



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

Tribunal reference : **BIR/00CQ/HMF/2019/0001**

Property : **267 St George's Road, Coventry, CV1
2DG**

Applicant : **Mr. Chung Pui Chan**

Representative : **In person**

Respondents : **1. Mr. Harminder Singh Bilkhu &
2. Mrs Kawaljit Bilkhu**

Representative : **In person**

Tribunal members : **Judge A McNamara and Mr A Lavender**

Date of decision : **17 April 2020**

DECISION

Introduction/brief procedural history

1. By an application dated 8 July 2019, the Applicant sought a rent repayment order as a tenant of 267 St George's Road, Coventry, CV1 2DG ("the Property"). The legislation applicable to this Application is found in the Housing Act 2004 (the "2004 Act") and the Housing and Planning Act 2016 (the "2016 Act"). The relevant provisions are attached to this decision at Annex 1.
2. The Application was opposed in a statement of case dated 25 September 2019.
3. When directions were issued on 10 July 2019, they provided, amongst other things, that this case was originally to be the subject of a paper determination on 4 October 2019. Upon re-consideration of the documents, the Tribunal took the view that an oral hearing was necessary and so the case was listed on 19 December 2019 for that purpose.
4. Accordingly, the matter proceeded by way of oral hearing and the Tribunal heard evidence from the parties.
5. At the hearing, the First Respondent asserted that, although he was described as the 'Landlord' in the tenancy agreement in this case, the freehold owner of the property was in fact his wife. As a result, the Tribunal directed she should be identified as the Second Respondent and given an opportunity to make written representations in response to the Application. The Tribunal's directions dated 21 January 2020 refer.
6. On 17 February 2020, the Tribunal received written representations from the Second Respondent, dated 12 February 2020: she too opposes the Application.
7. The Tribunal considered the Second Respondent's written representations in tandem with the written and oral representations already received. The Second Respondent accepts that she is the legal owner of the property and that the property is owned subject to mortgage.

The nature of the application & the response to it

8. The Application relates to what was said to be a house in multiple occupation (HMO) at 267 Georges Road, Coventry, CV1 2DG (the premises).
9. The Applicant was a student at the material time and he and his soon to be house mates entered into an assured shorthold tenancy agreement with the First Respondent dated 14 December 2017; the tenancy was to commence on 1 July 2018 and was for a period of 12 months.
10. The tenancy states that the rent was £1,775.00 per calendar month, an email from Mr Bilkhu dated the 11th December 2017 stated that July and August were half rent, with September 2018 until 30th June 2019 at full rent. In addition, there was a security deposit taken in the amount of £1,775.00. The applicant paid £4,482.50 in rent during the term of the tenancy (equivalent to 11 months at full rent £407.50 a month).
11. On page 2 (of 9) of the tenancy there are four entries at §3 'Name(s) of Tenants'. At line three of that entry are two names: AK and KB. Therefore, it is clear that there were going to be five occupants who were subject to, if not all signatories to, the mutual obligations under the lease. KB did not sign the tenancy.
12. It was said that the Property was unlicensed from 1st July 2018. An email from the Assistant Property Licensing Officer of Coventry City Council ("the Authority") to the Applicant dated 15th May 2019, confirming that:

"If the property is tenanted by 5 or more people who are sharing amenities, then yes it requires a mandatory HMO Licence. According to our records, no HMO application has been submitted for 267 St Georges Road, Coventry, CV1 2DG"
13. In the light of that, it is the Applicant's case that the property was rented by 5 unrelated persons forming 4 households and meets the criteria which require it to be licensed as stated in the Licensing of Houses in Multiple Occupation

(Prescribed Description) Order 2018 and ought to have been licensed. Consequently, the Respondents have committed an offence under section 72(1) of the Housing Act 2004 (the "2004 Act") of being a person having control of or managing a House in Multiple Occupation (an HMO) which is required to be licensed under Part 2 of the 2004 Act (see section 61(1)) but is not so licensed.

