



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

Case reference : **LON/00AB/HMK/2020/0030**

**HMCTS code
(paper, video,
audio)** : **V: CVPREMOTE**

Property : **116 Upney Lane, Barking, Essex IG11
9LR**

Applicant : **Ms Whitney Morgan**

Representative : **In person**

Respondents : **Filrooms Limited**

Representative : **Mr Shazad Khan (director)**

Type of application : **Application for a Rent Repayment Order
under s.41 of the Housing and Planning
Act 2016**

**Tribunal
member(s)** : **Judge N Rushton QC;
Mr P Roberts DipArch RIBA**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of hearing : **22 September 2021**

Date of decision : **23 September 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because no-one requested this and all issues could be

determined in a remote hearing. The documents that the Tribunal were referred to were in a bundle submitted by the Applicant of 43 pages, together with 3 email chains (with attachments) which were forwarded by the Applicant to the tribunal during the course of the hearing, as referred to below. The tribunal also had regard to certain publicly available information about the Respondent company on the Companies House government-operated website.

Decisions of the tribunal

- (1) The tribunal is satisfied beyond reasonable doubt that the Applicant's landlord Filrooms Limited committed an offence under section 72(1) of the Housing Act 2004 ("**the 2004 Act**") in that it had control of and/or managed a house in multiple occupation ("**HMO**") which was required to be licensed under section 61 of the 2004 Act but was not so licensed, during the 11 month period from 1 August 2019 to 30 June 2020.
- (2) The tribunal makes a rent repayment order against Filrooms Limited in favour of the Applicant, Ms Whitney Morgan in the sum of £6,673.26.
- (3) The tribunal makes an order on its own initiative under rules 13(2) and (3) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that Filrooms Limited shall reimburse the application fee of £100 and the hearing fee of £200 paid by Ms Morgan, within 14 days of the date this Decision is received by the parties.
- (4) The tribunal makes the further determinations as set out under the various headings in this Decision.

The application

1. The Applicant, Ms Whitney Morgan, issued an application on 6 August 2020 for a rent repayment order ("**RRO**") under s.41(1) of the Housing and Planning Act 2016 ("**the 2016 Act**") against the Respondent, Filrooms Limited ("**Filrooms**"). The application concerns the property known as 116 Upney Lane, Barking, London IG11 9LR ("**the Property**").
2. Directions were issued by Judge Hamilton-Farey on 29 March 2021. Ms Morgan did not originally comply with the direction to file and serve a bundle for the hearing by 20 May 2021. Consequently on 9 July 2021 Judge Vance cancelled the hearing originally listed for 23 July 2021 and ordered that unless Ms Morgan provided a hearing bundle to the tribunal and Filrooms by 26 July 2021, her application would be

automatically struck out. Ms Morgan complied with that order, so her application was relisted to be heard on 22 September 2021.

3. Filrooms has taken no active part at all in the proceedings. It filed no response to the application and did not attend the hearing.
4. The tribunal is however satisfied that all reasonable steps have been taken to bring the application and hearing details to the attention of Filrooms. The application and later the bundle were emailed by Ms Morgan to Filrooms at the email address info@filrooms.com at the same time as she sent them to the tribunal. This was the email address through which she had communicated throughout her tenancy with Filrooms and its director Mr Shazad Khan (the main person whom she dealt during her tenancy).
5. Notification of the issue of the application and of the hearing date (among other correspondence) was also sent by the tribunal's case officer to Filrooms at that email address, and also by post for the attention of Mr Shazad Khan, to the address Unit C2, 110 Violet Road, London, E3 3QH. This is the registered address of Filrooms according to Companies House records. Those records also show that Filrooms is an active company, that its sole director is Mr Shazad Khan and that it filed accounts most recently on 20 May 2021 for the year ending 30 November 2020. Accordingly, all relevant correspondence has been sent to Filrooms' current registered address, as well as to its email address.

