

ENGLAND AND WALES / JUDGMENT

Dr Noshaba Khiljee v London Borough of Waltham Forest

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Neutral Citation Number: [2026] UKUT 171 (LC) IN THE UPPER TRIBUNAL (LANDS CHAMBER) AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER) Ref: LON/OOBH/HNA/2025/0636 Case Nos: LC-2025-635 Royal Courts of Justice, Strand, London, WC2A 2LL TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007 HOUSING – HOUSE IN MULTIPLE OCCUPATION – CIVIL PENALTY – Housing Act 2004 – meaning of “rack-rent” in definition of “person having control” – whether the net annual value is of the premises used lawfully instead of as an HMO 7 May 2026 BETWEEN: DR NOSHABA KHILJEE -and- LONDON BOROUGH OF WALTHAM FOREST Appellant Respondent 15 Fairview Close, London, E17 5HJ His Honour Judge Johns KC Hearing date: 24 April 2026 Harley Ronan (instructed by Internations Legal LLP) for the appellant John Fitzsimons (instructed by Sharpe Pritchard LLP) for the respondent © CROWN COPYRIGHT 2026 The following cases were referred to in this decision: Global Guardians Management Ltd v Hounslow London Borough Council [2023] EWCA Civ Global Guardians Management Ltd v Hounslow London Borough Council [2022] UKUT 259 (LC) London Corporation v Cusack Smith [1955] AC 337 Urban Lettings (London) Ltd v Haringey LBC [2015] UKUT 104 (LC) Rawlance v Croydon Corporation [1952] QB 803 Newman v Dorrington Developments Ltd [1975] 1 WLR 1642

Introduction

1. This appeal concerns a financial penalty imposed on Dr Noshaba Khiljee (Dr Khiljee) on the basis she was a person having control of an unlicensed house in multiple occupation (HMO). It raises an important question about the meaning of “rack-rent” in s.263(1) of the Housing Act 2004 (the Act). Factual background and FTT Decision
2. Dr Khiljee is the owner of 15 Fairview Close, London E17 5HJ (the Property). By a written agreement dated 22 April 2019 (the Agreement) made with We Invest Ltd (WIL), Dr Khiljee engaged WIL to manage the Property. The Agreement provided for payment of a fixed monthly sum by WIL to Dr Khiljee of £3400. WIL was to collect all rental income from the Property and agreed by clause 3.7.7 that the Property would not be let as a house in multiple occupation.

3. Despite that clause, the Property was then let as an HMO, with WIL collecting rent of £7,000 to £10,000 per month from the occupiers. The respondent council, London Borough of Waltham Forest (the Council), granted a short HMO licence for the Property on 1 February 2022 for the period of just one year; the limited period apparently reflecting the fact that the Property lacked the necessary planning permission. But use as an HMO continued beyond the expiry of the licence and on 11 December 2024 the Council issued notices of a decision to impose a financial penalty on both Dr Khiljee and WIL for an offence as at 14 March 2024. Dr Khiljee's penalty was in the sum of £24,500.
 4. She appealed the penalty to the First-tier Tribunal (the FTT). She contended that she was not a person having control of, or a person managing, the Property within s.263 of the Act. She argued, in the alternative, that she had a reasonable excuse; pointing to the contractual obligation placed on WIL by the Agreement not to let the Property as an HMO. She also criticised the level of the penalty.
 5. By its decision made on 6 September 2025 (the Decision) the FTT upheld the penalty, subject to a reduction to £19,600. It referred to evidence that the maximum rack-rent for a single family dwelling in this area was £5000 per month, and concluded that Dr Khiljee was therefore a person having control of the Property within s.263 of the Act; her receipt of £3400 per month representing at least two-thirds of the rack-rent so calculated. It set out its conclusion on this point at [65] of the Decision. "In relation to the question of whether the Appellant was in control of the premises at the relevant time we find that she was. The rack-rent calculation in s.263(2) of the Act must be based on the lawful use of the premises. If the premises had been let as a family dwelling which it should only have been without a licence, the maximum rent obtainable was in the region of £5000 per month and the Appellant was guaranteed at least 2/3 of this value. This appears to be common sense because were it otherwise the Appellant would benefit from her own wrongdoing. It must be right that any assessment of rack-rent must be limited to the lawful use of the premises. Both *Rawlance v Croydon Corporation*
- [1952] QB 803 and *Newman v Dorrington Developments Ltd* [1975] 1 WLR 1642 are instructive of such a conclusion." 6. It also determined that she did not have a reasonable excuse, despite the covenant in the Agreement against letting the Property as an HMO. It considered she should have ensured WIL was acting in accordance with her instructions and lawfully. The appeal
7. Dr Khiljee appeals to this Tribunal with the permission of Judge Cooke on the sole ground that the FTT was wrong in deciding that "rack-rent" in the definition of "person having control" in s.263 of the Act meant the rack-rent of the Property let as a single dwelling, being its lawful use.
 8. The outcome of this dispute now rests on that single question, as both sides accepted at the hearing before this Tribunal. In that regard, Dr Khiljee does not appeal the FTT's conclusion that she did not have a reasonable excuse. And the Council does not seek to uphold the FTT's

