



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case References : **BIR/OOGF/HBA/2019/0001
BIR/OOGF/HSB/2019/0001**

Property : **43 Dudmaston, Telford TF3 2DF**

Applicant : **Borough of Telford and Wrekin**

Respondent : **David Robert Beattie**

Applications : **Banning Order
Rent Repayment Order**

Members of Tribunal : **Judge D Jackson
Mrs S Hopkins FRICS
Mr R Chumley-Roberts MCIEH JP**

Date of Hearing : **14th August 2019
Centre City Tower, Birmingham**

Date of Decision : **16th August 2019**

DECISION

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Background

1. On 18th February 2019, at Telford Magistrates Court, the Respondent pleaded guilty to an offence that between 5th June 2018 and 19th September 2018 he had control of or managed a House in Multiple Occupation (“HMO”) which was required to be licensed, namely the Property, but which was not so licensed contrary to section 72(1) of the Housing Act 2004 (“the 2004 Act). The Respondent was fined £284 and ordered to pay costs of £410 and a surcharge to fund victim services in the sum of £30.
2. On 5th March 2019 the Applicant Local Authority gave Notice of intended proceedings to apply for a Banning Order. The Local Authority indicated that it intended to apply for a banning order for a period of 4 years. Representations were invited during “the notice period” to be received by 4 p.m. on 5th April 2019.
3. Representations were made by the Respondent, by email, at 09:24 on 5th April 2019.
4. On 26th April 2019 the Local Authority made application to the Tribunal for a Banning Order under section 15(1) of the Housing and Planning Act 2016 (“the 2016 Act”).
5. On 5th March 2019 the Local Authority gave Notice of Intended Proceedings that it intended to apply for a Rent Repayment Order (“RRO”) under section 41 of the 2016 Act. The Local Authority seek to recover monies paid in the form of Housing Benefit for the Property in the sum of £1924.65 for the period between 5th June 2018 and 19th September 2018. The Respondent was invited to make representations on or before 5th April 2019.
6. On 1st May 2019 the Local Authority applied to the Tribunal for a Rent Repayment Order under section 41 of the 2016 Act.
7. On 9th May 2019 the Tribunal issued Directions and consolidated both sets of proceedings under Rule 6(3)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
8. The Tribunal has considered Local Authority’s Statement of Case submitted under cover of letter dated 5th June 2019 and the Respondent’s Statement of Case received on 1st July 2019.
9. The Local Authority also rely on Witness Statements of Timothy Bage (Public Protection Manager (Environmental Health) dated 11th July 2019 and Dominic Jones (Trading Standards Compliance Officer – Public Protection Team) dated 12th July 2019.
10. The Tribunal has also considered the Trial Bundle A1 – J134.
11. This matter was heard in Birmingham on 14th August 2019. The Local Authority was represented by Catherine Girvan (solicitor – Telford and Wrekin Legal Services). Mr Bage gave oral evidence. The Respondent gave oral evidence but was not represented.

Inspection

12. The Tribunal inspected the Property on the morning of the hearing.
13. The Property is a 3 storey mid terraced house built in the 1970's. There is a driveway at the front and a garden at the rear. The Property has double glazing and gas fired central heating throughout.
14. On the ground floor there is an entrance lobby, kitchen, bedroom and utility room. The kitchen at the rear of the Property has a gas cooker, a freestanding fridge, a freestanding fridge freezer and a freestanding washing machine. Each tenant has a cupboard for food storage. The double bedroom at the front of the Property appears to be part of what was once the garage. That bedroom was in occupation at the time of our inspection. The utility room was padlocked and unused. The staircase located in the hall leads to the first and second floor.
15. On the first floor there were three further double bedrooms, a bathroom and a boiler cupboard. The front and rear left bedrooms were in occupation. The rear right bedroom was not occupied and appeared to be used to store mattresses and other furniture. The bathroom contains w.c., shower and washbasin.
16. On the second floor there is a bathroom with w.c., shower and washbasin and three further bedrooms. The bedroom at the front was occupied. Both rear bedrooms were unoccupied but each contained a bed, wardrobe and other furniture.
17. In summary this is a 7 bedroom property. Only four of the bedrooms were in occupation at the time of our inspection. However, the other three unoccupied rooms contained beds and other furniture and could be occupied by tenants in short order.
18. The Property has emergency lighting (which appeared to be on permanently) to the hall, stairs and landing. No additional lighting was provided to the stairs, hall or landing area. There were smoke alarms in all bedrooms with the exception of second floor rear left. There was a carbon monoxide detector adjacent to the boiler room on the first floor. The kitchen has a heat detector.
19. The Property was a little "tired" in appearance. In particular the doors, some of the carpets and the shower room deserve some attention. The Property was in indifferent decorative order. However, the Property was not in any way substandard or unsafe.

