



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

<b>Case references</b>	:	<b>LON/00BH/HSL/2019/0002-0014 LON/00BH/HSV/2019/0002-0024 LON/00BH/HXO/2019/0001-0007</b>
<b>Properties</b>	:	<b>Multiple properties as identified in the schedule annexed to this decision</b>
<b>Applicants</b>	:	<b>(1) Nasim Hussain (2) FHCO Limited (3) Farina Hussain (4) Luxcool Limited</b>
<b>Representative</b>	:	<b>Anthony Gold, solicitors</b>
<b>Respondent</b>	:	<b>London Borough of Waltham Forest</b>
<b>Representative</b>	:	<b>In House Legal Department</b>
<b>Types of applications</b>	:	<b>Multiple Appeals relating under the Housing Act 2004 concerning: (a) refusal to grant licences; (b) revocation of licenses; and (c) the imposition of Interim and Final Management Orders</b>
<b>Tribunal</b>	:	<b>Judge Amran Vance Mr T Sennett</b>
<b>Date of Decision</b>	:	<b>16 August 2021</b>

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## DECISION

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### **Covid-19 pandemic: description of hearing**

This was a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: FVHREMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing.

### **Decisions**

1. Nasim Hussain's appeal against the revocation of licences previously granted to her in respect of the 22 properties identified below is refused, and the Respondent's decisions confirmed.
2. Farina Hussain's appeal against the revocation of her licences of the First Floor Flat at 44 Westbury Road, London E17 6RH is allowed. The Respondent's decision is reversed, and her licence reinstated.
3. Nasim Hussain's appeal against the Respondent's refusal to grant her licences in respect of the seven properties identified below is refused, and the Respondent's decisions confirmed.
4. The appeal made by FHCO Limited ("FHCO") against the Respondent's refusal to grant licenses to it in respect of the six properties identified below is allowed. The Respondent's decisions are reversed, so as to provide for the grant of three-year licences to FHCO for each of the properties. That three-year time period is to run from 14 days after the date of this decision.
5. Nasim Hussain's appeal against the Respondent's decision to make interim management orders in respect of the Seven Properties is refused, and the Respondent's decisions confirmed.
6. The appeal pursued by Luxcool Limited ("Luxcool") against the Respondent's decision to make final management orders ("FMO's") regarding the Seven Properties is refused. In respect of Flats 3 and 4, Old Church Road, the FMOs are varied as set out below.

### **Background**

7. These appeals concern decisions taken by London Borough of Waltham Forest ("the Council"), under the licensing regime in Parts 2 and 3, Housing Act 2004 ("the 2004 Act") to:
  - (a) revoke licences previously granted to Nasim Hussain in respect of the 22 properties identified at rows 8-29 in the schedule annexed to this decision at Annex 2 ("the 22 Properties"), and to revoke a

property licence granted to her daughter, Farina Hussain in respect of the First Floor Flat at 44 Westbury Road, London E17 6RH (row 36 in the schedule);

- (b) refuse to grant Nasim Hussain licences in respect of seven properties identified at rows 1 – 7 in the schedule (“the Seven Properties”), and to refuse to grant licenses to FHCO in respect of the six properties identified at rows 30 – 35 (“the Six Properties);
  - (c) to impose interim management orders (“IMOs”) in respect of the Seven Properties; and
  - (d) then to make final management orders (“FMO’s) regarding the Seven Properties.
8. Page numbers in bold and in square brackets below refer to pages from the electronic hearing bundle provided by the Applicants,
  9. The appeals were considered at a case management hearing (“CMH”) on 12 January 2021. That hearing followed an application by the Applicants to strike out portions of the Respondent’s statement of case referring to Nasim Hussain’s spent convictions, for non-compliance with the Rehabilitation of Offenders Act 1974. The application for strike-out was unsuccessful before the Upper Tribunal, and, on appeal, before the Court of Appeal (*Hussain v Waltham Forest LBC* [2020] EWCA Civ 1539). The substantive applications then returned to this Tribunal for determination. At the CMH, the Council was granted permission to rely on convictions and sentences imposed on Nasim, and her husband, Tariq Hussain, and to ask questions about the convictions, sentences and ancillary circumstances
  10. The appeals were heard on 24 and 25 May 2021. The Applicants were represented by Mr Bates of counsel. Although Farina, and her brother Wahab, were present, their mother, Nasim did not attend. Tina Mitchell, a director of the Second Applicant, FHCO, was present. Mr Underwood QC represented the Council, supported by Mr Calzavara, of counsel. Mr David Beach, an Environmental Health Officer and Director of Enforcement employed by the Council was also present. We heard oral evidence from Farina, Wahab, Ms Mitchell, and Mr Beach.
  11. The following chronology is drawn, in part, from the Respondent’s Statement of Case dated 15 February 2021.
  12. Nasim was the previous freehold owner of most of the subject properties, including the 22 Properties. The current freehold ownership of the subject properties is identified in the final column of the schedule at Annex 2. Nasim is married to Tariq Hussain. She was the sole director of the Fourth Respondent, Luxcool Limited until 9 January 2020, when she was replaced by Tariq and her son, Wahab Hussain. Nasim remains the sole shareholder. Luxcool was the owner of five properties, some of which have been transferred into the ownership of Blackbrook Capital Ltd, a company solely owned and directed by Wahab. Farina was the sole

director of FHCO, until 3 February 2021, when Tina Mitchell was appointed as a co-director.

13. On 12 June 2015, Nasim submitted 23 licence applications to the Council in which she stated, falsely, that the properties did not have gas appliances. She subsequently provided 21 gas safety certificates that post-dated the licence applications, following which the Council granted her property licences and took no further action.
14. Between August 2015 and Feb 2016, Nasim was granted Part 2 House in Multiple Occupation licences and Part 3 (Selective Licensing) licences in respect of the 22 Properties.
15. On 19 May 2016, Nasim submitted licence applications for different properties (at 109-111 Old Church Road) declaring that the properties did not have gas appliances. On 13 September 2016, after this was challenged by the Council, she asserted, falsely, that it had not been possible to attach the gas safety certificates to her online applications and provided gas safety certificates dated 19 May 2016.
16. Nasim was interviewed by the Council under PACE on 28 September 2016 [403], in the presence of Farina. Both Farina and Tariq were interviewed by the Council on 27 March 2017 and gave wholly “no comment” responses [479, 494], although Tariq provided a written statement [493]. Nasim was interviewed again on 11 April 2017 [449], this time without Farina. She provided the Council with a written statement [448] but did not comment on the substantive questions asked.
17. On 12 May 2017, Nasim pleaded guilty to four offences of knowingly or recklessly supplying false information to the Council in connection with her licensing applications submitted on 19 May 2016, and was fined £40,000.
18. On 6 February 2018, FHCO submitted licence applications for six properties at 158 Blackhorse Road (“the Six Properties”).
19. On 29 June 2018, Tariq pleaded guilty to four offences under s.1 Forgery and Counterfeiting Act 1981, for fraudulently backdating the gas safety certificates provided by Nasim on 13 September 2016. He was fined £1,000.
20. On 4 October 2018, the Council gave notice of its intention to revoke and to refuse licences to both Nasim and FHCO.
21. On 23 November 2018, the Council refused to grant licences to Nasim (for the Seven Properties) and to FHCO (for the Six Properties) and revoked the licences previously granted to Nasim for the 22 Properties.
22. On 6 December 2018, the Council served IMOs for the Seven Properties under s.102(2) of the 2004 Act. A preliminary assessment of the properties identified a lack of routine repair and maintenance and a

further unannounced visit by the Council to the properties on 14 December 2018, identified management failings including regarding the installation and maintenance of smoke alarms.

23. On 20 December 2018, the appeals against the revocations and refusals were lodged at the tribunal.
24. On 1 February 2019 Nasim and Farina, via their solicitors, Anthony Gold, proposed FHCO as an appropriate alternative licence holder **[882]**. The Council responded to that proposal in a letter dated 20 February 2019 **[1059]**, in which it stated that it was prepared to consider that request in the event that further information was provided.
25. On 4 July 2019, Nasim was convicted of failing to comply with a licence condition in respect of the installation and maintenance of smoke alarms at the licensed property at 279D Wood Street, contrary to s.95(2) Housing Act 2004. She was fined £5,000.
26. On 8 August 2019, Nasim pleaded guilty to two further charges of failing to comply with a licence condition in respect of the installation and maintenance of smoke alarms at the licensed properties at Ground Floor Flat, 44 Westbury Rd and 415A Lea Bridge Rd. She was fined £10,000.
27. On 7 November 2019, the Council served notices of their proposals to make FMOs over the Seven Properties.
28. On 28 November 2019, Nasim, via Anthony Gold, made representations and proposed an alternative license holder for the Seven Properties, Lettings International Limited (“Lettings”).
29. On 3 December 2019, Lettings sought licences in respect of the Seven Properties.
30. On 5 December 2019, the Council issued FMOs for the Seven Properties.
31. On 30 April 2020, the Council granted licences to Lettings in respect of the Seven Properties as a result of which the IMO’s, as extended by the FMOs, ceased to have effect.

