



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

<b>Case Reference:</b>	CHI/OOHB/HSB/2020/0001
<b>Property:</b>	20 Burnell Drive, St Pauls, Bristol, BS2 9JU
<b>Applicant:</b>	Bristol City Council
<b>Representative:</b>	Onn Kee Davies
<b>Respondent:</b>	Charles Banda
<b>Representative:</b>	None
<b>Type of Application:</b>	For Rent Repayment Orders Sections 40,41,42, 43 and 45 of the Housing Act 2004 ("the Act")
<b>Tribunal Members:</b>	Judge A Cresswell (Chairman)
<b>Venue of Hearing:</b>	On the Papers
<b>Date of Decision:</b>	12 May 2020

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**DECISION**

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## **The Application**

1. The Respondent is the owner of the Property, which was let to a tenant. He was required to comply with an Improvement Notice under Section 11 of the Housing Act 2004 in respect of the Property but did not do so as required by 13 January 2019, thereby committing an offence contrary to Section 30 of the 2004 Act. All of the rent due from the tenant was paid by the Applicant Council (“the Council”) as housing benefit.
2. The Applicant has applied for a rent repayment order (“RRO”) under section 41 of the Housing and Planning Act 2016 for the period 13 January 2019 to 21 March 2019, during which period the offence was being committed.

## **Summary Decision**

3. The Tribunal orders the Respondent to repay to the Applicant housing benefit payments in the sum of £1569.10.

## **Directions**

4. Directions were issued on 30 January 2020. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration. The Respondent was ordered to submit his response to the Applicant by 27 March 2020.
5. The Directions also included notification to the parties that the application would be determined without a hearing unless either party objected. No such objection has been received.
6. The Respondent has failed to comply with the Directions and has taken no part in the preparation for this determination of the application save that he sent an email of 17 April 2020 to an employee of the Applicant. Although not meeting the Tribunal’s Directions, the Applicant is content that the Tribunal should take account of the contents of the email.
7. This Decision is made in the light of the documentation submitted by the parties in response to the Directions.

## **The Law**

8. Section 41 of the Housing and Planning Act 2016 provides that a local housing authority may apply to the First-tier Tribunal (FtT) for a RRO against a landlord who has committed an offence to which the 2016 Act applies. The 2016 Act applies to an offence committed under section 30(1) of the Housing Act 2004 (section 40(3) of the 2016 Act).
9. Under Section 30(1) of the 2004 Act: *“Where an improvement notice has become operative, the person on whom the notice was served commits an offence if he fails to comply with it.”*

10. Section 43 of the 2016 Act provides that the FtT may make a RRO if satisfied, beyond reasonable doubt, that the landlord has committed an offence to which the 2016 Act applies.
11. Section 45 of the 2016 Act provides for how the RRO is to be calculated. In relation to an offence under section 30(1) of the 2004 Act the period to which a RRO relates is a period, not exceeding 12 months, during which the landlord was committing the offence.
12. The amount that the landlord may be required to repay must not exceed the amount of universal credit that the landlord received (directly or indirectly) in respect of rent under the tenancy for the period not exceeding 12 months, during which the landlord was committing the offence (Section 45(3)).
13. If the tribunal decides to make a rent repayment order, section 46 of the Act sets out the basis on which any such repayment is to be calculated. The amount to be repaid must be the maximum the Tribunal has power to order, ie “*the amount of universal credit that the landlord [the Respondent] received in respect of rent for the tenancy*” in the 12 month period ending with the date of the offence (subsection 45(3)).
14. Subsection 46(5) of the Act states that nothing in section 46 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. “Exceptional circumstances” are not defined.

