Neutral Citation Number: [2021] EWCA Civ 1150

Case No: C3/2021/0562

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE UPPER TRIBUNAL (LANDS CHAMBER)
Martin Rodger QC
[2020] UKUT 298 (LC)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29 July 2021

Before :

LORD JUSTICE BAKER
LORD JUSTICE ARNOLD
and
LADY JUSTICE ANDREWS

- -

Between :

MARTIN JOSPEH RAKUSEN	**Appellant**
- and -	
(1) MIKKEL JEPSEN	**Respondent**
(2) RONAN MURPHY	
(3) STUART McARTHUR	
- and-	
SAFER RENTING	**Intervener**

- -
- -

Tom Morris (instructed by **Winckworth Sherwood LLP**) for the **Appellant**
Edward Fitzpatrick (instructed by **Edwards Duthie Shamash**) for the **Respondents**
Justin Bates and **Charles Bishop (**instructed by **Anthony Gold Solicitors LLP)** made written submissions on the behalf of the **Intervener**

Hearing date: 22 July 2021

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Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be at 10:30am on 29 July 2021

Lord Justice Arnold:

Introduction

1. The issue on this appeal is whether a rent repayment order ("RRO") under Chapter 4 of Part 2 of the Housing and Planning Act 2016 can be made against a superior landlord of the tenant in whose favour the order is sought or can only be made against an immediate landlord of that tenant. The First-tier Tribunal (Property Chamber) (Judge Amran Vance) in a decision dated 18 December 2019 and the Upper Tribunal (Lands Chamber) (Martin Rodger QC, Deputy President) in a decision dated 11 November 2020 [2020] UKUT 298 (LC), [2021] HLR 18 both held that an RRO could be made against a superior landlord as well as an immediate landlord.

Factual background

2. This appeal arises out of an application to strike out the Respondents' claim for an RRO on the ground that it had no reasonable prospect of success. The application was supported by a witness statement of the Appellant Martin Rakusen. For the purposes of the appeal it may be assumed that the facts stated in Mr Rakusen's witness statement are true. These were summarised by the Upper Tribunal as follows.

3. The appeal concerns Flat 9, Mandeville Court, Finchley Road, London NW3 6HB. In 2006 the freeholder of the building granted a lease of the flat to Mr Rakusen for a term of 999 years. In 2013 he assigned the lease to himself and his partner Ms Sarah Field. For a time the couple lived in the flat as their home before moving elsewhere and deciding to let the flat.

4. On 31 May 2016 Mr Rakusen granted a tenancy of the flat to Kensington Property Investment Group Ltd ("KPIG"), a company to which he had been introduced by his letting agents, Hamptons. The tenancy was for a term of 36 months, less one day, at a rent of £2,643.33 a month. The agreement appears to be a standard form of short term residential tenancy under which Mr Rakusen is responsible for keeping the property in repair. One modification of more conventional terms is found in clause 7.5 which provides that "the Tenant shall have the right to sublet each unit individually or the whole as part of the day to day management of their business".

5. Later in 2016, and at different times, KPIG entered into separate written agreements with the Respondents, each of whom was granted the right to occupy one room in the flat. The documents were described as licence agreements and made provision for the payment of a licence fee. The aggregate sum paid by the Respondents was £2,297 per month.

6. The evidence does not show how many rooms the flat contains, nor how many other individuals were granted the right to live there with the Respondents. There is material which suggests that by November 2018 there were four people living in the flat, and Mr Rakusen acknowledges in his witness statement that it appears to have been occupied by more than three people forming two or more households. On that basis, as he accepts, the flat was a house in multiple occupation ("HMO") and was required to be licensed under Part 2 of the Housing Act 2004.

7. In November 2018 Hamptons informed Mr Rakusen that KPIG wished to apply to the local housing authority for an HMO licence. The evidence does not show if such an application was ever made, but no licence was ever granted and Mr Rakusen did not renew KPIG's tenancy at the end of the fixed term in May 2019.