14. The Respondent's accept that no licence was obtained for the period of the tenancy in question. They pray in aid that the new regime introduced in October 2018 was confusing; they had tried to contact the Council on several occasions to seek clarification but had been unsuccessful. They had not operated the property as a licensable HMO before; and nor have they since.

The Law

15. Section 41 Housing and Planning Act 2016 provides as follows:

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...

16. The 'offence' referred to above is one contrary to section 72 Housing Act 2004:

72. Offences in relation to licensing of HMOs

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) of the 2004 Act but is not so licensed contrary to section 72(1) of the 2004 Act which is an offence under section 40(3) of the 2016 Act.....

(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),

17. The definition of a licensable HMO changed during the lifetime of the tenancy agreement in this case and is derived from the following provisions.
18. At the date of signing and commencement a licensable HMO was designated as follows:

The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006

(2) The conditions referred to in paragraph (1) are that—

- (a) the HMO or any part of it comprises three storeys or more;*
- (b) it is occupied by five or more persons; and*
- (c) it is occupied by persons living in two or more single households.*

19. From 1 October 2018, the following, revised, definition came into effect:

The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018

4. An HMO is of a prescribed description for the purpose of section 55(2)(a) of the Act if it—

- (a) is occupied by five or more persons;*
- (b) is occupied by persons living in two or more separate households...*

Decision

The Landlord

20. The Tribunal considered a preliminary issue which had been raised, namely the identification of the Landlord. Under the 2016 Act a Rent Repayment Order can only be made against a landlord who, in this case, has committed an offence under section 72(1) of the 2004 Act. Therefore, before making any determination with regard to a Rent Repayment Order the Tribunal must decide who is the Landlord and whether the Landlord has committed an offence under section 72(1) of the 2016 Act.
21. As stated, Mr H S Bilkhu was referred to as the Landlord on the Tenancy Agreement. However, the registered proprietor on Land Registry Entry Title

Number MM71916 is Mrs Kawaljit Bilkhu of 114 Leicester Lane, Leamington Spa CV32 7HH. The title also shows that there is a charge to the benefit of “The Mortgage Works”

22. Mr Bilkhu confirmed in his evidence that: *Mrs Kawaljit Bilkhu is the registered proprietor of the Property...since June 2016.*
23. *HSB Accommodation manages the Property including collecting the rent on behalf of Mrs Kawaljit Bilkhu and take a commission for the same.*
24. There has been no suggestion by the Respondents that *HSB Accommodation* or any other person Leases the Property from Mrs Kawaljit Bilkhu. The Tribunal finds that the Property is let to the Applicant by Mrs Kawaljit Bilkhu, the registered proprietor, through its agent *HSB Accommodation*.
25. The Tribunal finds support for its finding in the Upper Tribunal Case of *Goldsbrough & Swart v CA Property Management Ltd & Gardner* [2019] UKUT 311 (LC) which concerned the identification of the landlord as the respondent in an application for a Rent Repayment Order. In that case the managing agent (CAPM) had been granted a lease by the registered proprietors (Mr and Mrs Gardener). Judge Elizabeth Cooke held that the managing agent was the immediate landlord and the registered proprietor the head landlord. Both were landlords. It was for the applicants to prove which had committed the offence which made them liable to a rent repayment order.
26. In the course of the decision reference was made by the applicant to paragraph 3.8 of *Rent Repayment Orders under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities published by the Department for Communities and Local Government* which stated that a managing agent could not be a landlord. Judge Cooke observed at paragraph 31, that if the Guidance meant that a managing agent that does not have a lease of the property cannot be a landlord, then it was correct.

27. Therefore, the Tribunal finds that Mrs Kawaljit Bilkhu is the Landlord. She is also a Respondent and a person against whom the order should be made, hereinafter referred to as “the Respondent Landlord”. *HSB Accommodation* is referred to as the Landlord’s “Agent”.

