Neutral Citation Number: [2024] UKUT 69 (LC)

Case No: LC-2023-375

IN THE UPPER TRIBUNAL (LANDS CHAMBER)
AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)
FTT REF: LON/00BH/HMF/2022/0062

18 March 2024

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

HOUSING – RENT REPAYMENT ORDER – appeal against FTT's findings of fact – identity of landlord – defence of reasonable excuse – quantum of award – ss. 40-44, Housing and Planning Act 2016; section 72, Housing Act 2004 – appeal dismissed

BETWEEN:

MR TAQEER SHAH (1)
TSMB LIMITED (2)

Appellants

-and-

LINDA MCLAUGHLIN (1)
ALICE GREGOR (2)
RUBY BARRETT (3)
ANGELA PATRICIA RODRIGUES GOMES (4)
VICTORIA AQUINO (5)
TIM MORTIMER (6)

Respondents

19 Somerset Road, London E17

Martin Rodger KC,
Deputy Chamber President

13 March 2024

Karel Hart of Freemans Solicitors, for the appellant
The respondents did not participate in the appeal

The following cases are referred to in this decision:

Acheampong v Roman [2022] UKUT 239 (LC)

Assicurazioni Generali Spa v The Arab Insurance Group [2003] 1WLR 577

Clarke v Edinburgh and District Tramways Co Ltd 1919 SC (HL) 35

Cook v Thomas [2010] EWCA Civ 227 at [48]

Henderson v Foxworth Investments Ltd [2014] UKSC 41

The Ikarian Reefer [1995] Lloyd's Rep 455

Introduction

1. This appeal is against the decision of the First-tier Tribunal (Property Chamber) (the FTT) on 3 April 2023 ordering Mr Taqeer Shah, the first appellant, to repay rent totalling £21,000 to the six respondents who had been tenants of a house in North-East London belonging to Mr Shah's company, the second appellant, TSMB Ltd. The FTT was satisfied that the house was an unlicensed house in multiple occupation (HMO) and that, as a person having control of or managing unlicensed HMO, Mr Shah had committed an offence contrary to section 72(1), Housing Act 2004. It made a rent repayment order under section 40, Housing and Planning Act 2016 ordering Mr Shah to repay £3,500 to each of the former tenants.

2. At the hearing of the appeal Mr Shah was represented by his solicitor, Mr Karel Hart, to whom I am grateful for his submissions. The tenants have not participated in the appeal.

3. Mr Hart challenges the FTT's determination that Mr Shah (rather than TSMB Ltd) was the landlord of the property, and its dismissal of his defence of reasonable excuse. He also challenges the quantum of the order (which represented 70% of the total rent paid for the year of the tenancy).

Appeals against findings of fact by the FTT

4. The appeal is effectively an appeal against the FTT's findings of fact. It is argued by Mr Hart that, contrary to the findings of the FTT, Mr Shah was not the landlord of the property. He also argued, again contrary to the FTT's findings, that Mr Shah believed the property was occupied by a single household and that he was misled by his letting agent. Finally, it is said that the FTT's assessment of the quantum of the award failed to take account of the extent to which Mr Shah had been deceived by his letting agent, a deception which the FTT had not been convinced had occurred.

5. It is relevant therefore to begin with a reminder of the approach which will be taken by any appellate court or tribunal when it is asked to interfere with the findings of fact of a first instance court or tribunal. In cases which depend on the acceptance or rejection of oral evidence (as this case does) the usual outcome of applying that approach was explained by Lloyd LJ in *Cook v Thomas* [2010] EWCA Civ 227, at [48], when he said: "An appellate court can hardly ever overturn primary findings of fact by a trial Judge who has seen the witnesses giving evidence in a case in which creditability was in issue".

6. The proper approach has been long settled. In *Clarke v Edinburgh and District Tramways Co Ltd* 1919 SC (HL) 35 at 36-37, Lord Shaw said that an appellate court should intervene only if it is satisfied that the trial Judge's findings of fact were "plainly wrong". That requirement was restated in the context of the former Rules of the Supreme Court by Stuart-Smith LJ in *The Ikarian Reefer* [1995] Lloyd's Rep 455, at 458-9, as follows:

> "When questions of the creditability of witnesses who have given oral evidence arise the appellant must establish that the trial Judge was plainly

wrong. Once again there is a long line of authority emphasizing the restricted nature of the Court of Appeal's power to interfere with a Judge's decision in these circumstances though in describing that power different expressions have been used. In *SS Hontestroom v SS Sagaporack* [1927] AC 37 at 47 Lord Sumner said:

> "Nonetheless not to have seen the witnesses puts appellate Judges in a permanent position of disadvantage as against the trial Judge and unless it can be shown that he has failed to use or has palpably misused his advantage, the higher Court ought not to take the responsibility of reversing conclusions so arrived at merely on the results of their own comparisons and criticisms of witnesses and if their own view of the probabilities of the case."

