

Licensing and housing conditions under the Housing Act 2004

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Who is 'in control' and 'managing'?

Tara O'Leary



Section 263 Housing Act 2004

- (1) In this Act “**person having control**”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.
- (2) In subsection (1) “**rack-rent**” means a rent which is not less than two-thirds of the full net annual value of the premises.
- (3) In this Act “**person managing**” means, in relation to premises, the person who, being an owner or lessee of the premises—
- (a) receives (whether directly or through an agent or trustee) rents or other payments from—
 - (i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and
 - (ii) in the case of a house to which Part 3 applies, persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or
 - (b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;
- and includes, where those rents or other payments are received through another person as agent or trustee, that other person.

Who is 'in control'?

- **"*Rack-rent*"**: at least two-thirds of annual rent (or licence fees) which could be achieved on the open market from willing tenants / licensees: *Global Guardians Management v Jimenez* [2023] EWCA Civ 1243 [60, 63]
- 1. Person who receives the rack-rent on their own account – direct from occupants
- 2. Person who receives the rack-rent on their own account – via an agent or trustee
- 3. The agent, if they collect the rack-rent on behalf of the person entitled to it
- 4. If **no rack-rent is charged**, the person who "*would so receive it if premises were let at a rack-rent*" – looking at **all the current lettings in place**: *Cottam v Lowe Management Ltd* [2023] UKUT 306 (LC) [48-49]





Who is 'in control'?

NB No requirement to own any freehold or leasehold interest in premises **OR** to have any contractual entitlement to the rent:

- Global Guardians Management v Hounslow LBC [2022] UKUT 259 [79]
- Cabo v Dezotti [2022] UKUT 240 (LC) [42]

Some of the rack-rent passing into a person's hands is not enough: GGM v Hounslow [64]

Two or more persons can jointly receive rack-rent: Gill v Greenwich LBC [2022] UKUT 26 (LC)

“Receives” the rack-rent

- “When section 263(1) refers to someone who ‘receives’ rent, it is referring to **actual receipt**. Money must come into the hands of the person who has control”: Cabo v Dezotti UKUT [43]
- But also physical receipt alone is not enough...!
 - Camden LBC v Shor and Ro [2024] UKUT 202 (LC) [34] – rent into a joint bank account does not necessarily mean both persons ‘received’ it (obiter)
 - Reeds Rains v Salford City Council, FTT 10.07.25 (decision 09.09.25) – “Client Accounting Service Provider CASP” – audited and ring-fenced account used to collect & hold rent. Operator of account had no control over the funds and was not “receiving” rents [37]

Who is 'managing'?

1. An **owner or lessee** who receives payments from occupants, *i.e.* on own account:
s.263(3)(a)
2. An **owner or lessee** who receives payments from occupants via an agent or trustee:
s.263(3)(a)
3. The agent or trustee who receives payments from occupants on the owner's behalf:
s.263(3) final limb
4. An **owner or lessee ("A")** who **would** receive payments from occupants **but for** having entered into an agreement with a person who is **not an owner or lessee ("B")** which allows B to receive the rents: s.263(3)(b)
 - In this scenario, B may be 'in control' if they receive a rack-rent
 - Will not apply if A has **sub-let** to B, because then B is lessee

Who is 'managing'?

- **Not** merely someone who is a party to a management agreement or is involved in something that might be described as management: Next Location Company Ltd v Haringey LBC [2025] UKUT 279 (LC) [16] – s.263(3) is strict and exhaustive
- **Not** an agent who has no ongoing involvement after initial sign-up of tenants and first payment of rent: Cetin v Epping Forest DC [2025] UKUT 196 (LC)
- **Not** someone (e.g. freeholder) if they do not receive payments **from** the occupants: Global 100 Ltd v Ross [2025] UKUT 264 (LC); Kumar v Kolev [2024] UKUT 255 (LC) [40]

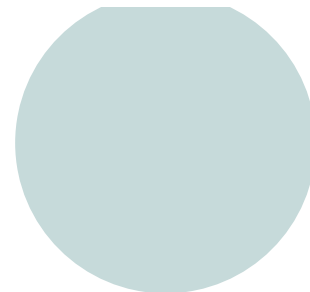
R (Clearsprings Ready Homes Ltd) v Swindon Magistrates Court [2024] EWHC 2023 (Admin)

Section 263(3): the person who ... receives (whether directly or through an agent or trustee) rents or other payments **from** ... persons who are in occupation as tenants or licensees

Section 234(3): offence of failing to comply with HMO Management Regulations 2006/372

Regulations impose duties only on *“the manager”*

What if no one meets definition of *“manager”* because none of the occupants pay rent?