overall decision on the different ground that Dr Khiljee was a person managing the Property. Discussion and conclusion 9. I start with the statutory provisions. By s.72(1) of the Act, “A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed ... but is not so licensed”. The meaning of “HMO” is explained by s.77. “In this Part –

- (a) ‘HMO’ means a house in multiple occupation as defined by sections 254 and 259, and (b) references to an HMO include (where the context permits) any yard, garden, outhouses and appurtenances belonging to or usually enjoyed with, it (or any part of it).” The phrases “person having control” and “person managing” used in s.72(1) are defined in s.263, so far as material, as follows: “(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; ... 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.”
- 10. The question of rack-rent in s.263(1) has received consideration in the Court of Appeal. *Global Guardians Management Ltd v Hounslow London Borough Council* [2023] EWCA Civ 1243 involved a company, Global 100 Ltd, receiving £15,000 per month from licensing property guardians to live in what had been NHS office accommodation at Stamford Brook Centre, Stamford Brook Avenue, London, W6 0YD. Penalty notices against Global 100 Ltd were upheld by the FTT and this Tribunal on the basis that Global 100 Ltd was a person having control of the premises. Global 100 Ltd appealed to the Court of Appeal on the grounds, among others, that it was not in receipt of the rack-rent of the premises. It pointed to the lack of expert evidence as to the net annual value of the premises. The Court of Appeal dismissed the appeal, determining that the FTT and this Tribunal were entitled to find that Global 100 Ltd had received the rack-rent for the premises. Dingemans LJ (with whom the other members of the Court of Appeal agreed) said at [63], “Global Guardians, with Global 100, arranged for the property to be modified for habitation and then licensed

property guardians to live in the property. That generated £15,000 per calendar month. Global 100 was not acting as a charity and was in the business of making money. The property guardians were willing licensees of the living accommodation and Global 100 was a willing licensor. The evidence of the transactions between Global 100 and the property guardians is, at the least, some evidence of the market value of the accommodation and the FTT and Upper Tribunal were entitled to rely on it to find the rack-rent of the property. There was nothing to suggest that anything more could be obtained from letting or licensing the property.”