8. On 27 September 2019 the Respondents applied to the First-tier Tribunal under section 41 of the 2016 Act for RROs totalling £26,140 against Mr Rakusen and Ms Field. The grounds for making the application were stated to be "control or management of an unlicensed HMO". In support of the application the Respondents provided copies of the agreements between themselves and KPIG.

9. In their response to the application Mr Rakusen and Ms Field invited the First-tier Tribunal to exercise its power under rule 9(3)(e) of the Property Chamber Rules to strike out the whole of the application on the ground that there was no reasonable prospect of it succeeding because an RRO could only be made against the immediate landlord of the person who made the application. Ms Field also relied upon the fact that she had never been party to any agreement in respect of the property with either KPIG or the applicants.

10. Mr Rakusen's evidence is that he only became aware of the licence agreements entered into by KPIG after the applications for RROs were made. He denies that he committed an offence under section 72(1) of the 2004 Act, because he was not a person having control of the HMO or a person managing it. In the alternative, he relies on the defence provided by section 72(5)(a) of the 2004 Act that he had a reasonable excuse for having control or management of an unlicensed HMO.

11. The First-tier Tribunal struck out the application against Ms Field on the ground that there was no reasonable prospect of it succeeding against her. It refused to strike out the application against Mr Rakusen, as it was bound by the earlier decision of the Upper Tribunal in *Goldsbrough v CA Property Management Ltd* [2019] UKUT 311 (LC), [2020] HLR 18.

12. The Upper Tribunal dismissed Mr Rakusen's appeal for the reasons given in the Deputy President's careful judgment. Mr Rakusen now appeals to this Court.

The relevant provisions of the 2016 Act

13. Section 40(1) and (2) provide:

> "**Introduction and key definitions**
>
> (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) 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."

14. A list of seven offences, or sets of offences, committed by a landlord to which Chapter 4 applies is provided in section 40(3). Two involve violence or harassment: using violence to secure entry contrary to section 6(1) of Criminal Law Act 1977, and unlawful eviction or harassment of occupiers contrary to section 1(2), (3) or (3A) of the Protection from Eviction Act 1977. Four are offences under the 2004 Act: failure to comply with an improvement notice (section 30(1)) or a prohibition order (section 32(1)), or being in control or management of an unlicensed HMO (section 72(1)) or unlicensed house (section 95(1)). The last offence is breach of a banning order contrary to section 21 of the 2016 Act.

15. Section 41 deals with applications for RROs. So far as material, it provides as follows:

> "**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."

16. Section 43 provides:

> "**Making of 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 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)."

17. By section 44(2) the amount payable under an RRO made in favour of a tenant "must relate to rent paid during the period mentioned" in a table which then follows. The table provides for repayment of rent paid by the tenant in respect of a maximum period of 12 months.

18. Section 46 provides, so far as relevant:

> "**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.
>
> …
>
> (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."

19. Section 48 imposes a duty on a local housing authority which becomes aware that a person who has been committed of an offence to which Chapter 4 applies to consider applying for an RRO. Section 40 empowers local housing authorities to help tenants to apply for RROs.

20. Section 50(1) provides that "'rent repayment order' has the meaning given by section 40".

21. The provisions set out above replaced, so far as England is concerned, earlier provisions relating to unlicensed HMOs contained in section 73 of the 2004 Act, which still apply in Wales. It is common ground that, by virtue of section 73(10), those provisions only permit the making of RROs against immediate landlords.

Can an RRO be made against a superior landlord?

22. Mr Rakusen contends that an RRO can only be made against an immediate landlord of an applicant tenant, and not against a superior landlord. The correctness of this contention depends upon the proper interpretation of section 40(2)(a) having regard to its language, context and purpose in circumstances where there is no definition of "landlord" in Chapter 4 of Part 2 of the 2016 Act.

23. So far as the language of section 40(2)(a) is concerned, counsel for Mr Rakusen submitted that "the landlord under a tenancy of housing" in the body of subsection (2) must refer to the landlord under the same tenancy as the tenancy held by the "tenant" referred to in paragraph (a). Only one tenancy was referred to, and it was that tenancy which enabled identification of both the tenant who could apply for an RRO and the landlord who could be made the respondent to that application. Otherwise, any tenant in a chain of tenancies could apply against any landlord in the chain.

