of a fine and the making of an RRO. The maximum fine is £20,000, and this shows the seriousness with which Parliament regards the offence. In the present case the magistrates imposed a fine of £525, which would suggest that they did not consider this particular offence to be other than minor. The RPT, however, is entitled to take a different view about the seriousness of operating the HMO without a licence.

(iii) There is no presumption that the RRO should be for the total amount received by the landlord during the relevant period unless there are good reasons why it should not be. The RPT must take an overall view of the circumstances in determining what amount would be reasonable.

(iv) Paragraph (a) of section 74(6) requires the RPT to take into account the total amount of rent received during any period during which it appears to it that the offence was being committed. It needs to do that because the RRO can only be made in respect of rent received during that period. It is limited to the period of 12 months ending with the date of the occupier's application (see section 74(8)). But the RPT ought also to have regard to the total length of time during which the offence was being committed, because this bears upon the seriousness of the offence.

(v) The fact that the tenant will have had the benefit of occupying the premises during the relevant period is not, in my judgment a material consideration or, if it is material, one to which any significant weight should be attached. This is because it is of the essence of an occupier's RRO that the rent should be repaid in respect of a period of his occupation. While the tenant might be viewed as the fortunate beneficiary of the sanction that is imposed on the landlord, it is only misconduct on his part (see paragraph(e)) that would in my view justify the reduction of a repayment amount that was otherwise reasonable.

(vi) Payments made as part of the rent for utility services count as part of the periodical payments in respect of which an RRO may be made. But since the landlord will not himself have benefited from these, it would only be in the most serious case that they should be included in the RRO.

(vii) Paragraph (d) requires the RPT to take account of the conduct and financial circumstances of the landlord. The circumstances in which the offence was committed are always likely to be material. A deliberate flouting of the requirement to register will obviously merit a larger RRO than instances of inadvertence – although all HMO landlords ought to know the law. A landlord who is engaged professionally in letting is likely to be more harshly dealt with than the non-professional.

13. Judge Edward Cousins considered the provisions further in *Fallon v Wilson* [2014] UKUT 0300. He followed the principles in *Parker v Waller* but also criticised the Tribunal for failing to exercise its discretion or to consider what payment was reasonable in the circumstances.

### **Findings**

14. The Tribunal is satisfied that the conditions in s.73(8) of the Housing Act 2004 have been met:

- (a) The application has been made by occupiers of an HMO.
- (b) The Respondent is the appropriate person, being the Applicants' landlord, and it has been convicted of an offence under s.72(1), namely being in control of and managing an unlicensed HMO.
- (c) The Applicants paid rent to the Respondent during the period when the HMO should have been licensed but was not.
- (d) The application was made within 3 months of the Respondent's conviction, well within the 12-month time limit.

15. Under s.74(8)(b), the rent which may be subject to a RRO is limited to that paid within the 12 months ending with the application to the Tribunal. Since the application was made on 16<sup>th</sup> November 2017, the Tribunal may only go back to 16<sup>th</sup> November 2016.

16. The Tribunal asked the Applicants to calculate the amount of rent paid by each of them after 16<sup>th</sup> November 2016. At least some of them withheld their last month's rent in order to recover the value of their security deposit. The following figures took this into account:

- |   |        |
|---|--------|
| (a) Rosie Woodward                          | £5,862 |
| (b) Alex Gambardella & Maria Assunta Rumolo | £5,362 |
| (c) Francesca Moauro & Laura Di Stefano     | £823   |



(d) Gregorio Davico	£5,118
(e) Brian Bertola	£3,537.50
(f) Davide Emili	£4,462.50

17. Ms Woodward said that the utilities were included in the rent but she had no idea what amounts were involved. The Tribunal would have considered deducting amounts for the utilities from any RRO but the failure of the Respondent to engage means that it does not have the required information.
18. Both the Respondent and Mr Hu appear to have form as landlords who do not comply with their obligations. Ms Woodward provided a newspaper report dated 18<sup>th</sup> September 2017 from Metro.co.uk stating that they had been prosecuted by Westminster City Council and fined a total between them of £214,000 for various health and safety offences, plus costs.
19. In the circumstances, the Tribunal has decided that the RROs should be for the full amount of the rent paid by the Applicants (as set out in paragraph 16 above).

