FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**CHI/00HB/HBA/2022/0001**
Applicant	**:**	**Bristol City Council**
Representative	**:**	**Kate Burnham-Davies** **Specialist Lawyer** **Bristol City Council**
Respondent	**:**	**Ms Naomi Knapp**
Representative	**:**	**Charles Auld of Counsel** **Henrique Griffiths LLP**
Type of application	**:**	**Application for a banning order – section 15(1) of the Housing and Planning Act 2016**
Tribunal Members	**:**	**Judge Tildesley OBE** **Mr M Woodrow MRICS**
Date of Hearing	**:**	**31 March 2022 Havant Justice Centre Hybrid Hearing** **8 April 2022 Reconvened in the absence of parties**
Date of Decision	**:**	**6 June 2022**

DECISION

SUMMARY OF THE DECISION

The Tribunal is satisfied that the Respondent has flouted her legal obligations in respect of the management of her property portfolio and has rented out accommodation which was substandard, and that the Respondent has failed to follow up on her agreements with the Council to improve the management and conditions of her properties. The Tribunal, therefore, determines that the making of a Banning Order is both necessary and proportionate to ensure that her property portfolio is managed to the appropriate standards.

The Tribunal gave an indication at the hearing on 31 March 2022 that if it made a Banning Order it would invite representations on the length and the terms of the Banning Order, and exceptions to it. Counsel indicated that if an Order was made he could not argue against the five year period proposed by the Council. The Tribunal wishes to reserve its position on length until it has heard the parties' submissions but it indicates at this stage that the length of the Order would be no more than five years.

The Tribunal invites the representations from the parties on the length and terms of the Order by **20 June 2022** which should be filed and served by email to rpsouthern@justice.gov.uk. The Tribunal would then fix a video hearing for two hours in the 14 days commencing **27 June 2022** to finalise the terms of the Banning Order. The parties are to provide dates to avoid by **14 June 2022**.

The Tribunal advises the parties to refrain from publishing the decision until the Order has been finalised. The right to apply for permission to appeal the decision will start on the date the Order is finalised and distributed.

The Proceedings

1. On 13 January 2022 Bristol City Council ("the Council) applied for a banning order against the Respondent who had been convicted of eight 'banning order offences' under section 15(1) of the Housing and Planning Act 2016 (2016 Act).

2. A 'banning order' is an order made by the Tribunal, banning a person (for a period of at least 12 months) from:

    (i) letting housing in England;

    (ii) engaging in English letting agency work;

(iii) engaging in English property management work; or

(iv) doing two or more of those things.

3. On 26 January 2022 the Tribunal directed a hearing to take place on 8 March 2022 and required the parties to exchange statements of case and replies.

4. On 8 March 2022 the hearing was adjourned until 31 March 2022 for the Respondent to file and serve (1) a short witness statement in reply to the witness statement of Andrew Riddell in particular the finances of her rental business and clarification of the Respondent's home address; (2) to indicate whether the Respondent was calling Greg Bigwood and Igor Cozma as witnesses and, if she was, to file and serve witness statements by the 21 March 2022; (3) to inform the Councils solicitor of Counsel's issues on procedure with the Council's reply and the witness statement of Andrew Riddell, the Tribunal gave the Council permission to correct the procedural irregularities if any, and file and serve compliant documents by 29 March 2022 with the skeleton.

5. At the hearing on 31 March 2022 Mrs Kate Burnham Davies represented the Council. The Council called one witness, Mr Andrew Riddell BSc (Hons) a Senior Environmental Officer who had been employed by the Council in the Private Housing Team since October 2003. Mr Riddell was a qualified Environmental Health Officer and a member of the Chartered Institute of Environmental Health. Mr Charles Auld of Counsel represented the Respondent who attended in person and gave evidence. The parties and Mr Woodrow attended the hearing by video link using the Common Video Platform.

6. The Council supplied a revised hearing bundle which comprised 1339 pages. The page numbers of the documents referred to in this decision are in [ ]. The parties' representatives produced skeletons.

7. The Tribunal reserved its decision on 31 March 2022 and reconvened in the absence of the parties on the 8 April 2022 to discuss the evidence and reach a decision.

Overview of the Issues

8. The Respondent is a large portfolio landlord in Bristol and owned 29 properties available for residential letting of which 18 required licensing as an HMO either under the mandatory scheme or under the additional licensing scheme. Mrs Knapp has been a professional landlord for 29 years.

9. Since 2016 the Council has had concerns with what it perceived to be the Respondent's poor standard of management of her properties and her history of non-compliance with legal requirements. In September 2016 the Council had a meeting with the Respondent to discuss its concerns. The

Respondent promised to improve the standard of her management, and outlined steps of how this would be achieved. In the light of the Respondent's responses the Council decided that she could retain her status as a licence holder [139-147]. On 12 March 2020 the Council imposed a financial penalty in the sum of £6,649 for offences contrary to Section 72 of the Housing Act 2004 as well as Section 234 of the Housing Act 2004 in respect of the property at 50 Wingfield Road [150] which was paid by the Respondent. On 11 November 2020 the Council issued the Respondent with notices of intention to refuse and revoke HMO licences. On 17 February 2021 the Council suspended the review of whether the Respondent was a fit and proper person to hold a HMO licence on the basis that the Respondent handed the entire management responsibility for her portfolio including being the licence holder to Bristol Property Partnership (BPP). On 19 April 2021 the Respondent was convicted of seven offences under section 234 of the 2004 Act, and one offence of failing to comply with licence conditions under section 72(3) of the 2004 Act. On 7 July 2021 the Council received a complaint from tenants at 29 Aubrey Road. The Council said its investigation revealed numerous breaches of the Management of Houses in Multiple Occupation (England) Regulations 2006 ("the 2006 Regulations). On 1 September 2021 BPP withdrew its applications for HMO licences in respect of the Respondent's properties. On 29 September 2021 the Council served a Notice of Intent to apply for a Banning Order [72].

10. Mr Riddell carried out the investigation of whether the Council should apply for a Banning Order. On 29 September 2021 Mr Riddell's recommendation to give Notice of Intent was signed off by Mr Jonathan Mallinson, Private Housing Manager [94]. On 29 October 2021 the Respondent made representations in response to the Notice [95]. On 13 January 2022 Mr Riddell considered the Respondent's representations and decided that "no substantive issues have been raised to give the Council confidence that the Respondent would not continue to present a significant risk to tenants in the private rented sector". Mr Riddell recommended that the Council applied to the First-tier Tribunal for a Banning Order for five year. Mr Mallinson agreed with the recommendation and signed it off [119].

11. The Respondent explained that she gave up her career as an IT director/consultant working for several multinational companies to do charity and Christian missionary work overseas. When she returned to the UK she set up a local charity to help the homeless and the marginalised.

12. The Respondent stated that she had built up her property portfolio over 37 years which comprised three distinct categories: those let to students; those let to professionals and those let to marginalised individuals. The Respondent maintained that she was not making vast profits from her portfolio and that she was providing a public service by letting properties at affordable rents to marginalised individuals.

13. The Respondent considered that she was being treated unfairly by the Council. The Respondent asserted that she had done her best to engage with the Council. The Respondent pointed out that she had held HMO licences for larger properties for 10-15 years with relatively few problems. The Respondent stated that suddenly in 2019, 13 of her properties which were mainly four bedrooms, had become licensable under the additional licensing scheme introduced by the Council. The Respondent said that she had wrote to the Council to agree a sensible schedule to implement the necessary works to meet the standards for additional licensing. The Council did not respond to her request. The Respondent said she had requested face to face meetings without success.

14. The Respondent contended that the Council had not appreciated the challenges posed by the COVID 19 Pandemic and Brexit in gaining access to her properties and in engaging trades people to carry out repairs to her properties.

15. The Respondent considered that her convictions for the eight banning order offences were minor, and that in any event she had carried out all the necessary works to put matters right prior to the court hearing. The Respondent said that overall her tenants were content with the accommodation provided. In this regard the Respondent referred to a tenant satisfaction survey carried out on various dates from November 2020 to February 2022 [944-990] in which she said 95 per cent of the tenants expressed their satisfaction with the property. The Respondent also pointed out that tenants in 14 of her properties have expressed a wish to extend their tenancies.

16. The Respondent did not believe a Banning Order necessary or appropriate in light of her standing as a landlord of 37 years experience and her intention to engage two managing agents to deal with the properties. The Respondent considered that a Banning Order would have an adverse impact on the marginalised individuals housed in her properties because they would not be able to find alternative accommodation at affordable rents.

17. The issues in this case are:

    a) **The integrity of the Council's decision making processes to apply for a Banning Order**: Counsel for the Respondent contended that the Council had failed properly to consider the Respondent's representations which was an express statutory requirement. In addition Counsel questioned whether Mr Riddell should have been involved in the decision making process considering that he was the primary witness of fact and questioned the relevance of some of the matters taken into consideration by Mr Riddell for making the application.

    b) **The seriousness of the offences**: The Council argued that seriousness should be viewed in the context of the penalties

imposed and of the Respondent's overall conduct both preceding and after the convictions which, in the Council's view, aggravated the seriousness of the offences. In contrast, the Respondent focused on the intrinsic nature of the offences themselves which, in the Respondent's view, were regulatory and posed minimal risks to the tenants and could not, therefore, be characterised as the most serious of offences. The Respondent also relied on the fact that when she found out about the breaches of the 2006 Regulations she took action to remedy them. The Respondent asserted that this was not a case where she had blatantly ignored her obligations as a landlord.

c) **The likely effect of the Banning Order**: The principal area of dispute between the parties was the likely impact of any Order on those marginalised tenants. The Council considered that all the Respondent's tenants would benefit from legally compliant management and high quality professional advice if an Order was granted and the Respondent's portfolio was managed by a suitably professional agent. The Respondent disagreed, contending that if a commercial agent managed the portfolio rents would likely increase which could mean that about 30 marginalised tenants would be deprived of their homes.

Legislative Context

18. Under section 16 of the 2016 Act a Tribunal may make a Banning Order against a person who has been convicted of a banning order offence preventing him/her from letting housing in England, engaging in English letting agency work; engaging in English property management work; or a combination of these.

19. The legislation for Banning Orders is found in sections 14 to 27 of Chapter 2 of Part 2 the 2016 Act. Part 2 of the Act is headed "Rogue Landlords and Property Agents in England". Section 13 states that Part 2 is about rogue landlords and property agents in England and then summarises a range a measures which can be taken against them, namely, a banning order, the establishment of a database of rogue landlords and property agents.

