FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**CHI/00HB/HBA/2020/0001**
Applicant	**:**	**Bristol City Council**
Representative	**:**	**Mrs Burnham- Davies, solicitor, Legal Services**
Respondent	**:**	**Deepak Singh Sachdeva**
Type of application	**:**	**Application for a banning order – section 15(1) of the Housing and Planning Act 2016**
Tribunal Member	**:**	**Judge J Dobson**
Date of Hearing	**:**	**22nd February 2021** **Hearing by Telephone Conference**
Date of Decision	**:**	**22nd February 2021**

DECISION

© CROWN COPYRIGHT

SUMMARY OF THE DECISION

1. **The Tribunal makes a Banning Order for four years commencing on 22nd March 2021.**

2. **The Respondent is ordered to pay to the Applicant the fees paid by the Applicant in respect of this application in the sum of £300 within 28 days.**

HISTORY OF APPLICATION

3. On 17th November 2020, the Applicant applied for banning order against the Respondent who has been convicted of a 'banning order offence' under section 15(1) of the Housing and Planning Act 2016 (" the 2016 Act") in relation to a property 186 Avonmouth Road, Bristol ("the Premises").

4. On 29th December 2020, the Tribunal gave Directions, setting out the steps to be taken by the parties in preparation for the hearing listed today and providing the details of the hearing and how to access it. The Tribunal also sent a copy of the Application together with directions to the Respondent at the address given by the Applicant.

5. The Respondent had not previously complied with the Directions in respect of his statement of case, or otherwise engaged in the proceedings in any identifiable manner until an email dated 15th February 2021, which stated as follows:

> "Dear sir/madam
>
> I have received a letter for an application for a banning order which is due to take place on 22 February via phone call conference.
>
> I have been trying to submit a Statutory Declaration Form to the Magistrates Court for nearly 12 months, but due to COVID-19 the court will not accept anything at the moment. They have told me to tell everyone related to this matter that they must wait until the court is open and the SDF has been submitted to the Magistrates Court.
>
> When the Magistrates Court is open they said they will get in contact with me."

6. The Tribunal replied by a letter dated 18th February 2021, sent by email, which advised the Respondent that he must attend the hearing today and which re-iterated the hearing details and the way to access the hearing.

7. The Applicant prepared a bundle of documents as directed.

LEGAL BACKGROUND

8. Under section 16 of the 2016 Act, a Tribunal may make a banning order against a person who has been convicted of a banning order offence, preventing that person (for a period of at least 12 months) from:

    i) letting housing in England;
    ii) engaging in English letting agency work;
    iii) engaging in English property management work; or
    iv) doing two or more of those things.

9. Banning orders were introduced into legislation as part of a package of measures directed at rogue landlords who do not meet their legal obligations, sometimes exploiting their tenants by renting out substandard, overcrowded or dangerous accommodation. Part 2 of the 2016 Act, within which the relevant sections of the statute are found, is headed "Rogue Landlords and Property Agents in England".

10. Lord Bourne of Aberystwyth explained in the House of Lords Debate on Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017 (" the 2017 Banning Order Regulations") that

> "These landlords often do not respond to legitimate complaints made by tenants. Some would even prefer to be prosecuted rather than maintain their properties to a decent standard".
>
> "The purpose of banning orders is to target the most prolific offenders who have been convicted of serious housing, immigration and other criminal offences connected to their role as landlords. The Orders will prevent rogue landlords and property agents earning income from renting out properties or engaging in letting agency or property management work, forcing them either to raise their standards or to leave the sector entirely"[1].

11. Before the Tribunal can consider making a banning order under section 16 of the 2016 Act it must be satisfied of various matters.

THE HEARING

12. The hearing was conducted by telephone. as had been directed.

13. The Respondent did not attend the hearing, and supplied no explanation for his non-attendance.

14. The Applicant did attend, by way of its representative Mrs Burnham- Davies and two witnesses, Mr Jonathan Mallinson and Mrs Alison Reid, from whom witness statements had been taken and served [83 and 242 respectively].