This passage was quoted by Clarke LJ in *Assicurazioni Generali Spa v The Arab Insurance Group* [2003] 1 WLR 577, CA, at [12], when considering the approach to be taken by the Court of Appeal under the current Civil Procedure Rules. In the same case Ward LJ added, at [196]:

> "The trial Judge's view inevitably imposes a restraint upon the appellate court, the weight of which varies from case to case. Two factors lead us to be cautious about interfering. The first, the appellate court recognises that judging the witness is a more complex task than merely judging the transcript. Each may have its intellectual component, but the former can also crucially rely on intuition. That gives the trial Judge advantage over us in assessing a witnesses' demeanour, so often a vital factor in deciding where the truth lies. Secondly, judging is an art not a science. So the more complex the question, the more likely it is that different Judges will come to different conclusions and the harder it is to determine right from wrong. Borrowing language from other jurisprudents the trial Judge is entitled to "a margin of appreciation"."

7. Finally, in *Henderson v Foxworth Investments Ltd* [2014] UKSC 41, Lord Reed commented on what was meant by a requirement that the first instance decision was "plainly wrong". At [62] he said that there was a risk that the phrase might be misunderstood:

> "The adverb "plainly" does not refer to the degree of confidence felt by the appellate court that it would not have reached the same conclusion as the trial Judge. It does not matter with whatever degree of certainty, that the appellate court considers that it would have reached a different conclusion. What matters is whether the decision of the appeal is one that no reasonable Judge could have reached."

8. Although the cases cited have all concerned appeals against the decisions of courts, the same approach applies in tribunals and is adopted by this Tribunal when determining appeals from the FTT when (as will almost always be the case) it has decided not to rehear the evidence for itself.

9. With that reminder of the difficulty of the task facing any appellant who seeks to reverse a finding of fact on appeal, I can turn to the facts and issues in this appeal.

The facts

10. 19 Somerset Road is a five-bedroomed terraced house which was purchased by TSMB Ltd in August 2010. Mr Shah is the sole shareholder and director of the company and in 2016 he was granted a licence by the local housing authority under its selective licensing scheme under Part 3 of the 2004 Act. The scheme required any property in the Borough of Waltham Forest which was not an HMO but was let for residential purposes to be licensed. The selective licensing scheme was renewed with effect from 1 May 2020.

11. At some point in the middle of 2020 Mr Shah instructed a letting agent, Empire Lettings London, to find new tenants for the property. The consequences of lockdowns associated with the corona virus pandemic had begun to have an effect on the letting market by that time.

12. On 23 July 2020 the six respondents, acting through Mr Mortimer, sent an email to Empire Lettings providing contact details for each of them. It is apparent from that email that a letting to the group had already been agreed in principle and a bank statement shows that a holding deposit of £600 was received by the agents on the same day.

13. The respondents moved into the property on 5 August 2020. The sequence of events is unclear and the FTT made no specific findings of fact about it, but the tenants' case was that they had attended at the property on 4 August and had collected keys and contracts to sign. They showed the FTT an assured shorthold tenancy agreement prepared by Empire Lettings which was amended in manuscript against one correction with the date 4 August, which tends to support that chronology, although the typed date against which they each signed was 5 August. A signature appears on the same document beneath the name of each of the six respondents although I was told by Mr Hart, who also represented the appellants before the FTT, that it had been acknowledged at the hearing that one of the respondents had signed twice (both times in the presence of the letting agent) once in her own name and once in the name of another tenant who could not attend that day. No mention was made of that detail in the respondent's witness statements, each of which was supported by a statement of truth, nor did the FTT refer to it.

14. The copy of the assured shorthold tenancy agreement which the respondents showed the FTT was not signed by Mr Shah. Although they said nothing of this in their witness statements, they explained to the FTT that the first document they signed had contained a number of mistakes, including the amount of the rent (which was overstated by £200) and that for that reason they had signed a second agreement on a later occasion. They said they were not given a copy of the second tenancy agreement by the agents and did not have one. Nevertheless, the FTT recorded that their evidence was that the second agreement had been signed "on behalf of the landlord".