20. The omission from Part 2 is that it contains no definition of a rogue landlord or property agent. In this regard guidance is found in the debates in Parliament on Banning Orders as reported in Hansard and in the Foreword to the *Guidance for Local Housing Authorities on Banning Order Offences under the Housing Act 2016,* (April 2016 Ministry of Housing, Communities and Local Government) ("2016 Guidance").

> "The private rented sector is an important part of our housing market, housing 4.5 million households in England[1]. The quality of privately rented housing has improved rapidly over the past decade with 82% of

private renters satisfied with their accommodation, and staying in their homes for an average of 4 years.

The Government wants to support good landlords who provide decent well maintained homes and is keen to strike the right balance on regulation in order to avoid stifling investment in the sector.

But a small number of rogue or criminal landlords knowingly rent out unsafe and substandard accommodation. We are determined to crack down on these landlords and disrupt their business model.

The Government is clear that the small minority of rogue landlords and property agents who knowingly flout their legal obligations, rent out accommodation which is substandard and harass their tenants should be prevented from managing or letting housing. The Housing and Planning Act 2016 introduced a range of measures to crack down on rogue landlords.

On 6 April 2018, new measures come into force:

- Banning orders for the most serious offenders;
- A database of rogue landlords and property agents against whom a banning order has been made, which may also include persons convicted of a banning order offence or who have received two or more financial penalties".

21. Section 14 defines Banning Order, and Banning Order Offence. Under Section 14(3) Banning Order Offence means an offence of a description specified in the in regulations made by the Secretary of State. The relevant Regulations are The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 SI 2018 No 216 ("2018 Regulations).

22. Lord Bourne of Aberystwyth explained in the House of Lords Debate on the 2018 Regulations Hansard HL 22 January 2018:

> "Banning orders target the most prolific offenders who have been convicted of serious housing, immigration and other criminal offences connected to their role as landlords. They will prevent rogue landlords and property agents earning income from renting out properties or engaging in letting agency or property management work, forcing them either to raise their standards or to leave the sector entirely.
>
> Noble Lords will be aware that we did not include specific banning order offences in the Housing and Planning Act 2016. During the passage of the Act, concerns were raised about the nature and scope of banning order offences. In response we held a public consultation on which existing criminal offences should be regarded as banning order offences. We also amended the Act to ensure that the regulation-making powers were subject to the affirmative procedure to enable full scrutiny of the proposed offences by Parliament.

> The regulations before the House today specify which offences will constitute banning order offences under Section 14 of the Act. I will summarise briefly the offences set out in the schedule to the regulations. All the offences listed in the regulations are existing criminal offences. By making the offences "banning order offences", we are not introducing new offences but simply introducing a new sanction for pre-existing criminal offences.
>
> Broadly speaking, there are three types of offences in the regulations. The first type is housing offences relating to a breach of existing requirements under the Housing Act 2004 and other housing-related legislation, provided the person convicted of the offence has not received an absolute or conditional discharge. This condition is in place to ensure that banning orders remain a proportionate sanction. We want to target only the worst offenders, who have been convicted of serious housing offences.
>
> Offences include failure to comply with an improvement or overcrowding notice, failure to comply with houses in multiple occupation licensing and selective licensing of other privately rented properties, and offences relating to fire and gas safety. They also include the unlawful eviction of tenants or violence or harassment towards tenants by the landlord or letting agent. Such offences are serious and directly impact on the health and safety of tenants at a property. These offences are directly related to the offender's role as a landlord, and it is right that they are included as banning order offences.
>
> The second type of offence is an immigration offence under Part 3 of the Immigration Act 2014.
>
> The third type of offence is a serious criminal offence with a connection to the housing or the tenant on the part of the landlord. A banning order may be sought where a person has been convicted in the Crown Court of a serious criminal offence including fraud, misuse of drugs or sexual offences".

23. Section 15 of the 2016 Act sets out the procedure that a Local Authority must follow when applying for a Banning Order. Section 15 provides:

> "(1) A local housing authority in England may apply for a banning order against a person who has been convicted of a banning order offence.
>
> (2) If a local housing authority in England applies for a banning order against a body corporate that has been convicted of a banning order offence, it must also apply for a banning order against any officer who has been convicted of the same offence in respect of the same conduct.
> (3) Before applying for a banning order under subsection (1), the authority must give the person a notice of intended proceedings—
>
> > (a) informing the person that the authority is proposing to apply for a banning order and explaining why,
> > (b) stating the length of each proposed ban, and

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

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

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

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

24. The 2016 Guidance was prepared as a guide for Local Housing Authorities ("LHA") to help them understand how to use their new powers to ban landlords from renting out property in the private rented sector. The Guidance is non-statutory.

25. Chapter 3 of the 2016 Guidance advises Local Housing Authorities on the factors that it should take account of when applying for a Banning Order. A Local Housing Authority is expected to develop its own policy on applications for a Banning Order. The 2016 Guidance states that it is the Department's expectation that a Local Housing Authority would pursue a banning order for the most serious offenders.

26. Para 3.3 of the 2016 Guidance lists the factors that a Local Housing Authority should have regard to when deciding whether to apply for a Banning Order and the length of such orders. This includes:

"The seriousness of the offence. All Banning Order offences are serious. When considering whether to apply for a Banning Order the Local Housing Authority should consider the sentence imposed by the Court in respect of the Banning Order offence itself. The more severe the sentence imposed by the Court, the more appropriate it would be for a Banning Order to be made. For example, did the offender receive a maximum or minimum sentence or did the offender receive an absolute or conditional discharge? Such evidence will later be considered by the First-tier Tribunal when determining whether to make, and the appropriate length of a Banning Order.

Previous convictions/rogue landlord database. A Local Housing Authority should check the rogue landlord database in order to establish whether a landlord has committed other banning order offences or has received any civil penalties in relation to banning order offences.

The harm caused to the tenant. This is a very important factor when determining whether to apply for a banning order. The greater the harm or the potential for harm (this may be as perceived by the tenant), the longer the ban should be. Banning order offences include a wide range of offences, some of which are more directly related to the health and safety

of tenants, and could therefore be considered more harmful than other offences (such as fraud).

Punishment of the offender. A banning order is a severe sanction. The length of the ban should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending. It is, therefore, important that it is set at a high enough level to remove the worst offenders from the sector. It should ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.

Deter the offender from repeating the offence. The ultimate goal is to prevent any further offending. The length of the ban should prevent the most serious offenders from operating in the sector again or, in certain circumstances; help ensure that the landlord fully complies with all of their legal responsibilities in future. The length of ban should therefore be set at a long enough period such that it is likely to deter the offender from repeating the offence.

Deter others from committing similar offences. An important part of deterrence is the realisation that (a) the local authority is proactive in applying for banning orders where the need to do so exists and (b) that the length of a banning order will be set at a high enough level to both punish the offender and deter repeat offending".

27. Section 16 sets out the powers of the First-tier Tribunal when making a Banning Order:

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

(a) has been convicted of a banning order offence, and
(b) was a residential landlord or a property agent at the time the offence was committed (but see subsection (3).

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

(3) Where an application is made under section 15(1) against an officer of a body corporate, the First-tier Tribunal may make a banning order against the officer even if the condition in subsection (1)(b) of this section is not met.

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

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

28. Paragraph 5.2 of the Guidance states that the First-tier Tribunal is not bound by it but the Tribunal may have regard to it.

29. Section 17 deals with the Duration and Effect of Banning Order

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

30. The remaining sections 17 – 28 of Chapter 2 dealing with Banning Orders are not relevant to the circumstances of this case.

Consideration

31. The Tribunal's starts by making findings of fact against the various matters set out in section 16 of the 2016 Act.

Whether the Respondent had been convicted of a banning order offence?

32. The Council produced a Memorandum of Entry of the Register of Avon and Somerset Magistrates Court which showed that on 19 April 2021 at Bristol Magistrates' Court:

1) The Respondent pleaded guilty to three offences of failing to comply with the Regulations of the Management of Houses in Multiple Occupation (England) 2006 contrary to section 234 of the Housing Act 2004 committed on 23 July 2020 at 202 St Johns Lane, Bedminster, Bristol for which she was fined £2,000 (Regulation 3), £3,000 (Regulation 4(4)), and £3,000 (Regulation 7(4).

2) The Respondent pleaded guilty to one offence of failing to comply with the Regulations of the Management of Houses in Multiple

Occupation (England) 2006 contrary to section 234 of the Housing Act 2004, and one offence of failing to comply with conditions of an HMO licence contrary to sections 72(3) and 72(7) of the Housing Act committed on 19 August 2020 at 69 Wedmore Vale, Bedminster, Bristol for which she was fined £3,000 (Regulation 7(4), and £3,000 (Breach of HMO licence conditions).

3) The Respondent pleaded guilty to three offences of failing to comply with the Regulations of the Management of Houses in Multiple Occupation (England) 2006 contrary to section 234 of the Housing Act 2004 committed on 7 September 2020 at 7 Dartmoor Street Bristol for which she was fined £2,000 (Regulation7(1)), £3,000 (Regulation4(1)), and £3,000 (Regulation 4(4)).

33. The Respondent was fined a total of £22,000 and ordered to pay costs of £7,407.59

34. The Tribunal observes that Offences under section 234(3) of the Housing Act 2004 (failing to comply management regulations in respect of HMOs) and under section 72(3) of the Housing Act (failing to comply with conditions of a licence are named as a Banning Order offences in Schedule 1 of The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018. Further the Respondent has committed these Offences after 6 April 2018.

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

Whether the Respondent was a Residential Landlord at the time Banning Order Offences were Committed?

36. The Respondent accepted that she had been a landlord of residential properties for 29 years. At the time the Banning Order Offences were committed the Respondent had a portfolio of 32 residential properties which included the three properties named in the Memorandum of the Register Entries for Bristol Magistrates Court on 19 April 2021.

37. In connection with the three subject properties, the Respondent had applied for an HMO licence in respect of 202 St Johns Lane, for which the Council had not received the Part 11 payment to process the Application. The Respondent held a HMO licence for 69 Wedmore Road which had a schedule of works. Finally, the Respondent had applied for a HMO licence for 7 Dartmoor Street.

38. The Tribunal is satisfied that the Respondent was a residential landlord at the time of committing the Banning Order Offences on 23 July 2020, 19 August 2020 and 9 September 2020

Whether the Council had complied with the requirements of section 15?

39. The Council was entitled to apply for a Banning Order against the Respondent because of her convictions on 19 April 2021 for Banning Order offences.