## **Statutory Provisions**

### *Licensing*

32. S.61(1) of the 2004 Act provides as follows in respect of HMOs:
  - (1) Every HMO to which this Part applies must be licensed under this Part unless –
    - (a) a temporary exemption notice is in force in relation to it under section 62, or

- (b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.
33. S.85(1) provides as follows in respect of houses that are required to be licensed under the Part 3 licensing regime:
- (1) Every Part 3 house must be licensed under this Part unless -
    - (a) it is an HMO to which Part 2 applies (see section 55(2)), or
    - (b) a temporary exemption notice is in force in relation to it under section 86, or
    - (c) a management order is in force in relation to it under Chapter 1 or 2 of Part 4.
34. Sections 63(1) and 87(1) specify applications for either type of licence must be made to a local housing authority, and sections 64(1) and 88(1) specify that upon receipt the authority must either grant a licence or refuse to grant a licence.
35. Subsections 55(5)(b) and 79(5) impose duties on a local housing authority to ensure that “all applications for licences and other issues falling to be determined by them under this Part are determined within a reasonable time”.

*Fit and proper person test*

36. No such licence may be granted unless the authority is satisfied that the proposed licence-holder is “a fit and proper person to be the licence holder” (ss.64(2), 64(3)(b)(i), 88(2), 88(3)(a)(i)).
37. The test for fitness is defined in sections 66 and 89. Section 66, so far as is relevant provides as follows:
- (1) In deciding for the purposes of section 64(3)(b) or (d) whether a person (“P”) is a fit and proper person to be the licence holder [.....] the local housing authority must have regard (among other things) to any evidence within subsection (2) or (3).
  - (2) Evidence is within this subsection if it shows that P has -
    - (a) committed any offence involving fraud or other dishonesty, or violence or drugs, or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (c. 42) (offences attracting notification requirements);
    - (b) practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business;

- (c) contravened any provision of the law relating to housing or of landlord and tenant law; or
- (d) acted otherwise than in accordance with any applicable code of practice approved under section 233.

(3) Evidence is within this subsection if –

- (a) it shows that any person associated or formerly associated with P (whether on a personal, work or other basis) has done any of the things set out in subsection (2)(a) to (d), and
- (b) it appears to the authority that the evidence is relevant to the question whether P is a fit and proper person to be the licence holder [.....].

38. The test for fitness in s.89 mirrors that in s.66 except that there is no equivalent provision to ss.30(2)(d).
39. The authority may revoke a licence if it no longer considers that the licence-holder is a fit and proper person to be a licence-holder (ss.70(1)(b)), 70(2)(b), 93(1)(b), and 93(2)(b)).

*Appeals against refusal or grant of licences*

40. Paragraph 31 of Schedule 5 to the 2004 Act provides as follows:

- 31 (1) The applicant or any relevant person may appeal to [this tribunal] against a decision by the local housing authority on an application for a licence -
  - (a) to refuse to grant the licence, or
  - (b) to grant the licence.
- (2) An appeal under sub-paragraph (1)(b) may, in particular, relate to any of the terms of the licence.

41. Paragraph 31 of Schedule 5 to the 2004 Act provides as follows:

- 31 (1) The applicant or any relevant person may appeal to [this tribunal] against a decision by the local housing authority on an application for a licence -
  - (c) to refuse to grant the licence, or
  - (d) to grant the licence.
- (2) An appeal under sub-paragraph (1)(b) may, in particular, relate to any of the terms of the licence.

42. Paragraph 32(1) of Schedule 5 confers an similar right of appeal on a licence holder, or relevant person, in respect of any decision by a local housing authority to vary or revoke a licence.
43. A “relevant person” is defined in paragraph 36(2) of Schedule 5 as any person (other than a person excluded by sub-paragraph (3))
  - (a) who, to the knowledge of the local housing authority concerned, is –
    - (i) a person having an estate or interest in the HMO or Part 3 house in question, or
    - (ii) a person managing or having control of that HMO or Part 3 house (and not falling within sub-paragraph (i)), or
  - (b) on whom any restriction or obligation is or is to be imposed by the licence in accordance with section 67(5) or 90(6)
44. The exclusions in sub-paragraph (3) refer to: (a) the applicant for the licence and (if different) the licence holder; and (b) any tenant under a lease with an unexpired term of 3 years or less.
45. Paragraph 34(2) provides that any appeal under paragraph 31 or 32 is to be by way of a re-hearing, but may be determined having regard to matters of which the authority was unaware. Sub-paragraph 34(3) states that the tribunal may confirm, reverse or vary the decision of the local housing authority. Sub-paragraph 34(4) provides that on an appeal under paragraph 31 the tribunal may direct the authority to grant a licence to the applicant for the licence on such terms as the tribunal may direct.

#### *IMOs*

46. S.102(2) of the 2004 Act provides as follows:

“... (2) The authority must make an interim management order in respect of a house if–

  - (a) it is an HMO or a Part 3 house which is required to be licensed under Part 2 or Part 3 (see section 61(1) or 85(1)) but is not so licensed, and
  - (b) they consider either–
    - (i) that there is no reasonable prospect of its being so licensed in the near future, or
    - (ii) that the health and safety condition is satisfied (see section 104).”
47. S.102(3) provides that:



- “(3) The authority must make an interim management order in respect of a house if—
- (a) it is an HMO or a Part 3 house which is required to be licensed under Part 2 or Part 3 and is so licensed,
  - (b) they have revoked the licence concerned but the revocation is not yet in force, and
  - (c) they consider either—
    - (i) that, on the revocation coming into force, there will be no reasonable prospect of the house being so licensed in the near future, or
    - (ii) that, on the revocation coming into force, the health and safety condition will be satisfied (see section 104).

#### *FMOs*

48. S.113 provides as follows, in respect of the making of FMOs:

- “(1) A local housing authority who have made an interim management order in respect of a house under [any provision of section 102 other than subsection (7A) of that section] (“the IMO”)—
- (a) have a duty to make a final management order in respect of the house in a case within subsection (2), and
  - (b) have power to make such an order in a case within subsection (3).
- (2) The authority must make a final management order so as to replace the IMO as from its expiry date if—
- (a) on that date the house would be required to be licensed under Part 2 or 3 of this Act (see section 61(1) or 85(1)), and
  - (b) the authority consider that they are unable to grant a licence under Part 2 or 3 in respect of the house that would replace the IMO as from that date.
- (3) The authority may make a final management order so as to replace the IMO as from its expiry date if—
- (a) on that date the house will not be one that would be required to be licensed as mentioned in subsection (2)(a), and
  - (b) the authority consider that making the final management order is necessary for the purpose of protecting, on a long-term basis, the health, safety or welfare of persons occupying the house, or persons occupying or having an estate or interest in any premises in the vicinity.

*Appeals against decisions relating to management orders*

49. Paragraph 24 of Schedule 6 to the 2004 Act provides as follows:

- (1) A relevant person may appeal to the appropriate tribunal against—
  - (a) a decision of the local housing authority to make an interim or final management order, or
  - (b) the terms of such an order (including, if it is a final management order, those of the management scheme contained in it).

50. Paragraph 26(2) provides as follows in respect of the tribunal’s powers on an appeal under paragraph 24 in respect of an interim or final management order.

- (2) The appeal—
  - (a) is to be by way of a re-hearing, but
  - (b) may be determined having regard to matters of which the authority were unaware.
- (3) The tribunal may confirm or vary the order or revoke it —
  - (a) (in the case of an interim management order) as from a date specified in the tribunal’s order, or
  - (b) (in the case of a final management order) as from the date of the tribunal’s order.

**Nasim’s appeals against revocation of licences**

51. Nasim originally challenged the revocation of her licences on the basis that (a) the local authority was wrong in law to have regard to her spent convictions; and (b) she was, in fact, a “fit and proper person” for the purposes of the 2004 Act, and her licences should not have been revoked.

52. Following the decision of the Court of Appeal, point (a) is no longer arguable. In addition, Nasim no longer wishes to be the license holder of any of the subject properties. We are told that this is because of the passage of time since her appeals were lodged, her age, and her personal circumstances. Instead, she contends that the tribunal should direct that FHCO should be granted the licences.

