FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AG/HMF/2020/0038**
HMCTS code		**V: CVPREMOTE**
Property	**:**	**156 West End Lane, London NW6 1SD**
Applicant	**:**	**Louisa Smith (A1) Victoria Goldsmith (A2) Chris Rye (A3) Gabriela Brudek (A4) Hannah Jones (A5) Andrew Brant (A6)**
Representative	**:**	**Mr Penny Flat Justice**
Respondent	**:**	**Oaksure Property Protection Limited**
Representative	**:**	**Mr Sibley, Counsel**
Type of application	**:**	**Application for a rent repayment order by a tenant Sections 40,41,43 & 44 of the Housing and Planning Act 2016**
Tribunal member(s)	**:**	**Judge D Brandler Antony Parkinson MRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR By remote video hearing**
Date of hearing	**:**	**8th October 2021**
Date of decision	**:**	**8th November 2021**

DECISION

Decision of the tribunal

(1) The Respondent shall pay to the Applicants a Rent Repayment Order in the total sum of £28,315.57 within 28 days. This sum to be paid in the following proportions to the Applicants:

- **(a) To Louisa Smith (A1) the sum of £5631.59**
- **(b) To Victoria Goldsmith (A2) the sum of £5575.40**
- **(c) To Chris Rye (A3) the sum of £4759.92**
- **(d) To Gabriela Brudek (A4) the sum of £6600.00**
- **(e) To Hannah Jones (A5) the sum of £1793.70**
- **(f) To Andrew Brant (A6) the sum of £ 3954.96**

(2) The Respondent is further ordered to repay the Applicants the sum of £300 for the fees paid to this tribunal in relation to this application. To be paid within 28 days.

The relevant legislative provisions are set out in an Appendix to this decision.

Reasons for the tribunal's decision

Background

1. The tribunal received an application under section 41 of the Housing and Planning Act 2016 from the Applicant tenants for a rent repayment order ("RRO").

2. The application alleged that Oaksure Property Protection Limited ("R") had failed to obtain an HMO licence for 156 West End Lane, London NW6 1SD ("The Building"). The Applicants each occupied a room in the building. The Building has facilities to accommodate 35 individuals in their own private rooms. Kitchens and bathrooms are shared facilities. The various rooms are situated on ground, 1st, 2nd and 3rd floors of the building.

3. The Tribunal issued directions on 29/04/2021 which were varied on 19/05/2021.

4. The history is briefly as follows: the Building was previously owned by L.B. Camden ("the Council"). Ownership passed to A2Dominion ("A2D"), a Housing Association in 2018. R offered their services to A2D to manage the building and on 12/02/2018 the offer was agreed, signed and dated [R86-88]. The undated offer forms the basis of the agreement between R and A2D. No subsequent contract was agreed between them and R stopped managing the building sometime in 2021.

5. As part of that agreement, A2D paid R a management fee of £200 plus VAT per month. R was tasked under the terms of the agreement to find and install property guardians in the building to avoid potential squatters moving in. Guardians were found by various means. Some were relocated to the Building from other properties managed by R,

some had friends who introduced them, and one found the room advertised on "Spare Room". Licence agreements were granted by R to each of the Applicants, the terms included a requirement to move rooms when required, and to allow unannounced visits to the room. Different rooms were charged at different rates.

6. All licence fees were paid to R, none of which were passed on to A2D.

7. The Applicants occupied individual rooms as follows:

   (i) Louisa Smith (A1) occupied Unit 9 on the 1st Floor from 18/03/2018-21/12/2019. She claims a RRO from 18/03/2018-17/03/2019. Initially paying £500 pcm, this was reduced to £450 pcm on when she became the head guardian for the 3rd floor for a period.

   (ii) Victoria Goldsmith (A2) occupied Unit 8 on the 1st Floor from 23/04/2018-01/11/2019 at £500 pcm. She claims a RRO for the period 23/04/2018-28/03/2019.

   (iii) Chris Rye (A3) occupied Unit 26 on the 3rd Floor from 11/05/2018-03/05/2021 at £450 pcm. He claims a RRO for the period 11/05/2018-28/03/2019.

   (iv) Gabriela Brudek (A4) occupied a large unit on the ground floor from 24/03/2018-24/08/2019 at £550 pcm. She claims a RRO for the period 24/03/2018-23/03/2019

   (v) Hannah Jones (A5) occupied Unit 24 on the third floor from 20/11/2018-19/03/2019 at £450 pcm. She claims a RRO for the period 20/11/2018-28/03/2019.