40. On 29 September 2021 the Council issued the Respondent with Notice of Intended Proceedings to Apply for a Banning Order for a period of ten years [72]. The Notice was issued within six months of the day on which Respondent was convicted of the Banning Order offences (19 April 2021). The Council explained that it was applying for a Banning Order because the Respondent had been convicted of the various Banning Order offences at the properties of 202 St Johns Street, 69 Wedmore Road and 7 Dartmoor Street. The Respondent was given the opportunity to make representations by 29 October 2021 which was not less than 28 days of service of the Notice of Intended Proceedings. The Respondent made representations on 29 October 2021. The Council documented its response to the Respondent's representations on 13 January 2022 with a recommendation to make Application for a Banning Order. The Application was made to the Tribunal on the same day, 13 January 2022 which was after the notice period for making representations.

41. Counsel for the Respondent argued that the Council had failed properly to consider the representations made on behalf of the Respondent and that there were serious questions to be asked about the whole of the Council's procedures on the manner in which it considered its statutory responsibilities under section 15 of the 2016 Act.

42. The 2016 Guidance requires Local Housing Authorities to develop a policy for making an application for a Banning Order. The Council in this case had included in the bundle its Private Housing Enforcement Policy dated 2017 [1197], Policy to determine Application for a Banning Order dated 13 March 2020, [1219] and Rogue Landlord database and time period of a Banning Order dated 31 January 2022 [1225]. The latter policy was not in force at the time the Council in this case made the Application for a Banning Order.

43. The Council had documented its decision making for making the Application for a Banning Order. The first document was entitled a "Form to be used to record the decision for follow up action subsequent to a prosecution", which was completed by Mr Riddell [77]. The completed "Form" included details of the properties owned by the Respondent, and previous convictions and civil penalties of the Respondent. Mr Riddell had included two civil penalties for housing offences on 12 March 2020, and a

conviction for causing unnecessary suffering to an animal on 23 June 2020 for which the Respondent had been given a community order and disqualified from keeping horses for five years. Mr Riddell had included this conviction because he said it demonstrated a further failure on the Respondent's part to meet legal obligations.

44. Mr Riddell then considered whether there were new/repeat offences for consideration. Mr Riddell referred to alleged offences contrary to the 2006 Regulations on the 8 July 2021 at 29 Aubrey Road, which was owned by the Respondent. Mr Riddell said this was relevant because it revealed that the property was in a similar condition to those witnessed at 202 St Johns Lane and 69 Wedmore Vale. Mr Riddell then looked at the history of the Council's dealings with the Respondent and documented the decision by Bristol Property Partnership to withdraw from the management of the Respondent's properties.

45. Mr Riddell then listed a range of additional factors which included an allegation that the Respondent had threatened to assault the step father of a tenant, allegations from tenants of the Respondent entering their rooms without notice and or permission, and allegations of using threatening behaviour to two tenants at 286 St Johns Lane following service of invalid section 8 notices to encourage them to leave. The latter allegation included one of arson against the Respondent following two fires at the property. Mr Riddell obtained the reports of the two fires from Avon Fire and Rescue. The first fire occurred on 30 June 2021 and was described as accidental. The second fire happened on 19 July 2021 and described as deliberate. Mr Riddell reported that the tenant who made the allegation of arson had not contacted the Fire Service or the Police.

46. Mr Riddell concluded that

> "applying for a Banning Order appeared to the most appropriate course of action for the Council to ensure that the tenants in the Respondent's properties were able to live in properties that meet the minimum legal standard. The evidence we have showed that the Respondent was unable and or unwilling to manage her portfolio of HMO's to the minimum legal standard and this inability has a detrimental effect on the health and welfare of her tenants".

47. Mr Riddell advised a period of ten years for the Banning Order to reflect the serious and ingrained wilful disregard for tenant's health, safety and welfare. Mr Riddell considered that the Banning Order offences were serious on the basis that although the offences did not result in any imminent and serious risks to the occupants there were potentially serious outcomes. Mr Riddell recorded that although there have been no reports of actual/recorded harm to the occupants of the properties, the conditions in the three properties inspected by him were such that he believed the occupants were continually exposed to low level hazards as well as the constant low level of stress of living in property that was shabby, in poor repair as well as dealing with a landlord who has little or no understanding

of her legal responsibilities. Mr Riddell signed off the form with a recommendation to apply to the First-tier Tribunal for a Banning Offer. The recommendation was approved by Mr Mallinson, Private Housing Manager.

48. On the 29 September 2021 the Council decided it intended to make an application for a Banning Order against the Respondent after considering the four Banning Order Offences ("*should be eight*"), the Respondent's history of non-compliance with the Council, the circumstances and complaints since the Banning Order offences and the fact the proposed agent had withdrawn from the agreement to manage the portfolio. The Council said that in so doing so it took into consideration its Private Housing Enforcement Policy and its Policy to determine application for a Banning Order .

49. Mr Riddell documented his response to the various representations made by the Respondent in connection with the Notice of Intent to apply for a Banning Order [112]. Mr Riddell rejected the Respondent's contention that an application for a Banning Order was contrary to the agreement dated 17 February 2021 under which the Council would suspend any review of her fitness to hold a HMO licence provided she handed over management of her properties to a managing agent. Mr Riddell did not accept that the circumstances of the Banning Order offence were due to a shortage of materials and specialist equipment rather in his view the circumstances were a reflection of the Respondent's poor management and inadequate maintenance of the properties. Mr Riddell acknowledged that Council Officers revisited two of the three properties where the banning order offences were committed and found that some or most of the issues had been addressed but some of the solutions adopted were barely adequate and displayed a low quality of workmanship. Mr Riddell stated that the Respondent had not supplied the Council with evidence of her tenant survey or positive reviews. Mr Riddell accepted that the Respondent was being treated differently from compliant landlords who manage their properties in accordance the relevant legislation. Mr Riddell said this was justified because of her poor record of compliance and such targeting was in accordance with the Council's enforcement policy. Mr Riddell asserted that all the Council's actions against the Respondent have been taken in accordance with its Enforcement Policy and have only been taken when other actions have failed to bring about a lasting change in the Respondent's management of her licensable portfolio. Mr Riddell recommended no change to the decision to apply for a Banning Order. Mr Riddell's reason was that "No substantive issues have been raised to give the Council confidence that Ms Knapp would not continue to present a significant risk to tenants in the private rented sector". Mr Mallinson agreed with Mr Riddell's recommendation.

50. Mr Riddell stated in evidence that on the 13 January 2022 the Council considered its previous decision to apply for a Banning Order application in relation to the Respondent. After considering the Respondent's

representations, the Council made the decision to proceed with an application. According to Mr Riddell, this decision was made having regard to the Respondent's history of non-compliance with the Council, the Respondent's representations, the Council's Private Housing Enforcement Policy and Policy to determine application for a Banning Order and the 2016 Guidance for Local Housing Authorities .

51. Mr Riddell explained in evidence he was part of the team which targeted "Rogue Landlords". Under paragraphs 3.8.1 and 3.8.3 of the Council's Private Housing Enforcement Policy 2017 the Council had adopted the principle that formal enforcement action should be targeted only at cases in which action was required. 3.8.3 permitted targeting individual landlords who persistently failed to manage privately rented accommodation with legal requirements; repeatedly fails to comply with informal or formal requests to meet minimum legal requirements or commits offences under Private Housing related legislation; and activities that result in the need for Council to work proactively to meet the Council's enforcement objectives.

52. Mr Riddell said that he did his best to follow the legal requirements when considering whether to apply for a Banning Order against the Respondent. Mr Riddell stated that the Council's procedures had a series of checks and balances. Mr Riddell explained that the Respondent's representations in connection with the Notice of Intention were considered by a group of officers which included himself, his line manager Ms Ambrose, Mr Cole and one other, and their decision was signed off by Mr Mallinson, the Private Sector Housing Manager. Mr Riddell maintained it was not a rubber stamping exercise and that he as lead officer had spent a long time considering the Respondent's representations. Mr Riddell stated that they had not involved a Councillor in its decision making process which Counsel for the Respondent found remarkable having regard to the likely impact of the Banning Order on tenants many of which fell within the "marginalised group" of tenants.

53. Mr Riddell accepted in cross examination that he did not carry out HHSRS assessments of the Respondent's properties he inspected. Mr Riddell disagreed with Counsel's suggestion that a surveyor should have been engaged to inspect the properties against the HMO Management Standards. Mr Riddell maintained that he was qualified and had over 15 years experience of assessing properties against the Management Standards.

54. Mr Riddell insisted that it was appropriate to refer to the circumstances of 29 Aubrey Road in his consideration of whether to apply for a Banning Order. In his view the circumstances bore similarities to those of the Banning Order offences of which the Respondent had been convicted, and the circumstances showed that the Respondent was unwilling to step back from the management of her properties. Mr Riddell denied that the imposition of a financial penalty on 2 March 2022 for the alleged offences

at 29 Aubrey Road just before the first hearing on 8 March 2022 was a cynical attempt to influence the proceedings. Mr Riddell insisted that he was following the process and that the financial penalty was issued when the Council had completed its investigation.

55. Mr Riddell disagreed with Counsel's suggestion that it was wrong to include in his assessment the unsubstantiated allegations against the Respondent of threats against tenants and their relatives and of initiating a fire in one of her properties. Mr Riddell stated that he had given them less weight but nevertheless considered that they were relevant to his decision on whether to apply for a Banning Order in building a picture of the Respondent's management of her property portfolio.

56. Mr Riddell acknowledged that the Council's case included no evidence of actual harm to the tenants caused by the Respondent's breach of the 2006 Regulations. Mr Riddell maintained it was wrong to delay action until actual harm had been caused to tenants. Mr Riddell considered that the Respondent's contraventions of the 2006 Regulations had potentially serious outcomes because they compromised fire separation within the properties and compromised means of escape. In this regard Mr Riddell stated he preferred to take action now so as to prevent the possibility of actual harm to tenants.

57. Mr Riddell did not believe the fact that the Respondent had subsequently carried out the necessary works to the properties which were the subject of the prosecutions fatal to the application for a Banning Order. Mr Riddell pointed out that the Officers who carried out the follow up inspections of the properties reported that the quality of work was quite poor. Mr Riddell insisted that the Respondent would only take action in respect of her properties after involvement of the Council. In the Council's view the Respondent was not proactive with the management of her properties.

58. Mr Riddell denied that the real reason for applying for a Banning Order was that the Council was "well and truly exasperated by the Respondent's Behaviour".

59. Under section 16(2) of the 2016 Act the Tribunal may only make a Banning Order on an application by a Local Housing Authority that has complied with section 15 of the 2016 Act.

60. Section 16(2) requires the Tribunal in this case to address the process by which the Council arrived at its decision to apply for a Banning Order against the Respondent. At this stage the Tribunal is not concerned with the merits of the Application but with how the Council went about the decision making process. The Tribunal has to be satisfied on the balance of probabilities that the Council has met the requirements of section 15 of the 2016 Act.