53. Mr Bates contends that FHCO is a “fit and proper person” because:

- (a) it has no convictions of the sort that concerned the Council in respect of Nasim or her husband;
- (b) its two directors, Farina and Tina Mitchell have no similar convictions; and

- (c) no person with “significant control” over FHCO has any similar convictions.
54. Mr Underwood, on behalf of the Council raises a jurisdictional point, namely that even though the hearing before the tribunal is a *de novo* hearing, the tribunal cannot vary the Council’s decisions so as to allow Nasim’s appeals against the revocation of her licences by appointing FHCO as the licence holder.

Jurisdictional decision on Nasim’s appeals against revocation of licences

55. We agree with the Council that we have no jurisdiction to allow Nasim’s appeals against the revocation of her licences by appointing FHCO as the licence holder.
56. Our powers, under paragraph 34 of Schedule 5 to the 2004 Act, on an appeal against a revocation of a licence brought under paragraph 32(1), allow us to confirm, reverse or vary the decision of the local housing authority.
57. Mr Bates argued that as a “relevant person” that meets the definition in paragraph 36 can bring an appeal under paragraph 32(1) against a decision to revoke or vary (or to refuse to revoke or vary) a license, the tribunal’s power is not limited to deciding whether or not the original licence holder should have their licence reinstated. In his submission we can vary the licenses in question so as to grant them to FHCO.
58. We do not accept that submission. In our determination, the plain meaning of the statute is that the power to vary a licence is confined to a variation in the terms of the licence, which may include its duration. Whilst a ‘relevant person’, other than the licence holder, may pursue an appeal, our powers do not allow us to direct that a licence be granted to a completely different person to the original licence holder. To do so would go beyond the scope of a variation, and would constitute the grant of a completely new licence to a new person. We therefore determine that we have no power to direct that FHCO is to be named as the licence holder of the 22 Properties.
59. As Nasim no longer wishes to be the licence holder of those properties, it follows that her appeals must be dismissed, and the Council’s decisions confirmed. In any event, as Mr Bates conceded, her convictions are such that she clearly cannot be considered a fit and proper person to hold a licence for these properties.

**Farina’s appeal against the decision revoke her licence for First Floor Flat, 44 Westbury Road, London E17 6RH .**

60. Farina was notified of the decision to revoke her licence by letter dated 23 November 2018 [30] in which the reasons given were identified as being her mother’s convictions for supplying false or misleading information, and her father’s conviction for falsifying gas safety certificates. No wrongdoing on Farina’s part was suggested.

### The Council's Case

61. In the Council's Statement of Case dated 9 March 2021, it asserts that Farina is not a fit and proper person because:
- (a) she was a vital part of the family business. She lived at the same address as her mother and father, and her use of her mother as a front person was demonstrated at her mother's interview under caution on 28 September 2016;
  - (b) it is likely that she was a party to the false declarations as to gas safety which underlay the convictions of both her parents. Each other family member submitted a prepared statement denying their involvement, but she did not;
  - (c) she was central to the attempted cover-up of the false declarations. She sought to protect Nasim from telling the truth about them when she was interviewed under caution, and she refused to answer questions when herself interviewed under caution;
  - (d) having advanced her company, FHCO, as an alternative licence holder, she persistently failed to give information which was reasonably requested in order to demonstrate her alleged distance from Nasim and her wrongdoing.
62. At paragraph 30 of Mr Beach's first witness statement dated 25 March 2019 [1127] he refers to section 2.3 of the Council's internal policy document "Determining Licence applications made under Part 2 or Part 3 Housing Act 2004 [524] which references draft Government guidance "A guide to the licensing and Management provisions in Parts 2,3 and 4 Housing Act 2004".
63. Paragraphs 85 – 87 of the government guidance says as follows:

#### **Consideration of 'persons associated or formerly associated' with the proposed licence holder or manager**

85. If there is evidence that a person associated, or formally associated, with the person proposed to be the licence holder or manager of the property, has committed any wrong doings, that evidence may be taken into account in determining the proposed licence holder's or manager's fitness (even if that person has himself or herself an unblemished record). The purpose of this requirement is to ensure that only fit and proper persons hold licences or are in any way involved in the management of licensed properties. It would not be appropriate for a licence to be granted to someone, or for someone to be the manager of a property, if that person was merely acting as a 'front' for someone else who, if he or she were not unfit, would be entitled to be the manager or licence holder.

86. An example might be that of a husband and wife, where the husband is the landlord (or indeed both he and his partner are joint landlords), but only the wife has applied for the licence. If there is evidence that the husband has committed wrong doings and those wrong doings are relevant to the wife's management of the property or licence then the LHA may refuse to grant her a licence. Likewise if a landlord with an unsatisfactory record nominated a "manager" who had a clean record, but had acted for him whilst the wrong doings were committed, the LHA may consider the managing agent by association to be unfit too.

87. A refusal to grant a licence in these circumstances should only be made if:

- there is actual evidence of wrong doing by the associated person and
- the associate's fitness is directly relevant to the applicant or proposed licence holder's fitness to manage the property or licence.

64. At paragraph 2.4 of the Council's guidance it is stated that:

" In applying the fit and proper person test, the Council will take into account any identified wrong doings of relatives and other associates of the licence holder and any separate manager that it believes are relevant to the licence under consideration."

65. At paragraph 14 of his second witness statement dated 31 May 2019 [178] Mr Beach says that the Council took the view that Farina was

"...a person associated with the First Applicant and her husband such that she did not meet the fit and proper person test". In particular, the Authority had due regard to the interview under caution of the First Applicant on 28 September 2016, when she was questioned in respect of the offences for which she was later convicted. The Third Applicant was also present at that interview. During the interview, the First Applicant repeatedly declined to answer questions regarding her own role in managing the properties for which she was the licence holder but instead indicated that officers should speak to her husband, son and daughter (the Third Applicant) who ran the property business.

66. At paragraph 15, Mr Beach went on to say:

" The Authority was, and remains, of the opinion that the Third Applicant is inextricably linked to the business and practice of the First Applicant, and that she is an 'associated person'."

67. The Council set out its concerns about Farina being an alternative licence-holder in its letter to the Applicants' solicitors, Anthony Gold, dated 20 February 2021 **[1059]**. In that letter, it stated that it considered Farina failed the fit and proper person test because she shared responsibility for the failings connected with all of the family held properties in the past, and because there was a demonstrably close association with her parents, who the Council properly considered had failed the test. The reason given as to why the Council believed Farina shared this responsibility was because of the answers given by her mother at the interview under caution on in September 2016.
68. Mr Beach was present at Nasim's interview under caution on 28 September 2016. The transcript of the interview **[403]** records that Farina was present, as was an interpreter. During the course of that interview Nasim is recorded as stating that although the properties she owned were in her name, "...her family ... run it, her husband, her son and her daughter, they run the business." The assertion that her husband, Farina and Wahab run the business is repeated on several occasions during the course of the interview, but nothing was said about the individual functions they performed in the business.
69. In Nasim's second interview under caution on 11 April 2017, she gave a 'no comment' response to the questions asked of her. In the written statement she gave to the Council that day **[448]** she said:
- “ My family, namely my husband (Tariq) son (Wahab) and daughter (Farina) and sometimes others assist with the day-to-day running of the business, which includes the preparation of applications and corresponding with the council.”
70. In the Council's letter of 20 February 2019 **[1059]**, it stated that despite its concerns over the proposal of FHCO as an alternative licence holder, due to Farina's perceived unfitness, it was prepared to consider the request upon receipt of a response from her to the following questions:
- “
- a. Her precise day-to day involvement in management of the family properties at all material times;
  - b. Her means of income at the material times;
  - c. Whether she or her company own any of the properties the subject to the appeals and, if so, precisely how they were financed;
  - d. If any other family member owns the properties, what are the contractual arrangements by which she or the company now have any connection with them;
  - e. Whether FHCO Ltd own any of the addresses;

- f. How many properties does FHCO manage, details of those properties, details of the addresses and owners of those properties;
  - g. Confirmation that she consents to the Council making enquiries of the clients of FHCO to obtain references from them;
  - h. Details of her experience of letting and managing properties;
  - i. Details of her professional qualifications, is she engaged in any other employment other than operating FHCO, if so by whom and in what capacity?
  - j. How much time does she devote to company business and what is her role in the company business;
  - k. Information about FHCO Ltd where does it trade from? How many staff are employed? Does it have a trading name?
  - l. If staff are employed what are their names and roles?
  - m. Copy of the Management Agreement that FHCO Ltd uses for the purposes of its' business with landlords.
71. Anthony Gold replied to the Council's letter of 20 February 2019 on 4 March 2019, in which it was stated that Farina was "willing to provide written representations to evidence that she is 'fit and proper' to be a licence holder but that this would not be possible prior to a case management hearing of these applications that had been listed for 7 March 2019. However, to date, the Council has not received a response to the 13 questions made in its letter of 20 February 2019 ("the 13 Questions"). At paragraph 23 of his fourth witness statement dated 16 February 2021, Mr Beach said that as Farina had declined to provide this information, the Council considered that there was no basis upon which to conclude that she, or her company, FHCO, met the fit and proper person test.

