FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	CHI/00HB/HMF/2021/0012
Property:	201 Easton Road, Bristol, BS5 0EH
Applicant:	Federico Walfisch Arroyo
Representative:	In Person
Respondent:	M G Properties (Bristol) Limited
Representative:	Mrs I Walters
Type of Application:	For Rent Repayment Order Sections 40, 41, 42, 43 and 45 of the Housing Act 2004 ("the Act")
Tribunal Members:	Judge A Cresswell (Chairman) Mr B Bourne MRICS Mr E Shaylor MCIEH
Date and venue of Hearing:	23 July 2021 by Video
Date of Decision:	29 July 2021

DECISION

The Application

1. The Respondent is the owner of the Property, which was let to three tenants not all of the same household, ie not all of the same family or partners, who shared amenities. The Property was, therefore, required to have an House in Multiple Occupation ("HMO") licence being within an area designated for Additional Licensing under Part 2, s56(b) of Housing Act 2004, but did not do so. The Applicant has applied for a rent repayment order ("RRO") under section 41 of the Housing and Planning Act 2016 ("the Act").

Summary Decision

2. The Respondent is ordered to repay to the Applicant the sum of £1,271.36.

Directions

3. Directions were issued on 2 June 2021 and 21 June 2021. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.
4. The directions provided for the matter to be heard on the basis of an oral hearing, and for any statements and documents upon which the parties intended to rely to be provided to the Tribunal
5. This decision is made in the light of the documentation submitted in response to those directions and the evidence and submissions made at the hearing. Evidence was given to the hearing by the Applicant (assisted by a Spanish-speaking interpreter) and by Mrs Walters. At the end of the hearing, the Applicant and Mrs Walters told the Tribunal that they had had an opportunity to say all that they wished and had nothing further to add.

The Law

6. Section 41 of the Housing and Planning Act 2016 provides that a tenant may apply to the First-tier Tribunal (FtT) for a RRO against a landlord who has committed an offence to which the 2016 Act applies. The 2016 Act applies to an

offence committed under section 72(1) of the Housing Act 2004 (section 40(3) of the 2016 Act).

7. Section 43 provides that the FtT may make a RRO if satisfied, beyond reasonable doubt, that the landlord has committed an offence to which the 2016 Act applies.

8. Section 44 of the 2016 Act provides for how the RRO is to be calculated. In relation to an offence under Section 72(1) the period to which a RRO relates is a period, not exceeding 12 months, during which the landlord was committing the offence. The amount that the landlord may be required to pay in respect of a period must not exceed the rent paid in respect of that period, less any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period (Section 44(3)).

9. By section 44(4) in determining the amount, the Tribunal had 'in particular' to take account of the following factors: (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.

   The use of the words 'in particular' suggests that these are not the only considerations the tribunal is to take into account.

10. **Mohamed and Lahrie v London Borough of Waltham Forest** (2020) EWHC 1083 (Admin): 39. "*In practical terms it was common ground that in order to prove the offence under section 72(1) of the 2004 Act the prosecution will need to make the relevant tribunal sure that: (1) the relevant defendant had control of or managed, as defined in section 263 of the 2004 Act; (2) a HMO which was required to be licensed, pursuant to sections 55 and 61 of the 2004 Act; and (3) it was not so licensed.*"

    48. "*For all these reasons we find that the prosecution is not required to prove that the relevant defendant knew that he had control of or managed a property which was a HMO, which therefore was required to be licensed. As noted above the absence of such knowledge may be relevant to the defence of reasonable excuse.*"

11. Section 263 Housing Act 2004:

    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.

12. **Thurrock Council v Daoudi** [2020] UKUT 209 (LC), **I R Management Services Limited v Salford Council** *[2020] UKUT 81(LC)* and **Nicholas Sutton (1) Faiths' Lane Apartments Limited (in administration) (2) v Norwich City Council** *[2020] UKUT 90(LC)* which dealt with the question of reasonable excuse as a defence to the imposition of financial penalties under

section 249A of the Housing Act 2004. The decisions have equal application to the corresponding situation under RROs when the defence of reasonable excuse is pleaded. The principles applied by the above authorities:

a) The proper construction of section 72(1) of the 2004 Act is clear. There is no justification for ignoring the separation of the elements of the Offence and the defence of reasonable excuse under section 95(4).

b) The offence of failing to comply with section 72(1) is one of strict liability subject only to the statutory defence of reasonable excuse.

c) The elements of the offence are set out comprehensively in section 72(1). Those elements do not refer to the absence of reasonable excuse which therefore does not form an ingredient of the offence, and is not one of the matters which must be established by the Tenant.

d) The burden of proving a reasonable excuse falls on the Landlord, and that it need only be established on the balance of probabilities.