**Name:** NK Nicol

**Date:** 10<sup>th</sup> May 2018

## **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.
- (8) 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.
- (9) 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.
- (10) 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).

**Section 73 Other consequences of operating unlicensed HMOs: rent repayment orders**

- (1) For the purposes of this section an HMO is an “unlicensed HMO” if–
  - (a) it is required to be licensed under this Part but is not so licensed, and
  - (b) neither of the conditions in subsection (2) is satisfied.
- (2) The conditions are–
  - (a) that a notification has been duly given in respect of the HMO under section 62(1) and that notification is still effective (as defined by section 72(8));
  - (b) that an application for a licence has been duly made in respect of the HMO under section 63 and that application is still effective (as so defined).
- (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 Chapter 4 of Part 2 of the Housing and Planning Act 2016 (in the case of an HMO in England).

(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 in Wales, 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 relevant award or awards of universal credit or 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—

- (i) one or more relevant awards of universal credit have been paid (to any person); or
- (ii) 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 an offence was being committed,

- (c) that the requirements of subsection (7) have been complied with in relation to the application.

(6A) ...

(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) If the application is made by an occupier of a part of the HMO, the tribunal must be satisfied as to the following matters–
- (a) that the appropriate person has been convicted of an offence under section 72(1) in relation to the HMO, or has been required by a rent repayment order to make a payment in respect of–
    - (i) one or more relevant awards of universal credit; or
    - (ii) housing benefit paid in connection with occupation of a part or parts of the HMO;
  - (b) that the occupier paid, to a person having control of or managing the HMO, periodical payments in respect of occupation of part 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, and
  - (c) that the application is made within the period of 12 months beginning with–
    - (i) the date of the conviction or order, or
    - (ii) if such a conviction was followed by such an order (or vice versa), the date of the later of them.
- (9) Where a local housing authority serve a notice of intended proceedings on any person under this section, they must ensure–
- (a) that a copy of the notice is received by the department of the authority responsible for administering the housing benefit to which the proceedings would relate; and
  - (b) that that department is subsequently kept informed of any matters relating to the proceedings that are likely to be of interest to it in connection with the administration of housing benefit.
- (10) In this section–

“the appropriate person” , in relation to any payment of universal credit or 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 occupation;

“housing benefit” means housing benefit provided by virtue of a scheme under section 123 of the Social Security Contributions and Benefits Act 1992 (c. 4);

“occupier”, in relation to any periodical payment, means a person who was an occupier at the time of the payment, whether under a tenancy or licence or otherwise (and “occupation” has a corresponding meaning);

“periodical payments” means—

- (a) payments 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, as referred to in paragraph 3 of Schedule 4 to the Universal Credit Regulations 2013 (“relevant payments”) (S.I. 2013/376) or any corresponding provision replacing that paragraph; and
- (b) periodical payments in respect of which housing benefit may be paid by virtue of regulation 12 of the Housing Benefit Regulations 2006 or any corresponding provision replacing that regulation;

(11) For the purposes of this section an amount which—

- (a) is not actually paid by an occupier but is used by him to discharge the whole or part of his liability in respect of a periodical payment (for example, by offsetting the amount against any such liability), and
- (b) is not an amount of universal credit or housing benefit,

is to be regarded as an amount paid by the occupier in respect of that periodical payment.

#### **Section 74 Further provisions 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) one or more relevant awards of universal credit (as defined in section 73(6A)) were paid (whether or not to the appropriate person), 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 in question,

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) ...

(3) ...

(4) ...

- (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 relevant awards of universal credit 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 relevant awards of universal credit, housing benefit or periodical payments payable by occupiers;

(b) in relation to an application by an occupier, periodical payments payable by the occupier,

(i) where one or more relevant awards of universal credit were payable during the period in question, the amount mentioned in subsection (2A)(a) in respect of the award or awards that related to the occupation of the part of the HMO occupied by him during that period; or

(ii) any amount of housing benefit payable in respect of the 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) ...

(10) ...

(11)...

(12) ...

(13) ...

(14) Any amount payable to an occupier by virtue of a rent repayment order is recoverable by the occupier as a debt due to him from the appropriate person.

...