#### Farina's Evidence

72. Farina referred to the 13 Questions in her witness statement dated 16 May 2019 [190] in which she stated that whilst she was very happy to tell the Council about FHCO, she did not feel able to share her clients' private information. She said that she had spoken to some of her clients who said they were uncomfortable about their details being provided to the Council. She also stated that she felt many of the questions were irrelevant, and that she did not understand why she was required to provide additional information other than what was requested in the licence application form.

73. In her witness statement, Farina said that she previously helped her mother to manage her properties by acting as her bookkeeper. She also said that she was not involved in managing her mother's properties, except in relation to the First Floor Flat at 44 Westbury Road, which she took on as a trial property. In oral evidence, she said that as she enjoyed managing that flat, she set up FHCO, in November 2017, in order to manage properties on behalf of other landlords.
74. In cross-examination, she agreed that FHCO did not trade for the first year after its incorporation, and that it had no assets or staff as at November 2018. This, she said, was because during the first year she was studying and taking exams. As to the 13 Questions set out in the Council's letter of 20 February 2019, she stated that her solicitors, after considering the questions, had advised against answering them because they were intrusive and not relevant, as they were not the usual questions asked when a licence application is made.
75. Her evidence was that following a discussion with Tina, she did, in fact, subsequently ask her clients for their consent to provide information required to answer the Council's questions. They refused, and one by one, over the course of six months, they asked her to stop managing their properties as they were not happy with being asked for such consent.
76. In her first witness statement Farina stated that she was working on FHCO matters five days a week, as well as training, part time, to become an accountant, studying for the Association of Chartered Accountants qualification. At the hearing before us she stated that she had now passed 12 out of the 14 examinations in order to qualify as an accountant. She is currently on maternity leave, her daughter being three months old.

#### Wahab's Evidence

77. Like Farina, Wahab rejected the assertion that the subject properties were run as a collective family business in the way suggested by the Council. In his witness statement dated 9 March 2021, he explained that he has been the director of the Fourth Appellant, Luxcool Limited, since 9 January 2020, when his mother resigned as a director. Prior to that he said he ran his own restaurant business, working around 100 hours per week. He agreed that he provided assistance to his mother in managing the financial aspects of her portfolio, but that this was limited to helping obtain loans from banks and other financial matters that his mother could not fully comprehend because of her limited English. He said that it was his father, whose command of English was a lot better than his mother's, who dealt with the management side of the business.
78. In his witness statement, Wahab goes on to say that his restaurant business, which at one point numbered 48 restaurants spread over the UK, struggled in 2018 and 2019, with administrators appointed in December 2019. At that point, following discussions with his mother, he agreed to take over the management of her properties. In December 2019, his mother transferred the remaining parts of her portfolio into



companies over which she had no control, and his father also stopped having any role in managing the properties. Wahab replaced her as director of Luxcool, and also runs HPP Capital Limited and Blackbrook Capital Limited, the owners of some of the other properties formerly owned by Nasim. He denied that he is in any way a “front” for his mother and asserted that he is perfectly capable of running the business himself.

Decision on Farina’s appeal against the decision revoke her licence for First Floor Flat, 44 Westbury Road

79. Farina’s appeal is allowed and the Council’s decision to revoke her licence is reversed.
80. The Council’s decision was founded on the basis that Farina shared culpability for the provision of the false, misleading and fraudulent information that had led to her mother and father’s convictions. It is said that she played a vital role in the family business, that it was likely that she was a party to the false gas safety declarations that led to her parents’ convictions, and that she was central to the attempted cover-up of the false declarations.
81. We find that the evidence does not support those assertions. Critically, there is no evidence at all of any wrongdoing by Farina. There is no suggestion in the sentencing remarks made on her father’s conviction **[1055]**, or the summary of the sentencing remarks made on her mother’s conviction **[1068]** of any wider family involvement, or any culpability in the false gas safety declarations, other than that of her parents. When sentencing Nasim, the judge described her as being a woman of great experience in property management whose involvement in the false certificates was clear and obvious. No mention is made of any involvement by Farina or Wahab.
82. Mr Beach’s oral evidence was that Nasim was being used as a front for a criminally run family business. He accepted that there was no evidence of Farina having received any convictions, but, in his opinion, she was implicated in the wrongdoings committed during the course of what he saw as a family-run business. He believed that Farina played a much more active role in the business than just book-keeping, but that the extent of that further involvement was unclear due to the lack of co-operation from any members of the family. He suggested that given her mother’s limited English, Farina was the most likely person to have submitted the licence applications for the subject properties.
83. We find that the evidence does not support Mr Beach’s assertions. Both Farina and Wahab denied any involvement with preparation of the licence applications and, on the balance of probabilities, we find their evidence to be credible. The Council’s suggestion that Farina was involved appears to us to be speculation, the origin of which appears to be Nasim’s answers during her first interview under caution and her written statement **[448]** that others assisted her with the running of her properties, including the preparation of licence applications. In cross-

examination, Mr Beach said that given Nasim's response, her husband's statement [493] that he was not involved in the preparation of applications, and Wahab's statement to the same effect [1058], that the only person left was Farina, and that it was therefore likely to have been Farina who prepared the licence applications.

84. We accept, given her limited English, that it is likely that Nasim received help with completing the licence application forms. But even if she did, that help may have come from her husband, as opposed to Farina. Given his conviction, and its impact on his credibility, we consider little evidential weight can be placed on Tariq's statement. Farina and Wahab's evidence that their father had a very good command of English was not challenged by the Council. Farina's evidence was that when she had asked her mother who had completed the licence application forms, her mother's response was that she had done so with the help of Farina's father. When Wahab was asked who completed the application forms for his mother, his response was that his father worked together with his mother, and that it was his father who dealt with the management of his mother's properties.
85. Unlike their parents, neither Farina's or Wahab's evidence is tainted by any conviction or evidence of any wrongdoing on their part. Whilst both agreed that they were involved in their parents' property business, we do not accept that the evidence supports the Council's view that Nasim was being used as a front by Farina. The Council has no direct evidence that Farina assisted in completing the licence application forms and given Wahab and Farina's evidence we find that it is more likely than not that Nasim completed the application forms with the assistance of her husband, Tariq. We agree that Nasim's responses when interviewed under caution on 28 September 2016 suggest that other family members had a greater role in managing her properties than she did, but we find that the person who is most likely to have done so is Tariq, rather than Farina or Wahab. It was, after all, Tariq who was convicted of fraudulently backdating the gas safety certificates provided by Nasim, and there is no evidence of any deeper involvement by the two children, other than the roles they have stated they performed.
86. It is suggested that Farina lived at the same address as her mother and father and that this supports the Council's belief that Farina used her mother as a front for her business activities. In her two witness statements dated 16 May 2019 and 9 March 2021, Farina gave an address in Gerrards Cross, Buckinghamshire. However, when she was interviewed under caution on 27 March 2017, she gave her address as her parents' address in Chigwell, Essex.
87. When cross-examined on this, her response was that she lived at the Gerrards Cross address with her then boyfriend, but then returned to her parent's home at the weekends where she stayed in a 'granny flat'. We accept her evidence on that point as being credible. There is some corroboration at paragraph 12 of Wahab's witness statement [252] where he says that Farina used to help their mother reconcile the

accounts for her properties at weekends. It appears to us more likely than not that she did so when visiting her parents at the weekend. In any event, there was no suggestion by the Council that Farina was not living at the Gerrards Cross property, and we are not persuaded that the use of her parent's address at the interview under caution, can be seen as evidence supporting her deeper involvement with her mother's property business.