The hearing

6. The hearing took place remotely using the CVP platform. In addition to the tribunal it was attended only by Ms Morgan, who represented herself.
7. The tribunal heard live evidence from Ms Morgan, including her answering a number of questions from the tribunal about the Property, her occupation and the occupation of others, and contacts between her and the housing enforcement department at the London Borough of Barking and Dagenham (“LBB”) in July 2020. Reference will be made to her answers, where relevant, in the course of this decision.
8. At the request of the tribunal, Ms Morgan also forwarded to the tribunal's case officer the following further documents to which she had referred orally but which were not in the bundle, and which have also been considered and relied upon by the tribunal: (a) an email chain between herself and LBB, especially its housing enforcement officer Ryan Dunne, between 3 July and 29 July 2020, including two attachments to his final email: a draft statement prepared by Mr Dunne from Ms Morgan's instructions, for a potential prosecution of Filrooms

(which did not proceed), and a blank application form for an RRO; (b) Ms Morgan's first email dated 3 July 2020 to LBBD, concerning lack of protection for her deposit and whether the Property was being operated as an HMO; and (c) an email from Ms Morgan to Filrooms dated 15 July 2020 in which she said it had come to her attention that the Property was an unlicensed HMO and asking that she be repaid 12 months' of rent.

9. The tribunal accepts the evidence of Ms Morgan in full, both as set out in her statement of reasons in the bundle and as given orally. She was clear and straightforward in answering the tribunal's questions, was clearly doing her best to assist, and her evidence was consistent with all the available documents.

The Property and its occupation

10. Ms Morgan explained orally (and in part in her application) that the Property is a 3 storey house comprising ground, first and second floors, with a single front door. The ground floor was a self-contained flat with an internal locked front door and its own kitchen and bathroom ("**the Flat**"). On the first floor there were 3 lockable bedrooms, and a shared kitchen and bathroom (with lavatory). On the second floor was a larger lockable bedroom with an en suite bathroom.
11. The occupants of the rooms on the first and second floors all shared use of the kitchen. There was simply a staircase from ground to first floor, so the kitchen and bathroom were readily accessible to all the occupants of the Property. Ms Morgan said the occupants of the Flat did occasionally use the bathroom on the first floor although they should have used their own, and that she and other tenants had discussions with Filrooms' representatives about separating the entrances to the Flat and the upper floors but this never happened. Occasionally she said she and one of the other tenants had been permitted to use the showers in the Flat by its occupants when there was a problem with their own.
12. HM Land Registry entries in the bundle record that the freehold is owned by Kausar Mahmood Ramay and Zeshan Mahmood Ramay.
13. There was a copy in the bundle of an assured shorthold tenancy agreement dated 7 December 2017, between Filrooms as landlord and Ms Morgan as tenant, of Room 2 at the Property, for a fortnightly rent of £280. The tenancy was originally for 12 months and thereafter she held over.
14. Ms Morgan said in evidence that she actually moved in on 9 December 2017 and moved out on 14 July 2020. She occupied the room throughout as her only residence. She was not in a relationship with or

related to any of the other occupants of the Property. The tribunal is satisfied that Ms Morgan was not in a “household” with any other person who was living at the Property, within the terms of section 258 of the 2004 Act.

15. Ms Morgan’s application for an RRO was for the 12 month period from 1 July 2019 to 30 June 2020, this also being the period in respect of which she produced evidence of her payment of rent. Her current account statements showed that she paid rent to Filrooms of £606.66 per month on the 1st day of each month throughout that period. This equates to £280 per fortnight, so her rent remained unchanged throughout her tenancy. It was paid in advance and she said she agreed early in the tenancy that she would pay monthly rather than fortnightly. She originally also paid a deposit of £280, or two weeks’ rent. Ms Morgan said she made no further rent payments after 1 June 2020, but that she told Filrooms’ representatives to draw down and use her deposit to pay the rent for her final two weeks of occupation. She also said that she believed her deposit was not held in a government-approved tenancy deposit scheme after the first 12 months, because she had received notification after the first year that it was no longer being protected.
16. During the period from 1 July 2019 to 30 June 2020, Ms Morgan said that the occupancy of the rooms at the Property was as follows:
 - (i) Ms Morgan occupied room 2 on her own throughout;
 - (ii) Room 1 on the first floor was occupied throughout by a woman called Rasheeda (surname probably Adebayo, from emails in the bundle);
 - (iii) Room 3 on the first floor was occupied from August 2019 until after Ms Morgan left by a woman called Deborah. Prior to that it had been occupied by a couple who moved out at the end of June 2019. The room was unoccupied for just under a month, in July 2019.
 - (iv) The room on the second floor was occupied throughout by a couple, who moved in 3 or 4 months before July 2019;
 - (v) The Flat was occupied by a family of two adults and three children.
17. Accordingly, during the relevant period, the Property excluding the Flat was occupied by a total of five people, except for one month in July 2019, when it was occupied by four people. Those five people lived in at

least two separate households, and most probably four separate households, within the meaning of section 258 of the 2004 Act.