   (vi) Andrew Brant (A6) occupied Unit 25 on the 3rd floor from 26/06/2018-19/03/2019 at £450 pcm. He claims a RRO for the period 26/06/2018-19/03/2019.

The Hearing

8. The Tribunal did not inspect the property as it considered the documentation and information before it in the trial bundle enabled the tribunal to proceed with this determination and also because of the restrictions and regulations arising out of the Covid-19 pandemic.

9. This has been a remote hearing which has not been opposed by the parties. The form of remote hearing was coded as CVPREMOTE with all participants joining from outside the court. A face-to-face hearing was not held because it was not possible due to the COVID-19 pandemic restrictions and regulations and because all issues could be determined in a remote hearing. The Tribunal had the benefit of various bundles of documents: the Applicants' bundle of 230 pages, referred to in square

brackets with a prefix of A, R's bundle of 332 pages referred to in square brackets with a prefix of R, the Applicants' response bundle of 86 pages referred to in square brackets with a prefix AR, the Applicants' 102 page bundle of authorities and R's 76 page bundle of authorities.

10. All six Applicants joined the hearing remotely by video connection. They were represented by Mr Penny from Flat Justice who also joined remotely. A late witness statement had been produced by Judith Harris, Principal Environmental Health Officer at the Council dated 13/08/2021. She did not attend the hearing as she was away on holiday and the Tribunal had to consider the weight to place on any evidence in that document.

11. R was represented by Mr Sibley of counsel. He was accompanied by Daniel Hudson, R's Chairman. He is also the founder of the Company and holds a 50% share. He has provided a witness statement. Benjam*in* Pascal who is a non-resident guardian manager of the building since August 2018, provided a witness statement but did not join at the start of the hearing, but made himself available later in the hearing. All joined by video remotely.

12. R disputes the application on four bases. On the morning of the hearing a skeleton argument was provided with a bundle of authorities which is dealt with below

13. In oral evidence the Applicants each confirmed their period of occupation in the building and the amount paid to R. These facts are not disputed by R. None of the Applicants were in receipt of Universal Credit during the relevant period. All of the Applicants were either in employment or studying in London during the relevant period. They confirmed their reasons for taking the accommodation was a combination of being close to work/study and cheaper rent. None of the rooms were furnished nor were many facilities provided in the shared kitchen. The kitchen on the ground floor was shared by 2 people. The kitchen on the 1st floor was shared by all those on the 1st floor. The 1st floor guardians rented a washing machine between them, and bought various fridges/freezers. No cleaning services were provided to any of the floors. A rota of sorts appears to have been agreed between the 1st floor occupants.

14. In oral evidence A1 described the room occupied as very basic, previously an office, it was at the end room of a locked corridor on the 1st floor. Although she had windows, one didn't close and had to be sealed. The lock on the door didn't close when she first moved in and she had to take her valuables with her to work every day, until it was fixed, the plasterboard used to partition off her room had gaps between her room and the room next door so that she had to use rags to block them. The building was cold in the winter and very hot in the summer. The heating was inadequate and the lighting sometimes failed. In the summer there had been many requests for ventilation and when this was finally switched on the dust that came out was very unpleasant.

15. There were 8 rooms within the locked corridor area serviced by a kitchen with only one oven. R later provided a further oven. The guardians on that floor obtained various fridge freezers themselves, and organised a shared rented washing machine. Outside of the locked corridor was a further room and the bathroom facilities. These were 3 bathrooms, one previously a disabled toilet which had been removed and replaced with a shower. There were 2 toilet cubicles and a small sink. A third bathroom had 3 toilets, one of which never flushed, and 3 sinks. The facilities were insufficient for the number of people using them. No cleaning services were provided by R.

16. A1 confirmed that she had never been asked to move to another room, but she was aware that unannounced visits were made. When she was in her room there had been occasion when someone had knocked to be allowed in, which she had permitted. She was aware that if her neighbours were not in, those visiting would knock and then enter without notice.

17. A2 told the Tribunal that while a contractor had been installing pink foam to insulate between the rooms, the contractor had taken no care and damaged her rug and clothes. The contractor had gone into her room without notice and while she was not there. She referred to her emails to Daniel Hudson which were never responded to [A's bundle 77-80].