24. Counsel for the Respondents submitted that what mattered was that there was no limitation in subsection (2) to the immediate landlord. A superior landlord was still "the landlord under a tenancy". In the absence of any limitation, paragraph (a) embraced both immediate and superior landlords.

25. In my judgment the natural interpretation of section 40(2)(a) is that advanced by counsel for Mr Rakusen. The absence of any express limitation to an immediate landlord is immaterial, because the language used connotes a direct relationship of landlord and tenant.

26. The Upper Tribunal placed some weight on the fact that section 40(2)(a) refers to "a tenant" and not "the tenant", and thus could include a tenant under an inferior tenancy. Counsel for the Respondents accepted that the use of the indefinite article was not decisive, submitting that it would not make any difference if paragraph (a) said "the tenant". In my view he was right to do so. If the intention had been to extend liability to superior landlords, it would have been easy for section 40(2)(a) to say so in terms rather than for that to be provided for merely by the use of the indefinite rather than the definite article. It is more likely that the drafter simply wanted to make it clear that an RRO could be made in favour of one out of a number of tenants.

27. Counsel for Mr Rakusen also submitted the word "repay" in section 40(2)(a) must refer to the landlord repaying the rent paid to that landlord by the tenant, rather than referring to money paid by the tenant to a different landlord. Counsel for the Respondents submitted that it was possible to speak of rent being repaid to a tenant even if the person being required to repay it was not the person to whom it was originally paid by the tenant. I accept that both interpretations of the word "repay" are possible, but it seems to me that the first interpretation is the more natural one in this context. This supports the conclusion to be derived from the references to "the landlord under a tenancy" and "tenant".

28. Turning to the context, counsel for Mr Rakusen relied upon section 40(2)(b). He submitted, and the Upper Tribunal agreed, that section 40(2)(b) only enables an RRO to be made on the application of a local housing authority in respect of universal credit paid in respect of rent under the tenancy of which the respondent to the order is the landlord (i.e. the immediate landlord), because the words "the tenancy" in paragraph

(b) must refer back to the "tenancy of housing" mentioned in subsection (2). This is despite the fact that the universal credit may have been paid "to any person".

29. Although counsel for the Respondents did not take issue with this interpretation of section 40(2)(b) in his skeleton argument, he did so in his oral submissions, submitting that paragraph (b) could also embrace an application against a superior landlord because of the absence of any limitation in subsection (2) to an immediate landlord. This submission seems to me to be irreconcilable with the language of paragraph (b).

30. Counsel for Mr Rakusen submitted that it would be illogical to interpret section 40(2)(a) as enabling an RRO to be made against a superior landlord when this was not permitted by section 40(2)(b), particularly when: (i) the words "the landlord under a tenancy" were common to both provisions; (ii) an application can be made under section 41 by both a tenant and a local housing authority in respect of rent and universal credit paid in respect of the same tenancy; (iii) section 40(2)(b) enables public money to be recovered from defaulting landlords; and (iv) the underlying policy (discussed below) is the same.

31. Counsel for the Respondents pointed out that universal credit is paid by central government rather than the local housing authority. This no doubt explains why paragraph (b) uses the word "pay" rather "repay", but it provides no answer to the points made by counsel for Mr Rakusen. Even if the interpretation of paragraph (a) were more doubtful, paragraph (b) would appear to me to point strongly in favour of Mr Rakusen's interpretation.

32. For his part, counsel for the Respondents relied upon three aspects of the legislative context. First, he pointed out that Chapter 4 refers repeatedly to "a landlord": see in particular section 40(1),(3), 43(1) and 46(2). He argued that this wording was entirely general and that, in the absence of any limitation to immediate landlords, embraced superior landlords. In so far as this submission depends on the use of the indefinite article, it does not assist the Respondents because the indefinite article is generally used where there is no antecedent reference to the landlord, and in any event section 40(2) refers to "the landlord". In so far as the submission depends simply on the use of the word "landlord" without any limiting definition, it does not assist the Respondents because it begs the question of what is meant by "the landlord" in section 40(2).

