



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

Case reference : **LON/00AC/HMF/2020/0246**

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

Property : **48 Durham Road, East Finchley,
London N2 9DT (“the Property”)**

Applicants : **(1) Thomas Pratt
(2) Pavel Maciulevic
(3) Ludwig Brouet**

Representative : **N/A**

Respondent : **Mr Alec Mackenzie**

Representative : **Housing and Property Law Partnership
(solicitors);
Mr Sam Madge-Wylde (counsel)**

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

**Tribunal
member(s)** : **Judge N Rushton QC
Mr C Gowman MCIEH MCMI BSc**

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

Date of hearing : **25 July 2022**

Date of decision : **2 August 2022**

DECISION

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 Applicants of 47 pages and a bundle submitted by the Respondent of 247 pages. The tribunal also received a skeleton argument and bundle of authorities from the Respondent's counsel. The tribunal has considered all of these documents.

Decisions of the tribunal

- (1) The Applicants' application for a rent repayment order in respect of the period November 2019 to November 2020 is dismissed. The tribunal's conclusion is that the Applicants have failed to prove beyond reasonable doubt that the Property was a house in multiple occupation ("**HMO**") which required a licence, during the period claimed, and have therefore failed to prove commission of the alleged offence relied upon in support of their application.
- (2) In any event, the tribunal has concluded that Mr Pratt and Mr Brouet were sub-tenants of Mr Maciulevic for any period when they resided at the Property and as such the tribunal would have had no jurisdiction to make a rent repayment order in their favour.
- (3) The tribunal makes the further determinations as set out under the various headings in this Decision.

The application

1. The Applicants, Thomas Pratt, Pavel Maciulevic and Louis Brouet, issued an application on 10 November 2020 for rent repayment orders ("**RROs**") under s.41(1) of the Housing and Planning Act 2016 ("**the 2016 Act**") against the Respondent, Mr Alec Mackenzie. The application concerns the property known as 48 Durham Road, East Finchley, London N2 9DT ("**the Property**"). The application was electronically signed by the three Applicants, with a statement of truth.
2. The application did not state any period for which a RRO was claimed. It stated that the Applicants had been made aware that the house was not fit for multiple occupants because it lacked fire safety measures and did not have an HMO licence. They also said that after consulting with the London Borough of Barnet's ("**Barnet**") housing department, they had been informed that Mr Mackenzie and Mr Raymond Harris (the freeholders) were not in a position to charge them rent for the Property.

3. The application was made against Mr Mackenzie alone, although the freehold is registered in the joint names of Mr Harris and Mr Mackenzie, and the tenancy agreements (referred to below) stated both men were landlords. Mr Harris filed a witness statement and attended, but said in his statement that he would object to being joined as a respondent. The tribunal inquired at the start of the hearing if it was correct that Mr Mackenzie was the only respondent, and both sides said that was correct, so the tribunal has proceeded on that basis.

4. Directions were issued by Judge D Jagger on 16 February 2022. In the preamble these stated: *“The applicants seek a RRO but [have] not stated in the application the period of occupation and the amount of the repayment sought.”* The directions to the Applicants provided that they should email a bundle to the tribunal and the other side by 1 April 2022 which included among other things:
 - “(c) an expanded statement of the reasons for the application;*

 - (d) full details of the alleged offence, with supporting documents from the local housing authority, if available (Note: the tribunal will need to be satisfied beyond reasonable doubt that an offence has been committed);...*

 - (g) evidence of rent payments made for the applicable period...;*

 - (h) a calculation, on a weekly/monthly basis, of the amount of rent paid in the applicable period...*

 - (i) any witness statements of fact relied upon with a statement of truth (see Notes below)...*”

5. The notes included the following:
 - “(b) If the applicant fails to comply with these directions the tribunal may strike out all or part of their case pursuant to rule 9(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the 2013 Rules”).*

 - (d) Witness statements should identify the name and reference number of the case, have numbered paragraphs and end with a statement of truth and the signature of the witness. Original witness statements should be brought to the hearing. In addition, witnesses are expected to attend the hearing to be questioned about their evidence, unless their statement has been agreed by the other party. The tribunal may decline to hear evidence from any witness who has not provided a statement in accordance with the above directions.”*