## **The History**

15. The Tribunal first records the relevant history where there is no challenge made by the Respondent to the case stated by the Applicant.
16. The Respondent is owner of the property, a maisonette on the first and second floors of a purpose-built block of flats, comprising a WC compartment, kitchen and living room all beneath a bathroom and 3 bedrooms.
17. Upon an inspection of the property on 12 November 2018, the Applicant discovered a Category 1 Hazard relating to personal hygiene, sanitation and drainage in accordance with Part 1 Housing Act 2004, specifically leakage from the waste pipe of the WC in the bathroom and leakage associated with the bath taps and the failing bath sealant to the floor below.
18. The property was occupied under a tenancy by a 69-year old adult during the relevant period, the Respondent being the landlord.
19. After fruitless attempts to contact the Respondent by telephone, an Improvement Notice dated 21 November 2018 was served on the Respondent requiring specified remedial action by 13 January 2019.
20. Further attempts to communicate with the Respondent by telephone and email proved fruitless. There was no appeal against the Improvement Notice.

21. On 16 January 2019, the Applicant revisited the property and saw that none of the required remedial works had been completed.
22. On 24 January 2019, the Applicant sent to the Respondent a notice under Section 34 Criminal Justice and Public Order Act 1994, advising him of the alleged offence and inviting him to make any representations at an interview under caution on 7 February 2019. The Respondent neither attended the interview nor submitted any representations.
23. On 14 February 2019, the Applicant sent to the Respondent notice under Schedule 3, paragraph 4 of the 2004 Act of its intention to take action without agreement. On 21 March 2019, the works specified in the Improvement Notice were undertaken by the Applicant at a cost of £413.62.
24. Being satisfied that the Respondent had committed an offence under Section 30(1) of the 2004 Act, on 16 May 2019, the Applicant sent to the Respondent a Notice of Intent to impose a financial penalty under Section 249A of the 2004 Act.
25. On 2 October 2019, a Final Notice Imposing a Financial Penalty under that section in the sum of £7,793.27 was hand delivered to the Respondent.
26. The weekly housing benefit entitlement of the tenant of the property was £168.98, covering the tenant's rent in full.
27. On 7 November 2019, a Notice of Intended Proceedings to apply for a RRO under Section 42 of the 2016 Act was hand delivered to the Respondent. No representations were received.
28. On 27 January 2020, this application was made.
29. £1617.38 in housing benefit was paid during the period of the commission of the offence.
30. The Respondent purchased the lease of the property for £22,000 in 2003 and sold it for £119,000 on 10 January 2020.

### **The Respondent**

31. The Respondent's email of 17 April 2020 was sent to Kerry Patterson of the Applicant council, who was helping the Respondent with a PIP application and is headed "PIP and Court Case".
32. The Respondent stated that his mother had passed away on 27 November 2019, having suffered a stroke and that he had been really upset and distressed by her death.
33. He travelled to Zambia so as to see her before she passed away. He was short of money and cancelled the direct debit for his rent.
34. He sets out his health circumstances.

35. Help received from Christians Against Poverty early last year ceased when they found he owned the property on mortgage. *“I am yet to find out everything about the sale of my property when I open all the mail.”*