15. The appellants' case to the FTT was that Mr Shah had asked the letting agents to arrange for the property to be let to a family and that it had been his understanding that that was what had happened. Mr Shah claimed never to have seen or to have signed the assured shorthold tenancy bearing his name as landlord which had been signed by the respondents. Instead, he relied on an entirely different document consisting of only two pages. The first page was from an assured shorthold tenancy agreement in the substantially the same form as the version prepared by Empire Lettings and given to the tenants; the main differences were that it identified TSMB Ltd as the landlord, and named only three tenants, Miss Aquino, Miss McLaughlin and Mr Mortimer, making no reference to the other three respondents. The second page relied on by Mr Shah was a signature page signed by the three respondents named as tenants on the first page of the document. That page had been witnessed by Mr Zaman, an employee of the letting agency, and had been signed "by/on behalf of the Landlord" by an unwitnessed signature which Mr Shah was unable to identify, other than that it was not his own. Mr Shah's case was that he had been provided only with the two-page document by the letting agent. He said that communication with the agent ceased after it was sent to him and that the company was subsequently wound up.

16. The first three instalments of rent were paid by the respondents to the letting agency. On 3 November 2020 another firm, Provident Management, contacted Miss McLaughlin and explained to her that they had been appointed as managing agents for the property. The rent for all six respondents was then paid to Provident by a single payment from the account of one of them.

17. In January 2021 concerns about the number of people living at the property and about excessive noise were said to have been raised with the local authority by neighbours. On 25 January, Provident Management sent an email to Miss McLaughlin seeking her comments. On 8 February replying to an email from Miss McLaughlin which is not in evidence, the new agents said they were surprised to learn that six people were living at the property. Other missing communications at around the same time seem to have included a suggestion that a new lease might be entered into (on 9 February the managing agents emailed "with regards to a new lease…"). On 8 March a notice was given under section 21, Housing Act 1988, and in accordance with the terms of the tenancy agreement, that possession of the property would be required on 18 September 2021. On 18 March the agents offered a one-off payment of £1500 if the tenants would vacate the property by 31 March, but this suggestion was not accepted.

18. The tenants vacated the property on 5 September 2021. By that time they had already commenced their application to the FTT for a rent repayment order. In their application form dated 8 August they stated that Mr Shah was the landlord named on their tenancy agreement. When the appellants submitted their statement of case to the FTT they disputed that Mr Shah had been named on the tenancy agreement and relied instead on the two-paged document which named TSMB Ltd as the landlord.

The FTT's decision

19. The FTT recorded the tenants' account of the letting at paragraph 31, as follows:

> "The applicants provided a copy of an assured shorthold tenancy agreement prepared by Empire Lettings London naming Mr Shah as landlord and listing the six appellants as tenants. They state this was not the final agreement as it contained a number of mistakes including spelling the address incorrectly and showing the wrong rent. They say a replacement agreement was signed by them and on behalf of the landlord but a copy was not provided. The three applicants named on the landlord's version of the tenancy agreement all deny having signed that document."

20. At paragraph 33 the FTT stated that, having heard the witnesses and considered the documentary evidence, it "preferred the evidence of the tenants as to the circumstances surrounding the letting". It explained that this conclusion was supported by the email of 23 July 2020 to the letting agent listing the names and contact details of all six proposed tenants. The FTT found:

> "The agency having met all six applicants could not have been under any illusion that they were from the same family."

21. The FTT also refused to accept Mr Shah's case that he only became aware that there were six tenants at the property when he received the rent repayment application in August or September 2021 and saw that Miss McLaughlin had sent an email to Provident Management on 5 February 2021 stating that there were six tenants in the house and on the tenancy agreement. The FTT went on at paragraph 35:

> "The Tribunal does not find it credible that a landlord would let a property at a rent of £2,500 per month without having details of the prospective tenants, or their financial situation and would have accepted being sent only the first and last pages of a tenancy agreement."

22. On that basis the FTT said it was satisfied that the tenancy was a letting to six tenants who were not related. The property therefore met the standard text for an HMO and required a mandatory licence under Part 2 of the 2004 Act.