6. Mr Pratt filed (included in the Applicants' bundle) an "expanded statement of reasons", which was said to be made on behalf of all of the Applicants. This stated at the end "*The period we are claiming an RRO for is Nov 2019 – Nov 2020, amounting to £27,769.85 accounting for a slight reduction agreed due to the pandemic, and the final month of October's rent which we were told we shouldn't have to pay...*" This statement was not signed and did not have a statement of truth.
7. The Applicants included a number of documents with this statement (in addition to those filed with the application). These included the original advertisement for the house on Spare Room; group messages and photographs said to date from the time of the initial viewing in 2016; the first (2016) and most recent (2019) tenancy agreements; various extracts from bank statements, and copy correspondence between the Applicants and Mr Mackenzie (although not any correspondence between the Applicants and Barnet). However none of the Applicants prepared or filed any witness statements.
8. The Applicants represented themselves throughout.
9. Mr Mackenzie, who has been represented by solicitors and counsel, relied upon two witness statements from himself, signed with a statement of truth, and a statement, also signed with a statement of truth, from Mr Harris. He filed a bundle which included among other things photographs said to be of the condition of the Property in the final year and when it was recovered; correspondence between him and Barnet; a Temporary Exemption Notice ("TEN") which he and Mr Harris obtained dated 8 October 2020; further correspondence with the Applicants; Section 8 and 21 Notices dated 27 October 2020 seeking possession of the Property; a rent account statement from 7 November 2019; and a refusal of a second TEN on 1 April 2021.
10. There appears to be no dispute that Mr Mackenzie and Mr Harris recovered possession of the property on 7 May 2021, when the then occupants, who included Mr Pratt, handed over the keys and left voluntarily.
11. There was also no dispute that at all material times the Property was within an area of Barnet which was subject to Additional Licensing with the effect that a licence as an HMO was required if the Property was occupied by 4 or more persons in at least 2 households, occupying it as their main residence. (This is confirmed by an email from HMO Enforcement Officer Mrs Deller to Mr Mackenzie's legal representative, Ms Victoria Seifert, dated 16 November 2020). It appeared to be agreed that the additional licensing requirement only started in about July 2016.
12. There is no dispute that the Property was not licensed as an HMO at any relevant time.

13. Extracts from relevant legislation are set out in an Appendix to this Decision.

The hearing

14. The hearing took place remotely using the CVP platform. In addition to the tribunal it was attended by the three Applicants (Mr Pratt had to leave at lunchtime due to a medical appointment, after giving evidence); counsel Mr Sam Madge-Wylde for the Respondent, and Mr Mackenzie and Mr Harris, both of whom attended together by telephone.
15. At the start of the hearing, the tribunal drew the parties' attention to the fact permission to appeal was given in May 2022 by the Supreme Court in the case of *Rakusen v. Jepsen* [2021] EWCA Civ 1150; [2022] 1 W.L.R. 324. After explaining briefly the effect of that decision, i.e. that only an immediate landlord can be liable for an RRO, the tribunal asked the parties whether any party wished to apply to adjourn the hearing until after the Supreme Court had ruled on the point. All parties said no, they wished to proceed, which the tribunal accordingly did.
16. At the start of the hearing, Mr Madge-Wylde also asked the tribunal to rule that because the Applicants had not provided signed witness statements, with a statement of truth, the tribunal should refuse to hear oral evidence from them. He submitted that since this was a quasi-criminal sanction, and proof had to be to the criminal standard, it would be unfair to proceed when they had failed to provide such witness statements. Mr Brouet opposed this, on behalf of the Applicants, saying that they had not been required by the directions to provide witness statements, only to provide an expanded statement of reasons (which they had done); that they did not have representation (he said they had at one stage had some pro bono advice, but that person had had to pull out); and that they had provided photos and documents which supported their position.
17. The tribunal ruled that it would permit the Applicants to give oral evidence. The reasons for its decision, given at the hearing, were that the Applicants were not in breach of any order, because the directions had not ordered them to provide witness statements and the tribunal's procedure was not as formal as a court; the Applicants' application was signed with a statement of truth by each of them; and Mr Mackenzie knew sufficiently what their case against him was from the application and statement of reasons. The tribunal considered that the fairest approach was to permit the Applicants to give oral evidence, but it also reminded the parties that the Applicants were required to prove that an offence had been committed to the criminal standard, i.e. of beyond reasonable doubt, and it was likely to be more difficult to do this when no witness statements signed with statements of truth had been supplied. (Although not available at the hearing as it was issued on the same day, the tribunal considers that this approach is consistent with the

guidance in the Upper Tribunal's decision of 25 July 2022 in *Cobb v Jahagir* [2022] UKUT 201 (LC)).

