FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BA/HBA/2020/0011 V:CVP**
Applicant	:	**London Borough of Camden**
Representative	:	**Mr Edward Sarkis, Principal Lawyer**
Respondent	:	**(1) Simple Properties Management Limited;** **(2) Mr Miguel Cabeo Cespedes**
Type of application	:	**Application for a banning order – section 15(1) of the Housing and Planning Act 2016**
Tribunal Member	:	**Judge N Carr** **Mr C Gowman BSc MCIEH (Professional Member)**
Date of Hearing	:	**21 May 2021**
Date of Decision	:	**25 May 2021**

DECISION AND REASONS

DECISION

The Tribunal makes a banning order for the periods and in the terms attached at the end of this Decision, against
(1) Simple Properties Management Limited; and
(2) Mr Miguel Cabeo Cespedes.

REASONS

BACKGROUND

1. The Applicant local housing authority ("LHA") applies, under section 15(1) of the Housing and Planning Act 2016 ('the Act'), for a banning order against (1) Simple Properties Management Limited ('the First Respondent') and (2) Mr Miguel Cabeo Cespedes ('the Second Respondent) (collectively, 'the Respondents'), who have each been convicted of a banning order offence prescribed by the Act. By that Application, the LHA seeks a ban of 5 years duration against the Respondents.

2. The LHA has provided a 170 page main bundle of documents. At our invitation, the LHA provided an addendum bundle of an additional 40 pages, in support of the witness statement of Ms Silvia Suarez (Environmental Health Officer) contained in the main bundle. Numbers in bold and in square brackets below refer to pages in the hearing bundles prepared by the LHA, preceded by the letter **M** for the main bundle and **A** for the addendum bundle.

3. The Respondents have neither responded to, nor participated in these proceedings. On 23 April 2021 the Tribunal notified them that if they did not comply with Directions by Friday 7 May 2021, the Tribunal might refuse to allow them to admit any documents or make any submissions pursuant to rule 8(2) of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 ('the Rules'). No response was received.

4. This case has been conducted by remote video (CVP) hearing. A face-to-face hearing was not held. It was not practicable during the currency of the pandemic. No party requested a face-to-face hearing, and all issues could be determined in a remote hearing.

5. In attendance at the hearing were Mr Edward Sarkis (the LHA's principal lawyer), and Ms Suarez. No one appeared for or on behalf of either Respondent.

6. At the hearing, we gave the Applicant permission to rely on a further witness statement made by an occupant in relation to a property at 13 Dolland House, Newburn Street, SE11 5LR. For the reasons set out in our separate decision of 21 May 2021, we granted a rule 17 Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 ('the Rules') order in respect of the disclosure of that statement, and redaction of identifying details of its maker.

Facts giving rise to the Applications

7. On 2 February 2020 at the Highbury Corner Magistrates' Court, the First Respondent was convicted in absence of the following banning order offences, and sentenced as indicated **[M42 – 44]**:

(a) On or about 13 May 2019, having control or management of a House in Multiple Occupation which was required to be licensed but was not so

licensed, namely Flat 5, 18 – 18a Acton Street WC1X 9ND, contrary to section 72(1) and (6) of the Housing Act 2004 – **fine £30,000**;

(b) On or about 13 May 2019, and in respect of the same property, failed to comply with Regulation 4 of the Management of Houses in Multiple Occupation (England Regulations) 2006 contrary to section 234 of the Housing Act 2004, in that it failed to take all such safety measures as reasonably required to protect the occupiers of the HMO from injury, by not ensuring appropriate fire separation between bedsits 2 and 3 and compartmentation within the flat, by not installing a fire alarm system exclusive to Flat 5 consisting of interlinked smoke alarm to the hallway and fire alarm to give early warning to sleeping occupants and not installing a fire door to the kitchen – **fine £5,000;**

(c) On or about 13 May 2019, in respect of the same property, failed to comply with Regulations 7 of the Management of Houses in Multiple Occupation (England Regulations) 2006 contrary to section 234 of the Housing Act 2004, in that it failed to maintain the common parts, fixtures, fittings and appliances by not addressing the washing machine electric cable whose isolating sheathing was damaged reducing isolation protection against contact with water – **fine £5,000.**

8. On 2 February 2020 at the Highbury Corner Magistrates' Court, the Second Respondent was convicted in absence of the following offences, and sentenced as indicated **[M38 – 40]**:

(a) On or about 13 May 2019, having control or management of a House in Multiple Occupation which was required to be licensed but was not so licensed, namely Flat 5, 18 – 18a Acton Street WC1X 9ND, contrary to section 72(1) and (6) of the Housing Act 2004 – **fine £20,000**

(b) On or about 13 May 2019, and in respect of the same property, failed to comply with Regulation 4 of the Management of Houses in Multiple Occupation (England Regulations) 2006 contrary to section 234 of the Housing Act 2004, in that he failed to take all such safety measures as reasonably required to protect the occupiers of the HMO from injury, by not ensuring appropriate fire separation between bedsits 2 and 3 and compartmentation within the flat, by not installing a fire alarm system exclusive to Flat 5 consisting of interlinked smoke alarm to the hallway and fire alarm to give early warning to sleeping occupants and not installing a fire door to the kitchen – **fine £5,000**;

(c) On or about 13 May 2019, in respect of the same property, failed to comply with Regulations 7 of the Management of Houses in Multiple Occupation (England Regulations) 2006 contrary to section 234 of the Housing Act 2004, in that he failed to maintain the common parts, fixtures, fittings and appliances by not addressing the washing machine electric cable whose isolating sheathing was damaged reducing isolation protection against contact with water – **fined £5,000.**

9. On 21 July 2020, the LHA sent to each of the Respondents a Notice of Intention to seek a Banning Order pursuant to section 16 of the Act, for a period of 5 years each. The reasons for seeking the order were given, and included the

convictions on 2 February 2020 **[M25 – 37]**, together with other specified conduct (which we will turn to later below).