11. A fuller discussion of the issue can be found in the decision of Fancourt J in the same case when it was in this Tribunal, at [83] to [92] of [2022] UKUT 259 (LC). “83. The Appellants submit that there was no evidence that the Property was let at a rack-rent within the meaning of the definition. They argue, correctly, that it is the rack-rent of the Property as a whole with which the definition of ‘person having control’ in s.263(1) of the 2004 Act is concerned, because the ‘premises’ in question in s.72 are the HMO, not individual rooms in it. Accordingly, they argue, there is no evidence of the rent at which the Property as a whole would let on the open market, no such letting having taken place and no opinion evidence of its rental value having been adduced before the FTT or this Tribunal. Further, GGM had no right under the signed Proposal to let or sub-let the whole of the Property, so it cannot be said that GGM (or Global 100) would receive the rack-rent if the Property were let at a rack-rent: only NHSPSL had the right to let the whole of the Property, so it was (on this basis) the person having control of the Property. The Appellants noted that NHSPSL had not challenged the penalty notice that was served on it.
84. Further, the Appellants argue that it is logically impossible for both GGM and Global 100 to be in receipt of the rack-rent of the Property, so the FTT’s decision was wrong for that reason too.
85. I am grateful to Mr Pettit for the clarity and succinctness of his written and oral arguments but I am fully satisfied that he is wrong in relation to the issue of rack-rent. There can be no doubt that the licensees were paying to Global 100, in aggregate, more than two-thirds of the net annual value of the Property within the definition of ‘rack-rent’ in s.263(2). There is no proper distinction to be drawn, either in law or fact, between the aggregate of the licence fees payable by the licensees, being the fees for occupation of the 30 available residential rooms in the Property, and the rack-rent of the Property as a whole. The evidence before the FTT established that the rooms had been advertised on Global Guardians’ website and comprised all the lettable space in the Property. The accommodation advertised was basic, involving shared WCs, bathrooms and kitchens, and was licensed without security of tenure. It would be unlikely to appeal to anyone minded and financially able to take a private tenancy of a room or flat. As the FTT said, such premises and the rooms in the Property are not comparable.

86. Further, there is no reason to believe that Global 100 would have advertised and licensed the rooms for significantly less than the market rate for such accommodation. They are experienced operators in the guardians business. They run their business for profit, not as a charity. The fact that their website indicated, in relation to the 30th room, that it was 65% cheaper than rented accommodation, is neither here nor there. The question is what was the net annual value of a room in the Property, not what rents were payable for an assured shorthold tenancy of privately rented rooms or flats. Given the nature of the accommodation, the fees being paid and the evidence about how the rooms were advertised and let, there was strong evidence that the fees being paid by the licensees were in aggregate the net annual value of those parts of the Property, or at least must have been more than two-thirds of that value, and so the ‘rack-rent’, as defined.
87. As a matter of law, in a case such as this, there is no relevant distinction to be drawn between the aggregate of the rack-rents payable for the lettable rooms in the house and the rack-rent of the house. The issue was addressed by this Tribunal in *Urban Lettings (London) Ltd v Haringey LBC* [2015] UKUT 0104 (LC).
88. That case concerned an HMO which was a converted block of flats falling within s.257 of the 2004 Act, and accordingly the provisions of Part 2 of the 2004 Act applied subject to the modifications specified in The Houses in Multiple Occupation (Certain Blocks of Flats) (Modifications to the Housing Act 2004 and Transitional Provisions for section 257 HMOs) (England) Regulations
2007. Reg 3 provides a different definition of “person having control”, in the form of a new s.61(7) of the 2004 Act, which applied in that case: ‘(7) In this Part the ‘person having control’ in respect of a section 257 HMO is—
- (a) in relation to an HMO in respect of which no person has been granted a long lease of a flat within the HMO, the person who receives the rack rent for the HMO, whether on his own account or as an agent or trustee of another person;
 - (b) ...’ ‘Rack rent’ was not further defined for that purpose.
89. The definition of ‘person having control’ was therefore different from the definition in s.263(1) and (2), but the issue in that case was whether the aggregate market rents received by a mesne landlord, who was the lessee of 4 flats on a floor of the block, represented the rack rent for that floor (which was the HMO). The mesne landlord argued that the HMO itself had a different identity from the flats comprised in it, since it also included common parts of which it was not the lessee, and so it was not in receipt of the rack rent for the HMO. Since it had no interest in the common parts it would not be granted a licence to manage them, and so the policy of the Act was better fulfilled by holding that it was not a person having control. His Honour Judge Behrens rejected the argument, holding that, in the light of the reasons given for the decision in the *Pollway Nominees* case, there could not have been an intention to distinguish in such a case between the rack rents received from the flats and the rack rent of the HMO itself. If there were a distinction, it would mean that no

one could be a person having control of the HMO. The policy of the Act was better served by concluding that the person who received the full net annual value of the lettable accommodation in the HMO was a person in control of it. If that person could not obtain an HMO licence in its own name, because it had no interest in common parts, then it should not have entered into business arrangements whereby it could not comply with the licensing obligations of Part 2.