23. The FTT then considered the identity of the landlord. It repeated that it preferred the version of events provided by the tenants, by which Mr Shah was the landlord notwithstanding the fact that after October the rent was paid to TSMB Ltd. It said that it did not find it strange that "the rent could be paid through Mr Shah's captive company of which he is the sole shareholder and director as his agent." It concluded at paragraph 45:

> "The landlord named on the tenancy agreement is Mr Shah and he is therefore the relevant landlord for the purposes of the rent repayment order."

The FTT did not find it necessary to make any findings on the circumstances under which the alternative two-page agreement naming three of the tenants and identifying the company as landlord had come into existence, nor whether or by whom it had been signed.

The grounds of appeal

24. When this Tribunal granted permission to appeal, it described the grounds of appeal as "discursive". They comprised 24 pages of argument commencing with a lengthy section headed "in brief". Mr Hart took every point that was fairly available to him, but the Tribunal organised those points into three grounds and Mr Hart presented the appeal on the same basis. The issues in the appeal are therefore:

    (a) whether any order should have been made against Mr Shah;

    (b) whether the FTT had erred in finding that there was no reasonable excuse for the failure to obtain an HMO licence; and

    (c) whether the FTT's decision about the quantum of the repayment order was based on findings of fact that were not justified on the evidence before it.

Ground 1: was the FTT entitled to find that Mr Shah was the landlord?

25. The substance of the appeal was that the FTT had been wrong to accept the tenants' case that Mr Shah was their landlord. Mr Hart argued that the FTT's conclusion was unsupported by the evidence and was one which no reasonable tribunal could have reached. The case was not put on the basis that the FTT had failed to give adequate reasons for its decision, although Mr Hart was critical of the absence of any detailed explanation for the FTT's finding that it preferred the evidence of the tenants as to the circumstances of the letting. Mr Hart made three main points and a host of subsidiary points in his written argument in support of the proposition that no reasonable tribunal could have accepted the tenants' case.

26. First, he argued that the FTT had failed to consider what he called "the missing evidence" relating to dealings between the original letting agent and the tenants after they had provided their names and contact details by the email of 23 July 2020 and before they had moved in on 5 August 2020. In particular, there was no evidence of a response from the agent accepting that the letting would be to all six respondents. Mr Hart suggested that without a confirmation from the agent that the suggested occupation of the property by six individuals was acceptable the FTT ought not to have been satisfied that that had been the basis of the arrangement.

27. This submission entirely overlooks the fact that a tenancy agreement in the form used by Empire Lettings and bearing its name had been prepared by 4 August and included the names of all six tenants. The agency was clearly satisfied that it was appropriate for the house to be let to the six tenants because it had them sign the document and its employee Mr Zaman witnessed their signatures. The FTT also found that there was then another tenancy agreement with all six names. Mr Shah did not give evidence of any communication he had with the agent which might have led to the original proposal being rejigged before one of the agreements was signed by him or on his behalf. The so-called "missing evidence" was evidence of communications by his or his company's agent yet he produced no correspondence with Empire Lettings giving it instructions. In the face of that gap, the FTT was entitled to find the landlord's agent was aware that

letting had (originally at least) been intended to be of the whole house to six people each with a different family name and email addresses.

28. Secondly, Mr Hart criticised the FTT's acceptance of the tenants' evidence and its failure to note the discrepancies between their witness statements and their oral evidence. In particular, they had acknowledged that the tenancy agreement of which they had a copy had not been signed by Miss McLaughlin but by one of her fellow tenants on her behalf. Mr Hart submitted that the FTT should have found that Miss McLaughlin had not provided a truthful version of events in her witness statement and that the other applicants had gone along with it, which should have cast doubt on the whole of their account of the letting which only emerged in its final form from the witness box.

29. The difficulty with Mr Hart's second proposition is that he cross-examined Miss McLaughlin at the hearing and she acknowledged that she had not signed the document. The FTT heard that evidence but nevertheless accepted the thrust of her and the other tenants' case. The FTT also found that the document relied on by the tenants was not the final version of the tenancy agreement and that a further version had been signed by all six of them and by or on behalf of the landlord. The evidence of who had signed the first version was therefore relevant only or mainly on the issue of credibility, and that was how Mr Hart himself made use of it.