18. Ms Morgan said that the reason she moved out was that she had been subjected to harassment by Rasheeda, and the landlord had not taken any steps to evict Rasheeda despite Ms Morgan reporting that harassment. In particular there was an incident at 8am on 26 November 2019 when Rasheeda became angry because her mug had been moved from the counter to the cupboard in the kitchen and she then proceeded to smash the other mugs and glasses in the kitchen. She also pushed Deborah into a freezer, causing a deep cut. Ms Morgan said she was able to give the exact date because she had videoed part of the incident. The police were called and a report of what Ms Morgan termed “aggravated assault” was made. The police said they would keep a record of the incident, advised them to keep out of each other’s way and to call the police back if anything further took place.
19. Ms Morgan said that after this incident she experienced low-level harassment from Rasheeda, including being pushed and shoved in the hallway, and Rasheeda unlocking the bathroom door when Ms Morgan was inside and then pushing her. She said that she and Deborah had told Mr Khan of the incident and he had said that he would take steps to evict Rasheeda but that nothing further happened, despite Ms Morgan chasing for updates.
20. In her Statement of Reasons for the application, in the bundle, Ms Morgan stated that she believed Filrooms had taken no steps to evict Rasheeda because it was aware that it would have difficulties in doing so because the Property was an unlicensed HMO. She also said that Filrooms did not provide adequate safety products, in particular a fire extinguisher or fire blanket until this was requested by another tenant. In addition, Filrooms’ representatives, and individuals who she believed to have been the freeholders, entered the Property and accessed the first floor on a number of occasions without giving any prior notice.
21. Ms Morgan said that Mr Khan was unwilling to disclose to her the identity of the freeholders during her time in occupation, so she was not able to speak to the exact relationship between Filrooms as her landlord and the freeholders.

The law

22. Extracts from relevant legislation are set out in an Appendix to this Decision.
23. The definition of HMO is set out in section 254 of the 2004 Act. The allegation in this case is essentially that either the Property, or the first

and second floors of the Property, met the conditions for an HMO set out in section 254(2) of the 2004 Act, referred to as the “standard test” (in s.254(1)(a)).

24. By section 61(1) of the 2004 Act, every HMO to which Part 2 of the Act applies must be licensed unless it is covered by one of the exceptions in that section (none of which apply here). By section 55(2), Part 2 of the Act applies to (a) any HMO which falls within any “prescribed description” of an HMO and (b) any HMO which falls within an area designated as subject to additional licensing. It is not alleged that the Property was subject to additional (or selective) licensing. Sub-section 55(3) provides that the appropriate national authority may by order prescribe descriptions of HMOs for the purposes of subsection 55(2).
25. Such a description has been prescribed by the Licensing of Houses in Multiple Occupation (Prescribed Description)(England) Order 2018/221 (“**the 2018 Order**”), which applied from 1 October 2018. By Paragraph 4, an HMO is of a prescribed description for the purposes of section 55(2)(a) if it

“(a) is occupied by five or more persons;

(b) is occupied by persons living in two or more separate households;
and

(c) meets—

(i) the standard test under section 254(2) of the Act...”

Was the Property licensed as an HMO?

26. In his email to Ms Morgan dated 15 July 2020 sent at 13.44, the housing enforcement officer Mr Dunne confirmed that the Property was not licensed as an HMO. Ms Morgan also gave evidence that she had undertaken a search of LBBD’s list on its website of all the properties in the borough which were licensed as HMOs, by reference to the Property’s post-code, and the Property was not on that list as licensed.
27. Filrooms has taken no active part in these proceedings and so has not raised any issue that the Property was licensed, or that it was not a prescribed type of HMO, or that it was exempt from licensing.