Banning Orders – statutory provisions

20. The statutory provisions in relation to Banning Orders are contained within Chapter 2 of Part 2 of the 2016 Act:

Section 14: "Banning order" and "banning order offence"

- (1) In this Part "banning order" means an order, made by the First-tier Tribunal, banning a person from—

- (a) letting housing in England,
- (b) engaging in English letting agency work,
- (c) engaging in English property management work, or
- (d) doing two or more of those things.

(3) In this Part “banning order offence” means an offence of a description specified in regulations made by the Secretary of State.

Section 15: Application and notice of intended proceedings

(1) A local housing authority in England may apply for a banning order against a person who has been convicted of a banning order offence.

(3) Before applying for a banning order under subsection (1), the authority must give the person a notice of intended proceedings—

- (a) informing the person that the authority is proposing to apply for a banning order and explaining why,
- (b) stating the length of each proposed ban, and
- (c) inviting the person to make representations within a period specified in the notice of not less than 28 days (“the notice period”).

(4) The authority must consider any representations made during the notice period.

(5) The authority must wait until the notice period has ended before applying for a banning order.

(6) A notice of intended proceedings may not be given after the end of the period of 6 months beginning with the day on which the person was convicted of the offence to which the notice relates.

Section 16: Making a banning order

(1) The First-tier Tribunal may make a banning order against a person who—

- (a) has been convicted of a banning order offence, and
- (b) was a residential landlord or a property agent at the time the offence was committed.

(2) A banning order may only be made on an application by a local housing authority in England that has complied with section 15.

(4) In deciding whether to make a banning order against a person, and in deciding what order to make, the Tribunal must consider—

- (a) the seriousness of the offence of which the person has been convicted,
- (b) any previous convictions that the person has for a banning order offence,
- (c) whether the person is or has at any time been included in the database of rogue landlords and property agents, and
- (d) the likely effect of the banning order on the person and anyone else who may be affected by the order.

Section 17: Duration and effect of banning order

- (1) A banning order must specify the length of each ban imposed by the order.
- (2) A ban must last at least 12 months.
- (3) A banning order may contain exceptions to a ban for some or all of the period to which the ban relates and the exceptions may be subject to conditions.
- (4) A banning order may, for example, contain exceptions—
 - (a) to deal with cases where there are existing tenancies and the landlord does not have the power to bring them to an immediate end, or
 - (b) to allow letting agents to wind down current business.

21. Banning Order Offences are set out in the Schedule to The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018. The Regulations apply only in relation to offences committed after the coming into force of the Regulations on 6th April 2018.

22. For the purposes of the present application the following are Banning Order offences for the purposes of Regulation 3 (a) unless the sentence imposed on a person convicted of the offence is an absolute discharge or a conditional discharge:

Section 1(2), (3) and (3A) Protection from Eviction Act 1977 – unlawful eviction or harassment of occupier (Item 1 in the Schedule to the 2018 Regulations)

Section 72 (1), (2) and (3) Housing Act 2004 – Offences in relation to licensing of Houses in Multiple Occupation (Item 3 in the Schedule)

Rent Repayment Orders – statutory provisions

23. The statutory provisions in relation to Rent Repayment Orders are contained within Chapter 4 of Part 2 of the 2016 Act:

Section 40: 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.

(3) A reference to “an offence to which this Chapter applies” is to 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.

[Row 5 in the Table is an offence contrary to section 72 (1) of the Housing Act 2004 – control or management of an unlicensed HMO]

Section 41: 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.

(3) A local housing authority may apply for a rent repayment order only if—

- (a) the offence relates to housing in the authority’s area, and
- (b) the authority has complied with section 42.

(4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

Section 42: Notice of intended proceedings

(1) Before applying for a rent repayment order a local housing authority must give the landlord a notice of intended proceedings.

(2) A notice of intended proceedings must—

- (a) inform the landlord that the authority is proposing to apply for a rent repayment order and explain why,
- (b) state the amount that the authority seeks to recover, and
- (c) invite the landlord to make representations within a period specified in the notice of not less than 28 days (“the notice period”).

(3) The authority must consider any representations made during the notice period.

(4) The authority must wait until the notice period has ended before applying for a rent repayment order.

(5) A notice of intended proceedings may not be given after the end of the period of 12 months beginning with the day on which the landlord committed the offence to which it relates.

Section 43: 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.)

Section 45: Amount of order: local housing authorities

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a local housing authority, the amount is to be determined in accordance with this section.

(2) The amount must relate to universal credit paid during the period mentioned in the table.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to universal credit paid in respect of</i>
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

(3) The amount that the landlord may be required to repay in respect of a period must not exceed the amount of universal credit that the landlord received (directly or indirectly) in respect of rent under the tenancy for that period.

