FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AM/HMF/2022/0161**
Property	**:**	**Flat 5, Evelyn Court, Evelyn Walk, London N1 7PJ**
Applicants	**:**	**Lavinia Balan** **Juvee Coughlan** **Luis Fernando Soto Tamayo**
Representative	**:**	**Ms Nicholls, of Flat Justice**
Respondent	**:**	**Olaitan Omotola Otinwa**
Representative	**:**	**Mr Mukulu of counsel, in respect of an application to lift order disbarring the Respondent**
Type of Application	**:**	**Application for a rent repayment order by a tenant**
Tribunal Members	**:**	**Tribunal Judge Prof R Percival** **Ms F Macleod MCIEH**
Date and venue of Hearing	**:**	**12 December 2022** **10 Alfred Place**
Date of Decision	**:**	**20 December 2022**

DECISION

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Orders

(1) The Tribunal makes rent repayment orders against the Respondent to each of the Applicants in the following sums, to be paid within 28 days:

Ms Balan: £4,720

Ms Coughlin: £5,290

Mr Soto: £5,050

(2) The Tribunal orders under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 13(2) that the Respondent reimburse the Applicants together the application and hearing fees in respect of this application in the sum of £300.

The application

1. On 20 July 2022, the Tribunal received an application under section 41 of the Housing and Planning Act 2016 ("the 2016 Act") for Rent Repayment Orders ("RROs") under Part 2, Chapter 4 of the Housing and Planning Act 2016. Directions were given on 23 August 2022.

2. In accordance with the directions, we were provided with an Applicant's bundle of 146 pages.

3. The Respondent failed to comply with the directions, and failed to engage with the Tribunal. On 30 November 2022, Judge Martyński debarred the Respondent from taking any further part in the proceedings under Tribunal Procedure (First-tier Property Chamber)(England) Rules 2013 ("the 2013 Rules"), rule 9.

4. After the Tribunal had heard the Applicants' representative on whether the Respondent had committed the criminal offence, and Ms Balan had given oral evidence, we were informed that Mr Mukulu had attended for the Respondent, and sought to be heard.

The hearing

The application to lift disbarring of Respondent

5. In the circumstances set out at paragraph [4] above, we agreed to hear Mr Mukulu as to whether we should lift or vary the order of Judge

Martyński disbarring the Respondent from taking any further part in the proceedings.

6. Ms Nicholls, of Flat Justice, represented the Applicants.

7. Making his application, Mr Mukulu said that the Respondent wished to present a defence of reasonable excuse, and the reasoning behind that submission was relevant to his submission that the order debarring the Respondent should be lifted or varied.

8. He told us that the Respondent would rely on a clause in the agreement between herself and the agent, at the time trading as Up My Street. Mr Mukulu showed us, and Ms Nicholls, a copy of the agreement on his laptop. The clause (at 4.1.4) made it the agent's obligation expressly to (inter alia) obtain an HMO licence, if one were necessary.

9. As to the sequence of events relating to the proceedings, Mr Mukulu told us that he had been instructed that the Respondent had been aware of the proceedings, but Up My Street was required, under the agreement, to contest the application. He said that she had been told by Up My Street that they were indeed doing so. She received the disbarring order, he said, on 5 December, and thereafter instructed solicitors. He could not help us with why there had been delays in contacting the Tribunal, or why it was only on 5 December that she became aware of the order made on 30 November, as he had himself only been instructed in the afternoon of Friday 9 December.

10. Mr Mukulu argued, first, that the making of the disbarring order had been draconian and disproportionate, in the absence of a prior warning to the Respondent. Rather, he suggested that, at most, there should have been a partial barring.

11. The Applicants would not be unfairly prejudiced, Mr Mukulu submitted, if we were to allow his application. Additional costs incurred by Flat Justice could, he said, be accommodated by a costs order under rule 13 of the 2013 Rules. The Applicants personally would not suffer prejudice.

12. As to what we should do, Mr Mukulu submitted that we should adjourn today's hearing and give the Respondent leave to present a defence, to which the Applicants could then respond before a reconvened meeting.

13. Ms Nicholls resisted the application. She emphasised that the Applicants had complied with all the requirements of the directions, and had properly served all materials on the Respondent, both at Up My Street (the address she gave on the tenancy agreement) and what they believed to be her personal address.