91. In my judgment, the conclusion that Judge Behrens reached applies equally to the facts of this case. The definition in s.263(1) is different in several respects from the definition in s.61(7), but the essential point – by reference to receipt of the rack-rent of the HMO – is the same. Further, the Pollway Nominees case, on which Judge Behrens relied for his conclusion, was decided on the basis of the definition in s.39 of the Housing Act 1957, which is in the same terms as s.263(1) and (2) of the 2004 Act. It could not have been intended by the draftsman of the Act that if any part of an HMO were not let reserving a rent, the recipient of the rack rent of all the remaining parts cannot be a person in control of the HMO, with the possible consequence that there would be no such person. Although it can be said that the recipient would, in most cases, at least be a ‘person managing’ the premises, it is not the policy of the Act to identify one person who is either a person having control or a manager, or the most appropriate person falling within either definition. On the contrary, the policy is that all persons falling within either description are liable in the case of an unlicensed HMO. That is evident from the drafting that makes both the agent who first receives rent and the person who is entitled to it from the agent persons managing the premises.
92. As a factual question, there is no distinction here between the rack-rent of the licensed rooms of the Property and the rack-rent of the Property because GGM was entitled to and did let all the lettable space in the Property. The evidence established that there was no other income-producing part to be let. It is unrealistic to consider that additional rental income could have been obtained for kitchens or bathrooms and common parts that the occupiers of rooms had the right to use. As any property valuer would explain, were premises such as the Property to be let as a single whole, instead of all the individual rooms being separately let, the rent produced by the single letting would be less than the aggregate of the rents for the individual rooms. That is because anyone taking a lease of the whole of the Property would want to profit from sub-letting the rooms and would factor into their rental bid the likely costs of sub-letting the individual rooms, the time taken to achieve full occupation and the risk of later voids when no income is received for individual rooms.”
12. It can thus be seen that a practical approach is to be taken to the ascertainment of rack-rent under s.263(1), with the sums in fact received from the occupiers of the rooms being used as the evidence from which to find the rack-rent for the premises. While a letting of the whole, being what is in view in s.263(1) as noted by Fancourt J, could be expected to produce a somewhat lower figure, as he also acknowledged and explained it could not be expected to produce a higher one. I should make clear that the Council did not rely on any distinction

between the letting of the whole of the Property for use as an HMO and lettings of the rooms in this case. Any lower figure for the whole would no doubt still have been very significantly too high to give rise to any liability on the part of Dr Khiljee. What she received under the Agreement was only just over two-thirds of the notional rack-rent of the Property even ignoring any HMO use.

13. Given the statutory provisions, and that practical approach to rack-rent, I consider that the FTT was wrong to find that Dr Khiljee was in receipt of the rack-rent and was therefore a person having control of the Property. Several points have led me to that

conclusion.