e) The burden does not place excessive difficulties on the Landlord to establish a reasonable excuse. In this case the Landlord relied on the fact that he did not know the property required to be licensed. Only the Landlord can give evidence of his state of knowledge at the time. The Tenant, on the other hand, has no means of knowing the state of knowledge of the Landlord. It is very difficult for the Tenant to disprove a negative.

f) Whether an excuse is reasonable or not is an objective question for the Tribunal to decide. Lack of knowledge or belief could be a relevant factor for a Tribunal to consider whether the Landlord had a reasonable excuse for the offence of no licence. If lack of knowledge is relied on it must be an honest belief (subjective test). Additionally, there have to be reasonable grounds for the holding of that belief (objective).

g) In order for lack of knowledge to constitute a reasonable excuse as a defence to the offence of having no licence it must refer to the facts

which caused the property to be licensed under section 72(1) of the Act. Ignorance of the law does not constitute a reasonable excuse.

h) Where the Landlord is unrepresented the Tribunal should consider the defence of reasonable excuse even if it is not specifically raised.

13. **BABU RATHINAPANDI VADAMALAYAN v ELIZABETH STEWART & ORS** [2020] UKUT 183 (LC): The Upper Tribunal clarified the correct approach to the calculation of a rent repayment order under the Housing and Planning Act 2016 s.44 where a landlord did not hold a licence to manage a house in multiple occupation.

The obvious starting point was the rent for the relevant period of up to 12 months. The rent repayment order was no longer tempered by a requirement of reasonableness, as it had been under the Housing Act 2004. It was not possible to find any support in s.44 of the 2016 Act for limiting the rent repayment order to the landlord's profits; that principle should no longer be applied, *Parker v Waller [2012] UKUT 301 (LC), [2013] J.P.L. 568, [2012] 11 WLUK 747* and *Fallon v Wilson [2014] UKUT 300 (LC), [2014] 7 WLUK 37* not followed. That meant that it was not appropriate to calculate a rent repayment order by deducting from the rent everything the landlord had spent on the property during the relevant period. That expenditure would have enhanced the landlord's own property and enabled him to charge rent for it.

Much of the expenditure would have been incurred in meeting the landlord's obligations under the lease. The tenants will typically be entitled to have the structure of the property kept in repair and to have the property kept free of damp and pests. Often the tenancy will include a fridge, a cooker and so on. there was no reason why the landlord's costs in meeting his obligations should be set off against the cost of complying with a rent repayment order.

The only basis for deduction was s.44 itself.

There might be cases where the landlord's good conduct or financial hardship justified an order of less than the maximum.

In addition, there might be a case for deduction where the landlord paid for utilities, as those services were provided to the tenant by third parties and consumed at a rate chosen by the tenant. In paying for utilities the landlord was not maintaining or enhancing his own property.

Fines or financial penalties should not be deducted, given Parliament's obvious intention that the landlord should be liable both (a) to pay a fine or civil penalty and (b) to make a repayment of rent (see paras 12-19 of judgment).
The arithmetical approach of adding up the landlord's expenses and deducting them from the rent, with a view to ensuring that he repay only his profit, is not appropriate and not in accordance with the law.

14. Following **Vadamalayan**, the proper approach is to start with the maximum amount, then decide what weight to be given to the findings in relation the factors identified in section 44 and what deductions if any should be made to the maximum amount. The preferred approach is to express the final order in terms of a percentage of the maximum amount.

15. In **Ficcara v James** [2021] UKUT 38 (LC) the Deputy President said this:

"49... the Tribunal's decision in Vadamalayan ... rejected what, under the 2004 Act, had become the convention of limiting the amount payable under a rent repayment order to the amount of the landlord's profit from letting the property during the relevant period. The Tribunal made clear at [14] that that principle should no longer be applied. In doing so it described the rent paid by the tenant as "the obvious starting point" for the repayment order and indeed as the only available starting point.

50. The concept of a "starting point" is familiar in criminal sentencing practice, but since the rent paid is also the maximum which may be ordered the difficulty with treating it as a starting point is that it may leave little room for the matters which section 44(4) obliges the FTT to take into account, and which Parliament clearly intended should play an important role. A full assessment of the FTT's discretion as to the amount to be repaid ought also to take account of section 46(1). Where the landlord has been convicted, other than of a licensing offence, in the absence of exceptional circumstances the amount to be repaid is to be the maximum that the Tribunal has power to order, disregarding subsection (4) of section 44 or section 45 .