10. The Respondents were each given until 18 August 2020 to make representations. No representations were made.

11. This Application was made to the Tribunal on 7 October 2020, seeking a banning order of 5 years duration against each of the Respondents **[M1-11]**. Directions were made by the Tribunal on 8 February 2021 **[M14 – 22]**.

12. The LHA has its own policy on seeking a banning order, which is included in the main bundle **[M80 – 84]**. In it, it substantially relies on the Ministry of Housing Communities and Local Government Guidance 2018 ('MHCLG Guidance). Additional factors said to support an application to a banning order include: nature of the business (e.g. rent-to-rent arrangements, no high street presence, no accountable lines of tenancy/property management); letting agents that trade as tenants or sub-letting 'agents'; Trading Standards and Housing Options complaints; non-communicative or -cooperative Directors; systematic lettings that circumnavigate the law for maximum rental income such as sub-division of rooms into multiple small rooms; use of sham licenses, unfair tenancy terms; a previous pattern of repeat offending with a high likelihood that further offences will be committed in the future and their letting operation or practices involves systematic breaches of any relevant law.

13. The LHA's policy requires it to take into account the implications of a banning order on: other councils (in circumstances in which the person holds a large portfolio); the tenant's welfare; any appropriate wind-down time; any alternative appropriate intervention (e.g. interim management order, final management order0; and impact on the person to whom the property will revert.

14. The LHA is required by its policy to obtain sign-off from a Departmental Director to make an application for a banning order. The report made to, and sign off from, the Departmental Director is in the bundle at **[M85 – 90]**.

15. In respect of the offences of which the Respondents have been convicted, Ms Suarez explained orally and in her written statement **[M93 – 94]** that that the First Respondent either sub-lets properties with the knowledge of the Freehold owners (known as a 'rent to rent' arrangement), and carry out alterations to make those properties into HMOs (with or without the Freeholders' consent), or assert ownership and residency in connection with them as demonstrated in the First Respondent's 'booking summary'. The Second Respondent is the sole Director of the First Respondent, and has been since 20 March 2019, when the former sole Director, Hannah Bellin, resigned. It is noted that the First Respondent was only incorporated on 13 September 2018 on the information available from Companies House and drawn to our attention by Mr Sarkis.

16. In relation to the offences in question, at **[M91 - 92]** and orally Ms Suarez gave evidence that the property at Flat 5, 18 – 18a Acton Street WC1X 9ND ('the Flat') had been identified as being a possible unlicensed HMO due to links with

the Lifestyle Club. On 13 May 2019, she had carried out an inspection and found five people of different households occupying 4 bedsits within the Flat. The living room of the property has been sub-divided to provide two bedsit-units, and therefore the only shared space was the kitchen and bathroom (the Flat formerly having had an open-plan kitchen-living arrangement). She considered that the property was an HMO, and there was no record of its having been licensed. The occupants were issued with a 'booking summary' from the 'host' (the First Respondent), in which it was recorded "*The Host either owns or is the person/entity authorised to arrange the use of the accommodation…*". All five occupants gave witness statements and provided their 'booking summaries' **[M115 - 163]**, and the rent being paid to the First Respondent every month in connection with the Flat was £2857 per month.

17. Ms Suarez recounts that the occupants complained about the condition of and the management of the Flat. On attending, she had discovered that the Flat was in '*poor condition*', with inadequate provision for fire safety. The division that had been put in place in the former living room between bedsits 2 and 3 was not carried out with fire-resistant boarding. There was no compartmentation due to the fact that the board had been cut around the pre-existing radiator that spanned both bedsits. The Flat itself had no exclusive Fire Alarm system, and there was no door (let alone a fire-door) to the kitchen despite the greatest risk of fire arising in that room. She found a washing machine in the bathroom, attached to the electricity supply in the hall, the cable of which has been stripped of its protective casing thus exposing the wires beneath and rendering it dangerous. Three out of the four rooms was smaller than the LHA's own HMO policy would have allowed occupation of; two of which also fell below national standards for occupation. Crowded conditions were exacerbated by the lack of communal living area.

18.The occupants had been young and mostly from other countries. They were students, or young people trying to start their careers having obtained their qualifications abroad. They were vulnerable as they did not know their rights, or the housing standards required, in English law, and the agreements they had entered into with the First Respondent were exploitative.

19. The LHA relied on the very large fines imposed by the Magistrates as indicative of the seriousness of the offences. Mr Sarkis, who had attended at the Magistrates' Court on behalf of the LHA, stated that the Magistrates had found the offences on this occasion particularly egregious.

20. The Respondents had each been added to the Greater London Authority/Mayor of London Rogue Landlord Database in respect of the offences on 6 February 2020. That has now automatically expired. Mr Sarkis explained that the reason that the entries stay on the database for only one year is that that is when a conviction becomes 'spent' (for summary offences in which only a fine is imposed).

Other facts relied on in support of the Applications

21. Each Respondent was also convicted of offences on 6 February 2020 that are not banning order offences, but related to the banning order offences as arising from the same background failure to engage. These were failures to the provide information in connection with LHA enquiries, under sections 16 of the Local Government (Miscellaneous Provisions) Act 1976 and section 236 of the Housing Act 2004. No separate penalties were imposed.