(4) In determining the amount the tribunal must, in particular, take into account—

- (a) the conduct of the landlord,
- (b) the financial circumstances of the landlord, and
- (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

Section 46: 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

(3) Condition 2 is that the order is made—

(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.

Section 51: Housing benefit: inclusion pending abolition

(1) In this Chapter a reference to universal credit or a relevant award of universal credit includes housing benefit under Part 7 of the Social Security Contributions and Benefits Act 1992.

(2) Where a local authority applies for a rent repayment order in relation to housing benefit, a reference in this Chapter to “rent” includes any payment in respect of which housing benefit may be paid.

Local Authority’s case – Banning Order

24. There has been a long history of Local Authority involvement with the Property. An unannounced inspection took place in 2011 when six persons were found to be in occupation (see J105). A further inspection took place in 2012 when 5 persons were in occupation but the Local Authority was assured that within 3 weeks there would only be 4 persons in residence (J107 and J109).

25. On 19th August 2015 the Local Authority found 5 tenants in occupation at the Property but took no enforcement action. Subsequently the Respondent and his partner, Debbie Fisher, applied for an HMO Licence for the Property. On 3rd November 2015 a Notice of Decision to Refuse to Grant a Licence for a House in Multiple Occupation because the Respondent was not a fit and proper person to be the licence holder (sections 66(2)(a) and 66(3) of the 2004 Act). That decision was not appealed.

26. On 16th December 2015 the Local Authority wrote to Ms Fisher (the Respondent’s partner) giving her the option of submitting a further HMO Licence application, request the issue of a Temporary Exemption Notice or “If the numbers of the property have naturally reduced to 4 or fewer tenants since my inspection on 19th August 2015, you must not permit the numbers to increase to 5 and will continue to manage the property as an un-licensable HMO” (G81 – G82).

27. Further inspections were carried out on 16th July, 2nd August and 27th September 2018 when 5 occupants were found at the Property.

28. The Respondent does not issue tenants with assured shorthold tenancy agreements. Instead he issues “Licences” which are terminable on 48 hours’ notice for “breach of house rules”. It is submitted that the use of licence arrangements is a deliberate device to misinform tenants about their rights.

29. The Local Authority relies on a “Licence to Occupy” dated 5th June 2018 between the Respondent and Christopher Johnson (H83 – H84). It is described as an “excluded occupancy agreement”. The licence to occupy “a single, maintained room in a shared house” is a fixed term agreement for a 12 month period at a Licence Fee of £85 per week. The occupier warrants:

“The occupier will vacate the property forthwith within a maximum of 48 hours’ notice or immediately if requested following a breach of the house rules or other disturbance”.

30. In bold type above the signatures of the parties it is stated:

“This Licence to Occupy does not create any form of tenancy.”

31. On 24th May 2019 Dominic Jones (Trading Standards Compliance Officer) wrote to landlords and letting agents in the Borough of Telford and Wrekin, including the Respondent, who were using licences rather than assured shorthold tenancies (J127 – J133).

32. It is against that background that the Local Authority argue that the conviction on 18th February 2019 for an offence contrary to section 72 of the 2004 Act (E41) should be viewed as a serious offence for the purposes of section 16(4)(a) of the 2016 Act. The offence was committed deliberately and in the knowledge that the Respondent had previously been refused an HMO Licence. Although the financial penalty of £284 was “low” that was because of the Respondent’s early guilty plea, the information he gave to the Magistrates as to his means, mitigation that the “5th tenant” had nowhere else to live and because the Magistrates were advised that the Respondent would be made the subject of a Rent Repayment Order.

33. Mitigation advanced by the Respondent before the Magistrates was that the “5th tenant”, Chris Johnson, was homeless and the Respondent was merely helping him out. However, the Local Authority points out that Mr Johnson received £67.89 by way of Housing Benefit towards the rent of £85 per week.

34. It is the Local Authority’s case that the Respondent has shown no remorse for his actions. Timothy Bage (Public Protection Manager (Environmental Health)) produces a social media entry from the Shropshire Star (J103 and J126) on 19th February 2019:

“Yes folks its me ... nothing printed as it seems tho. I had a homeless person with mental health issues living there not paying any rent to me. For doing my part in helping someone in desperate need I’ve been yet again attacked by the wolfs at environmental health ... the court actually apologised for having to impose a £284 fine as it was the law!!!”

35. Mr Bage in his Witness Statement (J104) makes it clear that the Local Authority is not seeking to argue that the Respondent offers accommodation of a poor standard. The Local Authority relies, instead on the Respondent’s conduct and compliance history.