61. At paragraph 40 the Tribunal recorded details of how the Council met the technical requirements of section 15, namely, the Respondent had convictions for Banning Order Offences, service of a Notice of Intention, the prescribed information contained in the Notice of Intention, and the various time periods for receipt of representations and the taking of proceedings. The Respondent's dispute with the Council over section 15 was not with the technical requirements but with how the Council conducted the process, in particular, the consideration of the Respondent's representations.

62. Solicitor for the Council asserted that the process adopted by the Council for deciding whether to apply for a Banning Order against the Respondent was transparent and documented, pointing out that the Council had included the documentation in the hearing bundle. According to the solicitor, the documentation demonstrated that the Council had given significant consideration to the Respondent's representations, and had covered all relevant matters point by point. Further the solicitor stated that the Council had introduced checks and balances in the process, namely, Mr Riddell did not act on his own but was assisted by team of three other officers including his line manager, Ms Ambrose, and Mr Riddell's recommendations were signed off by Mr Mallinson, the Private Sector Housing Manager.

63. Counsel for the Respondent took a contrary view. Counsel argued that the Council's approach was deeply flawed, in that it allowed one Officer, Mr Riddell, effectively to run the matter without detailed supervision and safeguards. Counsel pointed out that not only did Mr Riddell carry out most of the inspections (unaccompanied by any surveyor or other representative of the respondent), he also: a) Made the original decision to give notice of intention to apply for a Banning Order; b) Carried out the review of that decision when the Respondent's representations had been received); c) Provided the witness statements in support of the current application; d) Assessed that a 10 year ban was appropriate using a policy of which he himself was the co-author. Counsel submitted that as a result the whole of the Council's decision making process had been biased towards making the application and ignoring all contrary factors.

64. Counsel asserted that Mr Riddell in taking his original decision expressly took into account matters that it was entirely improper to consider and could not legitimately form the basis for a Banning Order application. This included an allegation that the Respondent had set fire to one of her properties to try to evict a tenant and that the Respondent threatened violence to a tenant's stepfather.

65. According to Counsel, Mr Riddell's consideration of these improper matters coloured his view of the Respondent which in turn compromised

the integrity of the next stage in the process of having regard to the Respondent's representations.

66. Counsel argued that Mr Riddell should not have been involved in the consideration of the Respondent's representations. In Counsel's view it should have done by someone independent of the original decision.

67. Counsel submitted that the word "consider" in section 15(4) meant that the decision maker for the Council must consciously take the Respondent's representations into account and must do so with a receptive mind. In this regard Counsel relied on the judgment of Silber J in *R v. East Kent Hospital NHS Trust* [2002] EWHC 2640 (Admin) at [60] and [61] which contained an analysis of the relevant authorities:

> "....the authorities establish a very different and more limited obligation on the consulting party, namely that "the product of consultation must be conscientiously taken into account when the ultimate decision is taken" (Coughlan (ibid) [108] per Lord Woolf CJ) or that the result of consultation "is conscientiously taken into account in finalising any × proposals" (R v. Brent LBC ex parte Gunning (1985) 84 LGR 168 at page 189 per Hodgson J) and that this must be done with "a receptive mind" (R v. Camden LBC ex parte Cran (1996) 94 LGR at page 38 per McCullough J").

68. Counsel contended that it was evident from Mr Riddell's response to the Respondent's representations that he was seeking to support his own previous decision to apply for a Banning Order rather than consciously taking those representations into account with a receptive mind. Counsel, therefore, asserted that the Council had failed to meet its obligation to consider the Respondent's representations which was fatal to its Application for a Banning Order against the Respondent.

69. The Tribunal's starting point in assessing the propriety of the Council's action is its Policy to Determine Application for a Banning Order. This was approved by Julian Higson on 13 March 2020 and its author was an Emma Tregale.

70. The Aims and Objectives of the Policy are

> "The Council is required to have in place its own policy on when to pursue a banning order and to decide which option it wishes to pursue on a case-by-case basis in line with this policy. It will also be taken into account when recommending to the First-tier Tribunal the length of any banning order.
>
> The policy takes into account non-statutory guidance issued by the Ministry of Housing, Communities and Local Government. This guidance

> will also be considered in each case when determining whether to apply for a banning order.
>
> Banning orders are aimed at rogue landlords who flout their legal obligations and rent out accommodation which is substandard. It is expected banning orders will only be used for the most serious offenders".

71. The Policy then sets out the factors that the Council would have regard to when considering an Application for a Banning Order which included those factors identified by the 2016 Guidance at [3.3] set out in paragraph 26 above. In addition the Council said it would have regard to Upper Tribunal decisions and that it may also have regard to other relevant matters deemed appropriate to the case.

72. Finally the Policy required that

> "Having had regard to this policy, a decision to commence the banning order procedure in any case will be confirmed by a Private Housing Manager/Service Manager who will also be responsible for considering any representations made by a landlord served with a notice of intention and for the decision to make an application for a banning order, including the recommended duration of the ban. The decision will be recorded".

73. The Tribunal finds the following:

a) The Tribunal accepts Mr Riddell's evidence that he was supported by a team of Officers when he considered the Application for a Banning Order and the Respondent's representations.

b) Mr Mallinson, the Private Housing Manager, took the decision to commence the Banning Order procedure against the Respondent and the decision to apply for a Banning Order following the Respondent's representations. The Tribunal is satisfied that Mr Mallinson did not simply rubber stamp the recommendations put forward by Mr Riddell. The form required Mr Mallinson to make an informed determination either to agree with the recommendation or to make another recommendation.

c) The Tribunal's examination of the Council's documentation dealing with the Banning Order application demonstrated that the specific matters set out in the Policy were addressed in full and cogent reasons were given for the decision to commence the Banning Order procedure.

d) The Policy permitted the Council to have regard to other relevant matters deemed appropriate to the circumstances of the case. The Tribunal considers that Mr Riddell's reference to additional

factors which included the allegations of assault and arson against the Respondent was justified and in accordance with the Policy. The Tribunal finds that Mr Riddell explained the sources of the information and the rationale for including it which was to provide as complete a picture of the Respondent's management of her property portfolio. The Tribunal observes that Mr Riddell emphasised that the Council had not completed its investigations of the reports from the tenants and could not vouch for the validity of the information. In those circumstances Mr Riddell said that less weight had been given to the information in the Council's decision making process. Finally the Tribunal considers that its inclusion demonstrated that the Council was acting transparently and disclosing all its sources of information about the Respondent's management of her property portfolio which, in turn, gave the Respondent the opportunity to refute the allegations.

e) The Tribunal is satisfied from examination of the documentation that Mr Riddell provided a reasoned response to each of the Respondent's representations. The Tribunal noted that Mr Riddell acknowledged those representations with which he agreed. The Tribunal finds that Mr Riddell addressed the issues raised by the Respondent in good faith and not with the intention of reinforcing his initial recommendation to apply for a Banning Order. The Tribunal considers that Counsel's submissions on the flawed consultation process overlooked the fact that it was the nature of the Respondent's representations which shaped the Council's response and the weight given to the representations. The Tribunal's characterisation of the representations was exculpatory with the Respondent not accepting responsibility for the situation she was facing. For example the Respondent said in her representations: "Both the landlord's association and BPP felt you (*"the Council"*) want to use me as a scapegoat or example as I am a portfolio landlord"; and "many of the convictions were truthfully due to tenant damage and in some cases due to a negligent electrician or bad tradesman". The Tribunal formed the view that the Respondent did not address the Council's core concern for taking action which was that she was not willing or unable to manage her portfolio in accordance with relevant legislation as demonstrated by their dealings with her over the last six years.

74. Counsel for the Respondent raised other concerns about whether the Council had met the necessary threshold, particularly in relation to the seriousness of the Banning Order offences for making an Application for a

Banning Order. The Tribunal took the view that Counsel's submissions went to the merits of the Application rather than the integrity of the process. For the avoidance of doubt, the Tribunal found at paragraph 73c above that the Council had addressed the specific matters set out in the Policy in full and cogent reasons were given. The specific matters included seriousness of the offence and impact on others. In the Tribunal's view, the manner in which the Council dealt with these matters was sufficient to meet the threshold for making the Application.

75. The Tribunal concludes that the Council conducted the process for making Application to the Tribunal for a Banning Order against the Respondent in accordance with its Policy dated 13 March 2020. Further the Council ensured that the process incorporated checks and balances. The Tribunal is satisfied that the decision to commence the Application for a Banning Order and the decision to make an Application for a Banning Order following consultation were taken by Mr Mallinson who was independent of Mr Riddell and his team preparing the Application and the response to the representations. The Tribunal finds that the Council had due regard to the Respondent's representations when making its decision to apply for a Banning Order.

76. The Tribunal finds the following:

a) On 29 September 2021 the Council issued the Respondent with Notice of Intended Proceedings to Apply for a Banning Order for a period of ten years [72]. The Notice was issued within six months of the day on which Respondent was convicted of the Banning Order offences (19 April 2021).

b) The Council explained that it was applying for a Banning Order because the Respondent had been convicted of the various Banning Order offences at the properties of 202 St Johns Street, 69 Wedmore Road and 7 Dartmoor Street.

c) The Respondent was given the opportunity to make representations by 29 October 2021 which was not less than 28 days of service of the Notice of Intended Proceedings.

d) The Respondent made representations on 29 October 2021. The Council documented its response to the Respondent's representations on 13 January 2022 with a recommendation to make Application for a Banning Order.

e) The Council had due regard to the Respondent's representations when making its decision to apply for a Banning Order.

f) The Application for a Banning Order was made to the Tribunal on the 13 January 2022 which was after the notice period for making representations.

g) The Council conducted the process for making Application to the Tribunal for a Banning Order against the Respondent in accordance with its Policy dated 13 March 2020.

77. The Tribunal, therefore, decides that the Council complied with section 15 of the 2016 Act when making the Application for a Banning Order to the Tribunal.

Whether a Banning Order should be made?

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

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

(a) the seriousness of the offence of which the Respondent has been convicted;

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

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

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

Seriousness of the Offence of which the Respondent has been convicted?

80. The Council contended that the seriousness of the offences to which the Respondent pleaded guilty on 19 April 2021 should primarily be assessed on the penalty which was imposed by the Magistrates. The Council pointed out that the totality of the fine of £22,000 for eight offences, seven of which related to contraventions of the 2006 Regulations reflected the so serious nature of the offences. The Council submitted that the Magistrates took into account the Respondent's mitigation including a discount for a guilty plea in arriving at its sentence.