Clearsprings Ready Homes

- District Judge at Magistrates Court: read s.263(3) as meaning a person who received rents paid “*front or in respect of*” persons in occupation of premises
- Divisional Court: wrong [53-54]. There was no basis to read down or re-interpret s.263(3) as primary legislation
- The problem was the Regulations – exclusion of liability for ‘persons in control’ from responsibility for condition of premises was “*inexplicable*”. Parliament clearly intended persons whose rent was paid on their behalf to have equal protection.
- To cure this absurdity, it is permissible to read “*manager*” **in the Regulations** as meaning “*the person manging **or the person in control***” [67]



2

Whose decision is it anyway?

Riccardo Calzavara





Sch.13A para.10



- (3) An appeal under this paragraph—
- (a) is to be a **re-hearing** of the local housing authority's decision, **but**
 - (b) may be determined having regard to matters of which the authority was unaware.
- (4) On an appeal under this paragraph the First-tier Tribunal may **confirm, vary or cancel** the final notice.

How do we get there?

Conditions
: s.80(2)

Consult:
s.80(9)

Designate:
s.80(1)

Confirmation
: s.82(1)

Publish:
s.83(2)

Applications:
s.87-88

Register:
s.232(1)

Penalty:
s.249A

On-the-way appeals

01

TEN

Under s.62, in respect of HMOs

Under s.86, in respect of Part 3
houses

02

Grant / Refusal

Sch.35 para.34

Sch.13A para.10 (again)

- (3) An appeal under this paragraph—
 - (a) is to be a **re-hearing** of the local housing authority's decision, **but**
 - (b) may be determined having regard to matters of which the authority was unaware.
- (4) On an appeal under this paragraph the First-tier Tribunal may **confirm, vary or cancel** the final notice.

Important words

01

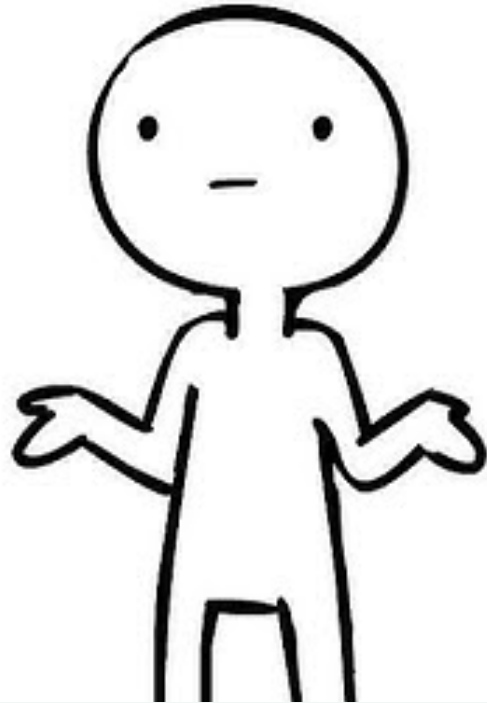
Re-hearing

02

But

03

Confirm, vary, or
cancel



What do they mean?



s.45 – emergency remedial action

(5) An appeal under subsection (1) or (2)–

(a) is to be by way of a **re-hearing, but**

(b) may be determined having regard to matters of which the authority were unaware.

(6) The tribunal may–

(a) in the case of an appeal under subsection (1), **confirm, reverse or vary** the decision of the authority;

(b) in the case of an appeal under subsection (2), **confirm or vary** the emergency prohibition order or make an order revoking it as from a date specified in that order.

ss.62, 86 – TENs

(8) Such an appeal–

(a) is to be by way of a **re-hearing, but**

(b) may be determined having regard to matters of which the authority were unaware.

(9) The tribunal–

(a) may **confirm or reverse** the decision of the authority, and

(b) if it reverses the decision, must direct the authority to serve a temporary exemption notice that comes into force on such date as the tribunal directs.

s.143 – overcrowding

(2) Such an appeal–

(a) is to be by way of a **re-hearing, but**

(b) may be determined having regard to matters of which the authority were unaware.

(3) On an appeal the tribunal may by order **confirm, quash or vary** the notice.

ss.255-256 – HMO declarations

(10) Such an appeal–

(a) is to be by way of a **re-hearing, but**

(b) may be determined having regard to matters of which the authority were unaware.

(11) The tribunal may–

(a) **confirm or reverse** the decision of the authority, and

(b) if it reverses the decision, revoke the HMO declaration.

Sch.1 para.15 – improvement notices

(2) The appeal–

(a) is to be by way of a **re-hearing, but**

(b) may be determined having regard to matters of which the authority were unaware.

(3) The tribunal may by order **confirm, quash or vary** the improvement notice.

Sch.2 para.11 – prohibition orders

(2) The appeal–

(a) is to be by way of a **re-hearing, but**

(b) may be determined having regard to matters of which the authority were unaware.

(3) The tribunal may by order **confirm, quash or vary** the prohibition order.