---

[1] See Hansard 22 January 2018 Volume 788 HL Debate on Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017

15. The Respondent had not in his above email stated that the Statutory Declaration to which he referred had led him to believe that he did not need to attend the hearing today, whereas the reply of the Tribunal made it abundantly clear that he did need to do so. The Tribunal was satisfied, by the fact that the Respondent had so emailed, that the Respondent had been notified of the proceedings and the hearing. No response was sent by the Respondent to the Tribunal's said letter.

16. The Applicant stated that it wished to proceed, including on the basis that the Respondent had almost completely failed to engage throughout. Mrs Burham-Davies said that the only indication that the Respondent had given was that he intended to sell the lease of the Premises, although she later added that the Applicant had no evidence as to whether that was in train.

17. In the circumstances, the Tribunal decided to proceed in the absence of the Respondent in accordance with rule 34 of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 "the Rules").

18. The Tribunal decided that it was in the interests of justice to so proceed with the hearing. The case involved serious allegations against the Respondent which potentially posed a high risk of harm to tenants occupying properties let by the Respondent. The Applicant's evidence indicated that the Respondent had totally disregarded housing standards. The Tribunal considered that the Respondent had been entirely able to participate in the hearing had he chosen to do so and that it was a matter for the Respondent that he had not followed the instruction to attend set out in the Directions and the letter from the Tribunal dated 18th February 2021.

19. The Tribunal principally heard from Mrs Burnham- Davies but with some clarification of certain matters from Mr Mallinson and Mrs Reid where required. The Tribunal considered that it did not need to hear from the Applicant's witnesses at length, given that their detailed written evidence was unchallenged by the Respondent.

20. Written supporting submissions dated 11th February 2021 were also made by Mrs Burnham- Davies and included in the bundle. No specific provision had been made for those in the Directions. However, they were akin to the Skeleton Arguments or other opening written submissions frequently received and in those circumstances- and absent any objection- the Tribunal accepted them.

21. The Tribunal particularly addressed four aspects of the application, namely:

    i) The Respondent's conviction and the reference to a Statutory Declaration;
    ii) The Notice of Intended Proceedings,
    iii) Whether a Banning Order should be made; and, if so,
    iv) The length of the Banning Order

22. The Tribunal takes each matter in turn. Numbers in [] are numbers of pages of the hearing bundle as provided by the Applicant.

i) HAS THE RESPONDENT BEEN CONVICTED OF A BANNING ORDER OFFENCE AND WHAT APPROACH SHOULD BE TAKEN TO THE REFERENCE TO A STATUTORY DECLARATION?

23. The Applicant produced a Memorandum of Entry of the Register of Avon and Somerset Magistrates' Court [page 103 onward] which showed that on 4th March 2020 at Bristol Magistrates' Court the Respondent was convicted of five offences of failing to comply with Regulations 4, 5 (3 offences) and 8 of the Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 and section 234(3) of the Housing Act 2004 on 18th July 2019. The Respondent was fined £17,400 for each offence, and ordered to pay costs of £1373.58 and a £181 surcharge to fund victim services.

24. The Tribunal observes that the offences under section 234(3) of the Housing Act 2004 ("the Banning Order Offences") are named as Banning Order offences in the Schedule to The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017.

25. The Tribunal is satisfied that the Respondent has been convicted of the Banning Order Offences.

26. However, the Tribunal does need to consider the relevance of the Respondent' s assertion that he has been attempting to make a Statutory Declaration in relation to the conviction.

27. The Applicant wrote to the Tribunal by email dated 19th February 2021 stating that Mrs Burnham- Davies had made enquiries with Bristol Magistrates Court and had spoken to the case progression officer there.

28. The email stated that the officer had informed Mrs Burnham-Davies that the Respondent had sought to make a Statutory Declaration in relation to the conviction for the Banning Order Offences shortly after the court date in 2020. He also advised that the Respondent had been waiting to make the Declaration since, due to a backlog of work at the court arising from the Covid-19 pandemic. The Statutory Declaration has not yet been made.

29. The email added that the Applicant had not been made aware until the Respondent's above email.

30. The position in respect of the Statutory Declaration is of some significance. If the conviction were to be set aside as a result of such a Statutory Declaration, there would then the Banning Order Offences convictions would no longer exist as the foundation for a Banning Order.

The case in the Magistrates Court would require listing for a further hearing date, potentially a trial date if the Respondent denied the offences.