30. Thirdly, Mr Hart said that the FTT had glossed over the fact that the witness statements of the six tenants were effectively copies of one another. That is true of five of the six statements (the sixth tenant recalled that no completed tenancy agreement had ever been signed). The FTT did not comment on this feature of the evidence, other than by referring to the witness statements as containing "a consistent account of the circumstances surrounding the lettings." The tenants were represented by an advocacy group which, I assume, assisted in the preparation of the evidence; as usual with such statements, too much attention is devoted to finding fault with the property or with the landlord's conduct, and too little with the basic facts about the letting.

31. The FTT would have been justified in expressing some scepticism in its decision about the quality of the evidence it was presented with in their own words. A witness statement should be the witness's own account of the facts about which they can give evidence. The more closely two statements resemble each other, the more their reliability is likely to be called into question. But in this case the FTT had more than the mirror image statements. It reached its conclusion that the evidence of the tenants was to be accepted after four had given oral evidence and been cross-examined by Mr Hart. Moreover, in closing remarks submitted in writing several weeks after the hearing, a prominent part of Mr Hart's case focussed on his criticisms of the witness statements and of the way in which the tenants had given their evidence. The FTT nevertheless rejected that case and accepted the tenants' version.

32. It is not difficult to understand why the FTT preferred the tenants' evidence. There was no evidence at all from Mr Shah about the circumstances in which the agent acting for him or for his company had been instructed or had arranged the letting. He was not present when the documents were signed and the only alternative version of events that he was able to suggest was entirely speculative. The evidence of four of the tenants was that they had signed a document which had also been signed on behalf of the landlord to

replace the original version which only they had signed but in which Mr Shah had been named as landlord. The FTT's conclusion that the landlord identified in that tenancy agreement was the same landlord as was named in the original version was consistent with the evidence it received. Nor was it contradicted by other direct evidence. The letting agency appears to have been chaotic and was criticised both by Mr Shah and by the tenants for not providing them with copies of the final documents, but that does not make one version of events any more likely than the other.

33. Mr Hart made a number of criticisms of the FTT on smaller points of evidence which I should deal with.

34. The FTT recorded that the appellants' case was that Mr Shah only became aware that there were six tenants when he received the rent repayment order application from the FTT. This was wrong, Mr Hart submitted, as Mr Shah's witness statement stated that he had been aware from February 2021 that there were six individuals residing at the property, but that he was unaware of the identity of three of them until he received the application. But the proposition which the FTT recorded was a direct quotation from the appellant's statement of case submitted on 16 December 2021 (only a few days before the witness statement) in paragraph 2 of which it said, "The respondent has only become aware following receiving the RRO application in this case that the property was let to six individuals from different households."

35. The FTT decided that it was not credible that a landlord would let property at a rent of £2,500 per month without having details of the tenants or their financial situation or that they would have accepted only the first and last pages of a tenancy agreement. Mr Hart countered this by referring to aspects of Mr Shah's evidence which the FTT had not mentioned. He had chased the letting agents for complete documents but had found them to be uncontactable; the covid 19 pandemic had prevented him from attending the property; his dissatisfaction with the original letting agents led to their replacement by Provident Management; the rent was then paid to the company and would have been considerably higher if the property had been intended to be let to six individuals. All these criticisms establish is that the letting agency was not doing a good job. The first three month's rent were received by the agency in monthly instalments between August and October, and the new arrangements by which rent was payable to the company casts no light on the identity of the landlord at the commencement of the letting. The FTT found that the company was receiving rent as agent for Mr Shah; that was an inference that it was entitled to draw from the fact the letting was arranged in Mr Shah's name (as the FTT found) and the rent was eventually paid to the company. While the FTT could certainly have provided a fuller explanation of its decision, the additional facts it did not refer to do not establish that its finding that Mr Shah was the landlord was plainly wrong.

36. Although Mr Hart made many other criticisms of the FTT's decision none of them advanced the case further than those I have already considered. The only supporting point which I should deal with further is the suggestion that the FTT ought to have permitted additional evidence to be adduced. That additional evidence was in the form of an email from Empire Lettings dated 17 August 2020. It was addressed to Mr Shah personally and it was said to have been provided by him just before the original FTT hearing. The FTT refused to permit it to be put in evidence because it was produced for

the first time at the hearing. The FTT did not mention the email or the request to rely on it in its decision and I infer that it did not read it either. Mr Hart did not develop his submission that the FTT should have permitted reliance on the email nor did he refer me to any directions about the production of evidence; I assume these were standard directions which required the parties to provide copies of any documents on which they wished to rely in good time before the hearing. The FTT is entitled to considerable latitude in case management matters and there are no grounds on which I could conclude that it was not entitled to refuse to admit this document on the day of the hearing. The email itself sheds no light at all on the identity of the landlord but refers instead to an attached invoice which has not been produced. That invoice might have been illuminating, as it might have shown whether the agents considered their client to be Mr Shah personally or his company, but no request appears to have been made to rely on the invoice. The withholding of the invoice would have been a separate ground for the FTT to refuse the request to rely on the covering letter.