Sch.5 para.34 - licences

(2) An appeal–

(a) is to be by way of a **re-hearing, but**

(b) may be determined having regard to matters of which the authority were unaware.

(3) The tribunal may **confirm, reverse or vary** the decision of the local housing authority.

(4) On an appeal under paragraph 31 the tribunal may direct the authority to grant a licence to the applicant for the licence on such terms as the tribunal may direct.

Sch.6 para.26 – management orders

(2) The appeal–

(a) is to be by way of a **re-hearing, but**

(b) may be determined having regard to matters of which the authority were unaware.

(3) The tribunal may **confirm or vary** the order or revoke it–

(a) (in the case of an interim management order) as from a date specified in the tribunal's order, or

(b) (in the case of a final management order) as from the date of the tribunal's order.

Sch.6 para.34 – compensation (1)

(2) The appeal–

(a) is to be by way of **re-hearing, but**

(b) may be determined having regard to matters of which the authority were unaware.

(3) The tribunal may **confirm, reverse or vary** the decision of the local housing authority.

(4) Where the tribunal reverses or varies a decision of the authority in respect of a final management order, it must make an order varying the management scheme contained in the final management order accordingly

Sch.7 para.28 – EDMOs (1)

(2) The appeal–

(a) is to be by way of a **re-hearing, but**

(b) may be determined having regard to matters of which the authority were unaware.

(3) The tribunal may–

(a) in the case of an interim EDMO, **vary** the order as mentioned in paragraph 26(2)(b), or

(b) in the case of a final EDMO, confirm or **vary** the order or **revoke** it as from the date of the tribunal's order.

Sch.7 para.32 – EDMOs (2)

(2) The appeal–

(a) is to be by way of a **re-hearing, but**

(b) may be determined having regard to matters of which the authority were unaware.

(3) The tribunal may **confirm, reverse or vary** the decision of the local housing authority.

(4) If the appeal is against a decision of the authority to refuse to revoke the order, the tribunal may make an order revoking the order as from a date specified in its order.

Sch.7 para.36 – compensation (2)

(2) The appeal–

(a) is to be by way of **re-hearing, but**

(b) may be determined having regard to matters of which the authority were unaware.

(3) The tribunal may **confirm, reverse or vary** the decision of the local housing authority.

(4) Where the tribunal reverses or varies the decision of the authority, it must make an order varying the management scheme contained in the final EDMO accordingly.

Sch.13A para.10 (again again)

- (3) An appeal under this paragraph—
 - (a) is to be a **re-hearing** of the local housing authority's decision, **but**
 - (b) may be determined having regard to matters of which the authority was unaware.
- (4) On an appeal under this paragraph the First-tier Tribunal may **confirm, vary or cancel** the final notice.

So, whose decision is it anyway?



 ***Stepney BC v Joffe* [1949] 1 KB 499, DC**

"It is a matter of common knowledge and entirely beyond doubt in an ordinary case that a right of appeal is a right to a rehearing of the whole matter in dispute, the appellate tribunal not being confined to the particular reasons which have been given by the court below as the ground of their decision."



***Sagnata Investments Ltd v Norwich Corp* [1971] 2 QB 614, CA**



“I hold that the proceedings before this recorder were by way of a complete rehearing. But, contrary to what has been contended, this conclusion does *not* involve that the views earlier formed by the local authority have to be entirely disregarded by quarter sessions.”

“I find no reason for thinking that the recorder in the present case failed in any degree to pay proper regard to the decision arrived at by an overwhelming majority of the local authority.”



***R (Westminster CC) v Middlesex Crown Court* [2002] EWHC 1104 (Admin)**



“In my judgment [the magistrates’ court] must accept the policy and apply it as if it was standing in the shoes of the council considering the application. Neither the Magistrates Court nor the Crown Court is the right place to challenge the policy. ”



***Clark v Manchester CC* [2015] UKUT 129 (LC)**



“On a rehearing an appellant is entitled to expect that the F-tT will make up its own mind. In doing so it is not required to adopt the approach advocated by Mr Madden of starting with a blank sheet of paper, and it is entitled to have regard to the views of the local housing authority whose decision is under appeal. How influential those views will be is likely to depend on the subject matter”



***Waltham Forest LBC v Khan* [2017]**

UKUT 153 (LC)



“In this context the direction that an appeal against such a decision is to be by way of re-hearing means that the FTT must make its own decision on the application for a licence, and is not simply to ask itself whether the decision made by the local housing authority was open to on the material it considered.”



***Marshall v Waltham Forest LBC* [2020] 1 WLR 3187, LC**



“The court can and should depart from the policy that lies behind an administrative decision, but only in certain circumstances. The court is to start from the policy, and it must give proper consideration to arguments that it should depart from it. It is the appellant who has the burden of persuading it to do so.”