The tribunal’s determination

28. The tribunal is satisfied beyond reasonable doubt, on the basis of the documentary evidence that it has seen and the oral evidence of Ms Morgan, of the following matters:

- (i) The part of the Property comprising the first and second floors (“**the Upper Floors**”) constituted at all material times (i.e. between 1 July 2019 and 30 June 2020) an HMO within the meaning of the “standard test”, i.e. that:
 - (a) It consisted of one or more (here, four) units of living accommodation not consisting of a self-contained flat or flats;
 - (b) Each of the four bedrooms, when occupied, was occupied by a separate household (within the meaning of s.258);
 - (c) The living accommodation was occupied by the persons in occupation as their only or main residence;
 - (d) Their occupation of that living accommodation constituted their only use of that accommodation;
 - (e) Rents were payable by at least Ms Morgan’s occupation of her own room;
 - (f) Two or more of those four households (in fact, four) shared one or more basic amenities (as defined by subsection 254(8)), namely (a) a toilet; (b) personal washing facilities and (c) cooking facilities.
- (ii) By reason of paragraph 4 of the 2018 Order, the Upper Floors constituted an HMO of a prescribed description for the period from 1 July 2019 to 30 June 2020, with the exception of one month in July 2019, because:
 - (a) It was occupied by at least 5 persons, as required by paragraph 4(a), for 11 of those 12 months (however in July 2019 it was only occupied by 4 persons);
 - (b) It was at all times occupied by at least two households;
 - (c) As set out above, it satisfied the standard test at all times.

- (iii) The Upper Floors were therefore an HMO falling within the prescribed description of an HMO, for the purposes of s.55(2) of the 2004 Act, for that 11 month period;
 - (iv) The Upper Floors were therefore required by section 61(1) of the 2004 Act to be licensed as an HMO, for that 11 month period;
 - (v) At no material time was either the Upper Floors specifically, or the Property as a whole, licensed as an HMO.
 - (vi) Filrooms was Ms Morgan's landlord under an assured shorthold tenancy which commenced on 7 December 2017. Regardless of the precise nature of the relationship between Filrooms and the freeholders (which is not known), Filrooms was therefore, during those 11 months, a person having control and/or management of an HMO which was required to be licensed under Part 2 of the 2004 Act, but which was not so licensed, within the meaning of section 72(1) of the 2004 Act.
29. The tribunal does not consider that the Flat is properly to be included as part of the HMO which included Ms Morgan's room. The balance of the evidence is that the Flat was a self-contained flat, and as such is not to be taken into account, by reason of section 254(2)(a) of the 2004 Act. Any use of the kitchen and first floor bathroom by the Flat's occupants was minimal and insufficient to count as "sharing those amenities". It also appears that this was Mr Dunne's conclusion, given that he referred to the Property in his email of 17 July 2020 (following his inspection of at least the common parts on 16 July 2020) as "*having a self-contained flat to the ground floor.*" The occupants of the Flat cannot therefore be included when determining whether Ms Morgan's room was part of an HMO of a prescribed description.
30. Filrooms has raised no argument that it has any defence of reasonable excuse under section 72(5) of the 2004 Act, for controlling or managing the Upper Floors when they were not licensed as an HMO (or any other defence). Nor is there any material before the tribunal which it considers might raise such a defence.
31. The tribunal is accordingly satisfied beyond reasonable doubt that Filrooms has committed the offence of being a person having control of and/or managing an HMO which was required to be licensed but was not so licensed, for the 11 month period from 1 August 2019 to 30 June 2020, contrary to section 72(1) of the 2004 Act.
32. Ms Morgan has satisfied the requirements for making a tenant's application for an RRO, as set out in section 41(2) of the 2016 Act, in that (a) the offence relates to housing which at the time of the offence

was let to her, and (b) the offence was committed in the period of 12 months ending with the day on which her application was made, which was 6 August 2020.