37. On Mr Shah's case, which the FTT said specifically that it did not find credible, neither he nor anyone else on behalf of the company had signed any agreement with any number of the tenants. I have no doubt that the FTT was entitled to reject that case, and that there was sufficient evidence before it to enable it to find, as it did, that Mr Shah or someone on his behalf had signed an agreement with all six tenants, naming him as landlord, but that no copy had then been provided to the tenants. It is quite impossible to conclude that those findings were "plainly wrong".

38. For these reasons I dismiss the appeal on ground 1. Despite Mr Hart's skilful submissions Mr Shah has failed to discharge the heavy burden of demonstrating that the FTT was plainly wrong to find that he was the landlord.

Ground 2 - reasonable excuse

39. I can take this ground of appeal very shortly. Once it is accepted that the letting was between Mr Shah and the six tenants and that a tenancy agreement was signed by him or on his behalf, the suggestion that Mr Shah was deceived by his own letting agents is impossible to accept. The FTT specifically ruled out any wrongdoing on the part of the tenants and based it conclusion that there was no reasonable excuse for the offence on the improbability of Mr Shah's account and on the absence of evidence of the instructions to Empire Lettings or reports from them or of any other correspondence between either of the appellants and the letting agent. Without evidence to disprove the natural assumption that the agent was acting in accordance with its instructions, the suggestion that Mr Shah was duped was simply unsubstantiated. If the email exchanges between the tenants and Provident management in February 2021 are to be taken at face value, the new managing agent does appear to have been unaware of the number of tenants living in the property. But there was no evidence about what Provident Management was told by Mr Shah and no reason to assume that Mr Shah was as surprised by the facts as they appear to have been. The FTT was entitled to dismiss Mr Shah's defence because he failed to satisfy it that he did not know exactly what was going on.

Ground 3 – the amount of the rent repayment order

40. The FTT applied the Tribunal's guidance in *Acheampong v Roman* [2022] UKUT 239 (LC), quoting the four-step approach recommended in paragraph 20 of that decision and following it.

41. The full amount of the rent paid for the period in question was £30,000 and the tenants had been responsible for all bills, so the FTT considered what adjustments should be made to that headline figure.

42. Although the FTT's assessment of quantum comprised a single paragraph, that paragraph came after a much longer section headed "conduct of the parties". There had been a series of complaints about blocked toilets, overflowing drains, fire alarms not functioning and failure to supply gas and electricity safety certificates at the commencement of the tenancy. The FTT was also critical of the attempt to persuade the tenants to sign a new tenancy agreement and the decision to serve notice when the tenants refused to leave voluntarily. The former criticism was justified, since the suggestion that a new agreement be entered into was presumably intended to disguise the true arrangement. The FTT acknowledged that the selective licence first obtained by Mr Shah in 2016 had been renewed on an application made in October 2020. But a selective licence did not permit the use of a property as an HMO and the FTT found that the appellants were aware that an HMO licence was required. The selective licence is not mentioned again in the later assessment of conduct and the FTT does not appear to have given Mr Shah much, if any, credit for having obtained it (it was considerably cheaper than an HMO licence). Nevertheless, it is not possible to say that the FTT failed to take the selective licence into account since it specifically dealt with it under the heading of "conduct" and it had reminded itself that issues of conduct were relevant to the quantum of the repayment order.

43. Having directed itself by reference to the guidance given by this Tribunal, the final assessment of the appropriate level of the award was a matter for the FTT which had heard all of the evidence and formed a view of the seriousness of the offence which it is not possible for this Tribunal to replicate. The FTT's determination that the offence was sufficiently serious to justify repayment of 70% of the rent was not inconsistent with the general level of awards for licensing offences, which vary widely depending on the circumstances of the case. Mr Hart was unable to point to any specific omission or error in the assessment of the evidence or the determination of quantum and I therefore refuse the appeal on this ground too.

Martin Rodger KC,
Deputy Chamber President

18 March 2024

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.