88. Nor do we accept the Council's submission that at her mother's interview under caution, Farina sought to protect Nasim from telling the truth about the false declarations. The transcript of that interview indicates that Farina intervened frequently on behalf of her mother, but that her primary concern in doing so was that her mother had been asked to attend the interview because of concerns that she had provided false or misleading information about properties at Flats 1 – 5, 109 – 111 Old Church Road, but the Council wished her mother to answer questions about additional properties that she owned. Farina, on behalf of her mother, objected to this. In our view, Farina's interjections appear to be designed to limit the Council's questioning to questions regarding the licensing of the properties identified in the Council's letter to her mother, asking her to attend for interview. We do not consider they evidence that her role in her mother and father's business was wider than she acknowledges.
89. Nor do we consider the fact that both Farina and Nasim gave no comment responses when subsequently interviewed under caution evidences Farina's deeper involvement. Farina's evidence was that her solicitor advised her to provide a no comment response. In the context of these applications, we do not consider we can infer any deeper involvement by Farina from her no comment responses, and our attention has not been drawn to any specific responses that would provide any support such an inference.
90. As to Farina's failure to answer the 13 Questions, those questions were asked by the Council in order to consider FHCO's suitability to be an alternative licence holder of Nasim's properties that had been made subject to an IMO. The questions were not asked in the context of the Council's decision to revoke Farina's licence for the property at First Floor Flat, 44 Westbury Road, London E17 6RH. Farina's evidence was that she did not answer the questions because of legal advice from her solicitor. She was entitled to follow that advice. Even if the lack of response is relevant to FHCO's fitness to be a licence holder, we do not consider we can infer from it that Farina, as an individual, is not herself a fit and proper person to be the licence holder for the subject property.
91. The government's guidance, which is reflected in the Council's internal guidance, is that a licence should only be refused if there is actual evidence of wrong doing by a person associated with the licence applicant, and where the associate's fitness is directly relevant to the proposed licence holder's fitness to manage the property. Clearly, Nasim's convictions constitute evidence of wrongdoing, but we do not

agree that her mother's unfitness is directly relevant to Farina's fitness to manage First Floor Flat, 44 Westbury Road.

92. Farina held a licence of that flat, in her own name, between January 2017 and 23 November 2018, when it was revoked. Mr Beach agreed that there is no suggestion of any impropriety in her licence application or any mismanagement of the property by her. He acknowledged that no enforcement action had been taken by the Council regarding the flat, although he suggested that Farina's application should probably have been held in abeyance given that the falsity of her mother's licences had been discovered in August 2016, and were under investigation at the time Farina's licence was granted.
93. In cross examination Farina said that she was responsible for dealing with maintenance issues in relation to the First Floor flat at 44 Westbury Road, including liaising with tenants, appointing contractors and dealing with the normal work of a property manager. There is no evidence of any complaints regarding her management of the flat and nothing to suggest that she did not perform those tasks to a good standard. This contrasts with her mother, who mismanaged and committed offences in respect of the Ground Floor Flat at that address by failing to install and maintain a smoke alarm as well as failing to remedy significant disrepair **[884]**. The Council's suggestion that Nasim was a front for a criminally run family enterprise, in which Farina played a leading role, is not supported by the evident difference in management of the two flats in the same house.
94. On her evidence, which was not challenged, Farina has almost qualified as an accountant. She has also completed a London Landlord Accreditation scheme course **[1034]**. She appeared to us to be an intelligent and responsible individual, who is a fit and proper person to be the licence holder for this flat.
95. We do not agree that her mother's unfitness to be a licence holder is directly relevant to her own fitness to be a licence holder. The Council's conclusion that Farina was a vital part of the family business and that she was likely to have been involved in giving the false gas safety declarations is not, in our view, supported by the evidence. On the evidence before us, we determine that she is a fit and proper person to hold a licence. We therefore allow her appeal, and reverse the Council's decision of 23 November 2018. Her licence is reinstated.

**Nasim's appeals against the decision to refuse her licences for the Seven Properties and FHCO's appeals against the decision to refuse licences for the Six Properties**

96. Mr Bates' primary case, for both Nasim's and FHCO's appeals against their refusal decisions, was that the effect of EU Directive 2006/123, and the Provision of Services Regulations 2009 (SI 2009/2999), was that, because of the Council's delay in dealing with the licence applications, the licences were deemed to have been granted, and so the refusals were a nullity. He

argued that we should therefore quash the Council's decisions. If that was wrong, he submitted that we should: (a) allow Nasim's appeals by granting licences for the Seven Properties to FHCO; and (b) allow FHCO's appeals.

97. It was not in dispute that: (a) the act of letting and managing private sector residential property is a "service" for the purposes of EU Directive 2006/123 and the Provision of Services Regulations 2009; and (b) the operation of a licensing scheme under Parts 2 and 3, Housing Act 2004, is an "authorisation scheme" for the purposes of the 2009 Regulations.

98. Regulation 19 of those regulations reads as follows:

"19 Authorisation procedures: time for dealing with application

- (1) Authorisation procedures and formalities provided for by a competent authority under an authorisation scheme must secure that applications for authorisation are processed as quickly as possible and, in any event, within a reasonable period running from the time when all documentation has been submitted.
- (2) That period must be fixed and made public in advance.
- (3) When justified by the complexity of the issue, that period may be extended once, by the competent authority, for a limited time.
- (4) The extension and its duration must be notified to the applicant, with reasons, before the original period has expired.
- (5) In the event of failure to process the application within the period set or extended in accordance with the preceding provisions of this regulation, authorisation is deemed to have been granted by a competent authority, unless different arrangements are in place.
- (6) Any different arrangements must be justified by overriding reasons relating to the public interest, including a legitimate interest of third parties."

#### Nasim's Appeals

99. Nasim's licence applications were made on 19 May 2016, but were not refused until November 2018. In cross-examination, Mr Beach acknowledged that the Council could have rejected Nasim's applications in August 2016, when the fraud regarding the gas certificates was discovered, or in May 2017, after her conviction. However, his evidence was that the Council delayed determination of the applications until further investigations had been carried out

100. Mr Bates contended that the Council's delay after May 2017 in order to investigate other potential offences was contrary to the Council's duty under Regulation 19(1) to determine them as quickly as possible, and in any event, within a reasonable period. The consequence, he argued, was that the applications were deemed to have been granted by virtue of Regulation 19(5). It followed, he said, that there was no power to refuse to grant the licences, which had already been granted by operation of law, and which remain in effect as they have not been revoked. According to Mr Bates, the position was the same in respect of FHCO's licence applications for the Six Properties, submitted on 6 February 2018, although the period of delay was, he acknowledged, shorter.
101. We do not accept Mr Bates' primary submission. We agree with Mr Underwood that there can be no deemed grant in circumstances where the Council did not fix a period for processing the licence applications. Whilst its failure to do so may well constitute a breach of sub-regulation (2), the appropriate forum for a challenge to such non-compliance, or for undue delay in processing licence applications, is judicial review.
102. Mr Underwood pointed out that on its website the Council asserts that it will not permit authorisation to be deemed to be automatically granted under sub-regulation (5), on the basis that there is an overriding public interest regarding public safety under sub-regulation (6). Whether or not such public interest exists is a question of public law, and not within this tribunal's jurisdiction.
103. Mr Underwood also argued that, in any event, the period of delay was not, unreasonable in the circumstances of this case. We do not need to address that question given our determination that no deemed grant can arise in respect of these applications. Nevertheless, we agree that the delay between 19 May 2016 and the September 2016 interviews was not unreasonable given the pre-interview investigations required. It is also clear from the transcripts of the March and April 2017 interviews that there had been substantial further investigations by the Council leading up to those interviews. However, it appears to us that after Nasim's May 2017 convictions, it should have been obvious to the Council that she was not a fit and proper person to hold a licence, meaning that her licence applications could have been determined in short order. As FHCO's licence applications were not submitted until February 2018, we do not consider the period between then and November 2018 to be unreasonable given the enquiries needed into its fitness to be a license holder.
104. Mr Bates secondary position was that we should allow these appeals and grant licences to FHCO. As far as Nasim's appeals are concerned, he contended that as with the revocation of her licences, we have jurisdiction to do so because FHCO is a relevant person who could have pursued an appeal against the relevant decisions, this time under paragraph 34 of Schedule 5. We reject that submission for the same reasons as set out above in respect of the revocation of Nasim's licences, namely that our power under paragraph 34(3) to confirm, reverse or vary the decision of

Council do not allow us to direct that a licence be granted to a completely different person other than the licence applicant.