The Offence

28. 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.
29. The Tribunal then considered whether it was satisfied beyond reasonable doubt that an offence had been committed to which the Rent Repayment Order provisions applied. In this case, whether the Respondent Landlord, had committed an offence under section 72(1) of the 2004 Act.
30. To commit the offence and be liable for a Rent Repayment Order the Respondent Landlord must, as landlord, be a person having control of or managing a House in Multiple Occupation which is required to be licensed but is not so licensed.
31. The Tribunal referred to Section 263 of the 2004 Act and found that the Respondent Landlord came within the definition of a “person having control” of a House in Multiple Occupation.
32. Although both Respondents sought to characterise the occupation of KB as one that was inconvenient to her studies; and that, when the property was inspected by the Respondents, there were no signs that a woman occupied the property, the Tribunal finds that KB was a tenant.
33. In that regard the Tribunal prefers the evidence of the Applicant; after all, he resided at the property for the whole of the period of the tenancy. Accordingly, KB’s occupation of the premises rendered the property a licensable HMO since she was the fifth tenant. Irrespective of the absence of a signature, from a

contractual perspective that means that the liability to pay rent to the First and/or Second Respondent was joint and several across all five identified as tenants. Whatever else may be said about KB by the Respondents, in the event of any default of rent, either by her or any of the other four, she may have been pursued for non-payment, or served with notice seeking possession under Ground 8 Housing Act 1988. The Tribunal doubts that the Respondents would have been so circumspect in those circumstances.

34. Further, based upon the email from Coventry City Council to the Applicant, dated 15th May 2019, and Mr Bilkhu's admission in his statement that it was around the end of May 2019 that it came to his attention that an HMO Licence was required, the Tribunal is satisfied beyond reasonable doubt that an offence under section 72(1) has been committed.
35. The Tribunal then considered whether the defence in section 72(5) to the offence under section 72(1) of the 2004 Act applied. This being that the Respondent had reasonable excuse for having control of or managing the Property as an HMO notwithstanding that it was unlicensed. Based on the evidence, the Tribunal is not satisfied that the Respondent had a reasonable excuse.
36. Pursuant to section 44 of the 2016 Act the Tribunal finds that the Respondent Landlord has committed the offence under section 72(1) of the 2004 Act for the period 1st July 2018 to 30th June 2019, during which time the Applicant was residing at the premises as a tenant and a Rent Repayment Order may be made.

The Application

37. The Tribunal considered the validity of the Application for a Rent Repayment Order and the period for which it was claimed.
38. Firstly, the Tribunal found that the Application was valid in that the alleged offence had occurred between 1st July 2018 to 30th June 2019 and the

Application was received on 10th July 2019, which was within 12 months of the offence taking place under section 41 of the 2016 Act.

39. Secondly, the Tribunal found that the period for which the Applicant could claim a Rent Repayment Order was from 1st July 2018 to 30th June 2019, when the Tenancy expired, and the Applicant left the Property.
40. Thirdly, the Tribunal found that no notice of intended proceedings had been served by the local housing authority on the Respondent Landlord under section 42 Housing and Planning Act 2016. It followed that neither the Respondent Landlord nor its Agent had been convicted of an offence under section 72(1) of the 2004 Act, nor had the Authority imposed a financial penalty.

The Order

41. The Tribunal considered the amount of the Rent Repayment Order.
42. The Tribunal finds that the amount of rent paid by the Applicant during the relevant period was £4,482.50.
43. No evidence was adduced that during this period the Applicant was in receipt of Universal Credit.
44. In accordance with section 44(4) of the 2016 Act the following must be considered:
 - a) The conduct of the landlord and the tenant,
 - b) The financial circumstances of the landlord,
 - c) Whether the landlord has at any time be convicted of an offence to which the specific legislation applies.
45. Firstly, the Tribunal considered the financial circumstances of the Landlord Respondent and secondly the conduct of the parties.