14. As to prejudice, Mr Mukulu's suggestion of a costs order might be appropriate if both parties were represented in the normal way by solicitors and counsel. It did not make sense, however, in the context of a case brought with the assistance of Flat Justice. Flat Justice was a not-for-profit community company, and she (and the only other active representative) appeared pro bono. Any additional burdens put on them were not just a matter of costs, but would mean time being taken out of another case with which they were involved. Further, both representatives pro bono availability was limited, and it could not be guaranteed that they would be available for a further hearing fixture. In addition, as far as the Applicants' were concerned, they had personally put time into preparing for the hearing, they found the proceedings stressful and had all taken time off work to attend today.

15. Ms Nicholls noted that the existence of a legal obligation on an agent to licence a property did not of itself absolve the landlord of responsibility – there were additional criteria set out in *Aytan v Moore* [2022] UKUT 27 (LC), [2022] HLR 29, including that it was reasonable for the landlord to have confidence in the competence of the agent, and for there to be a good reason why the landlord relied on the agent. In respect of the first, Up My Street were not a competent agent and the Respondent should not have relied upon them, and there was no reason, such as living abroad, that could justify such reliance.

16. We refused Mr Mukulu's application.

17. First, as to the initial decision to debar the Respondent, we do not accept that it was draconian or disproportionate. By the time that the Applicants applied to disbar the Respondent, and the order was made, the Respondent had had ample opportunity to engage with the Tribunal. The directions carried a warning that "[i]f the respondent fails to comply with these directions the tribunal may bar them from taking any further part in all or part of these proceedings and may determine all issues against it pursuant to rules 9(7) and (8) of the 2013 Rules." The overriding objective set out in rule 3 of the 2013 rules includes the stipulation that "[t]he parties must (a) help the Tribunal to further the overriding objective; and (b) co-operate with the Tribunal generally." The order debarring the Respondent was proportionate and appropriate.

18. We accept the Applicants' argument as to prejudice. In the context provided by the nature and functioning of Flat Justice, costs awards are not able to deal with the adverse consequences of an adjournment. In the first place, the differences between Flat Justice and private sector legal representation means that, because costs cannot be effectively deployed to avoid prejudice, they may be prejudiced by losing the services of the representative they have hitherto worked with, or by delay, if that is necessary to secure her services pro bono. We also

accept that there is some personal prejudice to the Applicants, as argued by Ms Nicholls.

19. It may be that the impact on Flat Justice itself and its other clients is not strictly a matter of prejudice to the *Applicants*. Nonetheless, we consider it an appropriate consideration for us to take into account. The jurisdiction to make RROs is not purely a matter of private compensation between citizens. Rather, the purpose of this jurisdiction is to use tenant-initiated RROs as an additional way of improving standards in the HMO private rented sector. This is a public policy consideration that it is proper for the Tribunal to have in mind. It is the experience of the Tribunal that the large majority of successful RROs under the current dispensation are brought by a very small number of not-for-profit community enterprises, of which Flat Justice is one. They constitute a valuable means by which the potential benefits of the RRO jurisdiction is capable of securing the aims of the legislation. If, given the nature of the way that Flat Justice and the other not-for-profits work, an adjournment would suborn more of their resources for one case, thus disadvantaging other cases, that is a negative impact which the Tribunal is entitled to take into account.

20. The application is also made at very nearly the last possible stage. We had already heard submissions and evidence when Mr Mukulu arrived to make his application. We understand the time frame that Mr Mukulu explained. However, Mr Mukulu was unable to explain (understandably, given the very late and it appears incomplete instructions provided to him) why the Tribunal could not have been informed at any time after the debarring order was made on 30 November. Indeed, Mr Mukulu's acceptance – rather, his positive urging – that rule 13 costs should follow if his submissions were successful amounts to an acceptance that the conduct of the Respondent had been, up to the time of the hearing, unreasonable, to the high standard required in this context (*Willow Court Management Co v Alexander* [2016] UKUT 290 (LC), [2016] L. & T.R. 34).

21. At a more general level, the Respondent employed an agent to stand in her shoes in relation to the letting of the flat. She gave her address for service as the address of the agent, and throughout the tenancy, the tenants related directly and solely to the agent. Where a landlord does that, then the tenants are entitled, and often in practice obliged, to relate to the landlord exclusively through their appointed agent. Of course, a landlord may be entitled to come before us and argue that the conduct of an agent was such as to provide them with a defence. But as a matter of procedure, it is not fair, at such a very late stage, for a landlord to claim that the agent was not acting for them, and to disown the acts or omissions of the agent insofar as they relate to the tenants. It is the landlord, not the tenants, who should bear the risk of the agency arrangement going wrong in such circumstances. The Respondent has her remedy against the agent, if it has broken its contract with her.