22. There is then a division between the other matters relied on as against the First Respondent, and those relied on as against both Respondents, due to the date of the Second Respondent's appointment as Director. We therefore deal with them in turn:

(i) Other facts relied on in support of the Application against the First Respondent

23. First, the LHA relies on a previous conviction against the First Respondent, obtained in the Highbury Corner Magistrates' Court on 6 June 2019, in which the First Respondent was convicted (once again in absence) of being in management or control of an HMO which was required to be licensed but was not so licensed, namely 56B Cricklewood Broadway, NW2 3ET contrary to section 72(1) and (6) of the Housing Act 2004 **[M46]**, in the period 27 October 2018 – 15 January 2019. That was, of course, itself a banning order offence. On that occasion, the First Defendant was fined £1,000.

24. The First Respondent was on the same occasion also convicted of the failure to provide information offences under sections 16 of the Local Government (Miscellaneous Provisions) Act 1976 and section 236 of the Housing Act 2004. Separate fines of £1,000 for each of those offences.

25. During the course of the investigation for the above, Mr Jack Kane (EHO) received a telephone call from a tenant, Mr Jerome Soloman, in which he advised Mr Kane that two men had entered the property (using keys), dragged him out of bed and assaulted him **[A3-4]**.

26. The Witness Statement subsequently obtained from Mr Soloman **[A9-10]** gives details of the First Respondent sending a 'mediator' to the property once the LHA's investigation was underway, who had attempted to persuade the tenants to move out of the property, so that new electrics and windows could be fitted. The tenant was told that if they didn't move out, they would live with no electricity and no windows. It transpired that the 'mediator' was an employee or agent of the First Respondent. The work did not start, and tenants did not leave.

27. In December of 2018, Mr Soloman told the First Respondents' employees or agents to stop letting themselves into the property without prior notice. That was followed by a serious of intimidating acts, including the employees or agents once again turning up and letting themselves in (resulting in a telephone call to the police), telling the tenants to leave, monitoring the property through the window of the house next door (also owned or managed by the First Respondent), and culminating on 30 January 2019 in two males entering the

property and '*kicking in*' the door of the tenant's room, '*dragging* [him] *into the corridor*' and telling him he had to leave that night. When the tenant resisted, one of the men grabbed him by the neck and the other punched him in the chest. They then left and told him not to call the police.

28. We asked whether the allegations in question had been proceeded with and convictions obtained. Ms Suarez explained that due to the EHO leaving the LHA, and the tenant leaving the property, it had not been thought possible to proceed with seeking a criminal conviction.

29. In September of 2019 the London Borough of Lambeth had cause to investigate the activities of the First Respondent, due to reports by occupants of 13 Dolland House, Newburn Street, SE11 5LR. The information was shared by Ms Charlotte Ward, EHO at Lambeth **[A4 and 11-14]**. Ms Ward gave information that tenants at the property had been forcibly evicted in the course of her licensing investigation, and that when she had attended the property she had met with an individual with the same name and telephone contact details as featured in that unlawful eviction. The property had smelt of fresh paint, partitioning had been taken out, and a door had been put back on backwards (room number facing in) and padlocks removed. The implication is that the unlawful eviction was to allow the First Respondent to put the property into a state whereby it no longer required licensing.

30. The LHA relied on a witness statement in respect of the above unlawful eviction which we have seen. In it, the individual making it recounts allegations very similar in nature to those in respect of 56B Cricklewood Broadway above. They include the First Respondent's employees or agents entering the property without permission, serious allegations of intimidation, degradation and threats to the person by the First Respondent's contractors if the individual did not leave by the end of the day, and false reports of criminal behaviour made by the First Respondent to the police in order to cast the individual as the wrongdoer so that they could not access police assistance. It is said that there was a Trading Standards complaint, but the LHA do not know the outcome.

31. The LHA further rely on findings made in a civil action brought by Ms Noelia Del Rio Sanchez against the First Respondent for unlawful eviction and harassment, in which damages in excess of £54,000 were awarded to Ms Sanchez (including aggravated and exemplary damages), in respect of a Flat at 41C Kilburn High Road, NW6 5SB. The Judgement was provided to us **[A15 – 40]**. In those proceedings, held at the County Court at Oxford on 11 February 2020, Her Honour Judge Melissa Clarke made findings after a trial (which was not attended by the First Respondent or anyone on its behalf).

32. The common features of the matter before Her Honour Judge Clarke were that Ms Sanchez complained of the First Respondent's employees or agents accessing the property without any notice, threats of 'termination' of her agreement for complaining about the condition of the property, entering her room in the property by tampering with her lock to leave a letter, cutting off services (gas, water, and internet), and ongoing intimidation by its employees or agents.

33. On 22 February 2019, two men stating they were repairmen engaged by the First Respondent to fix the boiler entered the property with keys. Ms Sanchez left to go to University. Upon returning, the locks had been changed, and she was let into the building by the owner of another of the Flats. Ms Sachez had knocked on the door of her own Flat. She could hear people inside. She had asked them what they were doing there, and they had told her that they were the new tenants and had been told by the First Respondent not to let anyone in. This had caused Ms Sanchez great distress, and she had tried to call the police. The men in the Flat had then called the police to state that it was simply a 'tenancy dispute'. Ms Sanchez called them again and eventually persuaded them to come. On the police attending, they went into the Flat alone, and emerged stating that '(i) the men were tenants; and (ii) everything had been cleared out of' Ms Sanchez's room.

34. While the police were then in the other owner's Flat with Ms Sanchez and the other owner, Ms Sanchez began receiving messages from the First Defendant in which they alleged that the two men in Ms Sanchez' Flat were claiming to be her tenants, and claiming she had changed the locks.