### FHCO's Appeals

105. No such jurisdictional barrier exists in respect of FHCO's appeals against the Council's decision to refuse licences for the Six Properties. FHCO was notified of the Council's decision by letters dated 23 November 2018 [28], in which the reasons given were identical to those stated in the letter sent to Farina revoking the single licence held by her. These were Nasim's convictions for supplying false or misleading information and Tariq's conviction for falsifying gas safety certificates. No reasons as to why FHCO was not a fit and proper person to be a licence holder were identified.
106. We agree with Mr Bates' submission that when considering FHCO's fitness to be a licence holder it is important to bear in mind that a company is a separate legal entity, with a separate legal personality from its directors and officers.
107. We also note that the primary reason why the Council appears to contend that FHCO is not "fit and proper" is because it considers that a person associated with the company, namely Farina, one of the two directors of FHCO, is not a fit and proper person. However, for the reasons stated above, we reject the Council's contention as to Farina's fitness. Further, as Mr Bates' suggests, even if Farina fails the fit and proper test, it does not automatically follow that the same is true of FHCO.
108. In our determination, FHCO is a fit and proper person to hold the licences for the subject properties. There is no suggestion that FHCO has committed any offences, or contravened any provision of the law relating to housing or of landlord and tenant law that would prevent it from being a fit and proper person. Neither of its two directors, Tina and Farina, have any relevant convictions. Farina now has relevant experience in property management and is a fit and proper person to hold a property licence. FHCO is a member of the National Residential Landlords Association ("NRLA") [1035] and the Property Redress Scheme, the government approved consumer redress scheme for estate, lettings and property agents[1036].
109. Mr Underwood argued that Tina's evidence indicated that she was not exercising directorial functions independent of Farina. We accept that Tina lacks experience, having only started to manage properties in 2020, and was only able to do so for the nine-month period prior to the Council revoking the licences for Flats A,B,C, and D, 279 Wood Street. However, her oral evidence as to how she conducted her duties during those nine months demonstrated a professional attitude and understanding of her responsibilities. She also appears to have put her time to good use after the licences were revoked by attending and completing various relevant courses, as well as studying towards a Level 3 Award qualification in Managing Property and Residential Lettings, organised by the NRLA. Given our conclusion regarding Farina's fitness to be a license holder, we

do not consider Tina's lack of experience as a Director casts doubt upon FHCO's fitness.

110. Nor do we consider that the fact that the Council has not received answers to the 13 Questions casts doubt on FHCO's fitness to be a licence holder. Firstly, we agree with Mr Bates' submission, that the questions asked went beyond the closed list of permissible questions for HMO licence applications.
111. Section 63(5) of the 2004 Act gives the Secretary of State the power to make regulations regarding the making of HMO licence applications.
112. S.63(6)(c) provides that such regulations may specify the information that must be provided in connection with an application for a HMO licence.
113. The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 ("the 2006 Regulations") were made pursuant to s.63(5). Any application for a licence must include the information set out in Sch.2 para.2: reg.7(2)(a).
114. The 2006 Regulations were amended by the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (Amendment) (England) Regulations 2012, but the amendments made are not relevant to these applications.
115. Mr Bates relied upon the decision in *R. (on the application of Gaskin) v Richmond upon Thames LBC*, [2018] H.L.R. 8 (2017) in which the Divisional Court held, at paragraph 36, that the use of the definite article in s.63(6)(c) is highly significant: the words "specify the information which is to be supplied" meant that it is only those items of information listed in the Regulations whose provision can be made mandatory by the local housing authority. The list is a maximum, not a minimum. At paragraph 37, the Court said that there would be nothing wrong with an application form that invited the provision of additional information so long as it was made clear that this was voluntary.
116. The fact that none of 13 Questions comprised information set out in Sch.2 para.2: reg.7(2)(a) was not in dispute. Mr Underwood sought to distinguish *Gaskin* on the basis that the case concerned the information that is required to be provided in a HMO licence application form. This, he argued, was distinct from the present case, which concerned the Council's obligation to consider evidence and whether it is permissible to ask questions and draw inferences from the failure to answer such questions. He relied upon the House of Lord's decision in *Regina v Crown Court at Warrington, Ex parte RBNB (an unlimited company)* [2002] 1 WLR 1954, a case concerning whether RBNB was a fit and proper person to hold a licence to sell intoxicating liquor. At paragraph 18, Lord Bingham referred to the potential relevance of questions that cast doubt on the integrity of a proposed licensee. There was, said Mr Underwood, nothing wrong with the Council asking questions, and then having regard to the failure to respond to them.



117. As Mr Bates' argued, the problem with those submissions, is that the 13 Questions were not questions asked following acceptance of a licence application, they were, in our view, the imposition of a condition precedent to the acceptance of an application. In its letter of 20 February [1059] the Council said that it would be necessary for written representations and materials addressing the 13 Questions needed to be provided *before* it was prepared to consider FHCO Limited as an alternative licence holder. That was an inappropriate filter on the Council's consideration of FHCO as an alternative licence holder. The Council was entitled to require FHCO to provide the information specified in Sch.2 para.2: reg.7(2)(a) of the 2006 Regulations in connection with its application, and it was entitled to ask the 13 Questions so long as it made clear that the provision of that information was voluntary. It did not do so in this case, and we conclude that the failure to answer the 13 Questions, which Farina was said was made on legal advice, is not relevant to the question of FHCO's suitability to be a licence holder.
118. In any event, several of the 13 Questions appear to us to be irrelevant to the question of FHCO's fitness as they are directed to the question of Farina's fitness, rather than that of FHCO as a corporate identity. We recognise that Farina was, at the time, the sole director of FHCO, but it is hard to see why questions such as Farina's source of income and how the purchase of the subject properties was financed are relevant to the question of FHCO's fitness.
119. We therefore allow FHCO's appeals and reverse the Council's decision to refuse it licences in respect of the Six Properties. However, we consider the grant of three-year licences to be appropriate, rather than the usual five-years, in order for FHCO, a fairly new company with limited lettings experience, to demonstrate its suitability for the grant of longer licences.

### **Nasim's appeals against the decisions to impose IMOs for the Seven Properties**

120. The Council made IMOs for the Seven Properties on 6 December 2018 [258]. These were all properties for which Nasim's application for a licence had just been refused. The Council changed the locks to the properties and directed the occupiers to pay the rental income to the Council. The IMOs were to cease to have effect on 5 December 2019, unless revoked before that date.
121. Mr Bates' primary submission was that the Council was wrong to make IMOs under s.102(2) as the properties were already deemed to be licenced because of the effect of the EU Directive 2006/123 and the Provision of Services Regulations 2009. His position was that if the Council wanted to impose IMO's, the appropriate course of action was to revoke the licences that were deemed to have been granted, and then proceed to make IMOs under s.102(3). As the primary difference between s.102(2) and s.102(3) is that an IMO under s.102(3) does not come into effect until any appeal is determined (see s.105), Nasim would have been entitled to continue to deal with the properties during the period of the IMOs, meaning that the

Council had been unlawfully dealing with the properties. As we have determined above that Mr Bates' deemed grant of licences point fails, we reject this submission.

122. Mr Bates also argued that the Council was wrong to conclude that there was no reasonable prospect of the properties being licensed in the near future, as there was no reason to believe that an alternative licence-holder could not be found. He pointed out that FHCO was a fit and proper person.
123. The Council's position is that it could not be satisfied that FHCO was a fit and proper person to hold a licence as it did not receive answers to the 13 Questions. It also considered that Farina had demonstrated that she was complicit in the management and control of Nasim's properties, as well as in the attempted coverup of illegality.
124. Mr Underwood also argued that the appeals against the IMOs was academic, because when the Seven Properties were licensed to Lettings on 30 April 2020, the IMOs ceased to have any effect.

#### Decision on IMOs

125. We confirm the Council's decision to make IMOs for the Seven Properties.
126. After the Council refused to grant licences to Nasim for the Seven Properties on 23 November 2018, it was under an obligation to make IMOs if it concluded there was no reasonable prospect of the properties being licensed in the near future. We conclude that its decision to make the IMO's on 6 December 2018 cannot be criticised on the information available to it at that time. It had decided, correctly, that Nasim was not a fit and proper person to be a licence holder. Although FHCO was proposed as alternative licence holder, that proposal was not made until 1 February 2019 [884], nearly two months after the making of the IMOs. No alternative licence holder was proposed between 23 November 2018 when licences were refused and 6 December 2018, when the IMO's were made. It would clearly be undesirable for the subject properties to remain unlicensed for a significant period of time and the Council's conclusion that there was no reasonable prospect of the Seven Properties being licensed in the near future was, in our view, one that it was entitled to make.
127. In any event, it is doubtful that as at 6 December 2018, FHCO would have been an appropriate alternative licence holder. Although it had been incorporated on 16 November 2017 [1143] its first accounts for the period up to 30 November 2018 [1144] show that it had no assets or reserves and no employees.

