FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	CHI/00MR/HMF/2021/0010
Property:	8 New Road East, Copnor, Portsmouth PO2 7RR
Applicants:	Hannah Jones Georgina Jones
Representative:	Mr K Sharma of counsel for Legal Road Limited
Respondents:	Mr M J Anderson Mr J M Anderson
Representative:	In Person
Type of Application:	For Rent Repayment Orders Sections 40, 41, 42, 43 and 45 of the Housing Act 2004 ("the Act")
Tribunal Members:	Judge A Cresswell (Chairman) Mr E Shaylor MCIEH Mr K Ridgeway MRICS
Date and venue of Hearing:	30 June 2021 by Video
Date of Decision:	5 August 2021

DECISION

The Application

1. The Respondents are said to be the owner of the Property, which was let to multiple tenants. The property was required to have an HMO licence but did not do so. The Applicants have applied for a rent repayment order ("RRO") under section 41 of the Housing and Planning Act 2016 ("the Act").

Preliminary Issues

2. Mr Sharma withdrew the case against the second Respondent, Mr J M Anderson as he was not a landlord. Future references to the Respondent are to Mr Michael John Anderson, the first Respondent.

Summary Decision

3. The Respondent is ordered to repay to the Applicants the following amounts:

   To Ms Hannah Jones £513.10

   To Ms Georgina Jones £513.10

4. The Tribunal orders the reimbursement by the Respondent of fees paid by the Applicants in the total sum of £300, being £150 to each Applicant.

Directions

5. Directions were issued on 4 May 2021.
6. 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
7. This determination 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 both Applicants and both Respondents. At the end of the hearing, the parties told the Tribunal that they had had an opportunity to say all that they wished and had nothing further to add.

The Law

8. 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.

9. 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.
10. 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)).
11. 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.
12. **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.*"
13. **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.

14. **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.

15. 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.

16. 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.

17. 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."

18. 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:

"[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."

19. **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.

20. 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. \

21. The Prescribed Description Order 2018 does not change the occupation requirement. For mandatory licensing to apply, the HMO (or Flat in Multiple Occupation) must be occupied by five or more persons, from two or more separate households.

22. A building meets the standard test 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.

23. Section 254 Housing Act 2004 defines house in multiple occupation.

A building or a part of a building meets the standard test if--

(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;

(b) the living accommodation is occupied by persons who do not form a single household (see section 258);

(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);

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

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

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

24, Section 258 Housing Act 2004 defines, amongst other statuses, a single household as a family, for example a couple (whether married or not and including same-sex couples) or persons related to one another.

Agreed Facts

25, The Tribunal first records the relevant history specifically agreed by the parties.

26. The Respondent is the owner of the property.

27. The property was occupied by 6 adults for the period 1 December 2019 to 24 December 2019 (3 weeks and 3 days, "period one") and 5 adults for the period 21 January 2020 to 4 February 2020 (14 days, "period two"), the Respondent being the landlord.

28. An HMO licence was required from 1 October 2018 by reason of The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018.

29. There was no licence for the property during the period 31 October 2019 to 31 October 2020 inclusive, within which period 6 and 5 people respectively were in occupation for the two periods detailed above. The Respondent accepts that the accommodation was occupied by the people as their only or main residence, albeit that in some cases this was of short duration. The Respondent also accepts that he had no HMO licence during the period of rental. He admits that he thereby committed an offence contrary to Section 72 of the 2004 Act. He did not argue that he had a reasonable excuse for the commission of his acts contrary to Section 72.

30. Each of the Applicants paid rent in the sums of £375.60 for period one and £219.10 for period two.

31. The Respondent paid for utilities, gas, electricity, water, TV licence and broadband in the average total daily sum of £12 during the 12-month period, equating to £2.40 per person per day as an average usage based on 5 occupiers and £2 per person per day as an average based on 6 occupiers.