81. The Council disagreed with the Respondent that the convictions were for minor offences. Mr Riddell gave evidence to the effect that the offences committed had potentially serious outcomes in respect of fire safety. According to Mr Riddell, means of escape were compromised by the use of

non-resistant fire doors and the non-removal of unwanted furniture, whilst fire separation was compromised by the presence of holes in walls and ceilings.

82. The Council argued that the seriousness of the Banning Order offences were aggravated by that (1) the Council had on 12 March 2020 imposed a financial penalty on the Respondent for similar offences of failing to licence an HMO and breaches of HMO Management Regulation; (2) the Respondent had a history of not managing her properties satisfactorily and not complying with legal requirements; and (3) the pattern of unsatisfactory management and non-compliance continued after the convictions for Banning Order offences.

83. The Council cited the following facts in support of its proposition on aggravating factors.

a) In 2016, the Council invited the Respondent to a meeting because of their concerns that there was a significant number of recurring issues relating to the management of her portfolio to discuss those issues and the Council's concerns about granting a HMO licence to the Respondent for 35 Holmsdale Road.

b) In the follow up letter dated 8 September 2016 the Council advised the Respondent of the following points:

- No satisfactory arrangements for the management of the property were in place.
- The Respondent's poor communication with Council's officers and attendance at visits.
- The Respondent's inadequate arrangements for the management of her properties in her absence
- The Council had found that necessary works to the properties were not always completed and occasionally carried out to poor standards.
- The Respondent's understanding of the HMO Management Regulations which she referred to as "Guidelines".

c) In November 2016 the Council after receiving the Respondent's representations decided to grant an HMO licence for one year and keep the Respondent's management of the properties under review.

d) On the 12 March 2020, Respondent was issued with a Civil Penalty Notice in the sum of £6,649 for offences of no HMO Licence section 72(1) of the 2004 Act and breaches of the 2006 Regulations contrary to section 234 of the Housing Act 2004 at 50 Wingfield Road,

Bedminster, Bristol. The Respondent admitted liability by paying the penalty.

e) According to the Council, the breaches of Regulations 2006 at 50 Wingfield Road included the following issues:

- None of the smoke detectors were working, which meant there would have been no warning to the occupants if a fire had started in the property.
- Access to the poorly converted attic space was by a loft ladder.
- When deployed the loft ladder prevented one of the bedroom doors from opening fully, and obstructed the first floor landing preventing free access from one of the bedrooms. This could hinder an escape in case of fire.
- The attic space had been split into two bedrooms by a partition wall. Access to the second bedroom could only be achieved by walking through the first bedroom giving no privacy for occupant of the first bedroom.
- There was a bolt on the door to the second bedroom which means a tenant could get locked into this room and unable to get out.

f) Following the imposition of a Civil Penalty for the offences committed at 50 Wingfield Road, the Council undertook a review of the Respondent's status as a fit and proper person to hold an HMO Licence. In November 2020 the Council decided that the Respondent was not a fit and proper person, and as a result served the Respondent with a Notice of an Intention to Refuse or Revoke her HMO licences.

g) In February 2021 the Council suspended the review of the Respondent's status as a Fit and Proper Person because the Council accepted the Respondent's solicitor's proposal that the Respondent handed over the entire management responsibility of her portfolio (including being the HMO licence holder to Bristol Property Partnership (BPP) [170]. The Council, however, reserved the right to reopen the review if the contract agreement between BPP and the Respondent did not materialise, or if it did not materialise in relation to the entire portfolio, if BPP did not agree to be the Licence holders or if at some time within the period of the Licence BPP ceased to be the licence holders and managers of the properties.

h) On 30 June 2021 Avon Fire and Rescue Service attended a fire at 286 St Johns Lane, one of the Respondent's properties. The fire was accidental and caused by a faulty WiFi electrical cable and transformer. The Fire and Rescue service recorded that excessive and dangerous storage contributed to the start of fire. No-one was injured by the fire. The Council stated that this incident exemplified its concerns with the Respondent's management of her property portfolio with respect to fire safety, and in particular the deposit of excess storage and belongings in

the Respondent's property which impede the means of escape from fire.

i) On 6 July 2021 the Council received a complaint from a tenant who had taken possession of the property at 29 Aubrey Road, Bedminster, Bristol on 1 July 2021. The complaint referred specifically to the Respondent and concerned her negative response to putting matters right. The Council obtained a statement from BPP which was ostensibly managing the property. In its statement BPP alleged that the Respondent was not allowing them to manage the property portfolio and the Respondent continued to select and allocate tenants. BPP concluded that the Respondent was continuing to control her property, interfering with the plan agreed, continuing to agree tenancies and overseeing works by her tradespersons under her control. On 1 September 2021 BPP wrote to the Council stating that it was formally withdrawing the HMO licensing applications for the Respondent's properties and that it had ceased to have any involvement with any of the Respondent's properties. The Respondent failed to inform the Council of the change in the management arrangements for her properties. The Council then contacted the Respondent about it to which on 14 September 2021 she replied to the effect that she was speaking to other managing agents.

j) On 17 February 2022 the Council received a complaint from a tenant at 102 Portway, Sea Mills, Bristol which was owned by the Respondent. Mr Riddell and Ms Ambrose discovered that the tenant was occupying a room within an HMO which did not meet the minimum size for a bedroom measuring 5.7 square metres as against 6.5 square metres. The Council also identified alleged breaches of the HMO Management Regulations.

k) On 2 March 2022 the Council imposed a financial penalty of £15,633.40 for breaches of regulation 7 of the HMO Management Regulations 2006 at 29 Aubrey Road, Bedminster, Bristol. The Respondent had appealed the financial penalty.

84. Counsel for the Respondent contended that the Council had not met the high hurdle of demonstrating to the Tribunal that the Respondent had committed the most serious offences. Counsel submitted that the whole point of the jurisdiction was to deal with landlords who have been convicted of the most serious offences. The fact that the Council was well and truly exasperated by the Respondent's conduct and management of her properties was not a proper basis upon which to make a Banning Order.

85. Counsel pointed out that the contraventions of the 2006 Regulations were not serious offences in themselves. In his view the 2006 Regulations included matters which were trivial. Counsel cited the offence of the failure by a landlord to display his/her name and address in a prominent

position in an HMO which he said constituted a banning order offence even though the details were set out in the tenancy agreement. Counsel referred to other offences within the Banning Order Regulations which he said were unquestionably very serious for example unlawful eviction; violence for securing entry and burglary and blackmail..

86. Counsel relied on the Respondent's first witness statement [925- 943] to show that the Banning Order Offences were minor and cosmetic. Counsel said that the only potential serious matters were to deal with the fire doors but the Respondent had acted on the advice of a Council Officer in installing non-compliant fire doors and when the error was pointed out she rectified it straightaway.

87. In her statement the Respondent stated that "none of those convictions for the Banning Order Offences related to issues complained of by my tenants, they are issues raised solely by the Council after carrying out their own inspections". The Respondent went onto state that "the Council appears to exaggerate and make out some things were broken or dysfunctional when they were not". The Respondent in cross-examination maintained that "a lot of the contraventions were very petty and invented by the Council".

88. The Respondent said that she had not installed fire doors in the properties because she had been advised by an Officer of the Council that fire doors were not necessary in a four-bed shared house at the time. The Respondent blamed the tenants for the problems at St John's Lane stating that they used it as "a party house". The Respondent pointed out that the tenants at St John's Lane had asked to renew the tenancy which the Respondent had refused because the tenants had not respected the house. The Respondent stated that none of the failings identified at 69 Wedmore Lane were significant and that the tenants at this property were very happy with it and requested extensions to their tenancies. Finally the Respondent took issue with the majority of the breaches at 7 Dartmoor Street and insisted that the tenants had made no complaints.

89. Counsel asserted that the Council in its Reply effectively admitted that the Offences were not serious. Counsel cited paragraph 21 of the reply which said that " the Council recognises that individually the convictions and contraventions are not of the most serious types of breaches in terms of potential harm".

90. Counsel argued that the Council tried to get round its admission about the seriousness of the breaches by relying on the penalty imposed by the Magistrates which the Council said truly reflected the serious nature of the Offences. Counsel submitted that the aggregation of fines did not make the individual offences more serious. According to Counsel, aggregation

should be judged against the entirety of the Respondent's portfolio, not just the three properties concerned. More importantly Counsel contended that relying on the sentence was simply wrong as a matter of law stating that the penalty imposed by the Magistrates was no more than their opinion. In support of his proposition Counsel relied on the decision of FTT in *Telford and Wrekin Council v Kalim Ahmed Hussain* [BIR/00GF/HBA/2020/0001] which at paragraph 50 said:

> "The first factor to consider is the seriousness of the relevant offences both individually and when taken together. We do not know what factors the magistrates took account of in determining the comparatively low level of fines (£180 for each offence), but the severity of the sentence is not a determinative factor for the present purposes. It is for the Tribunal to assess the seriousness of the offences based on the evidence available to it".

91. Counsel submitted that the Council failed to adduce convincing evidence that the Offences compromised the protection of the tenants. Counsel pointed out that the Council had produced no evidence that category 1 and category 2 HHSRS hazards existed at the Respondent's properties. Counsel questioned the Council's reliance on Mr Riddell's assessment of the defects at the properties, particularly as it appeared that Mr Riddell did not have regard to Regulation 11(2) of the 2006 Regulations[1]. Counsel asserted that in view of the seriousness of the allegations, the Council should have engaged a surveyor to assess the condition of the properties. Counsel also relied on Mr Riddell's evidence where he stated that "there had been no reports of actual/recordable harm to the occupants at the Respondent's properties", and that "the occupants were exposed to low level hazards and the stress of living in a property that was shabby" which in Counsel's view was no more than "normal everyday life".

92. Counsel said there was no evidence that the Respondent had been obdurate in carrying out the requirements of the Council. The Respondent had provided evidence of what she had spent on her properties during the period November 2019 to January 2021 which amounted to £353,098 [1081]. Counsel pointed out that the Council's principal complaint was that the Respondent was not pro-active with the management of her properties. Counsel said that might be grounds for a discussion but certainly not a basis for a Banning Order. Further there was no evidence that the Respondent had not attended to major items such as gas and electricity certificates. According to Counsel what had caused the problem was the urgent need to upgrade 13 properties which had become part of the licensing regime. Counsel stated that the Respondent had acknowledged

[1] Regulation 11(2) requires that any duty under the Regulations to maintain or repair a property are to be construed as requiring a standard that is reasonable in all the circumstances taking account of the age, character and prospective life of the house and the locality in which it is situated.

her difficulties in meeting this requirement which had been exacerbated first by Brexit and then by the constraints imposed by the Pandemic in securing reliable contractors to carry out the works. Counsel indicated that the Respondent had reached out to the Council without success to be more flexible with their demands.