35. Ms Sanchez had ended up homeless and staying on the floor of another student's room until she returned to Spain. The owner of the other Flat had found some of Ms Sanchez's belongings stuffed into a hallway cupboard at the property, and had on 25 February 2020 photographed bin-bags being taken away from the property, from which photographs Ms Sanchez was able to identify her belongings in the bags. Ms Sanchez had to obtain a new Spanish passport.

36. Her Honour Judge Clarke accepted that the First Respondent's Defence in the proceedings was '*patent nonsense*', and expressed disappointment that the First Respondent's actions in calling the police to encourage their doubt in Ms Sanchez's good faith were, apparently, successful.

37. On the days following the above incident, Her Honour Judge Clarke also accepted that Ms Sanchez's attempts to visit the First Respondent's offices to obtain an explanation and return of her belonging were met with further allegations that she had sub-let, and more threats of reporting her to the police and bringing a private prosecution. She found that the First Respondent had removed Ms Sanchez's belongings by van on 25 February 2019. She recounted that, in response to a letter before action from Ms Sanchez's solicitors, the First Respondent had on 1 March 2019 stated it had made three police complaints against Ms Sanchez (on 13 February 2019 a report of false allegations of someone entering her room; on 22 February 2019 for fraud and unlawful subletting; on 23 February 2019 for 'aggressive behaviour' at the First Respondent's office). It also asserted that trespass proceedings had been commenced against Ms Sanchez's unlawful sub-tenants, and that once losses had been quantified civil proceedings for recovery would be brought. They denied taking Ms Sanchez's belongings.

38. In her findings, Her Honour Judge Clarke reviewed the authorities and was satisfied that the 'guest' agreement was in fact an assured shorthold tenancy and

that the 'membership' of a 'club' in which 'guests' were given 'booking summaries' was a device and sham in order to avoid granting its 'members' tenancy protections afforded under statute. She found that Ms Sanchez had an assured shorthold tenancy that was only terminable by law in accordance with section 21 of the Housing Act 1988 or on the grounds as set out in schedule 2 of that Act, followed by (if necessary) a possession order. Even if, as asserted, the tenant was a licensee, the Protection from Eviction Act 1977 required that a valid notice to quit was served, followed by proceedings to obtain an order for possession, in order to lawfully terminate a tenancy. She could of course have gone on to say that even the existence of a possession order is not itself enough; an eviction is only lawful if carried out in pursuance of that order under a validly executed warrant of the court.

39. *Inter alia* in quantifying damages for the unlawful eviction claim, Her Honour Judge Clarke found that the behaviour of the First Respondent was calculated to make a profit, and therefore made an order for exemplary damages in the sum of £2,000. She also found that the manner in which the unlawful eviction was carried out was humiliating, frightening and distressing, and awarded a further £2,000 in aggravated damages. She found that the First Respondent's behaviour, in particular through the actions of the two men, was harassment within the meaning of the Protection from Harassment Act 1997 sections 1(1) and 3 and awarded damages in the sum of £8,800.

40. In the Notice of Intention to seek a Banning Order, the LHA relies on the First Respondent engaging in a systematic scheme not to comply with the law regarding licensing or the requirements for tenants' safety. It relies on the seriousness of the offences, as well as the wide-spread presence across London (Camden, Brent, Lambeth).

(ii) Other facts relied on in support of the Application against the Second Respondent

41. As against the Second Respondent, the LHA relied in its Notice of Intention to seek a Banning Order only on the subject convictions **[M34]**. However, orally, Mr Sarkis invited us to rely on the matters set out in the Judgement of Her Honour Judge Clarke insofar as they fell during the period of the Second Respondent's directorship, in justification of the 5-year term sought against the Second Respondent.

42. In her Judgment, Her Honour Judge Clarke recounted that the sole director of the First Respondent from 20 March 2019 was the Second Respondent. She notes that no explanation had been provided for failure by the First Respondent to attend at trial. Two witnesses who provided witness statements for the First Respondent failed to attend. No Civil Evidence Act notices had been given in respect of them. The Judge gave them little weight. 'Statements' from the two men involved, which were addressed 'to whom it may concern' and not signed with a statement of truth, were also filed but they did not attend. They had been provided to Ms Sanchez's legal advisers on 29 March 2019 (though dated 28 February 2019). The Judge gave them no weight.

43. The Judge provided an addendum to her Judgment, recording that on the 5 February 2020 the First Respondent had emailed the representatives of Ms Sanchez seeking an adjournment of the trial due to the Second Respondent being abroad. Ms Sanchez had refused, and an application to adjourn the trial was made to the County Court at Central London (where the trial was originally due to be heard), which application was refused on 7 February 2020. The Judge had proceeded in absence due to her perception that the First Respondent had no intention of participating. She had nevertheless addressed within her Judgment the First Respondent's Amended Defence. It is not known what the date of amendment was, but the Judge identifies that the original Defence was dated 10 July 2019.

LAW AND GUIDANCE

44. The statutory provisions relating to banning orders are contained within Chapter 2 of Part 2 of the Act.

45. In summary, an LHA may apply to the Tribunal for a banning order against a person who has been convicted of a banning order offence and who was a 'residential landlord' or a 'property agent' at the time the offence was committed.

46. Those expressions are defined in sections 54, 55 and 56 of the 2016 Act.

47. A 'property agent' means 'a letting agent or property manager'.

48. A letting agent is defined in section 54 of the 2016 Act as '*a person who engages in letting agency work (whether or not that person engages in other work)*', otherwise than under a contract of employment. 'Letting agency work' means things done by the letting agent in the course of a business, in response from instructions from *either* a prospective landlord (a person seeking another person to whom to let housing), *or* a prospective tenant (a person seeking housing to rent).