33. Secondly, counsel for the Respondents relied upon section 40(3). It is common ground that, for the reasons explained in detail by the Upper Tribunal at [41]-[60], each of the specified offences may be committed by a superior landlord as well as by an immediate landlord. Counsel for the Respondents submitted that, in the absence of any limitation of section 40(2)(a) to immediate landlords, it must have been intended to apply to superior landlords as well. This is a point which appears to have weighed heavily with the Upper Tribunal. As counsel for Mr Rakusen pointed out, however, many of the offences can be committed by persons who are not landlords at all, but section 40(2)(a) does not provide that an RRO can be made against any person who commits one of the specified offences. Nor does section 40(2)(a) provide that an RRO can be made against any landlord who has committed one of the offences: its wording is more specific.

34. Both sides relied upon the fact that, in the case of the offence under section 1(3A) of the 1977 Act, section 1(3C) of that Act expressly defines "landlord" as including "any superior landlord". Counsel for the Respondents argued that this showed that the words

"a landlord" in section 40(1) and (3) of the 2016 Act embraced a superior landlord, while counsel for Mr Rakusen argued that the contrast with the language of section 40(2) showed the opposite. I prefer the argument of counsel for Mr Rakusen on this point, but to my mind the more important point is the one I have made in the preceding paragraph.

35. Thirdly, counsel for the Respondents relied upon the fact that section 41(1) provides that an application for an RRO may be made against "a person who has committed an offence". As he pointed out, this is not limited to an immediate landlord. Again, however, this point proves too much, because the wording in section 41(1) is not limited to landlords at all.

36. Turning to the purpose of section 40(2)(a), Safer Renting (which was given permission by Lewis LJ to intervene by way of written submissions) explained that Part 2 of the 2016 Act was the product of a series of reviews into the problems caused by rogue landlords in the private rental sector and methods of forcing landlords to either comply with their obligations or leave the sector. While this background is interesting and informative, it does not seem to me that it adds materially to what is apparent on the face of the legislation.

37. As both Safer Renting and counsel for the Respondents pointed out, Part 2 of the 2016 Act is headed "Rogue landlords and property agents in England", and section 13(2) provides:

> "In summary –
>
> (a) Chapter 2 allows a banning order to be made where a landlord or property agent has been convicted of a banning order offence,
>
> (b) Chapter 3 requires a database of rogue landlords and property agents to be established,
>
> (c) Chapter 4 allows a rent repayment order to be made against a landlord who has committed an offence to which that Chapter applies …"

38. On its face, therefore, the legislation confers tough new powers to address these problems. Moreover, it is common ground that the provisions in Chapter 4 are broader than those contained in section 73 of the 2004 Act at least in embracing a wider range of offences. The question is whether they are also broader than section 73 with respect to the class of persons who can be made subject to RROs. Nothing in the pre-legislative materials relied upon demonstrates that this was the legislative intention.

39. It is common ground that Chapter 4 is intended to deter landlords from committing the specified offences. Safer Renting and the Respondents argue that, even if it was not spelled out in the pre-legislative materials, this policy is just as applicable to superior landlords as it is to immediate landlords. Counsel for Mr Rakusen took issue with this, arguing that it would be consistent with the legislative policy to drive immediate landlords who flouted their obligations out of the sector.

40. I entirely accept that Chapter 4 of the 2016 Act is aimed at combatting a significant social evil and that the courts should interpret the statute with that in mind. I also accept that the policy of requiring landlords to comply with their obligations or leave the sector is one that that a legislator could well regard as applicable to superior landlords as well as immediate landlords. It nevertheless remains the case that Parliament has legislated to implement that policy only to the extent provided for by the language of section 40(2).