36. For the purposes of section 16(4)(b) the Respondent has a previous conviction for a banning order offence namely: Unlawfully evicting occupier – section 1(2) Protection from Eviction Act 1977. The Respondent was convicted of two offences under the 1977 Act at Shropshire Magistrates Court 9th March 2017. He was sentenced to a Community Order with unpaid work requirement of 200 hours and was also made the subject of a Restraining Order (Conviction at E37 and attendance note of Local Authority’s solicitor at J121).
37. On 30th October 2015 the Respondent entered the Property and made threats to the tenant if he did not leave by 2nd November 2015. He took the tenant’s keys. On 2nd November the tenant was evicted and the Respondent refused to return some of his belongings. It was alleged that the tenant was assaulted. However, the Respondent denied that any assault took place and no “trial of the issue” took place. The Respondent said that the incident was “a domestic” and that the victim was his daughter’s former boyfriend.
38. In relation to section 16(4)(d) of the 2016 Act the Local Authority express concern that rooms are still advertised for let at the Property but no attempt has been made to regularise the licensing arrangements. At his court appearance on 2017 the Defendant told the Magistrates that he owned 8 houses and had 25 tenants (albeit that for the purposes of a means enquiry “it was not profitable”). The Local Authority believes that the Respondent has other properties in Telford (116 Wildwood, 48 Bembridge, 93 Pagent Drive and 88 Waverley) which are also let in multiple occupation. The Local Authority is also concerned that the Respondent has expressed no remorse in relation to the 2017 offences. He uses documentation which potentially misleads tenants as to their rights. The Respondent has previously been refused an HMO Licence because he is not a fit and proper person.
39. Finally, the Local Authority argues that if the Respondent were forced to sell his properties he still has a livelihood by reason of his business as a DJ.
40. The extent of the Respondent’s portfolio, based on Council Tax records, is set out in the Witness Statement of Timothy Bage at J104. The Respondent has 5 properties classed as HMO’s (43 Dudmaston, 116 Wildwood, 48 Bembridge, 93 Pageant Drive and 88 Waverley) and 3 further properties (214 Willowfield, 93 Chiltern Gardens and 77 Woodrows).
41. The Local Authority relies on its own policy published in November 2018 “Telford and Wrekin Council – The Housing and Planning Act 2016 – Banning Orders and Rogue Landlord Database – Determination of making an entry/application and associated timescales” (F57 – F71). That document has regard to MHCLG “Banning Order Offences under the Housing and Planning Act 2016” issued in April 2018. The Local Authority’s policy sets out its general approach and also contains a matrix of factors to be taken into account in determining “likelihood that a banning order application will not be made” and a further matrix to determine the “recommended time period for a banning order to be made”.

42. The Local Authority's "Statement of Reasons to apply for a banning order and the recommended time period" is dated 1st March 2019 (F47 – F55) and is accompanied by both matrices with the relevant entry marked in bold text. The reasons for the recommended time period of 4 years are given as:

"To reflect the severity of the repeated breaches of housing related legislation. You were convicted of an illegal eviction in 2017. You were found not a fit and proper person to hold a licence and continued to rent out rooms to vulnerable residents without applying for a licence plus manage at least four other properties in the Borough of Telford and Wrekin".

Local Authority's case – Rent Repayment Order

43. The Local Authority seeks an Order in the total amount of £1924.65 representing Housing Benefit paid to Trevor Chapman for the period 5th June 2018 to 19th September 2018 in the sum of £1335.96 and Housing Benefit paid to Christopher Johnson in the sum of £588.69 for the period 5th June 2018 to 26th August 2018 (see page F76 – F77). Those dates are confirmed by Timothy Bage in his Witness Statement at J104.

Respondent's case – Banning Order

44. The Respondent's case is at I85 – I100 in the Trial Bundle.
45. The nature of the offence is not of the utmost seriousness. The Respondent was not intentionally operating an unlicensed HMO for reward. He pleaded guilty. A very low fine of £284 was imposed. Mr Johnson ("the 5th tenant") was a friend, with mental health issues and the Respondent did not want him to become homeless. Even allowing for Housing Benefit payments the Respondent made a loss of £730 on the letting to Mr Johnson. In 2015 when licensing became enforceable the Respondent made a decision to reduce the number of occupants to 4. The period when there were 5 occupants and the offence occurred was only 106 days.
46. The Respondent has no previous convictions worthy of a banning order offence. The victim of the Protection from Eviction Act offences in 2017 was James Tidy who was a boyfriend of the Respondent's eldest daughter for approximately 2 years. The Respondent discovered that Mr Tidy was selling cocaine from a room at the Property. Mr Tidy made no effort to apply for Housing Benefit. The Respondent accepts raising his voice and told Mr Tidy "we had arranged that he was leaving over the weekend to which he said he was going to leave today". Whilst the Respondent was waiting downstairs "for James to get up and get dressed and make good his promise" Mr Tidy called the Police. Mr Tidy left with the Police and did not return. The Respondent submits "on reflection I now have a conviction for something I feel I'm not guilty of therefore when the council say I show no remorse for this so-called illegal eviction, they are correct."