49. A property manager is defined in section 55 of the 2016 Act as '*a person who engages in English property management work*' (otherwise than under a contract of employment). 'English property management work' means things done by the property manager in the course of business on the instruction of a client, to '*arrange services, repairs, maintenance, improvements or insurance in respect of, or to deal with any other aspect of the management of, premises let on the client's behalf*', and the premises consist of housing in England let under a tenancy.

50. Residential Landlord means 'a landlord of housing' (section 56 of the 2016 Act).

51. Section 14 of the Act provides that if a banning order is made by the Tribunal, the person is banned 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.

52. Section 15 requires the authority to give the person a notice of intended proceedings before applying for a banning order. Notice of intended proceedings may not be given after the end of the period of six months beginning with the day on which the person was convicted of the offence to which the notice relates, and must:

(a) inform the person that the authority is proposing to apply for a banning order and explain why;

(b) state the length of each proposed ban; and

(c) invite the person to make representations within a period specified in the notice of not less than 28 days.

53. Section 16(4) provides that 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.

54. The MHCLG Guidance, published in April 2018, is non-statutory. The stated intention of the Guidance is to help local authorities understand their new powers to ban landlords from renting out properties in the private sector. Its recommendations are not mandatory, but it is good practice for an LHA to follow them, and the Tribunal may take them into account when coming to its own decision.

55. The MHCLG Guidance notes the Government's intention to crack down on a "*small number of rogue or criminal landlords [*who*] knowingly rent out unsafe and substandard accommodation*" and to disrupt their business model.

56. Paragraph 1.7 of the MHCLG Guidance states that banning orders are 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*".

57. Paragraph 3.1 of the MHCLG Guidance states: "*Local housing authorities are expected to develop and document their own policy on when to pursue a banning order and should decide which option it wishes to pursue on a case-by-case basis in line with that policy. Our expectation is that a local housing authority will pursue a banning order for the most serious offenders.*"

58. At paragraph 3.3 of the MHCLG Guidance are set out the factors that an LHA should take into account when deciding whether to seek a banning order. They are:

- **The seriousness of the offence**: the Guidance sets out that all banning order offences are serious. The LHA should consider the sentence imposed by the Court for the banning order offence: the more severe the sentence, the more appropriate a banning order is. This factor is said to go to both the making of and the duration of a banning order;
- **Previous convictions/rogue landlord database**: it is stated that the LHA should check the rogue landlord database to ascertain whether the landlord has committed other banning order offences or received civil penalties in respect of banning order offences. "*A longer ban may be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities.*" Landlords are running a business and should be aware of their legal obligations.
- The **effect of a banning order** on the person or on any person that may be affected by the order, including:
    - **The harm caused to the tenant**: this is said to be a very important factor, and the greater the harm or potential for harm (which may be 'as perceived' by the tenant), the longer the ban should be. It is suggested that offences related to health and safety, for example, could be considered more harmful that other offences (the example given is fraud);
    - **Punishment of the offender**: a banning order is draconian, and any ban ought to be proportionate to the severity of the offence and whether there is a pattern of previous offending. It is important that it is set at a high enough level to remove the worst offenders from the sector, to have a real economic impact, and demonstrate the consequences of non-compliance.
    - **Deterrence of the offender from repeat offending**: '*The ultimate goal is to prevent any further offending*'. This might be achieved by preventing the most serious offenders from operating in the sector again. The length of the ban should be long enough to be a likely deterrence to the offender from repeating offences;
    - **Deterrence of others from similar offending**: this can be demonstrated through the realisation of others that the LHA is pro-active in seeking such orders, and at such a level to punish and deter repeat offending.

59. At the same paragraph, the MHCLG Guidance states as follows: "*A spent conviction should not be taken into account when determining whether to apply for and/or make a banning order*".

60. At paragraph 5.2, the MHCLG specifically indicates that the Tribunal is not bound by, but may have regard to the Guidance (the word 'may' being permissive). At 5.3, the MHCLG Guidance specifically reserves the decision on the duration of any banning order to the Tribunal (though it must be minimum 12 months).

ISSUES

61. The **issues** for the Tribunal to consider are:

(i) Whether the LHA has given the Respondents a Notice of Intended Proceedings in compliance with section 15 of the Act, and whether it has otherwise complied with the procedural requirements of that section.

(ii) Whether the Respondents have been convicted of a banning order offence.

(iii) Whether, at the time the offence was committed, the Respondents were a 'residential landlord' or a 'property agent'.

(iv) Whether to make a banning order (and, if so, what order to make) having regard to the matters set out in section 16(4) and the MHCLG Guidance.

DECISION

62. The Tribunal has been presented with sufficient evidence, as recited above, to find that the answers to issues (i) and (ii) are 'yes'. These are clearly evidenced in the bundle at **[M25 – 45]**.

63. The questions that we need to address more substantially are (iii) whether at the time the offences were committed, the Respondents were a 'residential landlord' or 'property agent'; and (iv) – whether a banning order should be made and if so for what duration above. We adopt the same alpha-numerics in the headings below.

(iii) At the time the offences were committed were the Respondents a 'residential Landlord' or 'property agent'?

64. We noted that in the case before us, the 'booking summaries' at **[M114 – 163]** appear to be of the same ilk as identified in the Sanchez case. In each case, the First Respondent purports to "*either* [own] *the accommodation or* [is] *the person/entity authorised to arrange the use of the accommodation*." As Ms Suarez points out, the First Respondent's description of its activities on its Companies House entry is "*other letting and operating of own or leased rental*

estate" **[M94]**. The agreements do not provide for termination by the Respondents.