31. The relevant provisions are contained in section 14 of the Magistrates Court Act 1980. Those read as follows:

> 14 Proceedings invalid where accused did not know of them.
>
> (1) Where a summons has been issued under section 1 above and a magistrates' court has begun to try the information to which the summons relates, then, if—
>
> (a)the accused, at any time during or after the trial, makes a statutory declaration that he did not know of the summons or the proceedings until a date specified in the declaration, being a date after the court has begun to try the information; and
> (b)within 21 days of that date the declaration is served on the designated officer for the court, without prejudice to the validity of the information, the summons and all subsequent proceedings shall be void.
>
> (2) For the purposes of subsection (1) above a statutory declaration shall be deemed to be duly served on the designated officer if it is delivered to him, or left at his office, or is sent in a registered letter or by the recorded delivery service addressed to him at his office.
>
> (3) If on the application of the accused it appears to a magistrates' court (which for this purpose may be composed of a single justice) that it was not reasonable to expect the accused to serve such a statutory declaration as is mentioned in subsection (1) above within the period allowed by that subsection, the court may accept service of such a declaration by the accused after that period has expired; and a statutory declaration accepted under this subsection shall be deemed to have been served as required by that subsection.
>
> (4) Where any proceedings have become void by virtue of subsection (1) above, the information shall not be tried again by any of the same justices.

32. It is plain that 21 days from the date of conviction has long since elapsed. It is equally apparent that the Magistrates Court may determine that it was reasonable for the Respondent not to make the Declaration within 21 days. The Tribunal is mindful that the national lockdown in consequence of the covid-19 pandemic was imposed with 21 days of the Respondent's conviction, although close to the end of that period.

33. However, the Tribunal adopts the position that the conviction is in force as at the current date, having been so for almost one year; the hearing is the final hearing of this application by the Applicant, made several weeks earlier and where no application has been made by the Respondent for

the hearing to be adjourned until the outcome of any process in relation to the Statutory Declaration or at all. The Respondent, as he did not attend the hearing today, prevented himself from supplying any other information in respect of any efforts made to progress the making of the Statutory Declaration or in respect of any other matters.

34. The Applicant, which did attend, wished to proceed in light of the convictions remaining in place as at the date of hearing.

35. The Tribunal determined that it was appropriate to proceed with the hearing, including noting that in the event that the convictions are set aside and the Respondent then makes an appropriate application to the Tribunal pursuant to section 20 of the 2016 Act or as may otherwise be appropriate, the Tribunal will consider that.

36. The Tribunal proceeded accordingly.

ii) THE NOTICE OF INTENDED PROCEEDINGS

37. Section 15 of the 2016 Act provides as follows:

> (1) ....
> (2) ....
> (3) Before applying to a banning order under subsection (1) the authority must give the person a notice in 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").

38. On 2nd September 2020, the Applicant issued the Respondent with Notice of Intended Proceedings to Apply for a Banning Order ("the Notice") for a period of 4 years, explaining that the application would be because of the Respondent being convicted of the Banning Order Offences referred to above.

39. The Respondent was given the opportunity to make representations by 2nd October 2020. The Respondent made no representations.

40. As referred to above, the Applicant applied to the Tribunal by application dated 17th November 2020.

41. The Applicant flagged up to the Tribunal a potential issue with the Notice, being that the Notice has been signed by Mrs Reid but the limitation on delegated authority applicable to an officer of her level [305] excludes "Application and notice of intended proceedings for a banning order against a person who has been convicted of a banning order offence" [297]. That was

flagged up with what Mrs Burnham- Davies described as an abundance of caution.

42. The written witness statement of Mr Mallinson [247] suggested that strictly speaking the officer named as signatory should have been one at a more senior level, although he suggested that would have made no difference to the Respondent.

43. The written supporting submissions of Mrs Burnham- Davies principally addressed this issue.

44. Mr Burnham- Davies clarified in oral submissions that the Applicant's primary position was that the Notice is valid, the action taken having been authorised by Mr Mallinson, who is authorised to take such action. Simply, he had instructed Mrs Reid to sign and serve the Notice.

45. In the alternative, the Applicant's position was that the name of the person signing the Notice was irrelevant and not an element critical to the statutory function of the Notice, being merely incidental. The Applicant contended that Notice was substantially the same as the required form of Notice and accomplished the statutory purpose of informing the Respondent of the Applicant's intention to seek a Banning Order. The Notice should, it was submitted, be upheld for that reason.