18. The tribunal accordingly proceeded to hear live evidence from Mr Pratt, Mr Maciulevic and Mr Brouet, each of whom was cross examined by Mr Madge-Wylde and answered questions from the tribunal. It also heard oral evidence from Mr Mackenzie and Mr Harris by phone, who were cross examined by one or more of the Applicants, and also answered questions from the tribunal. The tribunal then heard submissions from Mr Madge-Wylde (supplementing his skeleton argument), and from Mr Brouet and to a lesser extent Mr Maciulevic on behalf of the 3 Applicants, with a reply from Mr Madge-Wylde.
19. As to whether an offence had been committed, Mr Madge-Wylde submitted that the tribunal had insufficient evidence to corroborate the Applicants' account as to occupation of the Property at the material time (claimed to be November 2019 to November 2020, although he said an offence could not in any event have been committed from the date of the TEN on 8 October 2020). He emphasised the lack of any witness statements. He also said disclosure by the Applicants was significantly incomplete, in that complete bank statements for the relevant period had not been provided (only the results of search terms) and only a small, selected number of messages from group message chats. He confirmed it was not conceded that the Property was an HMO which required a licence at the relevant or any time. In addition, he submitted that Mr Pratt and Mr Brouet were sub-tenants of Mr Maciulevic, who was the only tenant on the written tenancy agreement of 7 November 2019, and so those two could have no RRO claim.
20. Mr Madge-Wylde also argued that Mr Mackenzie would have a defence of reasonable excuse under s.72(5) of the 2004 Act because he had only ever let the Property to at most 3 people (the number of individuals on the first tenancy agreement, in November 2016) and so believed this was the number of people living there as their residence. He said that after Mr Mackenzie was warned by Barnet in July 2020 that the Property might be an HMO, he had applied for a TEN and also sought to regain possession by serving a s.21 notice. Mr Madge-Wylde also submitted that if the tribunal did find that an offence had been committed, it should not make any RRO as a matter of discretion, since Mr Maciulevic would then also have been committing an HMO offence because he had sub-tenants.
21. Mr Brouet and Mr Maciulevic submitted that it could not be a defence that Mr Mackenzie, who it was agreed was a professional landlord who had about 9 properties with Mr Harris, had failed to carry out due diligence into the requirements of the licensing law. They submitted that during lockdown, there had been 6 or 7 people living in the Property, and that Mr Mackenzie had met them at the Property at various times e.g. when being offered a cup of tea. They submitted that Mr Mackenzie preferred to communicate in person or by phone call to avoid there being

any paper trail. They submitted that Barnet had advised them that the requirements for obtaining a licence had not been met.

22. In reply Mr Madge-Wylde said that the occupation of the Property was obviously very fluid as no one seemed able to say with any precision who was living there and when, and he also objected to the Applicants introducing evidence for the first time by way of submission. He also relied on the fact that no correspondence between Barnet and the Applicants had been disclosed by them, despite reference having been made to things which Barnet had allegedly said.