65. It appears that the Respondents acted in response to instructions received from prospective tenants to find housing to rent. We are therefore satisfied that the First Respondent is a property agent, and that the Second Respondent by virtue of his Directorship also meets that definition. In the alternative, each of the Respondents is the property agent instructed by the (undisclosed) client to exercise all the responsibilities of maintenance, repair, etc. We are satisfied that both section 54(3)(b) and section 55(3) apply.

66. In the further alternative, the First Respondent also, on the basis of its own assertions in the 'booking summaries', meets the definition of a residential landlord.

67. We note in particular that, for the purposes of the 2016 Act, any reference to a 'tenancy' also includes a licence (section 56).

(iv) Should a banning order be made, and if so for what duration?

(a) Should a banning order be made against each Respondent?

68. The Act sets out in section 16(4) what must be taken into account by the Tribunal in considering whether to make a banning order.

69. For 16(4)(a), the banning order offences to which we must have regard against each of the First and the Second Respondents, are those for which the LHA obtained convictions on 6 February 2020. Those are, in each case, as set out in paragraphs 7 and 8 above respectively.

70. We consider that the offence of failure to licence is no doubt always a serious one, given the reasoning behind requiring Landlords to obtain licenses for HMOs. However, there is a range of culpability between non-compliance from a position of innocent negligence with no other aggravating features at the bottom end, and deliberate and conscious flouting of the law accompanied by additional evidence of blatant disregard for occupants' health and safety at the other. The MHCLG Guidance makes very clear that banning orders are aimed at the worst offending Landlords, who behave egregiously and rent out unsafe and substandard accommodation.

71. On the evidence we are satisfied that the Magistrates found each of the Respondents highly culpable. In respect of the First Respondent, fines totalling £40,000 were imposed. In respect of the Second Respondent, fines totalled £30,000. The description of the offences provided to us and as outlined above demonstrate a blatant disregard for living conditions and the health and safety of the occupants of Flat 5. We accept Ms Suarez's evidence that the occupants were vulnerable and open to exploitation.

72. At this stage of our assessment and for the purposes of section 16(4)(b), it appears to us that the MHCLG Guidance (see paragraph 59 above) tells us that

we are not entitled to take into account the previous conviction in relation to 56B Cricklewood Broadway, as it has been spent. We are entitled, however, to take into account both the Respondents' inclusion on the GLA/MoL database of rogue landlords for the subject convictions **[M48 – 49]** (section 16(4)(c)), and in the case of the First Defendant that it was previously included on that database for the period of 12 months from 6 June 2019. We note that the banning order offences on which this application relies were committed during the currency of that inclusion of the First Respondent on the database, and entry on the database can therefore be perceived to have had little to no effect on the First Respondent's activities (as guided by its Director the Second Respondent).

73. As for section 16(4)(d), we are satisfied that the effect of any banning order would firstly be to legitimately interfere with the Respondents' business model, in which we are satisfied that the evidence demonstrates that the approach to the Respondents' legal obligations is not to learn from previous experience, but to continue in what can only be described as activity described to circumvent the law, ignore any attempt by any authority to bring them to reason or engage with the issues being created by their behaviour (whether the LHA, other LHAs, the civil or indeed the criminal courts), and continue in their practice of shadowy let-to-let arrangements in which vulnerable individuals are exploited. Secondly, the individuals who might be exposed to the Respondents' practices will be protected from risk to their health, safety and wellbeing from the continued deliberate flouting by the Respondents of their obligations.

74. We are therefore satisfied that we should make banning orders against each of the Respondents.

(b) Duration and terms of the Orders

75. Turning then to the second part of the question, and the duration of the banning order against each Respondent, it is here that we do not believe that the statute or MHCLG Guidance precludes us from taking into account the other facts relied on by the LHA. It was Mr Sarkis' submission that they fell to be considered as part of the section 16(4)(d) 'effects on the person and others'. We agree with that analysis, though we believe it necessitates breaking down the granting of, and then the setting of the duration and terms of, the banning order into two discrete steps.

76. For the second step, it is necessary to take each Respondent in turn.

A. First Respondent

77. The seriousness of the offence is said by the MHCLG Guidance to go both to the making of and the duration of the banning order. Our findings at 69 – 71 above are repeated.

78. As to previous convictions/rogue Landlord database, the MHCLG Guidance states that a *'longer ban may be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate*

and/or they knew, or ought to have known, that they were in breach of their legal responsibilities.' In the case of the First Respondent, it appears to us legitimate at this stage to take into account that it had been convicted only 8 months previously of another banning order offence of failing to license in respect of 56B Cricklewood Broadway. We further take into account that the non-banning order offences relating to the giving of information to the LHA were established both in relation to the subject incident and to Cricklewood Broadway.

79. It appears that the First Respondent has done nothing to improve its engagement with the LHA, nor to educate itself over the importance of compliance, despite large fines being imposed (£10,000 in total) on the first occasion in relation to those information offences. It is clear that the First Respondent knew, or ought reasonably to have known, through its officers, that it was in breach of its obligations. Nevertheless, further convictions were made in respect of further information offences. In addition, paragraph 72 above is repeated.

80. Turning then to the harm to the tenant, we have already addressed that in paragraph 73 above for Flat 5. We have had to think very carefully about the weight that we can put on the allegations made by Mr Soloman at 56B Cricklewood Broadway, and the occupant of 13 Dolland House. These individuals were not present to give evidence to the Tribunal. Their allegations were untested. What weight we give them, we give in the context of another former tenant, Ms Sanchez, having established her civil claim against the First Respondent for unlawful eviction and harassment. In that case, there are clear and cogent findings about the First Respondent's behaviour, through its employees or agents. We prefer to give weight to the County Court Judgment given after a trial, and to simple note (though making no findings) the pattern of behaviour that the allegations of Mr Soloman and the other tenant might seem to support.