51. It has not been necessary or possible in this appeal to consider whether, in the absence of aggravating or mitigating factors, the direction in section 44(2) that the amount to be repaid must "relate" to the rent paid during the relevant

period should be understood as meaning that the amount must "equate" to that rent. That issue must await a future appeal. Meanwhile Vadamalayan should not be treated as the last word on the exercise of discretion which section 44 clearly requires; neither party was represented in that case and the Tribunal's main focus was on clearing away the redundant notion that the landlord's profit represented a ceiling on the amount of the repayment."

16. In **Awad v Hooley** (2021) UKUT 0055 (LC), the Tribunal observed that the circumstances of that case are a good example of why conduct within the landlord and tenant relationship is relevant to quantification:

    a. "[I]t would offend any sense of justice for a tenant to be in persistent arrears of rent over an extended period and then to choose the one period where she did make some regular payments – albeit never actually clearing the arrears – and be awarded a repayment of all or most of what she paid in that period. That default, together with the respondent's kindness and the respondent's financial circumstances, led the FTT to make a 75% reduction in the maximum amount payable, and I see no reason to characterise any of those considerations as irrelevant or the decision as falling outside the range of reasonable orders that the FTT could have made."

17. **Awad v Hooley** demonstrates the importance of a tribunal properly exercising its considerable discretion in respect of the matters to which sections 44(4) and 45(4) of the 2016 Act direct it to have particular regard: and *it will be unusual for there to be absolutely nothing for a tribunal to take into account* under these provisions.

18. The **Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018** has the effect of extending the scope of section 55(2)(a) of the Housing Act 2004 ('the Act'), so that from 1 October 2018, mandatory licensing will no longer be limited to certain HMOs that are three or more storeys high, but will also include buildings with one or two storeys.

19. The Prescribed Description Order 2018 does not change the occupation requirement. For mandatory licensing to apply in an Additional Licensing area,

the HMO must be occupied by three or more persons, from two or more separate households.

20. A building meets the standard test (see below) if it is a building in which more than one household has living accommodation (other than self-contained flats) and:

    at least two households share a basic amenity, or

    the living accommodation is lacking in a basic amenity.

    Basic amenities are defined as a toilet, personal washing facilities or cooking facilities. The degree of sharing is not relevant and there is no requirement that all the households share those amenities.

Agreed History

21. The Tribunal first records the relevant history specifically agreed by the parties or where there is no challenge made to the case stated by the Applicant.
22. The Respondent is owner of the property.
23. The Respondent is a professional property management company owning about 40 properties and having about 80 tenants.
24. The property was occupied by 3 adults for the period 20 March 2020 to 1 April 2020 (12 days, "period one"), being the Applicant, "Elisa" and "Jakub" and 3 adults for the period 1 September 2020 to 13 December 2020 (104 days, "period two"), being the Applicant, "Elisa" and "Jorge", the Respondent being the landlord.
25. An HMO licence was required from 8 July 2019 by reason of a designation by Bristol City Council of the area where the property is situated under The Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licensing of Other Residential Accommodation (England) General Approval 2015 on 2 April 2019.
26. There was no licence for the property during periods one and two.
27. The Respondent accepts that the accommodation was occupied by the people as their only or main residence. The Respondent also accepts that it had no HMO licence during periods one and two of rental. It admits that it thereby committed an offence contrary to Section 72 of the 2004 Act. It did not argue

that it had a reasonable excuse for the commission of its acts contrary to Section 72.

28. The tenants paid for utilities.
29. The Applicant accepts that he paid £333.33 per month towards the £1,000 rent each month.
30. A fire at the property on 13 December 2020 was caused by an extension cable in the Applicant's room overheating, which caused him to leave the property.
31. He continued to pay rent until the tenancy came to an end on 1 March 2021.

The Issues Before the Tribunal

The Respondent

32. The Respondent argues that the Applicant can only recover the rental sums which he actually paid, it being apparent from his bank statements that contributions were made by the other tenants.
33. It argued also that any sums due by RRO should be reduced to take account of damage to the property caused by the fire.
34. Mrs Walters accepted that it was through ignorance that the Respondent had failed to apply for an HMO licence; the property had not been inspected at the time of the commencement of the tenancy nor had an up-to-date electrical installation inspection certificate been obtained at that time (the one in existence having been created on 29 January 2015).
35. It could be, she said, that the extension cable, the cause of the fire, had been left behind by a previous occupant. She accepted also that although she herself was not aware that Jorge had moved in, it was intended to replace Jakub as a resident and that it is quite possible that her husband (and fellow owner/director) was aware that Jorge was living in the property from September 2020.

The Applicant

36. The Applicant said that he had lost property in the fire and had paid the rent even after moving out in December 2020.

The Tribunal's Findings and Decision

37. The Tribunal is satisfied beyond a reasonable doubt that the Respondent was committing an offence under Section 72(1) of the Act during periods one and

two. This is based upon the Respondent's admission and the Tribunal's own assessment of the agreed facts detailed above.