#### **Nasim's appeals against the decisions to impose FMOs for the Seven Properties**

128. The IMOs were converted to FMOs on 5 December 2019 [32]. Luxcool is now the entity responsible for these properties, and pursues the appeals. It is now the freeholder for Flats 1 – 5, 109-111 Old Church Road and it has

an interest in the reversion of the assured shorthold tenancies for Flats A and Flat B, 158 Blackhorse Road, under an arrangement with Nasim, which the current freeholder, Blackbrook Capital Limited has accepted.

129. Luxcool is also pursuing a separate appeal before this tribunal, brought on 9 December 2019 (LON/00BH/HXL/2019/0001-0007) in which it has challenged the accounts maintained in respect of IMOs at the Seven Properties (“the Accounting Appeal”).
130. Mr Bates argued that the Council was wrong to make FMOs because the IMOs, which were a condition precedent to an FMO, were themselves invalid. In addition, he submitted that the Council’s decision failed to take into account the fact that there was another person who could have been granted the licences. This was either FHCO, which had been proposed as an alternative licence holder on 1 February 2019, or Lettings, which had been proposed as an alternative licence holder on 28 November 2019, having made a made a formal application on 3 December 2019.
131. He also argued that the quality of the management of the properties by the Council during the IMOs had been poor and of a lower standard than another manager (such as FHCOs or Lettings) would have provided so that it was irrational for the Council to conclude that another person could not be granted a licence.
132. Finally, he pointed out that Flats 3 and 4, Old Church Road were vacant when the FMOs were made and had been for several months. As a FMO can only be made under s.113(2) where the property requires a licence, and because, as at 5 December 2019, neither flat required one as they were unoccupied, it was, he said, wrong to make a FMOs for those two flats.
133. The Council’s position is that FHCO is not, and never has been a fit and proper person to hold a licence. As to the suitability of Lettings, Mr Underwood’s submission was that the proposal was made too late in the day for the applications to be processed in time to avoid the Council’s duty to make FMOs under s.113(2). He accepted that Flats 3 and 4, Old Church Road, were vacant as at the date of the FMOs, but argued that temporary vacancy does not avoid the requirement for a licence. In his submission, to succeed on this argument, the Applicants would need to establish they had no intention of letting the flats, which they could not do in circumstances where Luxcool had specifically granted consent to let one of the flats and its case in the Accounting Appeal is that the Council erred in not seeking to let the other flat.

#### Decision on FMOs

134. We confirm the Council’s decisions to make FMOs for the Seven Properties.
135. Mr Bates first submission, that the FMOs were invalid because the IMOs were invalid fails given our conclusion on the validity of the IMOs. As to the suggestion that the Council should have granted licenses to FHCO, Anthony Gold made representations regarding the notices of proposal to

make FMOS in its letter of 28 November 2019 to the Council **[1114]**. Whilst the author of that letter referred to FHCO having previously been proposed as an alternative licence holder, he also stated that both Nasim and Farina were suitable licence holders. The letter then ends with a section entitled “Conclusion” in which the author states, referring to Lettings:

“We have made a proposal for the appointment of a third party as the licence holder and their credentials, experience and past dealing with the borough will give the Council confidence that these properties will be managed well.....

In the event that you are not willing to grant a licence to Letting International Ltd we expect a further Notices of Proposals to make Final Management Orders to be served, with proper management schemes.”

136. Construing that letter as a whole, it appears to us that the Applicants’ position, when the letter of 28 November 2019 was sent, was that they wished the Council to consider Lettings as an alternative licence holder, and not FHCO or Farina personally.
137. The Council responded to Anthony Gold’s letter of 28 November by email dated 29 November **[1122]** in which it said that if formal applications from Lettings were submitted as a matter of urgency they would be progressed as quickly as possible. It was also pointed out that the Council was under an obligation to issue FMOs the following week, but that if licences were subsequently granted to Lettings, that the FMOs would be revoked in accordance with section 122 of the 2004 Act. Formal applications were then submitted on 3 December 2019 **[1121]**.
138. We agree with Mr Underwood that these applications were made too late in the day for them to be determined before the Council’s duty to make FMOs under s.113(2) arose, two days later, on 5 December 2019. Mr Beach accepted that the Council’s letters of 5 December 2019, enclosing the FMOs, incorrectly stated that no further application for a licence had been received since the IMOs was issued. Applications had, in fact, been received on 3 December, but there was obviously no realistic prospect of these being determined by 5 December, and the error in the letter is therefore not material. As at 5 December, the Council was right to decide that it was unable to grant a licence to Lettings. The need for further enquiries is evident from the Council’s email of 12 December 2019 to Anthony Gold **[984]** in which a copy of the management agreement between Lettings and the landlord was requested as part of the Council’s fit and proper person checks.
139. Nor do we consider that the making of the FMOs was erroneous because licences could have been granted to FHCO or Farina. Although FHCO had been proposed as an alternative licence holder on 1 February 2019, there is no evidence before us to suggest that either it, or Farina, made formal

applications for licences in compliance with requirements of Section 63(5) of the 2004 Act and the 2006 Regulations.

140. Turning to Flats 3 and 4, Old Church Road, Mr Beach's evidence [185] was that the Council's view was that the fact these flats were temporarily vacant did not mean that they ceased to be rental properties for which a licence was required. He also pointed out that Lettings submitted licence applications for the two flats amongst those received on 3 December 2019. Alternatively, he contended that it would have been appropriate for the Council to impose FMOs for the two flats under s.113(3)(b) on the basis that they were necessary for the purpose of protecting, on a long-term basis, the health, safety or welfare of persons occupying the house, or persons occupying or having an estate or interest in any premises in the vicinity. Mr Underwood argued that to successfully argue that temporary vacancy meant that no licence was required, the Applicants would need to establish that they had no intention of letting the flats.
141. The Council's decisions concerning these two flats were made under s.113(2). We agree with Mr Bates that it had no jurisdiction to do so as the s.113(2) duty to make a FMO only arises if a house is required to be licensed under Part 2 or 3 of this Act. The question of licensing for these flats arises in the context of Part 3 of the Act. S.85(2) provides that a licence under Part 3 is a licence authorising occupation of the house concerned under one or more tenancies or licences within s.79(2)(b). S.79(2)(b) provides that Part 3 applies to a house if the whole of it is occupied either (i) under a single tenancy or licence that is not an exempt tenancy or licence .... or (ii) under two or more tenancies or licences in respect of different dwellings contained in it, none of which is an exempt tenancy or licence [...].
142. The flats therefore needed to be occupied under a tenancy or licence in order to be subject to licencing under Part 3. As they were not occupied, they were not subject to the Part 3 regime, no licence was required, and the s.113(2) duty did not arise. As this is a question of jurisdiction, there is no need for the Applicants to show that they did not intend to let the flats.
143. The Council would, however, have had jurisdiction to make FMOs for the two flats under s.113(3), as under ss.113(3)(a) it has a discretion to do so where, on expiry of an IMO, a house is not one that needs to be licensed, but the authority considers making a FMO to be necessary for the reasons specified in ss.113(3)(b).
144. Mr Beech addresses this at paragraph 14 of his witness statement dated 16 February 2021, where he says that it would have been right for the Council to have imposed FMOs under s.113(3) if it was wrong to do so under s.113(2). In his oral evidence he also emphasised the importance of licensing properties to address anti-social behaviour and to ensure borough-wide licensing of properties.

145. This is a re-hearing of the Council's decision. On the balance of probabilities, we accept that it would have been appropriate for the Council to make a FMO under s.113(3)
146. At paragraph 19 of the Respondent's reply dated 23 March 2021 **[148]** the Council stated that Luxcool had specifically granted consent to let one of the flats, and that its case in the Accounting Appeal is that the Council should have let the other flat. It appears to us, therefore, that there was a clear understanding on the part of Luxcool that both flats should be let as soon as possible after they became vacant, in order to secure rental income.
147. As such, we agree that, having regard to the long-term position, the imposition of FMOs would have been appropriate in order to protect, the health, safety and welfare of the persons who were to occupy the house in the future. Once occupied under a tenancy or licence the flats would, of course, have been immediately subject to mandatory licencing under Part 3.
148. We therefore uphold the Council's decisions to make FMOs for these two flats but vary the grounds on which the Orders were made to refer to Section s.113(3) of the 2004 Act, and vary the reasons for making the Orders to those specified in the previous paragraph.
149. Luxcool's complaint regarding the quality of the management of the two flats by the Council during the period of the IMOs appears to us to be an issue for its Accounting Appeal.

Amran Vance

16 August 2021

## **ANNEX 1**

### **RIGHTS OF APPEAL**

#### *Appealing against the tribunal's decisions above*

1. A written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties.
3. 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.
4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking.