47. The Property is maintained to a very high standard. The Respondent has been a landlord for over 10 years. It is his full time occupation. He has never been told that he cannot use Licences and is aware that his tenants have the same protection as assured shorthold tenants.
48. A Banning Order would have life changing consequences to the Respondent, his family and his tenants. The Respondent's family rely on the rental income from his properties. The Respondent's hobby is DJing. He does not make any income from being a DJ. The Respondent states that his properties are in negative equity. He has no money to start another business and he has not been able to secure any interviews or job offers.
49. The Respondent has produced letters from 3 of his tenants. James Cooper (I95) says that the Respondent provides a safe environment (in contrast to previous properties he has resided at) and will help in a time of need. K Lawley (I96) is a 62 year old veteran. He says that the Respondent is a "good guy" and not a "rip off" landlord. Finally, Chris Johnson has also provided a Statement (I97). He says that the Property is well managed and with a very reasonable rent

Respondent's case – Rent Repayment Order

50. At page I91 the Respondent concedes that "I have no issues paying back the rent repayment order". However, his financial position is precarious as set out at paragraph 40 above.
51. At the outset of the hearing the Respondent confirmed that he did not oppose the application for a Rent Repayment Order.

Deliberation – Rent Repayment Order

52. The Tribunal is satisfied, beyond reasonable doubt, that the Respondent has been convicted of an offence of control or management of an unlicensed HMO. The Tribunal also finds that the Local Authority has complied with the provisions of section 42 of the 2016 Act in relation to Notice of intended proceedings.
53. The amount of the order in favour of the Local Authority following conviction is the amount of Housing Benefit (inclusion pending abolition) for a period, not exceeding 12 months, during which the landlord was committing the offence. In this case the amount relates to the period 5th June 2018 to 19th September 2018 and is in respect of an award of Housing Benefit to Trevor Chapman and Christopher Johnson.

54. There are no exceptional circumstances by reason of which the Tribunal considers that it would be unreasonable to require the landlord to pay any amount.
55. The Tribunal makes a Rent Repayment Order in favour of Telford and Wrekin Council in the sum of £1924.65

Deliberation – Banning Order

56. Notice of Intended Proceedings was given on 5th March 2019 (F74- F75). The Local Authority stated the length of the proposed ban as 4 years. Representations were invited within “the notice period” which expired at 4 p.m. on 5th April 2019. The Notice was given within 6 months of the conviction of the banning order offence on 18th February 2019. The Tribunal therefore finds that the Local Authority has complied with the requirements in relation to application and notice of intended proceedings set out in section 15 of the 2016 Act.
57. The Tribunal also finds that by reason of his conviction at Telford Magistrates Court on 18th February 2019 for an offence contrary to section 72(1) of the 2004 Act that the Respondent has been convicted of a banning order offence. The Respondent has been a landlord with a number of properties in Telford for the past 10 years. The Tribunal therefore finds that the Respondent was a residential landlord at the time that offence was committed. Accordingly, the pre-conditions for making a banning order set out in section 16(1) of the 2016 Act are satisfied.
58. The Tribunal has a discretion as to whether or not to make a Banning Order. In exercising that discretion, the Tribunal must consider:
 - (a) the seriousness of the offence of which the person has been convicted,
 - (b) any previous convictions that the person has for a banning order offence,
 - (c) whether the person is or has at any time been included in the database of rogue landlords and property agents, and
 - (d) the likely effect of the banning order on the person and anyone else who may be affected by the order.
59. In April 2018 the Ministry of Housing Communities and Local Government issued Guidance to Local Authorities. That Guidance is non-statutory. The Tribunal is not bound by it but may have regard to the Guidance (paragraph 5.2 of the Guidance)
60. The Foreword to the Guidance sets out the policy considerations that underlies the legislation in relation to Banning Orders:

“A small number of rogue or criminal landlords knowingly rent out unsafe and substandard accommodation”

“The Government is clear that the small minority of rogue landlords and property agents who knowingly flout their legal obligations, rent out accommodation which is

substandard and harass their tenants should be prevented from managing or letting housing”.

61. Paragraph 1.7 of the Guidance asks: “Who are banning orders aimed at?”

“Rogue landlords who flout their legal obligations and rent out accommodation which is substandard. We expect banning orders to be used for the most serious offenders.”