46. Various case authorities in relation to notices were referred to in the written submissions and copies of those were provided, albeit that they did not relate to this particular form of Notice. The Tribunal had considered those in advance of the hearing.

47. It was further clarified during the hearing that the Applicant's internal procedures in the Directorate Scheme of Delegations [249 onward] say nothing about who may sign a document taking an authorised step, only who may authorise the taking of the step. They do not on their face preclude a Notice authorised by Mr Mallinson being signed by Mrs Reid or another officer to whom the task is delegated by him.

48. There was additionally brief exploration as to whether such a Notice is required to be signed. It was noted that section 15 of the 2016 Act makes no reference to the Notice being signed at all. The Applicant's position was that such a Notice was signed, as a matter of internal procedure: it was not apparent to the Tribunal that consideration had been given to whether such a signature was a requirement of such a Notice under the 2016 Act or any applicable regulations, as opposed to simply being the Applicant's practice.

49. The Tribunal finds that the Notice was authorised by Mr Mallinson and that, accordingly, the Notice complies with the Applicants delegated powers and the limitations on such. The Notice is not rendered invalid by the Notice authorised by an officer empowered to authorise it having been signed by another officer, which the Scheme of Delegations does not preclude.

50. In those circumstances, the Tribunal does not need to consider whether the Notice may be valid because of being substantially the same as the Notice provided for in the 2016 Act or otherwise valid despite any absence of a suitable signatory, if any. The Tribunal therefore leaves those matters for another time at which it is necessary for the determination of a case that the questions be answered.

51. The Tribunal finds that (1) the Notice of Intended Proceedings was issued within 6 months of the Respondent's conviction for the Banning Order Offences; (2) the Notice of Intended Proceedings stated that the Applicant was applying for a Banning Order for a period of 4 years because he had been convicted of offences of failing to comply with Regulations 4, 5 (3 offences) and 8 of the Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 and section 234 of the Housing Act 2004; (3) the Respondent was invited to make representations within a period not less than 28 days; (4) the Respondent made no representations (5) the Application to the Tribunal was made after the closing date for receipt of representations.

52. The Tribunal is satisfied that the Applicant has given the Respondent a Notice of Intended Proceeding and has complied with the procedural requirements of section 15 of the 2016 Act. The Notice is valid.

iii) SHOULD A BANNING ORDER BE MADE?

53. The first matter to consider beyond those addressed above is whether, at the time the offences were committed, the Respondent was a 'residential landlord' or a 'property agent'?

54. The Tribunal has noted and considered the unchallenged written witness evidence adduced by the Applicant of Mrs Reid in respect of the inspections carried out on the property and related matters and the other evidence relied on by the Applicant.

55. The Tribunal accepts the Applicant's evidence.

56. The written evidence of Mrs Reid in respect of this application sets out that the Premises at 186 Avonmouth Road, which is where the various banning order offences had been committed, comprises commercial premises, being a shop with a large storage building to the rear. Inside the storage area, a structure had been created. To the first floor of that structure there were tenanted flats.

57. The bundle includes a witness statement of Mrs Reid prepared for the proceedings in the Magistrates Court [108] which gave details of the inspection of the property on 18th July 2020 by Mrs Reid and a colleague, Mr Andrew Riddell, and which recorded that two flats had

been created and were occupied by nine people between them. The nature of the construction and failure to comply with Building Regulations was such that the two flats formed a house in multiple occupation. Various photographs taken at that inspections were included in the bundle, displaying the structure and the condition of the flats. Those were useful to the Tribunal in aiding understanding of the nature of the structure and the flats within it. Reference is also made to a third area having been in the process of being created within the storage warehouse.

58. The witness statement of Mrs Reid prepared for this application records [87] that the Respondent received rent for the flats as at the time of the offences for which he was convicted. Her witness statement prepared for the Magistrates Court proceedings makes no comment as to rent. Whilst no specific information is recorded as to the level of rent paid to the Respondent by the occupiers, and it may have helpful if it had done so, the evidence of Mrs Reid that rent was paid has not been disputed. The Tribunal has no reason to disbelieve Mrs Reid and so accepts her evidence of rent having been paid to the Respondent. The only direct relevance would be to whether such rent ought to have any impact on the seriousness of the situation, the effect on any person and so any greater weight lent to the making of a Banning Order or the length of that.