**ANNEX 2**

**SCHEDULE OF PROPERTIES**



**LON/00BH/HSL/2019/0002-0014**

**LON/00BH/HSV/2019/0002-0024**

**LON/00BH/LXO/2019/0001-0007**

**IN THE FIRST TIER TRIBUNAL PROPERTY CHAMBER**

**(RESIDENTIAL PROPERTY)**

**B E T W E E N:**

**(1) NASIM HUSSAIN**

**(2) FHCO LIMITED**

**(3) FARINA HUSSAIN**

**(4) LUXCOOL LIMITED**

Applicants

**- and -**

**LONDON BOROUGH OF WALTHAM FOREST**

Respondent

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**APPLICANTS' UPDATED  
SCHEDULE OF PROPERTIES  
MAY 2021**

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	<b>Property Address</b>	<b>Description of Property</b>	<b>Appeal against licence revocation or refusal?</b>	<b>IMO made?</b>	<b>FMO made?</b>	<b>Licence applicant/ licence holder before revocation as applicable</b>	<b>Freeholder (December 2018/present)</b>
1.	Flat 1 109-111 Old Church E4 6ST	2 Bedroom flat, Living Room, Kitchen	Refusal	Yes – s101(2)	Yes	Nasim Hussain	Luxcool Limited throughout
2.	Flat 2 109-111 Old Church E4 6ST	2 Bedroom flat, Living Room, Kitchen	Refusal	Yes – s101(2)	Yes	Nasim Hussain	Luxcool Limited throughout
3.	Flat 3 109-111 Old Church E4 6ST	2 Bedroom flat, Living Room, Kitchen	Refusal	Yes – s101(2)	Yes	Nasim Hussain	Luxcool Limited throughout
4.	Flat 4 109-111 Old Church E4 6ST	3 Bedroom flat, Living Room, Kitchen	Refusal	Yes – s101(2)	Yes	Nasim Hussain	Luxcool Limited throughout
5.	Flat 5 109-111 Old Church E4 6ST	Studio flat	Refusal	Yes – s101(2)	Yes	Nasim Hussain	Luxcool Limited throughout
6.	Flat A 158 Blackhorse Road E17 6NH	2 Bedroom flat, Open Living Room and Kitchen	Refusal	Yes – s101(2)	Yes	Nasim Hussain	Nasim Hussain/Blackbrook Capital Limited
7.	Flat B 158 Blackhorse Road E17 6NH	Studio flat	Refusal	Yes – s101(2)	Yes	Nasim Hussain	Nasim Hussain/Blackbrook Capital Limited
8.	160 Blackhorse Road E17 6NH [First Floor Far Left 152-160]	5 Bedroom flat. Open Kitchen and Living Room	Revocation	Yes – s102(3)	No	Nasim Hussain	Nasim Hussain/Blackbrook Capital Limited
9.	158 Blackhorse Road E17 6NH	3 Bedroom flat. Open Kitchen and Living Room	Revocation	Yes – s102(3)	No	Nasim Hussain	Nasim Hussain/Blackbrook Capital Limited
10.	59A Park Road E10 7BZ	1 Bedroom flat, Living room, kitchen.	Revocation	Yes – s102(3)	No	Nasim Hussain	Nasim Hussain/HPP Capital Limited
11.	59B Park Road	1 Bedroom flat,	Revocation	Yes – s102(3)	No	Nasim Hussain	Nasim

	E10 7BZ	Living room, Kitchen					Hussain/HPP Capital Limited
12.	61 Ground Floor Flat A Park Road E10 7BZ [Front]	1 Bedroom flat, Living room, Kitchen	Revocation	Yes – s102(3)	No	Nasim Hussain	Nasim Hussain/HPP Capital Limited
13.	61A Park Road E10 7BZ [Ground Floor Rear]	2 Bedroom flat. Open Kitchen and sitting.	Revocation	Yes – s102(3)	No	Nasim Hussain	Nasim Hussain/HPP Capital Limited
14.	61B Park Road E10 7BZ [First Front]	2 Bedroom flat, Living room, Kitchen	Revocation	Yes – s102(3)	No	Nasim Hussain	Nasim Hussain/HPP Capital Limited
15.	61 First Floor Rear Park Road E10 7BZ [First Floor Front]	2 Bedroom flat, Living room, Kitchen	Revocation	Yes – s102(3)	No	Nasim Hussain	Nasim Hussain/HPP Capital Limited
16.	277-279 A Wood Street E17 3NR	Studio flat	Revocation	Yes – s102(3)	No	Nasim Hussain	Nasim Hussain/HPP Capital Limited
17.	277-279 B Wood Street E17 3NR	2 Bedroom flat, Living room, Kitchen	Revocation	Yes – s102(3)	No	Nasim Hussain	Nasim Hussain/HPP Capital Limited
18.	277-279 C Wood Street E17 3NR	1 Bed and Sitting room	Revocation	Yes – s102(3)	No	Nasim Hussain	Nasim Hussain/HPP Capital Limited
19.	277-279 D Wood Street E17 3NR	2 Bedroom flat, Living room, Kitchen	Revocation	Yes – s102(3)	No	Nasim Hussain	Nasim Hussain/HPP Capital Limited
20.	415 A Lea Bridge Road E10 7EA	1 Bedroom flat, Open Living room and Kitchen	Revocation	Yes – 102(3)	No	Nasim Hussain	Nasim Hussain/HPP Capital Limited
21.	415 B Lea Bridge Road E10 7EA	Studio flat	Revocation	Yes – 102(3)	No	Nasim Hussain	Nasim Hussain/HPP Capital Limited
22.	415 C Lea Bridge Road E10 7EA	1 Bedroom flat, Living room, Kitchen	Revocation	Yes – 102(3)	No	Nasim Hussain	Nasim Hussain/HPP Capital Limited

23.	415 D Lea Bridge Road E10 7EA	1 Bedroom flat, Living room, Kitchen	Revocation	Yes – 102(3)	No	Nasim Hussain	Nasim Hussain/HPP Capital Limited
24.	58 A Hatherley Road E17 6SF [Ground Floor Flat]	3 Bedroom flat. Open Kitchen and Living Room	Revocation	Yes – 102(3)	No	Nasim Hussain	Nasim Hussain/HPP Capital Limited
25.	58 B Hatherley Road E17 6SF [First Floor Flat]	3 Bedroom flat, Living room, Kitchen	Revocation	Yes – 102(3)	No	Nasim Hussain	Nasim Hussain/HPP Capital Limited
26.	First Floor Flat 80 Hatherley Road E17 6AB	1 Bedroom flat, Living room, Kitchen	Revocation	No	No	Nasim Hussain	Tariq Hussain/HPP Capital Limited
27.	Ground Floor Front Flat 80 Hatherley Road E17 6AB	2 Bedroom flat, Living room, Kitchen	Revocation	No	No	Nasim Hussain	Tariq Hussain/HPP Capital Limited
28.	Ground Floor Rear Flat 80 Hatherley Road E17 6AB	Studio	Revocation	No	No	Nasim Hussain	Tariq Hussain/HPP Capital Limited
29.	44 Ground Floor Westbury Road E17 6RH	3 Bedroom flat. Open Kitchen and Living Room	Revocation	Yes – 102(3)	No	Nasim Hussain	Nasim Hussain/HPP Capital Limited
30.	Flat C 158 Blackhorse Road E17 6NH	1 Bedroom, Open Kitchen and Living room.	Refusal	No	No	FHCO	Nasim Hussain/Blackbrook Capital Limited
31.	Flat D 158 Blackhorse Road E17 6NH	1 Bedroom, Open Kitchen and Living room.	Refusal	No	No	FHCO	Nasim Hussain/Blackbrook Capital Limited
32.	Flat E 158 Blackhorse Road E17 6NH	1 Bedroom, Open Kitchen and Living room.	Refusal	No	No	FHCO	Nasim Hussain/Blackbrook Capital Limited
33.	Flat F 158	1 Bedroom,	Refusal	No	No	FHCO	Nasim

	Blackhorse Road E17 6NH	Open Kitchen and Living room.					Hussain/Blackbrook Capital Limited
34.	Flat G 158 Blackhorse Road E17 6NH	1 Bedroom, Open Kitchen and Living room.	Refusal	No	No	FHCO	Nasim Hussain/Blackbrook Capital Limited
35.	Flat H 158 Blackhorse Road E17 6NH	1 Bedroom, Open Kitchen and Living room.	Refusal	No	No	FHCO	Nasim Hussain/Blackbrook Capital Limited
36.	44 First Floor Westbury Road E17 6RH	2 Bedroom flat, Living Room, Kitchen	Revocation	Yes – 102(3)	No	Farina Hussain	Nasim Hussain/HPP Capital Limited