32. The parties agreed together that there was no positive advantage to either side in pursuing any aspect of the behaviour of the parties, given the now relatively very small sums at stake (the claims having reduced from an initial £5,856 and £5,712 respectively for the two Applicants to revised claims of 1/10th of that amount) and given the negative effect it might have.

33. The Respondent no longer wished to pursue an argument related to lack of resource, telling the Tribunal that he could afford to repay the sums likely to be awarded.

The Issues Before the Tribunal

The Applicants

34. The Applicants relied upon the case of **Vadamalayan vs Stewart** [2020] UKUT 0183(LC). They referred to the terms of their tenancy as it related to utilities.
Clause 5.3 Utilities, items 5.3.1 & 5.3.2 state the following –

a. "5.3.1 The Landlord will be responsible for the payment of gas, provided this utility is used fairly (example; Using a thermostat timer for central heating in the winter months)."

b. "5.3.2 The Landlord will be responsible for payment of the electricity bill, council tax, TV license, water wastage, water supply, high-speed internet and basic Virgin television."

c. It was agreed that the monthly rent payments by "the Applicants" were inclusive of all bills & costs associated with "the Property".

35. Payment of bills for electricity, gas, internet, Virgin television and other utilities were legal obligations under the lease of the Respondent. Similar to ensuring proper and working facilities, it was the duty of the Respondent, as a part of a pre-packaged deal, to provide the facilities for unlimited consumption (barring heating in winter) as they were getting payment for the performance of those obligations. If the law then requires him to return the rent payment which includes the payment for these obligations, he cannot offset it by arguing a deduction by distinguishing the nature of the utilities from their legal obligations.

36. The Respondent states that the Applicants were in charge of paying for the utilities such as electricity that they use. Even if the Applicants were to agree to this (which they do not), the Respondent has not provided any evidence to show what exactly was the consumption amount of utilities (e.g. electricity) that was consumed by them. There has been no evidence produced to show the electricity and other utilities specifically consumed by Applicant 1 and Applicant 2 and the quantity of utilities and electricity consumed by all the tenants living in the property. There was no individual meter or device that could track exactly how much electricity, gas, internet was consumed by the Applicant 1 and 2 in their respective rooms. Electricity charges for the period produced by Respondent 1 and 2 includes communal electricity usage such as common electric outlets, refrigerator, toaster, TV, communal lighting etc. Therefore, merely producing evidence that electricity payments became due is not enough. The Respondent has failed to show what exactly was the consumption by the Applicant 1 and 2 that they are liable to pay. Further, as mentioned in the AST, this was a legal obligation of the Respondent in any case and that too, for the benefit of the Respondent to justify the rent that he charges for his property. Such utility provision allows the landlord to obtain and charge a higher rent in the market place and this is entirely for their benefit.

37. Council Tax, TV licence, water wastage, water supply and internet charges are unlimited use payments whether any tenants lived in the property or not. Given the multiple occupation of the property without obtaining the HMO licence, these payments would have been due in any instance. A fixed monthly payment that allows unlimited internet use does not distinguish and illustrate the distinct and exact consumption of utility such as internet by one tenant or all. Further and in the alternative, payment of Council Tax, water wastage, water supply are payments that are made for the benefit of the Respondent to keep the property in good shape, marketable and in order to attract tenants for the property. This ultimately is for the monetary benefit of the Respondent 1 and 2. Therefore, these payments do not qualify for reductions.

38. The case of **Vadamalayan** specifically lays down that deductions are not the rule but an exception. They are not usually allowed. Further, a Tribunal must not allow and follow an arithmetic approach in reaching their decision on the RRO

amount. The Respondents have attempted to contravene the law by adding up the amounts that they claim are due, draw the Tribunal's attention to it and then request the Tribunal to consider the same.