93. Counsel submitted that the Council's case for a Banning Order was further weakened by the absence of high numbers of complaints from tenants, when in fact the contrary was true. The Respondent had stated that the tenants at 14 of her houses had expressed a wish for their tenancies to be extended. The Respondent adduced evidence of five text messages to substantiate her assertion [1332].

94. The Respondent included in her evidence letters of support from former tenants: Mr Burfield [1147], Mr Bigwood [1150], Mr Cozma [1152], Ms Fiedor [1154], Ms Nole [1155], Ms Aliou Sagna [1157], Hamza Boudza [1162] and Mr Cadle [1164]. The Respondent also supplied 46 completed tenant satisfaction questionnaires relating to 15 of her properties. The survey was conducted over the period November 2021 to February 2022. The survey as whole showed that the tenants rated the Respondent's management of the property excellent or good. The tenants surveyed were less complimentary about the repair work at the properties, generally rating it as average or good, although there were occasional bad ratings.

95. The Respondent's explanation for the circumstances giving rise to the financial penalty in March 2020 at 50 Wingfield Road was that she had agreed to help a previous tenant who had travelled to the UK from Bulgaria and had nowhere to stay. The Respondent said that she had offered him one of the loft rooms at the property on a short-term basis. Further he refused to leave when asked and unbeknown to the Respondent he had invited a friend to occupy the other loft room. According to the Respondent, this meant that there were five people living at the house which required an HMO licence. The Respondent also stated that the tenants were responsible for cutting the fire alarms at the property so that they could smoke. The Respondent produced a statement from the tenant who occupied the loft room. The tenant said "I also lived at 50 Wingfield Road when the Council visited and I told them I chose to move myself up to the loft as I am a light sleeper and I preferred it up there for the quiet. Naomi my landlady told me to move from the loft as it was illegal unfortunately I did not move and got her into trouble".

96. The Respondent considered it was unfair for the Council to rely on the events at 29 Aubrey Road. The Respondent pointed out that the tenants at the property had requested an extension of their tenancy. Counsel submitted it was wholly wrong for the Council to have regard to the circumstances surrounding the alleged offences at 29 Aubrey Road.

Counsel pointed out that the Respondent had appealed the financial penalty.

97. The Respondent argued that the incident at 102 Portway was not significant because the Council often change its room requirements. The Respondent pointed out that the "small" room had a double bed, a wardrobe, a desk chair, filling shelf and a chest of drawers. Further the Respondent said that the tenant had not complained about the room size until it was inspected by Council officers. According to the Respondent, she was helping the tenant out as he was desperate for a room.

98. The Respondent claimed that Mr Riddell had not previously raised with her the fire risks in her properties. The Respondent pointed out that the two fires at 286 St Johns Road were the first fires at her properties that she had encountered in her 35 years as a landlord. The Respondent insisted that she implemented fire safety regulations and carry out fire risk assessments at all her properties.

99. The Respondent stated that since BPP stepped down in September 2021, she had been effectively been managing her properties again for the last four and half months and nothing out of the ordinary had happened. The Respondent asserted that she had been doing this landlord work for over 30 years and was quite willing to comply with the HMO regulations and Council's requirements. The Respondent just wished that the Council would act reasonably and stop persecuting her and recognise the challenges of getting work done in a Pandemic.

100. The Tribunal begins its consideration on the seriousness of the Banning Order offences of which the Respondent was convicted by considering Counsel's proposition that they were relatively minor and cosmetic. Underpinning Counsel's proposition is the notion that the Tribunal is entitled to consider the circumstances of the offending afresh and effectively disregard the sentence imposed by the Magistrates.

101. Counsel in his skeleton intimated that the Banning Order offences included in the 2018 Regulations could be ranked in order of seriousness and that contraventions of the 2006 Regulations were at the bottom end of the range of seriousness. The implication being that convictions for offences under the 2006 Regulations were not sufficiently serious to merit the imposition of a Banning Order.

102. The Tribunal considers that Counsel's submission pays insufficient regard to the legislative purpose and the structure of the 2018 Regulations. The Tribunal refers to the speech of Lord Bourne of Aberystwyth as reported in paragraph 22 above who explained that the identification of Banning Order offences had been the subject of consultation. The outcome of the

consultation exercise was to group the Offences into three categories rather than rank them in order of seriousness. The three categories being "housing offences"; "immigration offences"; and "serious criminal offences connected with housing". This categorisation is reflected in regulation 3 of the 2018 Regulations which states:

> **"3. Banning order offences**
>
> The following offences are banning order offences —
>
> (a) an offence listed in any of items 1 to 5 of the Schedule, unless the sentence imposed on the person convicted of the offence ("the offender") is an absolute discharge or a conditional discharge; (*"housing offences"*)[2]
>
> (b) an offence listed in item 6 of the Schedule; (*"immigration offences"*)[3]
>
> (c) an offence listed in any of items 7 to 14 of the Schedule if—
>
> (i) the offence was committed against or in collusion with a tenant occupying any housing (or another person occupying that housing with the tenant) or the offence was committed at or in relation to that housing;
> (ii) at the time the offence was committed, the offender was the residential landlord or property agent of that housing or an officer of a body corporate who was the residential landlord or property agent of that housing; and
> (iii) the offender was sentenced for the offence in the Crown Court *("serious criminal offences"*)[4]".

103. The Offences under the 2006 Regulations fall within the "housing offence" category. As Lord Bourne of Aberystwyth explained "housing offences" are serious and sufficient to have the sanction of a Banning Order because they directly relate to the offender's role as landlord and directly impact on the health and safety of tenants at a property.

104. The Tribunal's interpretation of the legislation is that as a starting point the Respondent's convictions for Banning Order offences, including her breaches of the 2006 Regulations, should be treated as serious offences which might warrant a Banning Order. In the Tribunal's view the ranking of Banning Order offences in accordance with an arbitrary scale of seriousness is not consistent with the legislation. This is emphasised by [3.3] of the 2016 Guidance: "All Banning Order offences are serious".

105. Counsel argued that section 234 of the 2004 Act which makes breach of the 2006 Regulations a criminal offence was an omnibus provision

[2] Tribunal's italics
[3] Tribunal's italics
[4] Tribunal's italics

covering a wide range of potential contraventions from cosmetic to more serious ones involving the health and safety of tenants. In this case Counsel argued it was permissible to view most of the Respondent's breaches of the 2006 Regulations as minor contraventions.

106. The Tribunal disagrees with Counsel's approach to the evaluation of seriousness of the Respondent's offending. The Tribunal considers that Counsel downplays the importance of compliance with the 2006 Regulations within the statutory framework for HMOs introduced by the 2004 Act to push up standards for HMOs which at the time were characterised by some of the very worst housing standards in the private rented housing sector[5]. The key feature of the 2006 Regulations is that they apply to all HMOs, whether licensed or not, except for converted blocks of flats, and are the means through which poor day -to-day management of all HMOs are addressed. The Tribunal considers this is important in relation to the facts of this case because the Respondent had no understanding of the scope of the Regulations. The Respondent considered them to be guidance not mandatory and that the imposition of the Regulations was a result of the Council's licensing scheme for smaller HMOs rather than an integral part of the regulatory fabric for HMOs.

107. The Tribunal, however, holds a more fundamental difference with Counsel's approach. Counsel argued that the Tribunal should make its own assessment of the seriousness of the offences based on all the circumstances and not be swayed by the sentence imposed by the Magistrates which, in Counsel's view, had no weight in law because the penalty imposed by the Magistrates was no more than their opinion.

108. The Tribunal demurs from the approach advocated by Counsel. Effectively Counsel was inviting the Tribunal to re-open the case heard by the Magistrates and start with a blank canvass. This cannot be correct on various levels. First the Respondent had an opportunity to challenge the facts before the court but chose to plead guilty. Second the Respondent had the right to appeal to the Crown Court against the sentence but decided not to pursue it. The Tribunal observes that the Respondent was legally represented throughout the court proceedings. Third the legislation and the 2016 Guidance give weight to the sentence in determining the seriousness of the offence. This is supported by the wording of the 2018 Regulations which excludes housing offences carrying a sentence of an absolute or conditional discharge from being banning order offences, and by the wording of [3.3] of the 2016 Guidance which states: "The more severe the sentence imposed by the Court, the more appropriate it would be for a Banning Order to be made".

[5] See 4.8 of Housing New Law

109. The Tribunal decides that in relation to the facts of this case the Respondent's guilty plea constituted an admission of the facts giving rise to the prosecution of the offences, and that the Magistrates had regard to the Respondent's mitigation when fixing sentence.

110. The Tribunal notes that the Magistrates imposed fines of £3,000 each for five of the breaches of the 2006 Regulations and for the breach of the HMO conditions and fines of £2,000 each for two breaches of the 2006 Regulations making total of £22,000. The Offences for which the Respondent was convicted are punishable on summary conviction by a fine not exceeding level five on the standard scale which is an unlimited fine. The parties did not refer the Tribunal to the Sentencing Guidelines. The Council stated that the level of fines was high and that the Respondent received the "discount" for guilty pleas. The Respondent stated that the fines were excessive. Counsel suggested that the level of fines reflected low to medium culpability but gave no reason for his proposition.

111. The Tribunal applying its general knowledge and expertise finds that the fines imposed by the Magistrates for the Respondent's Banning Order offences were at the upper level. The Tribunal holds that the Respondent's offending was aggravated by the fact that she committed similar offences at three different properties over a period of seven weeks in July to September 2020. The Tribunal is satisfied that a total fine of £22,000 for the Respondent's Banning Order offences was a severe sentence which reflected the seriousness of the Respondent's offending.

112. Counsel relied on the FTT decision in *Telford and Wrekin Council v Kalim Ahmed Hussain* [BIR/00GF/HBA/2020/0001] for his proposition that the severity of the sentence was not the determinative factor for the Tribunal's decision on seriousness for the purposes of section 16 (4) of the 2017 Act.

113. The Tribunal considers that Counsel's reliance on the *Kalim* decision is problematical. The Tribunal observes that the starting point of the *Kalim* decision was the low level of fines imposed by the Magistrates which was the prompt for that Tribunal to test the inference that the Offences were not sufficiently serious as reflected by the sentence to warrant the imposition of a Banning Order.