33. The tribunal considers that this is a case in which it should exercise its discretion under s.43 of the 2016 Act to make an RRO against Filrooms in favour of Ms Morgan, there being no proper basis on which it could refuse to do so.
34. Section 44 of the 2016 Act provides that where the tribunal decides to make an RRO against a landlord in favour of a tenant, the amount is to be determined in accordance with that section. Sub-paragraph 44(2) provides that in a case concerning an offence under s.72(1) of the 2004 Act, the amount must relate to rent paid during a period, not exceeding 12 months, during which the landlord was committing the offence.
35. The period for which Ms Morgan seeks a RRO is the 12 months from 1 July 2019 to 30 June 2020. For the reasons set out above, the tribunal has concluded that Filrooms was committing an offence under s.72(1) for 11 of those 12 months.
36. The evidence from Ms Morgan, supported by copies of her bank records, is that she paid £606.66 for each of those months. Accordingly, the amount which she paid for the 11 months during which Filrooms was committing an offence was 11 x £606.66 or £6,673.26.
37. No universal credit was paid to Ms Morgan which needs to be deducted pursuant to s.44(3)(b).
38. Accordingly, the maximum RRO which could be ordered in favour of Ms Morgan is £6,673.26.
39. Sub-section 44(4) provides that in determining the amount of the RRO, 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 Chapter of the 2016 Act applied.
40. Filrooms has not been convicted of any such offence, so (c) does not apply. Nor, so far as the tribunal is aware, has the local authority imposed any financial penalty on it under s.249A of the 2004 Act.
41. In *Vadamalayan v. Stewart* [2020] UKUT 183 (LC); [2020] HLR 38, the Upper Tribunal (Judge Cooke) said previous practice under the old 2004 Act provisions should not be applied under the 2016 Act, saying:

“[12] That means that there is nothing to detract from the obvious starting point, which is the rent itself for the relevant period of up to 12 months. Indeed, there is no other available starting point, which is unsurprising; this is a rent repayment order so we start with the rent.”

And at [19]:

“The only basis for deduction is s.44 itself and there will certainly be cases where the landlord’s good conduct, or financial hardship, will justify an order less than the maximum. But 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. I acknowledge that that will be seen by landlords as harsh, but my understanding is that Parliament intended a harsh and fiercely deterrent regime of penalties for the HMO licensing offence.”

42. Subsequently, in *Ficcara v. James* [2021] UKUT 38 (LC) the Deputy Chamber President of the Upper Tribunal, Martin Rodger QC, in considering *Vadamalayan* said at [50] that:

“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).”

(S.46, ss. (1) and (5) provide essentially that where the landlord has been convicted of a relevant offence, the tribunal must order the maximum unless this would be unreasonable by reason of exceptional circumstances.)

43. The Deputy Chamber President further observed at [51] that:

*“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.”*

44. Thereafter in *Awad v. Hooley* [2021] UKUT 0055 (LC) Judge Cooke herself said at [40] that she agreed with this analysis in *Ficcara*. She said that whether or not the maximum is described as a starting point, it cannot function in exactly the same way as a starting point in criminal sentencing because it can only go down; however badly a landlord has behaved, it cannot go up. She also said that it would be unusual for there to be absolutely nothing for the FTT to take into account under s.44(4) and emphasised how the cases were examples of exercise of discretion by the FTT.
45. The tribunal considers that the Upper Tribunal in *Ficcara* and *Awad* has disapproved any suggestion that it should approach the exercise of its discretion under s.44 by awarding the maximum amount unless there is a good reason to make a reduction. Rather it considers those decisions emphasise that (where there is no conviction), the amount of the RRO is a discretionary decision of the tribunal, which, while calculated by reference to the rent paid and subject to the stated maximum, should take into account in particular to the conduct of the landlord and tenant and the financial circumstances of the landlord. This is in deliberate contrast to the approach to be taken in the (more serious) cases where there is a conviction.
46. In the present case, the tribunal has reached the following conclusions on the specific matters it is to take into account under s.44(4).
47. Since Filrooms has taken no active part in this application, the tribunal has no evidence before it as to the financial circumstances of Filrooms, save that according to Companies House records, Filrooms had a negative balance sheet to the tune of £20,490 as at 30 November 2020. In the absence of any other information or representations as to Filrooms' financial position, the tribunal does not consider that this fact alone justifies a reduction in the amount of any RRO which it would otherwise award.
48. There is no evidence of any poor conduct on the part of Ms Morgan. On the contrary, the evidence is that she has been a good tenant who has paid her rent each month on time (save for the final 14 days, where she understandably asked Filrooms to set this off against the £280 deposit held by it, in circumstances where that deposit had not been properly protected by being held in a government-approved deposit protection scheme), and has communicated appropriately with her landlord.
49. However, there is evidence of poor conduct on the part of Filrooms, in addition to the absence of an HMO licence, in that it:
 - (i) Failed properly to protect Ms Morgan's deposit;