59. Mrs Reid also gave more detailed oral evidence about her attendance on 15th January of this year, at which time she attended at the Premises and entered the flats with a colleague, Mrs Emma Tregale. She spoke to the Respondent, the storage warehouse having to be accessed through the shop and the employee in the shop having telephoned the Respondent. Mrs Reid stated in her witness statement that the Respondent told her that he was in the process of selling the lease of the Premises.

60. The officers entered the storage building. They noted that whereas the door to the stairs leading to the first- floor flats within the structure had been boarded up- the Tribunal perceives following the Prohibition Order and the vacation of the properties by the occupiers- the boarding had been removed, such that the flats could be accessed.

61. Mrs Reid re-iterated evidence given in her witness statement that the larger flat did not appear to be occupied but also said the studio flat had a security chain on the door, although one which she could undo. A male was found to be sleeping on the floor with possessions around him. He was asked whether he lived there and was paying rent, to which he answered “no”. He stated that he worked in the shop.

62. The man then rang someone, speaking a language Mrs Reid and her colleague were unable to understand, although Mrs Reid said she caught references to the “council”. Other persons arrived and various discussions ensued. It was asserted that the male had essentially broken in and it was further stated that the door would be boarded up again. Mrs Reid said

that she stated that the male should be given time to gather his possessions and that no-one must sleep in the structure, after which the various people left.

63. Mrs Reid also gave evidence that a man, described as the "business partner" of other men who stated that they were the new shop owners, stated that he was buying the lease. Mrs Reid was able to obtain contact details for him and has since attempted to contact him using those, but with no response being received. The various men who had attended had said that the flats were nothing to do with them.

64. The Tribunal is satisfied that at the time the offences were committed the Respondent was a residential landlord, who had let the two flats to the occupiers.

65. Having regard to the above findings the Tribunal is satisfied that it can make a banning order. The next question is whether the Tribunal should exercise its discretion to do so.

66. Under section 16(4) of the 2016 Act the Tribunal must consider the following factors in deciding whether to make a banning order.

  i) the seriousness of the offence of which the Respondent has been convicted;

  ii) any previous convictions that the Respondent has for a banning order offence;

  iii) whether the Respondent is or has at any time been included in the database of rogue landlords and property agents (pursuant to section 30 of the 2016 Act); and

  iv) the likely effect of the banning order on the Respondent and anyone else who may be affected by the order.

67. The Applicant submitted that the offences committed by the Respondent were serious and had an immediate impact on the health and safety of the occupants of the property, with a particularly serious risk to life. In the Applicant's view the Respondent had shown a total lack of regard for planning and safety requirements and a blatant disregard of the wellbeing of the occupants, which put them at serious risk of harm.

68. Mrs Burnham- Davies observed that none of the Applicant's very experienced officers had ever seen properties constructed inside a storage warehouse in the manner of those constructed by the Respondent. The properties were, she submitted, far from being fit for habitation. She repeated concern about the third area which had continued to be built despite the Prohibition Order.

69. The written application additionally contended that the imposition of a Banning Order would make the legal and financial consequences of neglecting the responsibilities of managing rented properties clear.

70. The Applicant considered that the five convictions under the Regulations and the levels of fines imposed amounted on their own to an indictment of the seriousness of the Respondent's offending. In addition, it was asserted that the apparent continued work to create another property was further in breach of the Prohibition Order, although no further action has been taken to date.

71. All the above renders the current situation far less than clear. However, the Tribunal can identify no firm evidence that the Respondent has sold the Premises, rather the evidence indicates that he continues to own them and be involved in them at the current time. Whilst the Tribunal considers that particular point carries only minor weight in the exercise of considering whether to impose a Banning Order and in determining the length of that Order, any relevance that the cessation of involvement in the Premises may have had, does not arise.

72. The Tribunal finds from the wider circumstances that (1) the Respondent showed a blatant disregard for the health and safety, and wellbeing of the persons occupying the flats; (2) the Respondent abdicated his responsibilities as a landlord (3) the Respondent demonstrated his unwillingness to comply with statutory responsibilities for housing (4) the Respondent flouted the law.