22. Finally, one of the factors that elucidate the overriding objective set out in rule 3 is proportionality in terms of, among other things, the "costs and resources of ... the Tribunal". If we were to allow Mr Mukulu's application, we would effectively double the amount of time spent by the Tribunal on this case. This would not have been the case, had the application been made earlier.

23. Accordingly, the Respondent remains disbarred from taking any part in the proceedings.

The alleged criminal offence

24. The property is a three bedroom maisonette with a living room, kitchen, bathroom and separate WC.

25. The Applicants allege that the Respondent was guilty of the having control of, or managing, an unlicensed house in multiple occupation contrary to Housing Act 2004 ("the 2004 Act"), section 72(1). The offence is set out in Housing and Planning Act 2016, section 40(3), as one of the offences which, if committed, allows the Tribunal to make a rent repayment order under Part 2, chapter 4 of the 2016 Act.

26. The Applicants case is that the property was situated within an additional licensing area as designated by the London Borough of Hackney ("the council") from 1 October 2018. The relevant scheme covered the whole area of the Council, and required the licencing of any HMO in respect of which there were three or more occupants. The Applicants' tenancy commenced on 27 March 2021, and, they allege, the property should have been licenced as an HMO from that date until 21 February 2022, when Ms Coughlan moved out. After that date, the property did not require an HMO licence as there were only two tenants in occupation.

27. The Applicants have provided evidence of the relevant scheme, in the form of the Council's notice. There is evidence that the property is in Hackney (email correspondence with the Council). The Applicants give evidence of their occupation, and the rent paid, supported by appropriate documents. There is evidence that the Respondent holds the leasehold interest in the property (HM Land Registry official copies). The Respondent being disbarred, there was no evidence to contradict that of the Applicants.

28. Before Mr Mukulu made his application for the disbarring order to be lifted, we had considered whether there might be a reasonable excuse defence, and concluded that, on the evidence we had been provided with, there was not.

29. Mr Mukulu, in submissions, provided an indication of at least a part of a possible reasonable excuse (albeit one rarely successful). As we have

explained, we declined to lift the order disbarring the Respondent, so we conclude that we should not go behind that conclusion, and consider a possible defence (raised only in submissions) that is not apparent on the face of the evidence before us. Rule 9(8) of the 2013 Rules states that

> "If a respondent has been barred from taking further part in proceedings under this rule and that bar has not been lifted, the Tribunal need not consider any response or other submission made by the respondent, and may summarily determine any or all issues against that respondent."

We exercise that discretion.

30. We are satisfied so that we are sure that the offence contrary to section 72(1) of the 2004 Act has been committed by the Respondent.

The amount of the RRO

31. In considering the amount of an RRO, the Tribunal will take the approach set out in *Acheampong v Roman and Others* [2022] UKUT 239 (LC) at paragraph 20:

> "The following approach will ensure consistency with the authorities:
> (a) Ascertain the whole of the rent for the relevant period;
> (b) Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. ...
> (c) Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made ... and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step:
> (d) Consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4)." [We add that at this stage, it is also appropriate to consider any other circumstances of the case that the Tribunal considers relevant.

32. In respect of the relationship between stages (c) and (d), in *Acheampong* Judge Cooke went on to say at paragraph [21]

> "I would add that step (c) above is part of what is required under section 44(4)(a) [conduct of the parties]. It is an assessment of the conduct of the landlord specifically in the context of the offence itself; how badly has this landlord behaved in committing the offence? I have set it out as a

separate step because it is the matter that has most frequently been overlooked."

33. As to stage (a), by sections 44(2) and (3) of the 2016 Act, the maximum possible RRO is the rent paid during a period of 12 months, minus any universal credit (or Housing Benefit – section 51) paid during that period.

34. The relevant period is 27 March 2021 to 21 February 2022. The Applicants' evidence is that during that period, Ms Balan paid a total of £6,295.78 in rent, Ms Couglan paid £7,055.62, and Mr Soto paid £6,729.97. Their evidence was supported by financial records and a clearly explained method of calculation. We are satisfied that the calculations are correct.

35. The tenancy agreement provides for the tenants to pay all utilities. Accordingly, there is no deduction to be made at stage (b).

36. In assessing the seriousness starting point under stage (c), there are two axes of seriousness. The first is the seriousness of the offence, compared to the other offences specified in section 41 of the 2004 Act. The offence under section 72(1) is significantly less serious than those in rows 1, 2 and 7 in the table in section 40 of the 2016 Act, and we take that into account. It is, however, a much more common offence, which may be relevant to deterrence, one of the public policy objectives of the legislation.