39. Lastly, the Respondent has neither stated nor provided any evidence to show that he was paying for the utilities out of the rent. The Respondent, as landlord, incurred these utilities costs for their own benefit, in order to get a rental income from the property; and all were incurred in performance of the Respondent's own obligations as landlord. The Applicants as tenants were entitled to the items set out by the Respondent in their schedule of expenditure. Therefore, given the **Vadamalayan** ratio, it is submitted that there is no scope for any deductions in a rent repayment order here.

The Respondent

40. The Respondent argued that the proposals put forward by the Applicants would place him in an inferior position to a landlord who did not include the provision of utilities and left tenants to arrange provision and pay separately for it.

The Tribunal's Findings and Decision

41. 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.

42. 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.

43. There is no information to suggest any improper behaviour by the tenants.

44. There is no evidence of any convictions for the Respondent.

45. The Respondent does not seek to argue that he had financial hardship such that he could not meet the requirements of a RRO. He told the Tribunal he could afford to repay the sums in question.

46. The Tribunal noted that there were different accounts of the Respondent's conduct within the pleadings, presenting a mixed picture. The Tribunal was told by the parties that they did not wish the Tribunal to examine any circumstances of conduct on the part of the parties.

47. The offences here were of a short duration and caused by ignorance; the Respondent was a landlord on a small scale only, who wished to show remorse for his ignorance.

48. The Applicants' case had been misconceived at its outset as it appeared to be based upon there being an occupancy of 5 persons for the full 12-month period and an incorrect suggestion of a requirement for an HMO licence for a property which is occupied by 3 or more people forming 2 or more households.

49. The Tribunal has weighed all of the relevant factors detailed above and those listed in the agreed facts also detailed above, and concluded, taking a balanced view, that the Respondent should make a partial repayment of the monies paid in rent for periods one and two, being the sums paid in rent minus the sums paid out by him for utilities, broadband, TV and television licence ("the utilities") and that the other factors detailed do not lead it to a different view as to the fairness of such a determination.

50. There is little profit involved in an offence over a short period of time when mortgage payments are considered, but the Tribunal has discounted mortgage payments from its consideration as Parliament could not have meant to deal more leniently with those buying a property than those who actually own the property unencumbered, as **Vadamalayan** guides.

51. In respect of the utilities, the Applicants had sought to argue that these should not be excluded for the reasons detailed above.

52. The Tribunal finds that this is just the sort of situation envisaged by the Upper Tribunal in **Vadamalayan** for the allowance in the landlord's favour of such expenditure.

53. There is no evidence before the Tribunal of market conditions such as to suggest that the Respondent was able to achieve a higher rent by including the utilities elements and there is no evidence to support any form of profiteering on his part. He rightly argues, the Tribunal finds, that he should not be placed in a worse position to a landlord who leaves tenants to make their own arrangements, which tenants could not seek their payment for utilities to be returned to them as part of an RRO.

54. The Tribunal finds also that it is entirely appropriate to average out the daily payments for the number of users of the utilities. First of all, TV, TV licence and broadband cost the same no matter how many users and, secondly, in the absence of actual evidence of usage, it cannot be wrong to assume that all users will use equal amounts, particularly in a situation where the amounts are so small. Not to do so would always deprive the landlord of their payment when there was no individual metering.

55. 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.

56. The Tribunal calculates that each Applicant paid £594.70 during periods one and two (£375.60 and £219.10). From this the Tribunal has deducted utility payments in the sum of £81.60 (£12 per day = 6 x £2 and 5 x £2.40 per day; £2 x 24 days and £2.40 x 14 days = £81.60). No further deductions were made for behaviours, ability to pay or mortgage payments. After taking a rounded view of all of the factors within Section 44(4), the Tribunal concluded that the proper sum for return by RRO was £513.10 per Applicant.

57. The Respondent agreed that he should repay the fees paid by the Applicants for these proceedings and is ordered to do so in the total sum of £300 (£100 + £200), being £150 to each Applicant.

RIGHTS OF 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 by email to rpsouthern@justice.gov.uk 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.

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.

(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

(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

(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

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)) 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).