73. The properties were not only wholly unsuitable for human habitation but were so far removed from compliance with Building Regulations and fire safety standards as to be highly dangerous to occupy. The extent of the failings was extreme.

74. The Tribunal considers that a total fine of £87,000, together with costs of £1373.58 and £181 surcharge is, by any measure, a significant penalty. The Tribunal does note that the fines were imposed without the Magistrates Court possessing information as to the Respondent's means, where it may well be that the fines would have been lower if the Magistrates Court had received such information as to means.

75. However, that depends on the nature of the Respondent's means and whether they would in fact properly have resulted in a reduction in the level of the fines, which the Tribunal cannot know. All that is known to the Tribunal is that the Magistrates Court had regard to the seriousness of the offences and imposed fines commensurate in the absence of financial information such as to make it appropriate to limit the fines to a lower sum. The fines imposed by the Magistrates Court were substantial.

76. The Tribunal inevitably concludes having regard to the features of the offences and the totality of the penalty that the offences were very serious.

77. The Applicant was not aware of any previous Banning Order offences committed by the Respondent. The Applicant confirmed that the Respondent's name had not been included in the Database of Rogue Landlords.

78. The Respondent did not participate in the proceedings. The Tribunal has no information on the likely effect of a Banning Order on the Respondent and of any tenants that may be living in properties let by him. The Tribunal, however, observes that a Banning Order does not invalidate any tenancy agreement held by occupiers of a property let by the Respondent. The Tribunal notes that the occupiers of the properties created at 186 Avonmouth Road ceased to be in occupation in mid-2019 following the Prohibition Order and the provision of homelessness assistance by the Applicant.

79. However, the Tribunal also notes the occupation of the studio flat when Mrs Reid and her colleague attended in January 2021. The Tribunal bears in mind that the circumstances of that occupation and any awareness of it by the Respondent are unclear and considers that the Tribunal cannot make any specific findings about the Respondent's knowledge or lack of it based on such evidence or inferences which can properly be drawn. However, the situation described certainly does not allay fears

80. The Tribunal concludes on the facts found that the Respondent was a rogue landlord who had failed by a large margin to meet his legal obligations and who had exploited the occupiers by providing substandard and dangerous accommodation.

81. The Tribunal, therefore, grants the application for a banning order.

82. The Tribunal also records its concern that the structure may continue to be used as accommodation of one type or another. That may not necessarily be at the instigation of the Respondent or with the knowledge of the Respondent and indeed potentially after any sale by the Respondent. However, the presence of the structure creates the opportunity for similar use to that identified in 2019 in the event that the Respondent or another party has sufficient disregard to required standards and for safety to seek to so use it. The circumstances of and discussions at Mrs Reid's recent attendance and the lack of engagement by the "business partner" do not encourage any conclusion that proper regard will be given to the dangerous nature of the flats or the Orders in place. However, those are matters beyond the remit of the Tribunal at this time.

iv) WHAT SHOULD BE THE LENGTH AND TERMS OF THE BANNING ORDER?

83. The Applicant requested a Banning Order for four years in the application, having set out in the Notice that an Order of that length would be sought.

84. It was apparent in the hearing that there had been something of a misunderstanding on the part of the Applicant as to the maximum length of a Banning Order. The Applicant had calculated the period for which it sought a Banning Order on the basis of the maximum length of such an Order being five years. The Applicant reduced the period to allow for the fact that, despite the considerable risk of serious harm, there had been no actual known harm suffered.

85. The Tribunal queried the reference to a maximum length of Banning Orders being five years. After the hearing being stood down for a short time, the Applicant identified that there had been a misunderstanding on its part and sought a Banning Order for ten years.

86. The Applicant contended that the offences were very serious, the conditions were appalling and so ten years would be an appropriate level of punishment. The Applicant further submitted that a term of ten years would send a clear message that such conduct was not tolerated and would act as deterrent to others.

87. The Applicant confirmed that it was not aware of the Respondent being a "portfolio landlord" and of any other properties let by the Respondent. The Applicant accepted that a Banning Order may therefore have limited impact on this particular landlord, although the Respondents failure to respond to the Applicant's request for information pursuant to section 19 of the Act limited the information available. There was no evidence as to the circumstances in which the Respondent came to create the structure containing the flats within the storage building.