81. In relation to that behaviour, we again note the failure of the First Respondent substantially to engage with those County Court proceedings, save for continued threats made to Ms Sanchez in correspondence with her legal representatives. We consider that Her Honour Judge Clarke's findings about the abuse of power and attempts to invert the process of justice through false reporting to the police about Ms Sanchez particularly troubling.

82. Considering punishment of the First Respondent, we are aware that a banning order is a draconian step, and that the duration of any such order ought to be proportionate to the severity of the offence and whether there is a pattern of previous offending. We have addressed those matters above. As the MHCLG Guidance makes clear, it is important that it is set at a high enough level to remove the worst offenders from the sector, to have a real economic impact, and demonstrate the consequences of non-compliance. As stated above, we consider that the First Respondent, through its history of non-compliance with the law and refusal to engage with authorities, has not demonstrated through its actions any willingness to change its approach. We have noted that Companies House records that there is action to strike off the company, that has been suspended

by the LHA's intervention due to these proceedings and the still-unpaid fines made in the Magistrates' Court. We suspect, therefore, that the length of the ban against and any financial impact on the First Respondent might shortly become academic. We do not consider, however, that should deter us from treating the First Respondent as a still-trading company for the purposes of these proceedings.

83. In terms of deterrence of the First Respondent, it is clear from all of the above that anything less than a banning order of significant duration will be met with the same failure by the First Respondent (by its officers) to make any change to its systematic failures to comply. As regards deterrence of others from committing the same offences, Mr Sarkis made it clear that the publicity of such an order might have the salutary effect required in the LHA.

84. In all of those circumstances, we conclude that a banning order as sought by the LHA, for the term of 5 years, is proportionate and to the severity of the offence and the pattern of the offending, for the reasons set out.

B. The Second Respondent

85. As Second Respondent is the sole Director of the First Defendant, much of what is said above may be repeated as against him. To a certain extent he is the company as the sole Director, and therefore the distinction is somewhat artificial. Given, however, the strike off action at Companies House, and more importantly the requirements of section 15(2) of the 2016 Act, we must consider him separately.

86. However, we have to be careful about the facts and matters we take into account against the Second Respondent, as much of what is relied on against the First Respondent pre-dates his Directorship (from 21 March 2019).

87. We repeat what is said above about the seriousness of the offences at paragraphs 69 – 71. The Second Respondent was also, it seems to us, found to be deliberately culpable as indicated by the level of the fines imposed.

88. As against him, however, the subject offences, together with the information offences also found against him, are the only convictions to be taken into account. Save for the subject offences, he has not previously been included in the rogue Landlord database.

89. As regards harm to the tenant, Mr Sarkis invited us to find that the Second Respondent was the one under whose Directorship the '*patent*[ly] *nonsense*' Amended Defence was filed in the County Court. It was under his Directorship that those proceedings were conducted in their entirety, including when the 'statements' of the two men involved were sent on 31 March 2019. He had in that case therefore been the driving force, and was not able to hide behind a lack of involvement in the incident leading to those proceedings.

90. The problem, it seems to us, is that these matters were not included on the Notice of Intention to Apply for a Banning Order against the Second

Respondent. Section 15(3)(a) of the 2016 Act requires the LHA to give its reasons in that Notice. The requirement is more than merely functional; it goes to the respondent's right to respond in his own defence (regardless of whether he avails himself of that right). He cannot make effective representations unless he knows, by that Notice, the LHA's reasoning for why the offence is so serious as to justify the making of a banning order for a particular duration.

91. We therefore find that we are unable to take into account the Second Respondent's acts/inaction or attitude in those proceedings, as the facts relied on have not been included in the Notice of Intention to Apply for a Banning Order.

92. We therefore rely on the convictions for banning order offences and related information offences of which the Second Respondent was convicted on 6 February 2020.

93. In terms of harm to the tenant, we repeat paragraph 73 above.

94. In respect of punishment of the Second Respondent, we repeat that we are aware that a banning order is a draconian step, and that the duration of any such order ought to be proportionate to the severity of the offence and whether there is a pattern of previous offending. There being no pattern of previous offending, the level against which the ban is to be set is solely the set of convictions obtained against him on 6 February 2020. Nevertheless, we reiterate that the MHCLG Guidance sets out that it is important that it is set at a high enough level to remove the worst offenders from the sector, to have a real economic impact, and demonstrate the consequences of non-compliance. As stated above, we consider that the First Respondent, through its history of non-compliance with the law and refusal to engage with authorities, has not demonstrated through its actions any willingness to change its approach. The advent of the Second Respondent's Directorship does not appear to have resulted in any positive change to that approach. He continued to fail to reply in these proceedings, to the Notice of Intention to Apply for a Banning Order, to the Magistrates' Court. Such complete refusal to engage and work with the LHA to improve conditions for tenants in its area speaks volumes.

95. In terms of deterrence of the Second Respondent from repeating the offences complained of, it is equally clear from all of the above that anything less than a banning order of significant duration will be met with the same failure by the Second Respondent (as officer of the First Respondent) to make any change to the systematic failures to comply in respect of which we cannot identify any change as a result of his Directorship. As regards deterrence of others from committing the same offences, Mr Sarkis made it clear that the publicity of such an order might have the salutary effect required in the LHA.

96. In all of those circumstances, we conclude that a banning order for a term of 3 years is proportionate and to the severity of the offences and the pattern of the offending, for the reasons set out.