### **The Tribunal’s Findings and Decision**

36. The Tribunal is satisfied beyond a reasonable doubt that the Respondent was committing an offence under section 30(1) of the Act from 14 January 2019 up to 21 March 2019 when the Applicant completed the required works.
37. None of the evidence presented by the Applicant has been challenged by the Respondent and there is no other apparent reason why the Tribunal should doubt any of that evidence.
38. The evidence to support this finding includes the following. The Respondent was the owner of the long lease of the property (proved by a copy of the lease and Land Registry documentation); he was the landlord of the property with a 69-year old tenant (proved by a copy of the lease and applications for housing benefit and Land Registry documentation); there was a Category 1 hazard at the premises (proved by the inspection report and photographs); he was made aware of the hazard and eventually served with an Improvement Notice (proved by the documents asserting same sent to him by the Applicant); he failed to comply with the Improvement Notice (proved by the evidence of further inspection, notices of the intention of the Applicant to undertake the works and evidence that the works were undertaken by the Applicant).
39. The Respondent does not argue either that any of the above facts or the detail of the Applicant’s case is in any way inaccurate or that there is any reasonable excuse for his failure to act.
40. The Applicant served Notice of Intended Proceedings on the Respondent on 7 November 2019 (Section 42).
41. The table in Section 45 provides that for an offence at row 3 of the table in section 40(3) the amount must relate to universal credit paid in respect of the period not exceeding 12 months during which the landlord was committing the offence.
42. The Tribunal can only act upon the evidence made available to it.
43. There is no information to suggest any improper behaviour by the tenant; the Respondent landlord failed to engage at all with the procedure relating to the hazard. The information available for the Tribunal to consider relating to the Respondent’s financial circumstances is mixed. On the one hand, he claims poverty circa November 2019 (some 11 months after he should have commenced the works), but, on the other hand, there is evidence within the Land Registry documents that he made a profit of some £97,000 when he sold the property in January 2020 (subject to any outstanding mortgages). His assertion in his email that he was unaware of the status of the property sale does not hold water as he would have had to sign the various sale documents (contract and transfer) and provide information to the buyer and it is inconceivable that a solicitor would not have passed the proceeds of sale to the

vendor or accounted for same some 3 months later. Whilst there is support for the Respondent's assertion of various medical conditions within the documentation within the Applicant's bundle, there is also a reference to his working, evidence of the property sale and evidence of his ability to write a cogent email.

44. There is no evidence of any other convictions, but there is an assertion of a previous failure to comply in full with an Improvement Notice in 2017 leading to repairs undertaken by the Applicant, which the Respondent has not denied.
45. The offence here was of a relatively short duration, but followed on from a previous failure to comply in full with an Improvement Notice in 2017 leading to repairs undertaken by the Applicant and ended only when the Applicant undertook the required works in this instance.
46. Given the evidence of a previous failure to comply fully with an Improvement Notice, the Respondent would have been aware of the likely consequences of such action. There is no substantive evidence of an inability to comply with the current Improvement Notice; the medical evidence and, indeed, the submissions of the Applicant himself, point to a period well after the dates of the offence. There is, however, evidence that he was able to function properly even when suffering the ills he describes by virtue of the fact that he was working, the fact that he was able to effect the execution of a legal process which benefited him, i.e. the property sale, and the fact that he was able to send to the Applicant a lucid and cogent email.
47. The Tribunal has weighed all of the relevant factors and concluded that the Respondent should make a full repayment of the monies paid in Housing Benefit for the relevant period. He knew his tenant was enduring unhygienic conditions and yet failed to remedy them.
48. The Respondent meets Condition 1 in Section 46(2) in that he is a landlord who has received a financial penalty in respect of the offence and there is currently no prospect of appeal against that penalty, the Respondent not having appealed and the time for doing so having expired.
49. The Tribunal must make an RRO requiring the Respondent to pay to the Applicant Council an amount equal to the total amount of the housing benefit, but an order may not require the payment of any amount which the Tribunal is satisfied that, by reason of exceptional circumstances, it would be unreasonable for the Respondent to be required to pay – subsection (4).
50. Given the submissions of the Respondent recorded above, are there any exceptional circumstances such as to reduce or expunge the amount to be paid? He does not specifically refer to exceptional circumstances, but the Tribunal still needs to consider whether any exist.
51. The Tribunal considers here specifically the situation of repayments to a local authority. Clearly the issues relevant to repayments to occupiers are not

exceptional circumstances, else Parliament would have made similar provisions for local authority applications.