41. Safer Renting and the Respondents argue that the regime contained in Chapter 4 of the 2016 Act would be rendered less effective if Mr Rakusen's interpretation of section 40(2)(a) were upheld, because of the prevalence of so-called "rent-to-rent" arrangements under which a superior landlord grants a lease to a company that rents out the property as an HMO. Such companies may fail to comply with the applicable statutory conditions, but have no assets against which an RRO can be enforced. If this concern proves well-founded, then Parliament may be moved to amend section 40(2)(a), but we have to interpret the provision as it presently stands.

42. Safer Renting also relies upon the fact that the offences listed in section 40(3) contained their own protections for landlords, such as the defence of "reasonable excuse" provided for by section 72 of the 2004 Act, and submits that this is how Parliament has struck the balance between punishing "bad" landlords and protecting "good" landlords. In my view, however, this sheds little light on the proper interpretation of section 40(2)(a) given that the offences can be committed by persons who are not landlords at all and given that the question is not whether section 40(2)(a) applies to "good" as opposed to "bad" landlords, but whether it applies to superior as well as immediate landlords.

43. For the reasons given above I conclude that section 40(2)(a) only enables an RRO to be made against an immediate landlord and not a superior landlord. I would add that, if there were doubt about the matter, I would accept counsel for Mr Rakusen's fall-back submission, which was not advanced below, that the principle of statutory interpretation that a person should not be penalised except under clear law (see *Bennion on Statutory Interpretation* (7th ed) at 27.1) would indicate that the doubt should be resolved in favour of Mr Rakusen. This is particularly so given that the effect of the Respondents' interpretation is that superior landlords can be ordered to repay tenants sums of money which the superior landlords have never received.

Disposition

44. I would therefore allow this appeal and strike out the Respondents' claim against Mr Rakusen.

Andrews LJ:

45. The fact that the offences specified in s.40(3) of the 2016 Act can be committed by superior landlords as well as by direct landlords tells one nothing about whether Parliament changed the law in 2016 so as to enable an RRO to be obtained in England against superior landlords. The answer to that question depends on the construction of section 40(2) of the 2016 Act, because that section not only defines what an RRO is, but identifies the person against whom such an order can be made. Section 41(1) then

goes on to add the further requirement that that person must have committed one of the offences stipulated in Section 40(3).

46. As the Deputy President observed in his judgment at paragraph 32, "as a matter of first impression… the language of section 40(2)(a) is suggestive of a single direct relationship of landlord and tenant". First impressions can sometimes prove to be wrong; but in this case, the more closely one examines the possible alternative construction, the clearer it becomes that those impressions are plainly correct.

47. The crucial phrase in section 40(2) is "the landlord under a tenancy of housing", which identifies the person who can be required by the RRO to make a payment, but does not define the relevant tenancy. In order to find out *what* tenancy of housing, one needs to look further. As a matter of internal consistency, one would expect the answer to what qualifies as "a tenancy of housing" to be the same for the purposes of both subsections of section 40(2), and of the section read as a whole.

48. Taking subsection (b) first, the person concerned may be required to "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." That *must* mean the tenancy of housing of which the person entitled to claim universal credit is the tenant. Read together with the opening words of section 40(2), this identifies the "tenancy of housing" of which the target of the RRO is the landlord. The Deputy President rightly accepted this interpretation of subsection (b) in paragraph 40 of his judgment.

49. That makes it clear that a local authority can only obtain an RRO against a direct landlord, but in my judgment it goes further than that. It is a very strong indicator that for the purposes of construing the section as a whole, the "tenancy of housing" referred to in the opening lines is a direct tenancy. The draftsman has also used the words "to any person" to make it clear that it does not matter whether the universal credit was paid to the tenant, or directly to the landlord. The choice of the word "pay" rather than "repay" must also be taken to be deliberate, as universal credit would not have been paid by the local authority but by central government. The landlord is not being made to pay it back to the person from whom he received it, as he would be if he were repaying a tenant.

50. Turning to subsection (a), the target of the RRO may be required to "repay an amount of rent paid by a tenant". The natural construction of that phrase is that he should have to pay back the rent paid to him by a tenant under the tenancy of housing of which he is that person's landlord. That interpretation is consistent with the identification of the relevant "tenancy of housing" reached by reading the opening words of section 40(2) together with subsection (b). It also explains the use of the word "repay" in that subsection and "pay" in subsection (b). There is nothing in the language of subsection (a) to indicate that "tenancy of housing" should have some different meaning when the tenant is seeking the RRO.