62. Paragraph 3.3 of the Guidance asks: “What factors should a local housing authority take into account when deciding whether to seek a banning order”. Those factors mirror the matters that the Tribunal must consider under section 16 (4) of the 2016 Act. In relation to “the likely effect of the banning order on the person and anyone else who may be affected by the order” (section 16(4)(d)) the Guidance identifies:

- The harm caused to the tenant
- Punishment of the offender
- Deter the offender from repeating the offence
- Deter others from committing similar offences

63. The Tribunal finds the following observations to be particularly relevant to this case:

“Banning order offences include a wide range of offences, some of which are more directly related to the health and safety of tenants, and could therefore be considered more harmful than the other offences (such as fraud)” (see – The harm caused to the tenant).

“A banning order is a severe sanction. The length of the ban should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending” (see – Punishment of the offender).

64. The Local Authority has referred to the Respondent’s previous convictions within the Bundle. Those convictions, with the exception of the 2017 and 2019 offences, are spent by virtue of the provisions of the Rehabilitation of Offenders Act 1974 as amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Section 4(1) of the 1974 Act provides that evidence in relation to spent convictions is not admissible in civil proceedings unless section 7(3) applies. Paragraph 3.4 of the Guidance specifically provides that “a spent conviction should not be taken into account when determining whether to apply for and/or making a banning order”. Accordingly, the Tribunal does not take into account any previous convictions of the Respondent other than those in 2017 and 2019.

65. The conviction under the Protection from Eviction Act on 9th March 2017 would normally become spent after 2 years because it is a community order with no specified end date. However, on 18th February 2019 the Respondent was convicted of the banning order offence. That offence is not yet spent as the rehabilitation period for a financial penalty is one year. However, that further conviction within the rehabilitation period of the 2017 offence also means that neither offence becomes spent until the later offence becomes spent.

66. We now deal with the section 16(4) factors in turn starting with “the seriousness of the offence of which the person has been convicted”. The offence relates to having control or management of an unlicensed HMO. That offence does not relate directly to the provision of unsafe or substandard accommodation. However, the HMO Licensing regime is, of course, principally aimed at ensuring that “the house is reasonably fit for occupation” (section 64(3)(a) of the 2004 Act). The period over which the offence was committed was relatively short, a little over 3 months between 5th June 2018 and 19th September 2019.
67. The Respondent argues that the offence cannot be considered as serious because the Magistrates imposed a very modest fine of £284. The Magistrates were clearly sympathetic – the Respondent told them that he was only helping out a friend with mental health issues who found himself homeless.
68. However, the Respondent’s conduct was not entirely altruistic. The Respondent did receive Housing Benefit payments in relation to Mr Johnson’s occupation albeit that there may have been a shortfall in relation to the total rent. More importantly the Respondent was, in part, responsible for Mr Johnson becoming homeless. Mr Johnson had, in fact, been a tenant of another Property owned by the Respondent at 38 Danesford. When his interest only mortgage came to an end the Respondent decided to sell that property and required Mr Johnson to leave.
69. The Tribunal accords the greatest respect to the sentencing Bench. However, the Tribunal is not bound by the sentence imposed by the Magistrates. Section 14(4)(f) of the 2016 Act provides that Regulations may describe a banning order offence by reference to the sentence imposed. The only reference to sentence imposed in the 2018 Regulations is that an offence is not a banning order offence where the sentence imposed is an absolute or conditional discharge. What the Tribunal must look at is the seriousness of the offence and not the penalty imposed.
70. The Tribunal has considerable experience in relation to assessing the seriousness of licensing offences as part of its jurisdiction in relation to Financial Penalties under section 249A and Schedule 13A of the 2004 Act. We view the offence contrary to section 72(1) of the 2004 Act as a serious offence. We reach that conclusion for three reasons. Firstly, it was committed deliberately. The Respondent was well aware of his obligations in relation to licensable HMO’s following his decision in 2015 to reduce the number of occupants in his properties to 4. Second, the Respondent was refused an HMO Licence in 2015 because he was not a fit and proper person to be a licence holder. Finally, the Respondent has relevant previous convictions under the Protection from Eviction Act which demonstrates a pattern of offending of deliberately flouting his legal obligations as a landlord.
71. Under section 16(4)(b) the Local Authority initially argued in its Statement of Case that Respondent has previous convictions for banning order offences. Those convictions are two offences of unlawfully evicting an occupier contrary to section 1(2) of the Protection from Eviction Act 1977. The Respondent was convicted of both offences at Shropshire Magistrates Court on 9th March 2017. However, Regulation 1(3) of the 2018 Regulations provides:

“These Regulations apply only in relation to offences committed after these Regulations come into force”

As the Regulations came into force on 6th April 2018 it follows that the 2017 offences cannot be banning order offences to be taken into account under section 16(4)(b). However, as those convictions are not spent (see paragraph 65 above) the Tribunal can take them into account as probative of the Respondent's propensity to flout his legal obligations and harass his tenants.