“The authorities we have looked at so far do use those words, but they make it very clear that the court uses its own judgment. It is not simply carrying out a review; the court is to afford considerable weight to the local authority's decision but may vary it if it disagrees with the local authority's conclusion. ”



***Thurrock BC v Daoudi* [2020] UKUT 209 (LC)**



“The formulation of policy is a matter for the Council, but where the result is a policy as impenetrable as in this case it would be fruitless for the Tribunal to attempt to construe and apply it to the letter.”



Leicester CC v Morjaria [2023] HLR 42, LC



“In my judgment the FTT was entitled to ignore the Council's policy of adding the cost of investigation to the financial penalty arrived at after consideration of all relevant factors.”



Park Green Investments Ltd v Teignbridge DC [2024] HLR 18, LC



“A decision maker is not obliged to follow guidance or policy which it has been persuaded is arbitrary and anomalous; on the contrary, as the Tribunal explained in Marshall and Kazi (see paragraphs 23 and 24 above) the decision maker is required to make its own decision, starting from the policy but exercising its own discretion and departing from the policy where it is persuaded that it is right to do so.”



Hastings BC v Turner [2021] UKUT 258 (LC)



“I also accept Mr Manning's submission that on a matter involving the exercise of a discretion, or an evaluative judgment, the authority's decision was entitled to respect and that, on a re-hearing, the onus was on Ms Turner to persuade the FTT to take a different view. On an appeal by way of re-hearing from a decision of a regulatory authority it falls to the appellant to lead evidence and to establish a basis on which the appellate tribunal can be satisfied that a different outcome is justified.”



Hussain v Waltham Forest LBC [2024]

KB 154, CA (1)



“I find considerable force in Mr Underwood's submissions that Parliament intended the licensing decision to be taken by the local housing authority, and that their decision should not be treated as a mere step on the path to a final decision being taken by the FTT, based on the latter's own evaluation of the evidence, including matters which could only be relevant if the decision were to be taken afresh as at the date of the appeal.”



Hussain v Waltham Forest LBC [2024]

KB 154, CA (2)



“Where a re-hearing on appeal does not involve the appellate tribunal starting afresh, the appellate tribunal may still be required to make up its own mind on the application in place of the original decision-maker. But even then, if the decision involves the exercise of a discretion, or judgment, by another person or body, the appellate tribunal will not interfere with the original decision unless, having afforded it what is variously described in the authorities as “great respect”, or “considerable weight”, it is satisfied that the decision was wrong. In making that evaluation the appellate tribunal must pay proper attention to the decision under challenge and the reasoning behind it.”



Hussain v Waltham Forest LBC [2024]

KB 154, CA (3)



“True it is that the FTT is not asking itself whether the decision of the authority was within the range of decisions reasonably open to it, as it would do on a judicial review. It is deciding whether the authority made the wrong decision. But in doing so, the FTT must pay careful attention to the reasons why the authority reached the decision that it did, and explain why it disagrees with them. Since Parliament intended such decisions to be taken by the authority, the FTT must afford the decision the weight and respect that must be afforded to any decision involving a value judgment made by the decision-maker which was also the finder of primary fact.”



***Bradford MDC v Kazi* [2025] HLR 3, CA**

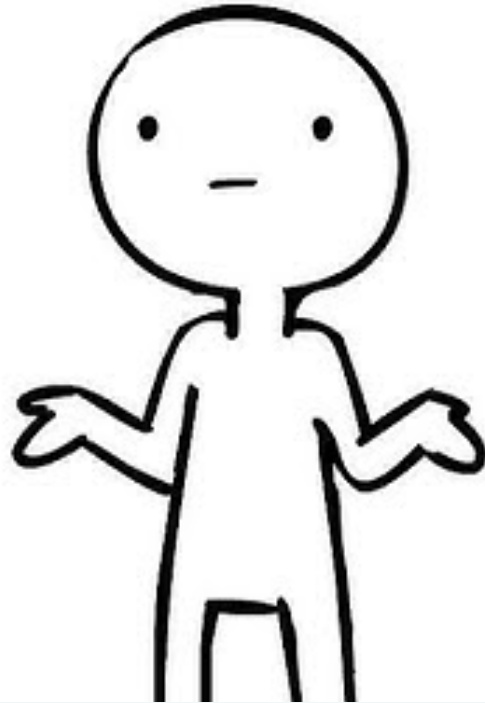


“The Council were granted permission to appeal by Falk LJ on three grounds. The first is that the UT erred by allowing challenges to the Council's Policy *per se* , in the context of an appeal against financial penalties imposed by the Council. The second is that the UT erred in construing the Council's Policy as containing an absolute limit on the amount by which a penalty may be reduced in respect of mitigating features so as arguably to fetter its discretion.”

“That is sufficient to dispose of the appeal to this court. It is not necessary to examine the first ground of appeal.”



So, whose decision is it anyway?



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Thank you!

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