18. Mr Hudson in response confirmed that they had had problems with that particular contractor, but that this was the first time he had heard about this particular complaint, although they had received complaints from other guardians to whom they had paid compensation. Mr Hudson was apologetic and stated that at times he had not read or responded to emails, but that A2 was entitled to compensation for this damage, and that they should have compensated her accordingly.

19. A2 confirmed the poor state of toilets showers, kitchen, heating and ventilation.

20. A3 told the Tribunal about the very small shared kitchen on the 3rd floor and the poor condition of the bathroom facilities. He told the Tribunal about an incident in May 2018 when the fire brigade had attended the building. It seems that the issue had not been serious, but some 4 days after that visit, all guardians had been sent an email [A50] headed *"NON CONSENT TO ENTER OAKSURE PROPERTY – PLEASE READ*". The body of the email states "*Can we all make sure to not, under any circumstances, allow people to enter an Oaksure Property without written consent from Oaksure..It has been brought to my attention that people from the fire brigade and council have been allowed in to properties by Guardians. Oaksure propert* (sic*) Protection is a security company and people must have written consent from Oaksure to enter the property. Please contact Ayo – 07871 950 551 or Ceri -7704 245 527 if anyone tries to enter the building without written consent. Please do not respond to this email. Many thanks. James*"

21. A3 also reported that just after that incident there had been a flurry of activity by R's electricians when they had been working until 1 a.m. installing smoke alarms in the rooms.

22. In cross examination it was put to A3 that in fact the email [A50] did not say that Fire Brigade could not enter, but that R should know about visits, and pointed out that telephone numbers had been provided in that email. In response A3 stated that although that may be the case, telephone numbers were not always answered by R and what should they do in those circumstances where there may be an emergency.

23. Mr Hudson in response to the issues of the Fire Brigade stated that the smoke alarms installed at that time were an extension of the smoke alarms already installed, and that they all take fire safety very seriously, but he could not confirm categorically that there had been smoke alarms in all the rooms, because he did not inspect the rooms. He would, he said, have been very surprised if that had not been picked up by his operations manager. He denied that the flurry of activity of electricians until 1 a.m. had been as a result of the fire brigade attendances.

24. In relation to fire safety, he was referred to the fire risk assessment dated 21/03/2018 [R's bundle p.90]. Mr Hudson confirmed that this was carried out by Cerri Barraclough who was employed by R. The Tribunal questioned the fact that no hazards, improvements or actions had been identified in that report, and whether it had been accurate. Mr Hudson was adamant that the assessment was correctly carried out.

25. Mr Hudson was also asked about the Building Regulations Certificate of Compliance dated 09/06/2018, although guardians moved in in March 2018. Mr Hudson explained that the certificate in their bundle [R125] was an updated one. There had been Building Regulations Compliance prior to that.

26. A4 told the Tribunal that she had chosen a ground floor room which was very large, which had doors onto a patio area, however when she moved in these were blocked by metal sheeting. She had been very concerned about her ability to get out of the building should there be a fire, as she would not have been able to get out via the corridor, and the blocked patio doors (with sign stating fire exit above) would not have allowed her to exit from there. She had to wait about 3 weeks for this to be resolved despite her contact with R. When these were removed, it transpired that the door handles were broken/missing and she had to ask another guardian to resolve this in the end, as she did not get assistance from R.

27. In terms of bathroom facilities, these were terrible on the ground floor. When she complained, James from the Respondent Company, arranged for her to have a key cut for the 1st floor facilities, which were located in a locked corridor. She also participated with the joint rented washing machine arrangement with other guardians on the 1st floor. She stayed at the property because it was very close to work.

28. A5 told the Tribunal that she found the conditions in the building so appalling that she left fairly quickly, as soon as she could find alternative accommodation. The toilets were dirty, often not working, the showers were often cold, and the ventilation was terrible.

29. A6 living on the 3rd floor described the conditions in which he lived as having poor ventilation, a very small kitchen space for the number of people using it. He was aware of A2D during the course of his work as an electrician, having worked in some of their buildings, however he had been completely unaware of any connection between the building, R and A2D.

30. In cross examination it was put to the Applicants that although issues may not have been addressed as promptly as they would have liked, issues were resolved. Mr Hudson himself confirmed that there had been a lot of problems with windows and ventilation.