- (ii) Failed to provide proper fire protection equipment for at least part of the period of her tenancy;
 - (iii) Through its representatives, entered the Property without giving proper prior notice;
 - (iv) Failed over an extended period to take any steps to evict the tenant known as Rasheeda, despite extensive evidence of persistent harassment of Ms Morgan and another tenant by her, which the tribunal accepts, which will have constituted a breach of Rasheeda's tenancy, and which had the consequence that Ms Morgan did not feel comfortable continuing to live at the Property.
50. Given that all the relevant information about this application has been sent to Filrooms' registered address, as well as being emailed to the address used by Ms Morgan throughout her tenancy, and that company is active, the tribunal also considers that it is most likely that Mr Khan, on behalf of Filrooms, has decided to ignore this application and not to take an active part in it.
51. The tribunal also bears in mind, in its capacity as an expert tribunal, that HMO licensing was introduced with the aim of improving the quality and safety of private rented accommodation occupied by multiple households. It notes the legislation is intended to assist local authorities to locate and monitor HMOs and also improve the standard and management of this sector. Multi-occupied property has historically contained the most unsatisfactory and hazardous living accommodation with particular concerns about inadequate fire safety provision and poor management. Against this background the failure to license is potentially extremely serious - hence the significant associated penalties and forfeit of rents sanctioned by the legislation. In addition, good landlords who license promptly may otherwise feel that those failing to license would gain unfair benefit by dodging licensing costs and associated improvement expenditure if licensing were not heavily incentivised. There are therefore sound public policy reasons for the provisions.
52. The tribunal takes into account this punitive purpose of this jurisdiction, and the importance of the aim of enforcing a licensing regime which is intended to raise the standards of privately rented HMOs.
53. In the absence of any evidence or submissions from Filrooms as to any factors said to point to reducing the award, and taking into account all of the factors set out above, the tribunal has concluded that the appropriate award in this case is the full amount of the rent for the relevant 11 month period, that is £6,673.26. It therefore awards an RRO in this sum to Ms Morgan.

54. In view of its findings, and the fact Ms Morgan could not have obtained relief without pursuing this application, the tribunal further makes an order under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, that Filrooms Limited shall within 14 days reimburse the application fee of £100 and the hearing fee of £200 paid by the Applicant. The order is made by the tribunal on its own initiative under rule 13(3).

Name: Judge Nicola Rushton QC

Date: 23 September 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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 to the person making the application.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Housing Act 2004

55 Licensing of HMOs to which this Part applies

(1) This Part provides for HMOs to be licensed by local housing authorities where—

- (a) they are HMOs to which this Part applies (see subsection (2)), and
- (b) they are required to be licensed under this Part (see section 61(1)).

(2) This Part applies to the following HMOs in the case of each local housing authority—

- (a) any HMO in the authority's district which falls within any prescribed description of HMO, and
- (b) if an area is for the time being designated by the authority under section 56 as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in the designation.

(3) The appropriate national authority may by order prescribe descriptions of HMOs for the purposes of subsection (2)(a).

(4) The power conferred by subsection (3) may be exercised in such a way that this Part applies to all HMOs in the district of a local housing authority....

61 Requirement for HMOs to be licensed

(1) Every HMO to which this Part applies must be licensed under this Part unless—

- (a) a temporary exemption notice is in force in relation to it under section 62, or
- (b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.

(2) A licence under this Part is a licence authorising occupation of the house concerned by not more than a maximum number of households or persons specified in the licence.

(3) Sections 63 to 67 deal with applications for licences, the granting or refusal of licences and the imposition of licence conditions.

(4) The local housing authority must take all reasonable steps to secure that applications for licences are made to them in respect of HMOs in their area which are required to be licensed under this Part but are not.

(5) The appropriate national authority may by regulations provide for—

(a) any provision of this Part, or

(b) section 263 (in its operation for the purposes of any such provision),

to have effect in relation to a section 257 HMO with such modifications as are prescribed by the regulations. A “section 257 HMO” is an HMO which is a converted block of flats to which section 257 applies.

(6) In this Part (unless the context otherwise requires)—

(a) references to a licence are to a licence under this Part,

(b) references to a licence holder are to be read accordingly, and

(c) references to an HMO being (or not being) licensed under this Part are to its being (or not being) an HMO in respect of which a licence is in force under this Part.

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). 12

(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).