88. The Tribunal on balance considers a period of ten years is not appropriate.

89. The Tribunal decides that a period of four years is appropriate in the particular circumstances of the case.

90. The Tribunal has had particular regard to the fact that the Notice required the Applicant to state the length of the proposed Banning Order. Whilst, section 15 of the 2016 Act does not state that must be the maximum period of Order then requested, the purpose of the Notice is to inform the Respondent of that which he faces, in response to which the Respondent can make representations, which the Applicant must consider.

91. The Respondent was informed by the Notice that he would face proceedings seeking a four year Banning Order.

92. The application subsequently submitted maintained that period as the one for which the Banning Order was sought and did not indicate that any longer period might be sought. That is the case to which the Respondent could have responded.

93. There is no way of knowing whether the Respondent might have taken a different approach to the proceedings if he had received a Notice that a ten year Banning Order was sought. He may very well not have. However, equally he may have, where it would be inappropriate to make a negative assumption about the Respondent's potentially engagement, notwithstanding the obvious concerns about the Respondent's approach to the whole situation inevitably created by his approach to the properties and safety.

94. Assuming that the Respondent can seek a longer period than set out in the Notice and is not limited by that period, nevertheless the Tribunal does not consider that a longer period of Banning Order should be imposed in this case.

95. The Applicant's change to the period of Banning Order sought was made without prior notice to the Respondent in any manner and at a hearing at which the Respondent was not in attendance. Necessarily, the Respondent was unable to make any representations that he might otherwise have sought to make, if any.

96. The Tribunal considers that it would be contrary to natural justice to accede to the Applicant's application for an Order for ten years or another period beyond four years in those specific circumstances. The Tribunal considers that four years is the longest period appropriate in this instance for that reason.

97. The Tribunal determines that a four year Banning Order is appropriate as compared to any shorter period of Order.

98. The Tribunal has not sought to definitively answer the question of whether the appropriate length of a Banning Order would otherwise have been longer or, if so, to what extent. It will not assist to speculate on the outcome of a balancing of relevant factors in circumstances other than those that exist.

99. For the avoidance of doubt, the Tribunal has made no determination as to whether the period of Banning Order proposed to be applied for in the Notice must, should or may be the maximum period later imposed. The Tribunal has made no determination as to the circumstances in which there could or should be any increase from the period set out in the Notice.

100. The Tribunal has simply found that is it not appropriate to grant the Applicant's application for a longer period than that previous stated made at the final hearing itself in the particular circumstances of this case, no more and no less.

101. The Tribunal considers that a Banning Order in itself, and that a period of four years more specifically, constitute a significant deterrent to the Respondent and to others who might otherwise stray into the path of being a rogue landlord.

102. The Tribunal is satisfied that the Order should prevent the Respondent from letting houses and in engaging in letting agency and property management work. Finally, the Tribunal holds that as an anti-avoidance measure the Respondent should be banned from acting as an officer of any company that lets housing or is engaged in property management or letting agency work in England and from any involvement in the management of such a company.

103. Although the banning order takes effect from 22nd March 2021, it does not affect the rights of any tenants of the Respondent that there may be in any other property owned by the Respondent and tenanted to an extended period of notice of 6 months as a result of the Coronavirus public health emergency.

COSTS AND FEES

104. The Applicant made an application for reimbursement of the fees paid for the proceedings

105. The Applicant indicated that it may seek to apply for an order that the Respondent pay the costs of the proceedings pursuant to Rule 13 of the Rules within 28 days of this Decision.

106. The Tribunal determines that it is appropriate to order the Respondent to refund the fees paid by the Applicant in the sum of £300.

107. The Applicant has succeeded with the application which it was, in light of that outcome, entirely proper to make and in consequence of very serious failings of the Respondent. The fees were necessarily incurred. Nothing has been advanced which might make it appropriate not to order those fees to be paid by the Respondent.

108. The Tribunal will consider any application for costs in the event of such an application being made and at such time as one is made and the Respondent has been given the opportunity to respond, but not before.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case by email at rpsouthern@justice.gov.uk

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28- day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28- day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.