31. There was discussion about the term in the licence agreement which required each of the Applicants to provide "a principal address" other than the building. This despite the applicants all confirming that they were registered at the building in one form or another, varying from the building being their registered address for doctor, dentist, employer, polling card, bank. The licence agreement itself had been varied when the Applicants had been asked to sign an amended contract. This was explained to them in an email as being just for the purposes of tidying up grammatical errors. Mr Hudson said that although grammatical errors needed to be tidied up, the main reason for amending the licence agreements was because they had a new operations manager, who wanted to make sure all the guardians were signing the same agreement. In relation to the demand to the guardians to provide 'a principal address' was to ensure that should the Guardians be asked to leave on short notice (20 working days in the licence agreement and 28 days described in the agreement between R and A2D), R could be sure that the Guardians would not be homeless as they had all provided alternative addresses.

32. Each of the Applicants explained that they had been forced to provide such alternative addresses, otherwise they would not be accepted as a guardian. Most of the Applicants had to provide their parents' address, for example A3's parents who live in Devon, another guardian's parents live in Essex. Even though their work/study was all in central London and so these addresses could not effectively assisted them had R asked them to leave the Building with short notice.

33. None of the Applicants ever had any contact with A2D. A4 stated that on one occasion someone had attended with R and asked her about the fire exit to her room, but she didn't know who they were. A6, who is an electrician who confirmed that he knew of A2D as he had previously done some work in their buildings, confirmed that he had not been at all aware of the connection to A2D in relation to the Building.

The Respondent's legal submissions & the Tribunal's findings:

The time limit

34. Firstly, R maintains that if an order is made, the Tribunal is limited to make an award only for the 12 months immediately prior to the application to the Tribunal on 16/03/2020. In effect limiting any award to the period from 16/03/2019 to 29/03/2019 (the date on which the application for an HMO licence was made by R).

35. R argues that the wording of s.41(2)(b) of HPA 2016 and S.44(2) is to be conflated such that the offence referred to in s.41(2)(b) and the period claimed by the applicants are to be within the 12 months prior to the application. If not, it is said the limitation period would be undermined.

36. The Tribunal accept that section 41(2)(b) is a limitation period and there is no provision for the Tribunal to extend the 12-month limit therein.

37. S.41(2)(b) is the starting point for the test, namely, has the application reached the Tribunal in time. This test here is satisfied, as the application reached the Tribunal on 16/03/2020 which is within 12 months of the offence being committed given that the offence continued until 28/03/2019.

38. There is no reason however for section 44(2) to be conflated with section 41(2)(b). There are no words making the one section subject to the other.

39. The wording of section 44(2) is clear.
    a. If the offence is one of using violence to secure entry or a specified offence under the Protection from Eviction Act 1977, the period of a RRO is the 12 months prior to the commission of the offence
    b. If the offence is one of the other 5 in section 40(3) the period of the RRO is limited to 12 months but it does not prescribe when the period starts or ends. It merely applies to a period in which the landlord was committing the offence.

40. The effect of R's position is that a tenant who was unlawfully evicted, for example, would have to bring proceedings the day after being evicted to avoid any potential award being reduced by the effluxion of time. That would be an absurd position and undermine the purpose of the RRO.

41. The Tribunal finds that once s.41(2)(b) is satisfied, Applicants, in licensing cases such as this, can claim a RRO for a period of up to 12 months during which the offence was being committed, they were in occupation, and they paid 'rent'. In this case this is satisfied for the periods claimed, there having been no licence applied for until 29/03/2019. R does not dispute that the Applicants paid him a fee to occupy.

Landlord or licensor

42. Secondly, Mr Sibley argues that the Tribunal does not have jurisdiction to make a RRO against R because R is not a landlord but a licensor. He argues:

    (a) S.40(1) and (2) of the Housing and Planning Act 2016 ("the 2016 Act") refers to "a landlord" and provides authority for the Tribunal to make an order where "a landlord" has committed an offence, requiring "a landlord" to repay an amount of rent paid by "a tenant".
    (b) Further that s.56 of the 2016 Act does not define "landlord", that the clear meaning of a landlord is a landlord under a tenancy.
    (c) Furthermore, it is argued that the purpose of the 2016 Act was to tackle "rogue landlords" as per the explanatory notes to that Act and there is no policy reason to extend the 2016 Act to providers of property guardian services.
    (d) R goes on to argue that R is a licensor and not a landlord as the arrangements entered into between the Applicants and R were licences not leases, and relies on *Camelot Guardian Management Ltd v Khoo* (2018) EWHC 2296 (QB) at 19,24,27-29,31 and 33.