72. In considering "the likely effect of the banning order on the person and anyone else who may be affected by the order" (section 16(4)(d)) we recognise that a Banning Order is a severe sanction. It will have a real economic impact on the Respondent and the family. He will be unable to use his most significant capital assets (his properties) to generate an income for himself or his family.
73. At the hearing the Respondent gave us details of his financial position. He produced a written list of all his properties and tenants. He owns seven properties (43 Dudmaston, 116 Wildwood, 48 Bembridge, 93 Pageant Drive, 214 Willowfield, 88 Waverly and 93 Chilton Gardens). The property at 77 Woodrows referred to by Mr Bage belongs to the Respondent's wife. The Respondent told the Tribunal that all his properties are in negative equity and were purchased on 15 year interest only mortgages. All those mortgages are due to end within the next 2 years apart from 88 Waverly and 48 Bembridge which have 7/8 years to run. The Respondent estimates that he receives a total monthly rent of around £6,500. He told us that his profit is around £2,500 per month. The Tribunal found the details given by the Respondent as to his rental income to be surprisingly vague and were unconvinced that he had such little grasp of his true financial position. Having had the advantage of hearing the Respondent's evidence we can only conclude that he was unwilling to reveal the true extent of his income. He is a married man with two dependent children and one grown up child. The Respondent's wife works on a part time basis. The Respondent has been involved with underground dance music since 1994 as a promoter, DJ and laser light shows. Although that was once lucrative it is now little more than a hobby. He does not make any money from his DJ activities. The Local Authority told the Tribunal that the Respondent is due to appear at the largest nightclub in Shropshire on 23rd August 2019.
74. The Respondent has produced three letters from his tenants who speak highly of him. If a Banning Order is imposed one of the consequences will be that unless the Respondent can dispose of his business as a going concern all existing tenancies will have to be brought to an end. Consequently, the Respondent's tenants may lose their homes.
75. In exercising our discretion, we must make a determination that is proportionate to the Respondent's offending. We take into account the impact on the Respondent's livelihood, his family and his tenants. It forms no part of the Local Authorities case that the Respondent is letting out unsafe or substandard accommodation. From our own inspection it is clear that the accommodation provided at the Property by the Respondent is not substandard.
76. Banning Orders should be used only for the most serious offenders. The statutory purpose behind the rogue landlord legislation is to protect tenants from landlords

who knowingly flout their legal obligations, rent out accommodation which is substandard and harass their tenants.

77. The Respondent has previous convictions for two offences of unlawfully evicting an occupier contrary to section 1(2) of the Protection from Eviction Act 1977. The Respondent was convicted of both offences at Shropshire Magistrates Court on 9th March 2017. As set out at paragraph 65 above those convictions are not yet spent and may be taken into account by the Tribunal. We take the 2017 offences into account in exercising our discretion because they show in the starkest terms the behaviour of the Respondent towards one of his tenants. We view these offences as particularly serious. Even on the Respondent's own account he accepts that he shouted and waited downstairs for the victim "to get his stuff". At this point the victim called the police from his room. The Respondent shows no remorse for his offending describing the circumstances of his 2017 conviction as "a domestic". In his Statement of Case the Respondent submits "I show no remorse for this so-called illegal eviction".
78. The Respondent has been convicted of an HMO Licensing offence, a little under two years previously he was convicted of two offences under the Protection of Eviction Act. He does not appear to show any remorse for those offences. He was found not to be a fit and proper person to be a licence holder in 2015. We take into account the Respondent's use of Licence Agreements which clearly state "**This Licence to Occupy does not create any form of tenancy.**" We find that the use of such Licences is a deliberate attempt to mislead tenants as to their legal rights and in particular security of tenure.
79. We find that there is a risk that the Respondent will continue to flout his legal obligations resulting in potential harm to his tenants. From our inspection of the Property there is a real risk that one or more of the 3 empty bedrooms could be occupied with the result that the Respondent, will again be controlling or managing an unlicensed HMO. We have no doubt given the Respondents previous flouting of licence requirements and the previous decision of the Local Authority that he is not a fit and proper person to hold a Licence that an HMO Licence would neither be applied for nor granted. The nature of the Licences used by the Respondent expose tenants to the real risk of unlawful eviction. The Respondent shows no remorse or insight in relation to the 2017 unlawful eviction. We find that there is a real risk that the Respondent will harass and evict other tenants.
80. The risk of harm is significant because it is clear that a number of the Respondent's tenants are vulnerable. The evidence from tenants produced by the Respondent at I95 – I97 speaks of individuals who have been homeless, assaulted or are recovering from broken relationships. It is particularly concerning the Respondent was aware of the allegation made by his daughter that the victim of the 2017 offences was selling cocaine from the room he was renting at the Property. The Respondent did not call the police as he was obliged to do, not least to protect other residents. Instead his priority was to force the victim to chase up his Housing Benefit using the Respondent's telephone on loudspeaker so that he could listen in to the victim's conversation (see I88).
81. We take into account the likely economic impact on the Respondent. We also attach significant weight to the fact that the Respondent does not let out substandard