38. In accordance with Section 44(4), the Tribunal has taken account of the conduct of the landlord and the tenant, the financial circumstances of the landlord, and whether the landlord has at any time been convicted of a relevant offence.
39. The Respondent does not seek to argue that it had financial hardship such that it could not meet the requirements of a RRO.
40. The Respondent is a professional landlord.
41. There is no evidence of any convictions for the Respondent.
42. The Respondent appears to have entered into existence as a professional landlord without doing thorough research. It was unaware of the requirement to obtain an HMO licence and failed to conduct both an internal inspection of the property prior to agreeing the lease with the Applicant on 20 March 2020 and an up-to-date electrical safety inspection.
43. An electrical safety certificate for an HMO lasted only 5 years in accordance with Regulation 6 (3) The Management of Houses in Multiple Occupation (England) Regulations 2006 (UK Statutory Instruments 2006 No. 372), which was in force when the existing certificate lapsed on 29 January 2020, this date being prior to the Electrical Safety Standards in the Private Rented Sector Regulations 2020.
44. The Applicant's room was served by a single dual socket electrical outlet. After the fire, a further outlet was added to the room, the Respondent appearing to accept that a single dual socket in a bedroom in an HMO is insufficient.
45. Accordingly, the Respondent is not without fault here.
46. The Applicant too is not without fault. Photographs of the fire damage show no less than 16 plugs within various (maybe 7) multi socket extension leads, all of which appear to have been fed from a single socket. The Applicant told the Tribunal that he had connected a music player/centre, an amplifier, a computer (he works with photographs and graphic design), monitors, 3 lamps, chargers a TV, "*everything I had in the room*".
47. Whist the Applicant said that he had left only the TV on standby when he had left the room prior to the fire and that he was unaware of any risk from the use of multiple extensions, the Tribunal has concluded that any sensible person

would have appreciated the risk of using so many items on so many interlinked multi-socket extensions from a single socket.

48. The Tribunal is aware, however, that the risk taken by the Applicant led to loss of his personal property, loss of accommodation and that he continued to pay the rent.

49. The Tribunal has concluded that the behaviour of both parties is not without criticism, but can be seen to equal out.

50. The Tribunal has weighed all of the relevant factors and concluded that the Respondent should make a full repayment of the monies paid in rent by the Applicant for periods one and two and that the other factors detailed do not lead it to a different view as to the fairness of such a determination.

51. The Tribunal has explained how it reached its decision. It has taken account of all of the factors in Section 44(4) and sought to avoid a purely mathematical approach. In the event, the result has necessarily involved the appliance of some mathematics; it is not possible to avoid using mathematics as part of the wider process of determination.

52. The Tribunal calculates that the Applicant paid the equivalent of £10.96 per day in rent, based on £333.33 per month. He therefore paid £1,271 during periods one and two (£131.52 plus £1,139.84, being 12 x £10.96 and 104 x £10.96). No deductions were made for behaviours. After taking a rounded view of all of the factors within Section 44(4), the Tribunal concluded that the proper sum for return to the Applicant by RRO was £1,271.36.

APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. Where possible you should send your application for permission to appeal by email to rpsouthern@justice.gov.uk as this will enable the First-tier Tribunal Regional Office to deal with it more efficiently.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Schedule

Housing and Planning Act 2016

Section 40

(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).....

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

	Act	Section	general description of offence
1	Criminal Law Act 1977	Section 6(1)	violence for securing entry

2	Protection from Eviction Act 1977	Section1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	Section 30(1)	failure to comply with improvement notice
4		Section 32(1)	failure to comply with prohibition order etc
5		Section 72(1)	control or management of unlicensed HMO
6		Section 95(1)	control or management of unlicensed house
7	This Act	Section 21	breach of banning order

The table described in s40(3) includes at row 5 an offence contrary to s72(1) of the Housing Act 2004 "control or management of unlicensed HMO" Section 72(1) provides: (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.

Section 41

(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

(1) The First-tier Tribunal may make a rent repayment order if it is satisfied beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applied (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

Tenant

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

(2) The amount must relate to rent paid during the period mentioned in the table:

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

The table provides that for an offence at row 5 of the table in section 40(3) the amount must relate to rent paid by the tenant in respect of the period not exceeding 12 months during which the landlord was committing the offence.

(3) The amount that the landlord may be required to pay 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.

	Act	*Section*	*general description of offence*
1	Criminal Law Act 1977	Section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	Section1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	Section 30(1)	failure to comply with improvement notice
4		Section 32(1)	failure to comply with prohibition order etc
5		Section 72(1)	control or management of unlicensed HMO
6		Section 95(1)	control or management of unlicensed house

7	This Act	Section 21	breach of banning order

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).