43. Mr Sibley refers to the agreement between R and A2D, which does not provide for exclusive occupation of the property by R, and confirms that A2D could enter the building at any time.

44. In response, Mr Penny argues that R falls within the 2016 Act, s.56 is clear that letting includes a licence. If a licence can be a tenancy for the purposes of the 2016 Act, then a Licensor can be a person against whom a RRO can be made.

45. It is not necessary for the Tribunal to rehearse the factors that lead to a distinction between a tenancy and a licence *Camelot Guardian Management Limited* v *Khoo* [2018] EWHC 2296 (Ch). The Tribunal is proceeding on the basis that the Applicants had been granted licence agreements and that R is a licensee of A2D and that therefore the Applicants are effectively sub-licensees.

46. It is accepted that section 40(2)(a) refers to a '*landlord under a tenancy*' and to '*rent paid by a tenant*'. The question in a nutshell is whether an RRO can be made in these circumstances or whether it cannot because a licensee (R) is not a landlord, licence payments are not rent and a sub-licensee (A) is not a tenant.

47. As to whether the use of the word rent includes licence payments the Tribunal finds that it does:

(a) Under section 73 of the Housing Act 2004 ('HA 2004') which is headed *"Other consequences of operating unlicensed HMOs: rent repayment orders"*. Subsection 4 states *"But amounts paid in respect of rent or other periodical payments payable in connection with such a tenancy or licence may be recovered in accordance with subsection (5) and section 74 [(in the case of an HMO in Wales) or in accordance with Chapter 4 of Part 2 of the Housing and Planning Act 2016 (in the case of an HMO in England)]"*.

(b) Section 50 of the 2016 Act specifically amended section 73 to include RROs under the 2016 Act such that the Tribunal finds the an RRO under the 2016 Act includes licences and licence payments

(c) Further, section 52(1) of the 2016 Act states "*"rent" includes any payment in respect of which an amount under section 11 of the Welfare Reform Act 2012 may be included in the calculation of an award of universal credit"*.

(d) Under the regulations made under section 11 Welfare Reform Act 2012, payments for a licence or other permission to occupy accommodation are rent payments [Paragraph 2(b) Schedule 1 of the Universal Credit Regulations 2013 [SI 2013/376].

(e) There would be an anomalous position were rent defined to include licence payments in an application by a Local Authority, but not in an application by a licensee.

48. The Tribunal is satisfied that for the foregoing reasons that rent includes licence payments and that a rent repayment order applies to licences in the same way as tenancies.

49. This leaves the definition of a *landlord under a tenancy*. In section 56 of the 2016 Act a tenancy is defined as including a *'licence'* which means the question is whether R is a 'landlord under a licence'.

50. The issue over the meanings of landlord, tenant or licensee and rent do not apply to whether a licensing offence has been committed given the definitions in sections 262 and 263 of the 2004 Act. R's argument would create serious anomalies in the RRO scheme and allow a loophole that would potentially avoid the consequence of failing to licence. That cannot have been intended.

51. Landlord is not defined in Chapter 4 of the 2016 Act and has no specialist meaning. However, the Tribunal finds that R in this case was a licence holder who was empowered to grant sub-licences which provided for termination sooner than A2D could terminate R's licence. R is therefore the immediate 'landlord' in every sense of the term: R was in control and management of the building which included sourcing the guardians, signing them up to licence agreements, defining the amount of rent for each unit, and accepting the licence fees without passing on any of that rent to A2D. R took on the responsibility of making the building habitable for the guardians, putting up partitions, installing bathroom and kitchen facilities, carrying out in house fire safety checks, liaising with the local authority in relation to HMO application, which was

eventually made by them on 29/03/2019, taking responsibility for damages to be paid to some occupiers when things went wrong. In addition, they would have the power to bring possession proceedings once any notice expired and the Applicants had no contractual relationship with A2D and R is their immediate landlord for the purpose of a RRO.