Conclusion

97. We are satisfied that we ought to make a banning order against each of the Respondents, as follows: (i) First Respondent, 5 years; (ii) Second Respondent, 3 years.

98. At the hearing, Mr Sarkis addressed us on the terms of the orders **[M50 – 51]**. In particular in respect of that in relation to the Second Respondent, he asked that (though it was absent from the draft), the wording as set out in section 18 of the 2016 Act be included, prohibiting the Second Respondent from being involved in any body corporate that carries out an activity that the person is banned by the order from carrying out.

99. Mr Sarkis stated that the LHA supported a moratorium period of 4 months in order for the Respondents to get their affairs in order. He stated that Ms Ward supported a shorter period of 2 months. We noted that, for a section 21 Notice to lawfully terminate an assured shorthold tenancy, currently the requirements due to COVID19 were for a period of 6 months' notice. This might of course change soon and with little fanfare, but at the date of the hearing that was probably the minimum period for a moratorium, as we would not wish to encourage further behaviour by the Respondents of the type relied on. Mr Sarkis accepted this.

100. We therefore make the Orders as appended immediately hereto.

Judge N Carr
25 May 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case

number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BA/HBA/2020/0011**
Applicant	**:**	**London Borough of Camden** (Ref: 254399)
Respondent	**:**	**Simple Properties Management Limited**
Date	**:**	**25 May 2021**

BANNING ORDER
PURSUANT TO THE HOUSING AND PLANNING ACT 2016

IMPORTANT

A person who breaches a Banning Order commits an offence and is liable on summary conviction to imprisonment for a period not exceeding 51 weeks or to a fine or both. Alternatively, a local housing authority may impose a financial penalty of up to £30,000 on a person whose conduct amounts to that offence.

The Respondent's attention is drawn to the provisions of section 21 of the Housing and Planning Act 2016.

1. This Banning Order is made pursuant to sections 14 – 18 of the Housing and Planning Act 2016.

2. For the reasons given in the decision of the Tribunal dated 25 May 2021 IT IS ORDERED:

   The Respondent, Simple Properties Management Limited is, with effect from 25 November 2021 until 25 November 2026 banned 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. The date specified in paragraph 2 above as the date on which the Order is to commence is six months from the date of the Tribunal's decision to make a Banning Order. This six-month period is to enable the Respondent to bring to an end any existing residential tenancy agreement it may have entered into.

4. The reasons for making this Banning Order are set out in the Decision issued separately by the Tribunal. Notification concerning rights of appeal against the Tribunal's decision to make a Banning Order is given at the end of the Tribunal's decision.

Judge N Carr
25 May 2021

EXPLANATORY NOTES:

A. A person who is subject to a banning order that includes a ban on letting may not make an unauthorised transfer of an estate in land to a prohibited person. Any such transfer is void (section 27 of the Housing and Planning Act 2016).

B. A breach of a banning order does not affect the validity or enforceability of any provision of a tenancy or other contract.

C. A person against whom a banning order is made may apply to the Tribunal for an order varying or revoking the order, pursuant to section 20 of the Housing and Planning Act 2016.

D. The expressions "English letting agency work" and "English property management work" have the meanings given to them in sections 54 and 55 of the Housing and Planning Act 2016.

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BA/HBA/2020/0011**
Applicant	**:**	**London Borough of Camden** (Ref: 254399)
Respondent	**:**	**Mr Miguel Cabeo Cespedes**
Date	**:**	**25 May 2021**

BANNING ORDER
PURSUANT TO THE HOUSING AND PLANNING ACT 2016

IMPORTANT

A person who breaches a Banning Order commits an offence and is liable on summary conviction to imprisonment for a period not exceeding 51 weeks or to a fine or both. Alternatively, a local housing authority may impose a financial penalty of up to £30,000 on a person whose conduct amounts to that offence.

The Respondent's attention is drawn to the provisions of section 21 of the Housing and Planning Act 2016.

1. This Banning Order is made pursuant to sections 14 – 18 of the Housing and Planning Act 2016.

2. For the reasons given in the decision of the Tribunal dated 25 May 2021 IT IS ORDERED:

   (i) The Respondent, Mr Miguel Cabeo Cespedes is, with effect from 25 November 2021 until 25 November 2024 banned 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.

(ii) The Respondent, Mr Miguel Cabeo Cespedes is also banned from being involved in any body corporate that carries out an activity that he is banned by paragraph 2(i) above from carrying out.

3. The date specified in paragraph 2(i) above as the date on which the Order is to commence is six months from the date of the Tribunal's decision to make a Banning Order. This six-month period is to enable the Respondent to bring to an end any existing residential tenancy agreement he may have entered into.

4. The reasons for making this Banning Order are set out in the Decision issued separately by the Tribunal. Notification concerning rights of appeal against the Tribunal's decision to make a Banning Order is given at the end of the Tribunal's decision.

Judge N Carr
25 May 2021

EXPLANATORY NOTES:

E. A person who is subject to a banning order that includes a ban on letting may not make an unauthorised transfer of an estate in land to a prohibited person. Any such transfer is void (section 27 of the Housing and Planning Act 2016).

F. A breach of a banning order does not affect the validity or enforceability of any provision of a tenancy or other contract.

G. A person against whom a banning order is made may apply to the Tribunal for an order varying or revoking the order, pursuant to section 20 of the Housing and Planning Act 2016.

H. The expressions "English letting agency work" and "English property management work" have the meanings given to them in sections 54 and 55 of the Housing and Planning Act 2016.

I. The expression "involved in a body corporate" has the meaning given to it in section 18 of the Housing and Planning Act 2016.