14. First, the subject of the offence under s.72(1) is an HMO which is required to be licensed and is not licensed, with an HMO meaning, by s.77, a house in multiple occupation as defined in ss.254 to 259. That is the property with which this aspect of the legislation, including s.263, is concerned. It would be surprising if the nature of the property as an HMO were suddenly to be ignored when approaching s.263 and the meaning of rack-rent. The question s.263 is answering is, who is in control of this HMO? Clear words could be expected to be used if the intention was that the fact the property was an HMO was to be ignored for the purposes of arriving at an answer.
15. Second, quite apart from the statutory provisions, that the Property is an HMO is the reality. There is no express disregard of that reality to be found in s.263. Had Parliament required the reality to be ignored, it might be expected to have done so expressly.
16. Third, the practical approach taken to rack-rent enables a quick and clear answer to the important question as to whether a person is in control of the HMO and so has committed an offence. By contrast, an approach which requires the HMO to be valued as if it was not an HMO in order to assess the rack-rent is far less workable and produces considerable uncertainty. It would mean that, as here, there would need in many cases to be valuation evidence to decide whether a person was in receipt of the rack-rent. And a person would, accordingly, be likely to need to take valuation advice to decide whether they might be committing an offence. The facts of this case illustrate the uncertainty which could be expected to flow from this. Dr Khiljee was found to have committed the offence on evidence that the rack-rent was £5000 per month, with her receipts of £3400 representing 68 percent of that figure. Given the definition of rack-rent in s.263(1) under which it is at least two-thirds, or 66.67 percent, of the net annual value which must be received, her liability for a serious offence might well have depended on a question of valuation where a difference of just a few hundred pounds in the monthly value would mean liability or not. Parliament is unlikely, in my judgment, to have intended such difficulties of workability and such uncertainty. That is particularly so in view of the statutory definition here of rack-rent as meaning not less than two-thirds of the full net annual value. That definition promotes workability and certainty by avoiding fine distinctions between the sum actually received and the full value. As Fancourt J said in *Global Guardians* at [80], “The test of not less than

two-thirds of the net annual value was probably adopted to avoid argument that the rent that was actually being received was not a rack-rent because it was a little less than the full annual value of the property". Indeed, rack-rent has always been used so as to avoid those issues. As noted by Lord Reid in *London Corporation v Cusack Smith* [1955] AC 337 when considering the use of the term rack-rent in s.119 of the Town and Country Planning Act 1947 (where it had no statutory definition) at p.357, it means "a rent of the full value of the tenement, or near it" (my italics) "Blackstone's Commentaries, 1st Ed, Vol. II, p.43." Further, there would be likely to be significant room for debate as to the value of premises if a hypothesis of ignoring unlawful HMO use were to be adopted. The FTT's decision focussed at [65] on the absence of an HMO licence. But should the possibility of obtaining one be taken into account when assessing value and, if so, how? And the Council also pointed to the absence of planning permission. But what about the possibility of obtaining such permission, or a certificate of lawful use? And what about having regard to the range of lawful uses for a property under the Use Classes Order? All this uncertainty is unlikely to have been intended to form part of the definition of an offence.

17. Fourth, Mr Fitzsimons, appearing for the Council, was constrained to accept that the FTT's interpretation of s.263 involved there being two rack-rents for the purposes of the section. One represented by the actual receipts from the occupiers, founding WIL's liability. And another, represented by the annual value of the Property on the assumption it was let as a single dwelling, founding Dr Khiljee's liability. I see no warrant for that in the section. On the contrary, it refers in s.263(1) to "the" rack-rent, and in s.263(2) to "the" full net annual value. In *Urban Lettings (London) Ltd v Haringey LBC* [2015] UKUT 104 (LC) (to which Fancourt J referred in *Global Guardians*), HHJ Behrens quoted this part of Lord Reid's speech in *Cusack Smith*: "A, the freeholder, may let to B for a rent of £100 which is a rack-rent at the date of B's lease, and later B may sublet to C for a rent of £200 which is a rack-rent at the date of C's lease. It appears to me that then both A and B are entitled to receive a rack-rent of the land. ... I am therefore of opinion that there can be more than one 'owner' under the first limb of the definition, and that if the freeholder lets at a rack-rent he is and remains an 'owner' no matter what his tenant may do." The authorities do therefore contemplate two persons being in receipt of the rack-rent where there is a letting at full market value followed later by a subletting at a different full market value, the market value having changed. But that is not the situation here. It does not justify a reading of s.263 which involves there being two very different rack-rents simultaneously; one representing the reality and another on a particular valuation assumption or disregard.
18. Fifth, contrary to the argument for the Council and unlike the FTT, I do not consider that to assess the rack-rent of the Property in line with the sums actually received by WIL is to allow Dr Khiljee to profit from her wrong. The relevant wrong is being in control of an unlicensed HMO. But it is WIL, not Dr Khiljee, enjoying the fruits of the Property as an unlicensed HMO.