37. We turn to the seriousness of the offence committed by the Respondents compared to other offences against section 72(1).

38. The Applicants gave evidence as to the condition of the property.

39. Ms Balan and Ms Coughlin gave evidence in their witness statements about fire safety, which Ms Balan expanded upon while being questioned by the Tribunal at the hearing. Ms Coughlin and Mr Soto both endorsed Ms Balan's evidence. Ms Balan said that there were no working fire or smoke detectors upstairs. The only alarm on the premises was a smoke alarm in the downstairs hallway. That alarm was battery operated, not wired in (the tenants had changed the battery on one occasion).

40. Ms Balan and Ms Coughlin thought that the kitchen door was not a fire door. It had no self-closing mechanism. There were no labels no labels to indicate that it was a fire door. It was light, and looked, just like the bedroom doors, a cheap wooden door.

41. The tenants did, however, agree that there was a fire blanket in the kitchen. There was no fire exit signage.

42. The oven only worked on a single, high, setting, making proper cooking difficult. The Applicants made various complaints requiring repair on moving in. Mr Soto referred to the light in the oven, the light from the kitchen extractor fan, the light and water dispenser in the refrigerator, cracked shelves in the freezer, lose unit doors in the kitchen, the shed door and lock and the doorbell. He said some of these matters were never attended to.

43. Complaints were made about thermostats. The evidence (as clarified in the hearing) was that there was an old thermostat left in place in the living room, which did not work. A new, wireless gas thermostat did work, although the tenants had some difficulty pairing the thermostat with its base unit.

44. There was a problem changing electricity supplier, which Ms Coughlin attributed (at least in part) to the landlord's agent not paying the previous supplier's bill.

45. There was mould in the bathroom. There was an extractor fan triggered by the light switch, but it seemed to be ineffective. We were shown photographs which showed little mould, but it transpired that they were taken after the tenants had cleaned the bathroom ceiling with bleach.

46. The property suffered from ant infestations.

47. Some of the windows in the property were defective, allowing drafts into the bedrooms. The window in the WC did not close.

48. In March 2022, the refrigerator/freezer stopped working, and it took the landlord's agents five days to replace it. We heard evidence that one of the tenants estimated her loss of food as a result was valued at about £70, and the tenants were obliged to spend about £200 on takeaways until the refrigerator was repaired. This evidence appeared to rely on the assumption that all fresh food would go off, in England, in March, in one day, and we discount it.

49. Before moving in, the Applicants asked for some of the furniture in the property to be moved, and for the garden shed to be cleared. It took some weeks for this to be done.

50. Each of the Applicants said that they had not been provided with copies of valid Gas Safety Certificates, Electrical Safety Certificates, or an Electrical Installation Condition Report. They were not supplied with copies of the publication "How to Rent".

51. Maintenance in general was poor, in that tradespeople would either not turn up at all, or would arrive without prior notice. At the end of the tenancy, the check-out clerk arrived without prior notice.

52. We have no evidence as to whether the landlord let other properties, or how much of her income derived from letting. We do not think we can properly draw any inferences either way. Although the professional or amateur status of a landlord frequently features in applications for RROs before the Tribunal, we do not think it necessary to come to a conclusion on the question. We note that a number of the cases in which the Upper Tribunal has re-taken a decision as to the amount of an RRO, the issue has not been mentioned (for instance, *Acheampong* itself, and *Hancher v David* [2022] UKUT 277 (LC)). We do not feel the need to disturb this conclusion, having heard Mr Mukulu say that his instructions were that the landlord only let this property.

53. Our conclusions are that the position in relation to fire safety was serious. We consider, on the Applicants' evidence, that it is more likely than not that neither the kitchen door nor any of the bedroom doors were fire doors. All should have been. There was only one, inadequate (because battery) smoke alarm, when there should have been a wired in smoke alarm on both storeys, and there should have been a heat detector in the kitchen. The presence of a fire blanket in the kitchen gives some little mitigation.

54. As to the condition of the property generally (and aside from the fire safety aspects), and the Applicants complaints, it is clear that there were some flaws in the condition of the property and in the conduct of the agents. However, for the most part, these were not conspicuously serious matters, and some might even be considered trivial. Compared with both reported cases and the experience of the Tribunal, the condition of the property while not perfect, is on the lower end of the spectrum of disrepair associated with other offences contrary to section 72(1).