52. In addition, the Tribunal rejects the argument that because A2D may have retained some form of right to enter the building, that R did not have exclusive possession, and therefore cannot somehow have been a landlord because of that. The documentary evidence is that A2D handed the building to R to manage, to make ready for use for Guardians, to find and install guardians into the building. None of the Applicants had been aware of the existence of A2D in any form.

53. Finally in relation to the issue that somehow Guardian Companies are a special case and not rogue landlords, the Tribunal would merely note that the facts of this case show otherwise

Reasonable excuse

54. Thirdly, R argues that the Council did not demand that the property be licenced, and that during the course of correspondence, it only transpired in early 2019 that they were in fact required to licence the building as a property guardian company. They therefore have a defence of reasonable excuse

55. The Tribunal found that the Council had originally demanded the building be licenced in 2018 by a letter, which R argues was just a standard letter. The Tribunal found that letter to provide sufficient information that a licence was required.

56. Thereafter what followed appears to be evasive action by R to confuse issues. R seeks to rely on a previous tender made by them direct to the Council to manage their buildings. Under the terms of the proposed direct contract with the Council, R would not have been required to licence the building. The eventual contract was between A2D and R, thus leaving them with no valid excuse not to license. R's alleged misconception as to whether he was required to licence with the L.B. Camden could have been clarified quite easily. He has experience with other local authorities. The Tribunal took the view that he was obfuscating to try to reach a point where they may be out of the building and not need to licence it. Certainly it appears from the description of the building and the issues with fire escapes, that work would have been required to bring it up to a licensable condition, which would have reduced R's profit margin.

57. The Tribunal found that R did not have a reasonable excuse not to apply for a licence

Conduct

58. Fourthly R argues that any potential award to the Applicants should be limited because they gave him no notice of the application.

59. In oral evidence Mr Hudson did acknowledge A1 had told him that she was intending to issue an application. He told the Tribunal that had he been told that the others would join, he may have dealt with the matter differently. The fact that they did not all write to tell R that they were going to pursue this application is not relevant. There is no evidence of poor conduct by the Applicants

60. It is accepted that R has no previous convictions but this is about the only factor in R's favour. R is a professional landlord managing 13 properties who claimed to fully understand the licencing process. The Tribunal finds that R failed to apply for a relevant licence because of the costs of bringing the property up to a licensable condition and preferred to claim that confusion had been created by the Council. Contrary to the statement of opposition, the condition of the property and in particular fire safety, sanitary arrangements and ventilation are relevant to the assessment of conduct

Conclusions

61. The Tribunal finds beyond a reasonable doubt that

    a. R received payments from the Applicants who were in occupation of parts of the Building

    b. R was a manager of the Building for the purposes of section 263(3) of the 2004 Act

    c. Had the Building been let at a rack rent, R would have received that rent such as to be in control of the building under 263(1) the 2004 Act.

    d. The building required a mandatory licence, being accommodation over 4 floors with 35 individual units with shared facilities.

    e. In the requisite period, R did not have a licence

    f. R does not have a reasonable excuse for not having applied for a licence prior to 29/03/2019.

    g. The Tribunal is permitted to take into account the wider conduct including the poor condition of the building and the facilities provided, in addition to issues relating to fire safety, which is reflected in the lack of reduction in the award against R

    h. No evidence of utilities paid was provided by R, and the evidence does not support a good supply of hot water, ventilation or heating. Nor is there any evidence of Council Tax payment provided, which in any event would have to be covered by the person in control of the building. No deductions.

62. The periods and awards are set out in Annexe 1.

63. The Tribunal keeps in mind that a RRO is meant to be a penalty against a landlord who does not follow the law. It is a serious offence which could lead to criminal proceedings. Taking these matters into account and the

evidence of the landlord's conduct, we consider that the award should not be reduced. Accordingly, we find that an RRO should be made against the Respondent in the sum of £28,315.57, which should be paid to the Applicants in the proportions set out in Appendix 1.