52. In **R v Kelly**. [1999] 2 Cr App R (S) 176, the then Chief Justice, Lord Bingham, gave a construction of 'exceptional' which has been followed in later cases. He said:  
*'We must construe 'exceptional' as an ordinary, familiar English adjective, and not as a term of art. It describes a circumstance which is such as to form an exception, which is out of the ordinary course, or unusual, or special, or uncommon. To be exceptional a circumstance need not be unique, or unprecedented, or very rare; but it cannot be one that is regularly, or routinely, or normally encountered.'*  
 In **Offen** [2001] 1 Cr App Rep 372 Lord Woolf CJ at para 72, said:  
*"When deciding whether a situation is exceptional, we regard it as being of the greatest importance to have in mind the policy already identified which reflects the intention of Parliament. That is the rationale spelt out by Lord Bingham in the case of Buckland."*
53. It follows that the Tribunal must look to Parliament's intention, i.e. that a landlord who receives rent while failing to comply with an Improvement Notice could be liable to a penalty equivalent to any rent received during the period of the offence and that exceptional circumstances requiring a different outcome will be *out of the ordinary course, or unusual, or special, or uncommon, need not be unique, or unprecedented, or very rare; but it cannot be one that is regularly, or routinely, or normally encountered.*
54. The Tribunal does not accept that there are here any exceptional circumstances which could remove the requirement of Parliament for the repayment of all of the Housing Benefit paid out during the relevant period.
55. This Tribunal is not asked to sentence the Respondent for his crime, but to assess whether there are exceptional circumstances such as to negate the requirement of repayment. The Tribunal has found that there are no such exceptional circumstances. There is nothing here which is *out of the ordinary course, or unusual, or special, or uncommon*, but rather circumstances that are *regularly, or routinely, or normally encountered.*
56. The Tribunal calculates the sum of housing benefit paid to the Applicant during the relevant period as £1569.10. This is reached by multiplying the period of 9 weeks and 2 days from 14 January 2019 to 20 March 2019 (thereby giving to the Respondent the benefit of excluding 13 January 2019 and 21 March 2019 because he had until midnight on 13 January 2019 to comply and, for some of the day of 21 March 2019, there was no longer a category 1 hazard at the property) by £168.98 per week. Thus, 9 weeks at £168.98 (£1520.82) plus 2 days at £24.14 (£48.28) totals £1569.10.
57. The Tribunal orders the sum of £1,569.10 is to be repaid to the Applicant.

**A Cresswell (Judge)**

**APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
  
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
  
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
  
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

**Schedule**

**Housing and Planning Act 2016**

**Section 40**

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

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to— (a) repay an amount of rent paid by a tenant, or (b).....

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

	Act	Section	general description of offence
1	Criminal Law Act 1977	Section 6(1)	violence for securing entry



2	Protection from Eviction Act 1977	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**

(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 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.

## **Section 43**

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

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

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

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

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

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

## **Section 45**

### **Local Housing Authority**

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

(2) The amount must relate to universal credit 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 universal credit paid 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 the amount of universal credit that the landlord received (directly or indirectly) in respect of rent under the tenancy for that period.

(4) In determining the amount the tribunal must, in particular, take into account— (a) the conduct of the landlord,

(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.

## **Section 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.

## **Housing Act 2004**

### **30 Offence of failing to comply with improvement notice**

(1) Where an improvement notice has become operative, the person on whom the notice was served commits an offence if he fails to comply with it.

(2) For the purposes of this Chapter compliance with an improvement notice means, in relation to each hazard, beginning and completing any remedial action specified in the notice—

(a) (if no appeal is brought against the notice) not later than the date specified under section 13(2)(e) and within the period specified under section 13(2)(f);

(b) (if an appeal is brought against the notice and is not withdrawn) not later than such date and within such period as may be fixed by the tribunal determining the appeal; and

(c) (if an appeal brought against the notice is withdrawn) not later than the 21st day after the date on which the notice becomes operative and within the period (beginning on that 21st day) specified in the notice under section 13(2)(f).

(3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse for failing to comply with the notice.

(5)The obligation to take any remedial action specified in the notice in relation to a hazard continues despite the fact that the period for completion of the action has expired.

(6)In this section any reference to any remedial action specified in a notice includes a reference to any part of any remedial action which is required to be completed within a particular period specified in the notice.

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

(8)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.]