55. Ms Nichols urged us to start at a figure of 90% of the total for the RRO (if we did not award 100%). She took us to paragraph [64] in *Aytan v Moore*, which relates to the appeal in *Wilson v Arrow* heard with *Aytan*. Retaking the erroneous First-tier Tribunal decision, Judge Cooke said

> "The compelling factor in this case is the absence of important fire safety features, in particular fire doors and alarms, which gave rise to a dangerous situation for the tenants throughout the time they lived at the property until the problems were finally remedied ... Accordingly we make only a 10% deduction from the rent to be repaid to the tenants."

56. We have also considered the conjoined case of *Choudhury v Razak*, considered in *Acheampong*. In that case, again re-taking the decision, the same judge said

> "I consider the seriousness of the offence; obviously fire safety failings are a significant factor, and may have made the property ineligible for a licence. The failure to protect the deposit is a significant breach of duty to the tenants."

57. It is quite difficult to discern the factual differences between the cases (we note that in *Williams v Arrow*, Judge Cooke noted that the FTT dealt with the facts very briefly), but we note that in *Wilson*, Judge Cooke refers to the absence of fire alarms, as well as fire doors. In this case, there was one, albeit inadequately specified, smoke alarm. The nature of the "fire safety failings" in *Choudhury* are not clear, but if it is possible that they would make the property ineligible for a licence, they might have been worse than in this case. We would expect a licence to be granted in our case, with a condition to rectify the relatively straightforward defects within a specified time.

58. We also have in mind the full range of percentage awards made in the cases where the Upper Tribunal has re-taken a decision or upheld that of a First-tier Tribunal, which vary between 25% and 90%.

59. In addition to those mentioned, we have taken account of *Williams v Parmar and Others* [2021] UKUT 244 (UT), [2022] H.L.R. 8; *Aytan v Moore* [2022] UKUT 27 (LC); *Hallett v Parker* [2022] UKUT 239 (LC); *Hancher v David and Others* [2022] UKUT 277 (LC); and *Dowd v Martins and Others* [2022] UKUT 249 (LC).Calibrating this case within the parameters provided by cases with widely divergent facts, we conclude that, at stage (c), we assess the seriousness of the offence as indicating an RRO of 75% of the maximum.

60. At stage (d), we must consider what effect the matters set out in section 44(4) have on our conclusions so far. Section 44(4) provides that in determining the amount of an RRO, within the maximum, the Tribunal should have particular regard to the conduct of both parties, and to the financial circumstances of the landlord. We must have particular regard to these matters, but we may also have regard to such us matters as we consider relevant in the circumstances.

61. As Judge Cooke said in *Acheampong*, there is a close relationship between stages (c) and (d). Insofar as we have already made findings as to fire safety and the condition of the property which could be attributed to the conduct of the landlord, we do not double count them in considering the section 44(4) matters.

62. We note the complaints relating to lack of notice (or, indeed, attendance) by the agent as matters relating to conduct but not the

condition of the property, but while we accept they were improper and discourteous, they do not in our view justify an increase in the percentage.

63. We can see no basis for any criticism of the Applicants' conduct (and of course, the Respondent has not provided any evidence of submissions to that effect).

64. Similarly, we have no evidence of the landlord's financial circumstances.

65. In the result, we do not consider that there is anything at stage (d) that should change the conclusion we came to at stage (c). We have slightly rounded the final orders to the nearest ten pounds.

Reimbursement of Tribunal fees

66. The Applicant applied for the reimbursement of the application and hearing fees paid by the Applicants under Rule 13(2) of the Rules. In the light of our findings, we allow that application.

67. In the light of our conclusions above, we allow the application.

Rights of appeal

68. 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 London regional office.

69. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

70. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

71. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Name: Tribunal Judge Professor Richard Percival **Date:** 20 December 2020

Appendix of Relevant Legislation

Housing Act 2004

72 Offences in relation to licensing of HMOs

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

Housing and Planning Act 2016

40 Introduction and key definitions

(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord and 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 to 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

	Act	*section*	*general description of offence*
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).

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.

42 Notice of intended proceedings

(1) Before applying for a rent repayment order a local housing authority must give the landlord a notice of intended proceedings.

(2) A notice of intended proceedings must—

(a) inform the landlord that the authority is proposing to apply for a rent repayment order and explain why,

(b) state the amount that the authority seeks to recover, and (c) invite the landlord to make representations within a period specified in the notice of not less than 28 days ("the notice period").

(3) The authority must consider any representations made during the notice period.

(4) The authority must wait until the notice period has ended before applying for a rent repayment order.

(5) A notice of intended proceedings may not be given after the end of the period of 12 months beginning with the day on which the landlord committed the offence to which it relates.

43 Making of a 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 had 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 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).

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 this 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 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,

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.