Name: Judge D Brandler **Date:** 8th November 2021

APPENDIX 1

Applicant	Month/year	accommodation fee paid	RRO awarded
Louisa Smith (A1)	March 2018 (14 days) (500x12/365=£16.44 per day) April 2018 May 2018 June 2018 July 2018 August 2018 Sept 2018 Oct 2018 Nov 2018 Dec 2018 Jan 2019 Feb 2019 March 2019 (17 days) (*450x12/365 = £14.79 per day)*	£230.16 (pro-rata of £500 pcm) £500 £500 £500 £500 £450 £450 £450 £450 £450 £450 £450 £251.43 (pro rata of £450)	£5631.59
Victoria Goldsmith (A2)	April 2018 (7 days) *£500 pro rata £16.44 per day* May 2018 June 2018 July 2018 August 2018 September 2018 October 2018 November 2018 December 2018 January 2019 February 2019 March 2019 (*to 28.3.2018) 28 days @£16.44 per day*	£115.08 £500 £500 £500 £500 £500 £500 £500 £500 £500 £500 £460.32	£5,575.40

Chris Rye (A3)	May (20 days pro rata =£14.79 per day) June 2018 July 2018 August 2018 September 2018 October 2018 November 2018 December 2018 January 2019 February 2019 March 2019 (28 days)	£295.80 £450 £450 £450 £450 £450 £450 £450 £450 £450 £414.12	£4,759.92
Gabriela Brudek (A4)	24/03/2018-24.3.2019	£550 pcm x 12 months	£6600
Hannah Jones (A5)	November 2018 (11 days @14.79 per day) December 2018 January 2019 February 2019 March 2019 (19 days)	£162.69 £450 £450 £450 £281.01	£1793.70
Andrew Brant (A6)	June 2018 (5 days @ £14.79 per day) July August September October November December January 2019 February 2019 March 2019 (19 days £14.79 per day)	£73.95 £450 £450 £450 £450 £450 £450 £450 £450 £281.01	£3954.96
total			**£28,315.57**

ANNEX - RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.

Appendix of relevant legislation

Housing Act 2004

Section 72 Offences in relation to licensing of HMOs

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

(2) A person commits an offence if–

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) A person commits an offence if–

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

(b) he fails to comply with any condition of the licence.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time–

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse–

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.

(7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(8) For the purposes of subsection (4) a notification or application is "effective" at a particular time if at that time it has not been withdrawn, and either–

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(9) The conditions are–

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or

(b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(10) In subsection (9) "relevant decision" means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

262 Meaning of "lease", "tenancy", "occupier" and "owner" etc.

(1)In this Act "lease" and "tenancy" have the same meaning.

(2)Both expressions include—

(a)a sub-lease or sub-tenancy; and

(b)an agreement for a lease or tenancy (or sub-lease or sub-tenancy).

And see sections 108 and 117 and paragraphs 3 and 11 of Schedule 7 (which also extend the meaning of references to leases).

(3)The expressions "lessor" and "lessee" and "landlord" and "tenant" and references to letting, to the grant of a lease or to covenants or terms, are to be construed accordingly.

Section 263 Meaning of "person having control" and "person managing" etc.

(1)In this Act "person having control", in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2)In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.

(3)In this Act "person managing" means, in relation to premises, the person who, being an owner or lessee of the premises—

(a)receives (whether directly or through an agent or trustee) rents or other payments from—

(i)in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii)in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b)would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.

(4)In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).

(5)References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

Housing and Planning Act 2016

Chapter 4 RENT REPAYMENT ORDERS

Section 40 Introduction and key definitions

(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—

(a) repay an amount of rent paid by a tenant, or

(b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.

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

Act	section	general description of offence
1 Criminal Law Act 1977	section 6(1)	violence for securing entry
2 Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3 Housing Act 2004	section 30(1)	failure to comply with improvement notice
4	section 32(1)	failure to comply with prohibition order etc
5	section 72(1)	control or management of unlicensed HMO
6	section 95(1)	control or management of unlicensed house
7 This Act	section 21	breach of banning order

(4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

Section 41 **Application for rent repayment order**

(1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.

(2) A tenant may apply for a rent repayment order only if —

(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and

(b) the offence was committed in the period of 12 months ending with the day on which the application is made.

(3) A local housing authority may apply for a rent repayment order only if—

(a) the offence relates to housing in the authority's area, and

(b) the authority has complied with section 42.

(4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

Section 43 **Making of rent repayment order**

(1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).

(2) A rent repayment order under this section may be made only on an application under section 41.

(3) The amount of a rent repayment order under this section is to be determined in accordance with—

(a) section 44 (where the application is made by a tenant);

(b) section 45 (where the application is made by a local housing authority);

(c) section 46 (in certain cases where the landlord has been convicted etc).

Section 44 **Amount of order: tenants**

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

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

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

(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.