114. Where this Tribunal differs from the other Tribunal is the scope of the enquiry to confirm or otherwise the seriousness of the offences as indicated by the sentence imposed by the Magistrates. This Tribunal maintains that it is not correct as part of its enquiry into seriousness to re-open the case before the Magistrates and undermine the conviction and sentence particularly where the Offender has participated fully in those proceedings.

115. The Tribunal considers the enquiry to confirm or otherwise the seriousness of the offence embraces the aggravating features identified by the Council and any mitigating factors put forward by the Respondent which would not have been before the Magistrates.

116. The Council submitted that the seriousness of the Respondent's convictions for the Banning Order offences was aggravated by the fact that they were manifestations of a prolonged course of conduct by the Respondent of operating her letting business below the required standards and consistently failing to heed the advice of the Council dating back to 2016, and continuing after the convictions for the Banning Order offences.

117. The Tribunal finds on the evidence that the course of conduct has two prevailing themes. The first theme is the Respondent's incomplete understanding of the legal requirements for HMOs. In particular her persistent failure to understand that the 2006 Regulations are mandatory for all HMOs whether licensed or not, which carries the risk that the management of her property portfolio primarily comprising HMOs would not be to the required standards.

118. In regard to the first theme the Tribunal is satisfied that the seriousness of the Respondent's convictions for Banning Orders Offences is aggravated by the circumstances of the financial penalty for 50 Wingfield Road imposed for failing to licence an HMO and for breaches of the 2006 Regulations in March 2020 which were similar in nature to and preceded the Respondent's convictions in April 2021. Further the Tribunal considers that the fire at 286 St Johns Lane on 30 June 2021 and the subsequent investigations of 29 Aubrey Road and 102 Portway by the Council following complaints from tenants aggravated the seriousness of the Respondent's offending because they identified breaches of the 2006 Regulations and highlighted the Respondent's lack of understanding of the legal requirements.

119. The Tribunal notes that the facts of the Offences to which the Respondent pleaded guilty included contraventions of the 2006 Regulations to do with the risks of fire (fire door at 202 St John's Lane, and obstruction of means of fire escape at 7 Dartmoor Street). The Tribunal observes that the financial penalty in respect of 50 Wingfield Road was imposed for fire safety contraventions (the non-working of fire alarms and obstructing means of escape). In this regard the fire, albeit accidental, at 286 St Johns Lane demonstrated that the Respondent's failure to comply with the 2006 Regulations carried with it real risks of potential harm to the tenants, and constituted an aggravating feature of the Respondent's offending.

120. Counsel strongly objected to the inclusion of the facts relating to 29 Aubrey Road stating that the Respondent had appealed the financial penalty and it was wholly wrong for the Tribunal to take them into account. Counsel made no observations on the Council's reliance on the facts of 102 Portway. The Tribunal has decided to include the facts of the two properties in its consideration because (1) they involve alleged failures of the 2006

Regulations similar in nature to the convictions; (2) the Respondent has given her account in her second witness statement of the circumstances in relation to the properties at Aubrey Road and Portway; and (3) the facts of 102 Portway were relevant to counter the Respondent's assertion that she had been managing her portfolio satisfactory since the departure of BPP.

121. The Tribunal finds that the Respondent's explanation for the state of affairs at 102 Portway and 29 Aubrey Road revealed her inadequate understanding of the legal requirements, and her unwillingness to accept responsibility. The Respondent considered the small bedroom at 102 Portway was not significant because the Council often changed their room requirements. The Tribunal points out that minimum room sizes for sleeping accommodation has been a legal requirement for HMOs falling within the mandatory licensing scheme since 1 October 2018. In respect of 29 Aubrey Road the Respondent stated that the Council had exaggerated and fabricated the faults identified at the property.

122. The second theme associated with the course of conduct is the Respondent's failure to comply with the agreements made with the Council. The Tribunal finds that the Respondent did not adhere to the agreement in November 2016 to raise standards of the management of her property portfolio with the result that in November 2020 the Council decided to serve the Respondent with a notice of intention to revoke her HMO licences on the ground that she was not a fit and proper person. In February 2021 the Respondent offered to hand over the entire management responsibility of her portfolio, including holding of the HMO licences to BPP, which the Council accepted and in return suspended the review of the Respondent's status as a fit and proper person. The Tribunal is satisfied that the Respondent welched on the agreement by not allowing BPP to manage the portfolio which ultimately resulted in BPP withdrawing its services.

123. Counsel acknowledged that the Respondent might be seen as difficult and that the Council was totally exasperated with her, however, in his submission, that did not justify the making of a Banning order but instead the basis for a discussion. The Tribunal views the Respondent's conduct somewhat differently from Counsel. The Tribunal finds that the Council had given the Respondent two opportunities to address the shortcomings in the management of her property portfolio, and had accepted the Respondent's proposals for improvement. The Tribunal considers the fact that the Respondent had not followed up on her proposals demonstrated her unwillingness to change matters for the better and her acceptance of the risk that her management of the properties might be below the required standard. The Tribunal is satisfied that such conduct on the Respondent's part aggravated the seriousness of her offending.

124. Counsel put forward a series of mitigating factors which he said reduced the severity of the Respondent's offending. Counsel relied on Mr Riddell's evidence that the Banning Order offences committed by the Respondent

exposed the tenants to low level hazards and that the required works to the subject properties had been carried out. Counsel also focussed on the problems of securing the services of contractors caused by Brexit and the Pandemic. The Tribunal is of the view that these matters would have been known to the Magistrates and have been taken into account when fixing the level of fines. The Tribunal has already indicated that it has no intention of re-opening the case before the Magistrates.

125. Counsel pointed out that the Respondent had received support and praise from a substantial number of her tenants for her to continue as their landlord. Counsel relied on the high number of tenants requesting an extension of their tenancies, the letters of support from former tenants and the results of the tenant's satisfaction survey. The Council produced a copy of two online reviews of the Respondent with one describing her as the worst landlord he had met [400]. The Tribunal placed no weight on the online reviews. The Tribunal, however, noted Mr Riddell's evidence that the Council has an equally long and detailed history over 15 years of complaints about the Respondent and the properties she manages, and that the Council's investigations of the three subject properties and of 50 Wingfield Road were initiated by complaints from tenants.

126. The Tribunal is not convinced that the Respondent's support from tenants was representative of the tenant's views as whole. The Tribunal noted that the Respondent said that she had requests for extensions of tenancies in respect of 14 of her houses. The supporting evidence comprised five text messages. Further the Respondent in her witness statement said that 95 per cent of the tenant satisfaction surveys were positive but she gave no figure for the proportion of the surveys returned against her total tenant population. Also the Tribunal observed that the returned surveys were not overwhelmingly positive, and that some tenants expressed concerns about the quality and time taken to carry out repairs. The Tribunal is not persuaded that the Respondent's reliance on the evidence from the tenants mitigates the severity of her offending. The Tribunal finds that the Respondent's offences would not have come to light unless there had been a complaint from a tenant.

127. Counsel placed weight on the fact that the Respondent was faced with a short time scale of getting her smaller HMOs compliant with the Council's expanded HMO licensing scheme. The Tribunal questions the relevance of this when the principal issue in this case concerned the Respondent's failures to observe the 2006 Regulations which applied to all HMOs whether licensed or not.

128. The Tribunal summarises its findings on the seriousness of the Banning Order offences for which the Respondent was convicted:

    a) The Tribunal's interpretation of the legislation is that as a starting point the Respondent's convictions for Banning Order offences, including those for breaches of the 2006 Regulations, should be treated as serious offences which might warrant the

making of a Banning Order. In short, "all Banning Order offences are serious".

b) The Tribunal decides that the Respondent's guilty plea in the Magistrates' Court constituted an admission of the facts giving rise to the prosecution of the offences, and that the Magistrates had regard to the Respondent's mitigation when fixing sentence.

c) The Tribunal applying its general knowledge and expertise finds that the fines imposed by the Magistrates for the Respondent's Banning Order offences were at the upper level. The Tribunal holds that the Respondent's offending was aggravated by the fact that she committed similar offences at three different properties over a period of seven weeks from July to September 2020. The Tribunal is satisfied that a total fine of £22,000 for the Respondent's Banning Order offences was a severe sentence which reflected the seriousness of the Respondent's offending.

d) The Tribunal is satisfied that the seriousness of the Respondent's convictions for Banning Orders Offences is aggravated by the circumstances of the financial penalty for 50 Wingfield Road; the fire at 286 St Johns Lane on 30 June 2021, the subsequent investigations of 29 Aubrey Road and 102 Portway, and her failure to follow up on her agreements with the Council to improve matters.

e) The Tribunal is not convinced that the mitigation put forward on the Respondent's behalf diminished the seriousness of her convictions for Banning Order offences.

129. The Tribunal having regard to its findings decide that the Respondent's convictions for eight Banning Order offences met the threshold of seriousness to warrant the imposition of a Banning Order.

Previous Convictions for Banning Order Offence

130. The Tribunal is satisfied that the Respondent had no previous convictions for Banning Order offences.

Whether the Respondent had been included in the database of Rogue Landlords and Letting Agents?

131. The Council confirmed that the Respondent's name had not been included in the Database of Rogue Landlords.

The Likely Effect of the Banning Order on the Respondent and Anyone Else who May be affected by the Order

132. The Respondent stated that the business model of her portfolio comprised three distinct categories: those let to students; those let to professionals

and those let to marginalised individuals. The Respondent asserted that a significant proportion of her properties were let to marginalised individuals which were less profitable than the other two categories of lettings. The Respondent accepted that virtually all her properties were let out as HMOs. The Respondent said that the exceptions were two one bedroomed flats and that one of her houses had been let to a Polish family for about eight years.

133. The Council estimated that the Respondent received a minimum gross rental income of £523,612 per annum from her property letting business. The Respondent said her gross monthly rental income was £42,000 which equated to an annual gross income of £504,000. The Respondent, however, stated that she incurred significant costs in running her property portfolio. The Respondent gave evidence that during the period from November 2019 until January 2021 she had spent £353,098 on property repairs and managing agent fees, £24,775 in licensing fees and £44,000 in Council Tax. In addition the Respondent paid out £11,500 a month in mortgage repayments. The Respondent asserted that she experienced high levels of rent arrears which she said was £7,500 a month.

134. The Respondent has on the whole managed the portfolio herself, and used a selected group of tradespeople to carry out repairs to the properties and the services of a letting agent to recruit prospective tenants. The Respondent said that prior to the Pandemic she engaged an administrator to handle some of the paperwork.

135. The Respondent doubted that the handing over of the management of her properties to managing agents would necessarily improve outcomes for her tenants and or her properties. The Respondent's view was based on her experience of using managing agents in the past and that she feared her houses would end up in a worse state if she was unable to monitor their performance. Nevertheless the Respondent said that she was planning to instruct managing agents in the future to take over the HMOs in her portfolio. The Respondent said she had found two different agents which appeared to satisfy her own high standards. The Respondent, however, felt that to be denied any involvement in her own business was not right or necessary.