accommodation. However, the Respondent has repeatedly flouted his legal obligations. He has unlawfully evicted one tenant and has misled the others as to their legal rights. In all the circumstances we find that the Respondent falls within the category of “the most serious offenders” We exercise our discretion to make a Banning Order. We find that the making of a Banning Order is proportionate and necessary to protect tenants from potential harm from the Respondent, to deter him from repeating his offending and to deter others from committing similar offences.

Terms of the Order

82. The Local Authority has provided the Tribunal with two draft Orders. The first proposes a ban subject to an exception under section 17(3) that the Respondent may continue to let his properties through a local letting agent approved by the Local Authority (consent not to be unreasonably withheld). The Local Authority suggests that such an exception would be acceptable to them because they believe that the Respondent is “temperamentally unsuitable to be a landlord” and “removing him from the picture” would reduce the risk to his tenants.
83. The Respondent at the hearing made it absolutely clear that he had no respect for or trust of any of the local letting agents. He flatly refused to countenance the use of a letting agent. On that basis the Tribunal does not consider it appropriate to force a letting agent on the Respondent. Such an exception would have no prospects of succeeding. The Tribunal is also concerned at the workability of such an exception. It would undoubtedly give rise to disputes as to whether the Local Authority had unreasonably withheld its approval of the letting agent proposed by the Respondent. Such an exception would also fail to adequately address the mischief at which the Banning Order is aimed in that it would allow the Respondent to continue to be involved in letting, albeit through an agent.
84. The second draft Order contains an exception in accordance with section 17(4)(a) to deal with cases where there are existing tenancies and the landlord does not have the power to bring them to an immediate end. The Respondent has produced a schedule showing the 7 properties held by him and listing his 19 tenants. The schedule also shows the expiry date of the licenses/ tenancies some of which have nearly a year to run.
85. The Local Authority suggest an exception “until the expiry of a fixed term tenancy already in being or 3 months from today whichever shall be the later”. It is suggested that the Respondent could obtain possession within 8 weeks using “section 21” procedure. However, the Respondent has not issued assured shorthold tenancies and cannot therefore use the accelerated possession procedure under section 21 of the Housing Act 1988. The “Licence to Occupy” issued by the Respondent is a fixed term agreement for a 12 month period. The Respondent has no prospect of obtaining possession before expiry of the term. The Tribunal would not wish additional pressure to be brought against tenants by the Respondent seeking early termination of their licences/tenancies. Accordingly, the Tribunal makes an exception under section 17(3) in terms that the Respondent may continue existing tenancies until the expiry of the fixed term.

86. The Local Authority invites the Tribunal to make an Order for 4 years. However, the effect of the exception is that the Respondent will still continue with his existing tenancies for the next 12 months. Accordingly, the Tribunal considers that the length of the ban should be 5 years. A ban for 5 years is appropriate as the Respondent has demonstrated a history of deliberately failing to comply with his obligations. The ban should be long enough to deter the offender from repeating the offence and to deter others. We consider that a period of 5 years is proportionate and reflects the severity of the banning order offence and the Respondent's previous convictions under the Protection from Eviction Act. We therefore make a Banning Order for a period of 5 years subject to an exception in relation to the existing tenancies set out in the Schedule to the Order.

Reimbursement of Fees

87. The Local Authority seek an Order under Rule 13(2) of the Tribunal Procedure Rules in relation to the application fees for both applications (£100 each) together with the hearing fee of £200 making a total of £400. The Local Authority has been successful in relation to both applications and we therefore make an Order for reimbursement of fees in the sum of £400.

Decision

88. The Tribunal makes a Banning Order against the Respondent for 5 years in the terms set out in the Order that accompanies this Decision

89. The Tribunal makes a Rent Repayment Order requiring the Respondent to pay to the Local Authority the sum of £1924.65.

90. The Tribunal makes an Order requiring the Respondent to reimburse to the Local Authority the sum of £400 in relation to Tribunal fees

D Jackson
Judge of the First-tier Tribunal

Either party may appeal this decision to the Upper Tribunal (Lands Chamber) but must first apply to the First-tier Tribunal for permission. Any application for permission must be in writing, stating grounds relied upon, and be received by the First-tier Tribunal no later than 28 days after the Tribunal sends this written Decision to the party seeking permission.