51. There was no need for the draftsman to include the words "under the tenancy," in subsection (a), as they are necessarily implicit. Their omission does not point towards a wider construction that would make the target of the RRO liable to pay back to the tenant rent paid to someone else under a sub-tenancy, which he never received in the first place. As subsection (b) illustrates, the draftsman has taken pains to make it clear

when the identity of the recipient of a payment is irrelevant; yet the words "to any person" do not appear after "paid" in subsection (a).

52. The need for a consistent approach to the interpretation of the phrase "the landlord under a tenancy of housing" is reinforced by the fact that an application could be made by both a local authority and a tenant for both types of RRO in respect of rent and universal credit paid in respect of the same tenancy. In such circumstances it would make no sense to interpret the phrase "the landlord under a tenancy of housing" as referring to different people.

53. Thus when section 40(2) is construed as a whole, whether the applicant for the RRO is a tenant or a local authority, the tenancy of housing contemplated but not yet identified in the opening words of that section is the tenancy under which the tenant's rent has been paid, or in respect of which universal credit has been paid, and the landlord who is the target of the RRO must be the direct landlord irrespective of whether the application is made by the tenant under subsection (a) or the local authority under subsection (b).

54. The correctness of this construction is reinforced by three further matters:

    i) Section 41(1) provides that an application can be made for an RRO against a person who has committed an offence "to which this Chapter applies". That is defined in section 40(3) as "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". Section 41(2)(a), provides that a tenant may apply for an RRO only if the offence relates to housing that, at the time of the offence, was let to the tenant. Reading all those provisions together it seems to me to be necessarily implicit that the housing must have been let to the tenant by the landlord who has committed the offence, and is the target of the RRO, and not by some third party. That is consistent with the phrase "a tenancy of housing" in section 40(2) meaning a direct tenancy.

    ii) By contrast with the Protection From Eviction Act 1977, the word "landlord" has not been expressly defined to include a superior landlord.

    iii) The construction for which the Respondents contend would mean that tenants could obtain an RRO against a superior landlord whereas a local authority could not. That is something that Parliament is unlikely to have intended, especially given the possibility that the rent might be paid in part by universal credit and in part from the tenant's own funds. Mr Fitzpatrick, on behalf of the Respondents, was unable to come up with any justification for that distinction, given that the policy of the 2016 Act was the deterrence of rogue landlords, and universal credit is paid out of public funds. Surely if Parliament had wanted the sanction of an RRO to be available to discourage "bad" superior landlords, it would have made it available to local authorities as well as to tenants.

55. Unfortunately, in my judgment, the Deputy President fell into error by regarding it as significant that the offences listed under section 40(3) could be committed by a superior landlord. He was wrong to regard the commission of the offence by a landlord as a jurisdictional filter, let alone as the sole jurisdictional criterion for making a RRO, and wrong to treat section 40(1) as anything other than an introductory provision which

explains what Chapter 4 of the 2016 Act does. That is what appears to have led him to depart from the natural construction of section 40(2)(a) instead of trusting his first impressions.

56. Since I regard the language of the statute as unambiguous, there is no need to resort to the principle of statutory interpretation that a statute should not be interpreted as imposing a penalty unless that intention is made clear. I would simply make the observation that if Parliament had considered the criminal penalties already available in respect of superior landlords who commit offences of the type falling within section 40(3) to be insufficient deterrence, and wished such landlords to be exposed to liability to civil penalties such as RROs, it would have been easy enough to make clear and express provision for it, and it has not done so. Indeed the Respondents' case was largely premised on the absence of words limiting the scope of the relevant statutory provisions.

57. For those reasons, and those more fully expressed by my Lord, Arnold LJ, I agree with him that the appeal should be allowed and the claim against Mr Rakusen should be struck out.

Baker LJ:

58. I agree with both judgments.