254 Meaning of "house in multiple occupation"

(1) For the purposes of this Act a building or a part of a building is a "house in multiple occupation" if—

(a) it meets the conditions in subsection (2) ("the standard test");

(b) it meets the conditions in subsection (3) ("the self-contained flat test");

(c) it meets the conditions in subsection (4) ("the converted building test");

(d) an HMO declaration is in force in respect of it under section 255; or

(e) it is a converted block of flats to which section 257 applies.

(2) 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.

(3) A part of a building meets the self-contained flat test if–

(a) it consists of a self-contained flat; and

(b) paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).

(4) A building or a part of a building meets the converted building test if–

(a) it is a converted building;

(b) it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);

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

(d) 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);

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

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

(5) But for any purposes of this Act (other than those of Part 1) a building or part of a building within subsection (1) is not a house in multiple occupation if it is listed in Schedule 14.

(6) The appropriate national authority may by regulations–

(a) make such amendments of this section and sections 255 to 259 as the authority considers appropriate with a view to securing that any building or

part of a building of a description specified in the regulations is or is not to be a house in multiple occupation for any specified purposes of this Act;

(b) provide for such amendments to have effect also for the purposes of definitions in other enactments that operate by reference to this Act;

(c) make such consequential amendments of any provision of this Act, or any other enactment, as the authority considers appropriate.

(7) Regulations under subsection (6) may frame any description by reference to any matters or circumstances whatever.

(8) In this section–

“basic amenities” means–

(a) a toilet,

(b) personal washing facilities, or

(c) cooking facilities;

“converted building” means a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed;

“enactment” includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30));

“self-contained flat” means a separate set of premises (whether or not on the same floor)–

(a) which forms part of a building;

(b) either the whole or a material part of which lies above or below some other part of the building; and

(c) in which all three basic amenities are available for the exclusive use of its occupants.

258 HMOs: persons not forming a single household

(1) This section sets out when persons are to be regarded as not forming a single household for the purposes of section 254.

- (2) Persons are to be regarded as not forming a single household unless–
- (a) they are all members of the same family, or
 - (b) their circumstances are circumstances of a description specified for the purposes of this section in regulations made by the appropriate national authority.
- (3) For the purposes of subsection (2)(a) a person is a member of the same family as another person if–
- (a) those persons are married to [, or civil partners of, each other or live together as if they were a married couple or civil partners]¹ ;
 - (b) one of them is a relative of the other; or
 - (c) one of them is, or is a relative of, one member of a couple and the other is a relative of the other member of the couple.
- (4) For those purposes–
- (a) a “couple” means two persons who [...]² fall within subsection (3)(a) ;
 - (b) “relative” means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin;
 - (c) a relationship of the half-blood shall be treated as a relationship of the whole blood; and
 - (d) the stepchild of a person shall be treated as his child.
- (5) Regulations under subsection (2)(b) may, in particular, secure that a group of persons are to be regarded as forming a single household only where (as the regulations may require) each member of the group has a prescribed relationship, or at least one of a number of prescribed relationships, to any one or more of the others.
- (6) In subsection (5) “prescribed relationship” means any relationship of a description specified in the regulations.

Housing and Planning Act 2016, Chapter 4

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. 13

(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.

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 the 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.

46 Amount of order following conviction

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 and both of the following conditions are met, the amount is to be the maximum that the tribunal has power to order in accordance with section 44 or 45 (but disregarding subsection (4) of those sections).

(2) Condition 1 is that the order—

- (a) is made against a landlord who has been convicted of the offence, or
- (b) is made against a landlord who has received a financial penalty in respect of the offence and is made at a time when there is no prospect of appeal against that penalty.

(3) Condition 2 is that the order is made—

- (a) in favour of a tenant on the ground that the landlord has committed an offence mentioned in row 1, 2, 3, 4 or 7 of the table in section 40(3), or
- (b) in favour of a local housing authority.

(4) For the purposes of subsection (2)(b) there is “*no prospect of appeal*”, in relation to a penalty, when the period for appealing the penalty has expired and any appeal has been finally determined or withdrawn.

(5) Nothing in this section requires the payment of any amount that, by reason of exceptional circumstances, the tribunal considers it would be unreasonable to require the landlord to pay.

Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018/221

4. Description of HMOs prescribed by the Secretary of State

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; and
- (c) meets—
 - (i) the standard test under section 254(2) of the Act;
 - (ii) the self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or
 - (iii) the converted building test under section 254(4) of the Act.