19. Sixth, assessing the rack-rent of the Property in line with the sums actually received from the occupiers does not run the risk of no one being in control of the Property for the purposes of s.72(1) of the Act. It is clear from the decided cases that that is a relevant factor when approaching arguments as to the meaning and operation of the definitions. Both *Urban Lettings* and *Global Guardians* involved the rejection of arguments which, if successful, may result in no one being liable as a person in control of the HMO.
20. Seventh, if it is objected that someone in receipt of some of the rents, at least indirectly, through a manager might be expected to be liable under the Act, the answer to such objection is that such a person would ordinarily, or often, be liable as within the definition of a person managing the HMO. While the Council does not seek to uphold the penalty against Dr Khiljee on that different basis in this case, the scope for a conclusion of liability against a person in her sort of position is plain under s.263(3). In that regard, both sides proceeded on the basis before the FTT and on appeal, that the Agreement was indeed a management agreement, not a tenancy. It is not therefore necessary to strain the definition in s.263(1) to extend liability to such persons.
21. Eighth, the case of *Rawlance v Croydon Corporation* [1952] QB 803 does not seem to me to offer any real support for the FTT's conclusion. While the FTT also referred to *Newman v Dorrington Developments Ltd* [1975] 1 WLR 1642, it was *Rawlance* which Mr Fitzsimons focussed on in his oral submissions at the hearing of the appeal before this Tribunal. In *Rawlance*, the Court of Appeal was faced with an argument that the landlord was not the person in control of a house for the purposes of s.9(1) of the Housing Act 1936 as the annual rent of £45 being received was not the rack-rent as £45 was the rent controlled by the Rent Restrictions Acts. Rack-rent was defined in like terms to s.263(2) of the Act. The Court of Appeal rejected that argument. It held that the full net annual value was £45 given the rent controls. Romer LJ expressed the conclusion in this way at p.816: "In my opinion the legislature, in section 9, was applying itself to a factual and not to a hypothetical position. If the standard rent is the greatest rent that is obtainable in respect of any particular premises then it is the full rent of those premises, the rack-rent, notwithstanding that (and indeed because) the owner is restricted from receiving the higher rent which the premises, if uncontrolled, would command." I do not see the case as a warrant to require a hypothetical rather than a factual exercise in the present case. On the contrary, it shows the court having regard to the reality, not a hypothesis, when applying the definitions of rack-rent and person in control. It also represents another example of a practical approach which avoids the possibility of no one being in control. Denning LJ said at p.813, "Any other view would lead to an impossible situation. If the Rent Restriction Acts are to be treated as non-existent, the annual value of the house would soar far above the restricted rent which the tenant is paying. The landlord would then not be the person having control of the house, because he would not be receiving a rack-rent. Who then would be in control of the house? ... Faced with these difficulties, Mr. Hoare suggested that there might be no one in control of the house and referred us to what Bowen L. J. said in *Wright v. Ingle*. But if there was no person having control we would get to the absurd position that the Housing Acts would be

inoperative in the case of houses which were within the Rent Restriction Acts, because there would be no one on whom the local authorities could serve the necessary notices.

Parliament cannot have intended any such result when they passed the Housing Act, 1936.”

As already noted, what I consider is the correct meaning of s.263 does not involve no one being liable as a person having control of the HMO.

22. For all those reasons and with respect I take a different view of the meaning of rack-rent in s.263(1) of the Act than the FTT. The appeal is therefore allowed and the penalty notice and order of the FTT will be set aside. His Honour Judge Johns KC 7 May 2026 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.

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