

# Rent Repayment Orders and Multiple Offences

---

By [Antonietta Grasso](#)

3PB Barristers

The term ‘rogue landlords’ has been around for many years.

In February 2016, the Parliamentary Under-Secretary of State for Communities and Local Government, Baroness Williams of Trafford, responded to Lord Greaves’ question of what is a ‘rogue landlord’:

*“The term ‘rogue landlord’ is widely understood in the lettings industry to describe a landlord who knowingly flouts their obligations by renting out unsafe and substandard accommodation to tenants, many of whom may be vulnerable.”* and referred to what was at the time the Housing and Planning Bill. The Housing and Planning Act 2016 (“HPA2016”) received royal assent on 12 May 2016, containing a range of measures to assist in the expansion of homeownership, reform of *housing* management and the *planning* process. Eventually, some two years later, in April 2018, measures to tackle rogue landlords came into force.

One of the areas covered by the HPA2016, is houses in multiple occupation (“HMOs”). The law around what defines a HMO is quite complicated. The law around offences that can be committed by a landlord is governed by both the HA2004 and the HPA2016; and, fortunately, tenants are becoming more alive to the situation as to the legality of the property they live in, specifically with regards to the licensing of it or not, and also the conduct of their landlord: A remedy available to a tenant would be to seek rent to be repaid by the landlord, known as a rent repayment order.

Once a tenant establishes that an offence has been committed, for example that there is no HMPO licence for the property in which they live, or that there has been ‘poor conduct’ on the part of the landlord, upon an application under s41 HP2016, to the First-tier Tribunal (FtT), s40, HPA2016, confers power on the FtT to make a rent repayment order, if it is satisfied beyond reasonable doubt (s43(1)) that a landlord has committed any of the offences listed in s40(3), helpfully listed in tabular form.

In terms of how much rent should be repaid by the landlord to the tenant is determined by s44 HPA2016, which provides yet another helpful table at s44(2). Importantly, s44(3) states that the rent that is to be repaid by the landlord must not exceed the rent paid in that period, in line with the table; less any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period: Limited to 12 months.

As I said, tenants have become alive to the wrongs of their landlord and so these applications are becoming more popular. That so, that the question of what if a landlord is found to have committed more than one offence, should there be more than one rent repayment order to reflect the number of offences?

On 3 February 2021, the Upper Tribunal (Lands Chamber) decided just that. It presided over the case of *Ficcara & Others v James* [2021] UKUT 0038 (LC), [2021] All ER (D) 30 (Mar), in which the tenants raised the issue of the interpretation of sections 40, 43 and 44 HPA2016. The tenants essentially submitted that the FtT wrongly awarded just one rent repayment order, despite the landlord being found to have committed three offences listed under s40(3): (1) Holding no licence for the HMO (s72 HA2004); (2) Committing acts likely to interfere with the peace or comfort of the appellants with intent to cause them to give up the occupation of the flat or to refrain from exercising rights or pursuing remedies in respect of it (s1(3) and 1(3A) Protection from Eviction Act 1977); (3) Unlawfully depriving the tenants of their occupation of the flat without reasonable cause to believe that they had ceased to reside there – by changing the locks and depriving them access (s1(2) Protection from Eviction Act 1977).

Mr. Michael Rodger QC, Deputy Chamber President, turned first to s6 of the Interpretation Act 1978, emphasising, at paragraph 27 of his judgment, that *'...that in any Act, unless the contrary intention appears, words in the singular include the plural and words in the plural include the singular. It follows that, unless it would be inconsistent with a particular provision of the Act, or with its general intent, references in sections 40, 43 and 44 to "a rent repayment order" and to "an offence" must be understood to mean "order or orders" and "offence or offences". For the same reason the reference in section 44(2) to the, or a, "period of 12 months", could mean more than one such period provided that would not be inconsistent with some other feature of the legislation.'* He went on to analyse s44HPA2016, and concluded at paragraph 34, that, *'[t]he proper interpretation of section 44(3) is therefore that the amount repayable in respect of a single period may not exceed the rent paid during that period, no matter how many offences an order, or orders, relate to.'*

Moreover, whilst there was some question as to how to treat multiple offences with overlapping periods, Mr. Rodger QC held at paragraph 38, that, *‘It is a general principle of law that a person should not be penalised except under clear law; that principle gives rise to a presumption of statutory interpretation sometimes referred to as the presumption against doubtful penalisation’*, he cited the case of *ESS Production Ltd (in administration) v Sully* [2005] EWCA Civ 554, and specifically, Arden LJ’s findings at paragraph 7 of that judgment, *‘...the principle against doubtful penalisation ... should be applied to the imposition of a civil liability as well as to the imposition of criminal liability.’*”

Importantly, at paragraph 40, Mr. Rodgers QC, went on, *‘[h]ad Parliament intended that more than 12 months’ rent could be repayable I believe it would have said so much more clearly in section 44(3). I also think it improbable that Parliament intended that the penalties to which a landlord would be exposed would be capable of varying depending on when offences were committed. My conclusion, therefore is that 12 months’ rent is the maximum which a landlord can be ordered to repay on an application under section 41, irrespective of the number, timing or duration of the offences committed.’*

I know there are many of these cases in the appeal ‘pipeline’ from FtT to the Upper Tribunal, one of which is mine, where I am acting for the landlord, so of course this decision is hugely welcomed!

**This document is not intended to constitute and should not be used as a substitute for legal advice on any specific matter. No liability for the accuracy of the content of this document, or the consequences of relying on it, is assumed by the author. If you seek further information, please contact [mark.heath@3pb.co.uk](mailto:mark.heath@3pb.co.uk).**

16 March 2021



**Antonietta Grasso**

*Barrister*  
*3PB Barristers*

01962 868 884  
[antonietta.grasso@3pb.co.uk](mailto:antonietta.grasso@3pb.co.uk)  
[3pb.co.uk](http://3pb.co.uk)