Financial Circumstances of the Landlord

46. The Tribunal was of the opinion that in determining the amount of the Rent Repayment Order it should consider both the financial circumstances of the Respondent Landlord specifically in relation to the Property and generally.
47. The Tribunal had regard to the Upper Tribunal decision of *Parker v Waller and Others* [2012] UKUT 301 (LC). In that case it was held the amount of the Rent Repayment Order should be based upon the landlord's profit from renting the Property (removing the landlord's financial benefit). Therefore, the costs incurred in respect of the Property should be taken into account.
48. While it was evident that there was a charge secured against the property to the benefit of the Mortgage Works, Mr Bilkhu indicated that the monthly mortgage payment was £873 a month (rental income £1,775.00 a month), but was unable to confirm whether the mortgage was on an interest only or capital payment basis.
49. In addition, Mr Bilkhu indicated that between him and his wife they owned approximately 10 properties, two of which were licensed HMOs. Despite both parties having been given the opportunity to provide supporting information in relation to their financial position, no further information or documentary evidence was provided.

Conduct of the Parties & Previous Convictions of Landlord

50. The Tribunal then considered how much of the profit should be repaid.
51. The Tribunal was of the view that Parliament required tribunals to differentiate between offending landlords when determining the amount of rent to be repaid and to grade the repayment order accordingly. On this basis a higher award is to be made against those landlords who fail to obtain a licence to avoid the scrutiny of the local authority and flagrantly disregard the safety, health and welfare of their tenants. In contrast lower repayment order might be made

against those landlords where there are mitigating circumstances, and whose HMOs meet appropriate standards, notwithstanding that they have not complied with the administrative requirements intended to safeguard tenants.

52. The Tribunal formed this view from:

a) The legislation which requires tribunals to take into account, in particular (therefore not exclusively), the conduct of the landlord and the tenant, and the financial circumstances of the landlord when making a determination.

b) The purpose of the Orders as set out in Government Guidance as being:
Punishment of the offender,
Deter the offender from repeating the offence,
Dissuade others from committing similar offences,
Remove any financial benefit from the offender as a result of committing the offence.

53. This opinion is reinforced by the Upper Tribunal decision of *Parker v Waller and Others* [2012] UKUT 301 (LC) where it was said that there is no presumption or starting point that 100% refund of payments should be made, nor is the benefit obtained by the tenant in having had accommodation a material consideration. However, the length of time that the offence has been committed and the degree of culpability of the landlord are relevant factors.

54. In considering the conduct of the Landlord Respondent the Tribunal found no evidence that the Respondent Landlord or its Agent had at any time been convicted of an offence to which the specific legislation applies in the past or in relation to this offence.

55. However, the Applicants stated in their evidence that the Respondent Landlord had failed to respond to some minor disrepair issues including a defective fridge. The Tribunal took this conduct into account, although it was minor in nature.

56. The Tribunal also considered the fact that, based on the number of properties in their collective ownership / control, the Respondents are professional landlords and property managers, respectively. Therefore, the expectation is that they would be compliant with the legislation and respond appropriately.
57. The Tribunal also found that the Council did not apply any penalties against the Respondent Landlord or its Agent for failure to obtain a licence, which supported their submission that the non-compliance was an oversight and not wilful.
58. The Tribunal found that there was no evidence to indicate that the Applicant had not acted other than reasonably in all the circumstances.
59. Having regard to all the circumstances, the Tribunal determines that a rent repayment order for £1494.17 should be made, equating to approximately a third of the rental profit. This sum is to be paid within 48 days of this Order.

Appeal

60. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the 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 is sent to the parties

61. 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.

62. 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.

63. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

Judge Andrew McNamara

Mr. Andrew Lavender

17 April 2020.

ANNEX 1 – THE LAW

1. The relevant provisions regarding the offence are in Chapter 5 Part 2 Section 72 of the Housing Act 2004 (2004 Act) as follows:

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).

2. The relevant provisions regarding the Rent Repayment Orders are in Chapter 4 sections 40, 41, 43 and 44 of the Housing Act 2016 (2016 Act) as follows:

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.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
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 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.

4. **Rule 13 of the Tribunal procedure (First-tier Tribunal) (Property Chamber) Rules 13 (2)** states:

(2) *The tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.*

(3) *The tribunal may make an order under this rule on an application or on its own initiative.*