Tribunal's decision on commission of an offence and reasons

23. The tribunal considered that all of the witnesses gave honest evidence about the situation as each had seen it.
24. However there was a real paucity of evidence from the Applicants as to exactly who was living in the Property and when, during the specific period with which the tribunal was concerned, which was 10 November 2019 to 7 October 2020 (i.e. from one year before the application until the day before the TEN). The Applicants' photographic and message chat evidence all related to 2016, when the first tenancy was entered into, not 2019/2020. The tribunal did not have the benefit of signed witness evidence from the Applicants. The application form, albeit signed with a statement of truth, did not refer to the issue of who was in occupation at the relevant time at all (and indeed did not specify a period for which an RRO was claimed). Mr Pratt's oral evidence also focused on the 2016 period. He only referred in general terms to "Geoff and Ebony" having left in September or October 2020 and "Urbanski and Gundum" leaving in April 2021.
25. It was also notable that there was no evidence at all from any other individuals who were alleged to have been in occupation of the Property at the relevant time, who might have been expected to give evidence in support and which might have corroborated the case as to who was in occupation and when.
26. Mr Maciulevic confirmed that the extracts from bank statements which were in the bundle related to his personal account and said he had produced them by putting in search keywords such as "rent" and then taking a screenshot of the results. He also said that some individuals had paid him in cash, rather than their contributions appearing in his account. People had also paid him for bills as well as towards the rent. He said he had had a spreadsheet in which he had recorded everyone's liabilities and contributions, but the tribunal notes that this was not disclosed and he did not explain why not.

27. It is clear that the bank statement extracts did not therefore represent a complete picture of alleged contributions, and there was no clarity as to whether those contributions were said to be towards rent or bills. It was unclear what amount if any had been contributed by Mr Maciulevic himself to the rent payments made by him to Mr Mackenzie. Other than these significantly incomplete bank records, there was no documentary evidence which might corroborate the Applicants' evidence about occupation of the Property in 2019/2020, which as noted was itself extremely vague.
28. The tribunal accepts Mr Mackenzie's figures as to the rent which he received from Mr Maciulevic over the period 8 November 2019 to 11 September 2020 (in his witness statement, paragraph 16). The first 5 payments (up to and including 7 March 2020) were of the full rent of £3,128, after which the amounts lessened. The Applicants' evidence was that after the pandemic and lockdown started, it became difficult for the occupants of the Property to meet the full rent.
29. Despite being given ample opportunity to do so by the tribunal, none of the Applicants were able to give specific details of exactly who they said was in occupation and when, over the relevant period from November 2019 to October 2020.
30. The tribunal has also concluded that the individuals named on the tenancy agreement (which in the relevant period was Mr Maciulevic alone, and was never more than 3 persons) were most probably the only direct tenants of Mr Mackenzie and Mr Harris, and that anyone else who was in occupation was a sub-tenant. The Applicants' evidence was that they organised replacement occupants themselves and did not notify Mr Mackenzie who was in occupation. There is no documentary evidence that Mr Mackenzie accepted any occupants other than the named tenants as being his tenants, whether in principle or on any particular occasion. This is not a case where there is any direct evidence of acceptance of a process of surrender and regrant by the landlord over a series of "churns" (unlike e.g. in *Sturgiss v. Boddy* (19.7.21)). On the basis of the evidence it heard, the tribunal agrees with Mr Madge-Wylde's description of the occupation arrangements as being "fluid". It appeared, for example, that there were occupants who only lived at the Property for a month or two.
31. The tribunal has concluded that it cannot therefore be satisfied to the criminal standard of proof, i.e. beyond reasonable doubt, that the Property was occupied by at least 4 persons in at least 2 households as their main residence, so that the Property was an HMO which required a licence, for all or any of the specific period from 10 November 2019 to 7 October 2020, within the meaning of s.254 of the 2004 Act as expanded by the Additional Licensing regime then in force in Barnet. This is especially so since the tribunal has concluded on the evidence that the occupants other than Mr Maciulevic were not Mr Mackenzie's tenants, a

factor which the tribunal considers has contributed to the lack of clarity about the identity of any other occupants and dates of any occupation.

32. The tribunal considers that the Applicants were given every opportunity to put before the tribunal specific and concrete evidence as to occupation of the Property in the relevant period, but have failed to do so to the necessary, high, standard of proof.
33. The tribunal has therefore concluded that it has no power to make an RRO in this case. In any event, it would have had no jurisdiction to make an RRO in favour of Mr Pratt and Mr Brouet since it has concluded they were not tenants of Mr Mackenzie.
34. In those circumstances, the tribunal does not consider it necessary or appropriate to go on to consider the other lines of defence relied upon by Mr Madge-Wylde on behalf of Mr Mackenzie.

Name: Judge Nicola Rushton QC **Date:** 2 August 2022

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.