136. The Respondent contended that a Banning Order would have a significant impact on her life. The Respondent said that she was a professional landlord who depended upon her rental income for her livelihood. The Respondent stated that she was 61 years old and if a Banning Order was imposed she would have to take early retirement with no prospect of returning to work as a landlord which she had undertaken for the last thirty years.

137. The Respondent asserted that the imposition of a Banning Order would be very distressing for her and would be ruinous for her reputation. The Respondent stated that it would be very hard for her to live without the work that she had been doing for the last 30 years.

138. The Respondent maintained that she used her properties not only for income for herself but as a philanthropist by housing needy and homeless persons or persons on low income. The Respondent considered she had responsibility to offer accommodation to those who might ordinarily struggle to be accepted as a tenant in the private rented sector, such as, those who are living on the street, or recovering from substance abuse addictions, or recently released from prison or in long-term unemployment. The Respondent said that she accepted these tenants at times without demanding any deposit and for periods of reduced or even no rent. The Respondent expressed the hope by so doing, she was contributing to the wellbeing of the City of Bristol and making it a more hospitable place to live in for those on the margins of Society.

139. The Respondent insisted that she was not primarily motivated by financial gain and that she let rooms to marginalised individuals in eight of her houses (originally nine) at rents significantly below the market room rentals in Bristol. The Respondent estimated that if she charged the market rent she would have received an additional £13,055 a month in rent for the then nine houses let to marginalised individuals.

140. The Respondent believed that if a Banning Order was made she would be forced to hand over the management of the properties to professional managing agents which would charge higher rents that would be unaffordable to those tenants in the marginalised group. This could result in around 30 people being deprived of their homes because commercial agents would not be keen to have them as tenants.

141. The Respondent stated that she had founded a charity called Refresh in Bristol which provided foodbanks, free meals for the homeless and a drop in café, a revival market giving employment and job opportunities to the marginalised; a child contact centre to allow contact with children from separated parents in a safe environment, and also counselling groups for those with addiction problems. The Respondent allowed Refresh to use two commercial premises owned by her rent free. The Respondent considered that a Banning Order might have an adverse impact on her charitable activities.

142. The Respondent supplied a character reference from Reverend Andy Paget, the Senior Minister of Trinity Tabernacle in Bristol, who commended the Respondent without reservation as "someone who has for decades been working tirelessly with some of the City's most marginalised and disadvantaged people, supporting them and offering housing". Reverend Paget expressed his concern of the negative impact that a Banning Order on the Respondent would have on Bristol's most needy citizens.

143. The Council accepted that a Banning Order would have financial implications for the Respondent. According to the Council, if a Banning Order was made she would have to arrange for her Property Portfolio to be managed by others, the costs of which would make a severe dent in the

rental income she received. The Council suggested, however, that these costs would be offset by the continuing fines and penalties the Respondent was acquiring due to the inadequate management of her property portfolio.

144. The Council believed that the Respondent would still receive sufficient income to support her charities, and that her continuing involvement in them would be a matter for the Charities Commission not for the Tribunal.

145. The Council submitted that the Respondent adduced no evidence to support her contention that a Banning Order would have an adverse impact upon her mental health. The Council, however, acknowledged that a Banning Order would cause her distress but this would need to be balanced by the distress caused to her by her continued and protracted involvement with the Council, the legislative regime and the justice system.

146. The Council considered that the Respondent had already suffered reputational damage from her convictions for eight Banning Order offences. The Council asserted that the Banning Order would not add to the damage already experienced.

147. The Council contended that a Banning Order would have a positive impact on the Tenants because the property portfolio would experience a professional and legally compliant management regime. Mr Riddell expressed the view that the managing agents would not be able to discriminate against the marginalised group of tenants.

148. The Tribunal is required to consider the likely effect of a Banning Order on the Respondent and anyone else who may be affected by such an Order.

149. The Tribunal is satisfied that a Banning Order would have a serious deleterious impact upon the Respondent. The Tribunal does not accept the Council's submissions in this regard. The Tribunal considers as a matter of common sense that a person who is deprived of her livelihood and a business for which she has dedicated 30 years of her life was bound to experience mental anguish and suffer substantial financial loss. The Tribunal is also of the view that her reputation would be further tarnished by the imposition of a Banning Order. The Tribunal is not in a position to make an informed assessment about the impact of a Banning Order on her charitable activities. The Respondent restricted her submissions to the financial support she gave to her various charitable activities. The Tribunal considers that she should be able to continue to make financial contributions because the parties accepted that she would not be deprived entirely of rental income if a Banning Order was made.

150. The Tribunal turns to the effect of a potential Banning Order on the tenants of the Respondent's properties. The Tribunal notes that [6.4] of the 2016 Guidance states that

> "a Banning Order does not invalidate any tenancy agreement held by occupiers in the property, regardless of whether the agreement was issued before or after the Banning Order was made. This is to ensure an occupier of the property does not lose their rights under the terms and conditions of the tenancy agreement".

151. It follows that the imposition of Banning Order would not have an immediate impact upon the tenants of the Respondent's property portfolio. The Respondent, however, submitted that the outcome of the Banning Order would eventually result in reduced capacity for marginalised individuals who would not be able to pay the market rents charged by the managing agents and who may also not be acceptable to them as suitable tenants.

152. The Tribunal recognizes that the Respondent sets aside part of her portfolio for the marginalised group of tenants and charges them lower rents. The Tribunal, however, finds that the Respondent accepted that the standards offered for this group of tenants were lower than those for the two other categories of tenants housed in the Respondent's property portfolio. The Respondent said at paragraph 14 of her first witness statement:

> "I also acknowledge that some of my properties are towards the lower end of the property market. They are affordable for people on lower incomes. The quality of the internal decoration is commensurate with the rent that I charge. I could spend more money to achieve a more up-market decor in my houses, but I would have to increase my rents to pay for it. Property in Bristol is already unaffordable for many, so I try to avoid unnecessarily increasing my rents. By keeping rents low, I aim to give my tenants and future potential tenants more choice and greater opportunity in the Bristol property market".

153. The Tribunal observes that the Respondent's future plan for her property portfolio to transfer more of her houses to group student accommodation, if no Banning Order was imposed would result in a reduction in the number of houses provided to tenants at lower rents.

154. The Tribunal concludes a Banning Order would have the following effects on the tenants of the Respondent's properties:

a. The terms of their current tenancy agreements would remain in force until the agreement comes to an end.

b. The tenants of the HMOs would have the benefit of a professional and legally compliant management regime provided by managing agents approved by the Council as fit and proper persons to hold HMO licences.

c. The marginalised group of tenants presently living in the Respondent's accommodation may be considered too high a risk

for the newly appointed managing agents, and may not be able to afford the rents if the Agent demands a market rent.

Should a Banning Order be Made?

155. The 2016 Act gives the Tribunal a discretion to make a Banning Order provided certain conditions are met. The 2016 Act offers no criteria on how the Tribunal should exercise its discretion except that the Tribunal must consider the factors set out in section 16(4). The 2016 Act states that Part 2 of the Act which includes Banning Orders is about Rogue Landlords and Property Agents in England. The Act, however, gives no definition of Rogue Landlord.

156. The non-statutory 2016 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.

157. Lord Bourne of Aberystwyth explained that Banning Orders:

> " ……. target the most prolific offenders who have been convicted of serious housing, immigration and other criminal offences connected to their role as landlords. They will prevent rogue landlords and property agents earning income from renting out properties or engaging in letting agency or property management work, forcing them either to raise their standards or to leave the sector entirely".

158. The Tribunal found in this case that the conditions in section 16 subsections 1(a) and 1(b) and subsection (2) of the 2016 Act have been met. The Tribunal is, therefore, entitled to make a Banning Order.

159. The Tribunal found in relation to the factors identified in section 16(4) of the 2016 Act the following:

a) The Respondent's convictions for eight Banning Order offences met the threshold of seriousness to warrant the imposition of a Banning Order.

b) The Respondent had no previous convictions for Banning Order offences.

c) The Respondent's name had not been included in the database of rogue landlords and letting agents.

d) A Banning Order would have a severe deleterious impact upon the Respondent's livelihood, mental health, and reputation.

e) A Banning Order would not have an immediate impact on the existing tenancy agreements of the tenants currently residing in

the Respondent's properties. The tenants of the HMOs would benefit from a professional and legally compliant management regime provided by approved managing agents. There is a tangible risk that the marginalised group of tenants would not be acceptable as tenants and or afford the rents for the improved properties.

160. The Tribunal determined that the Respondent's Banning Order convictions were manifestations of a course of conduct stretching back to 2016 which was characterised by her persistent failure to recognise the mandatory nature of the legal requirements for HMOs and her unwillingness to work with the Council to improve the management of her properties. In this regard the Tribunal is satisfied that the Respondent meets the description of a rogue landlord as a person who flouts her legal obligations and rents out accommodation which is substandard.

161. The Tribunal accepts that a Banning Order would have a severe deleterious impact on the Respondent's livelihood, mental health and reputation. The Respondent is in the process of transferring the management of the HMOs in her portfolio to two firms of managing agents, which she suggested met the Council's concerns about the poor management of the property portfolio. The Council indicated that one of the managing agents was suitable to hold a licence but not the other managing agent.

162. The Tribunal recognised that the Respondent's proposal to transfer the HMOs to managing agents would avoid the stigma of a Banning Order and allow her some involvement in her business, particularly the non HMOs. The Tribunal, however, must be satisfied that the proposal would ensure that the Respondent's portfolio is managed to the required standard in the future which outweighs the adverse impact of the Banning Order on the Respondent's well-being. The Tribunal is not confident from the Respondent's track record of working with the Council that it would work. The Tribunal identified that the Council had on two previous occasions accepted the Respondent's proposals for improving the standard of management of her properties, which the Respondent failed to keep. The present proposal is virtually the same as the one given by the Respondent to avoid the "fit and proper person" enquiry. In that instance BPP, the appointed managing agents indicated that the Respondent would not let go of the management of her properties which prevented BPP from carrying out its responsibilities. The Council has stated that if it was unsuccessful with the Application for a Banning Order it would reinstate the "fit and proper person" enquiry. The Tribunal is, therefore, satisfied that the route of alternative options to enable the Respondent to improve standards has been exhausted, which leaves the Banning Order as the only realistic option.

163. The Tribunal accepts that there is a tangible risk that a Banning Order would reduce the level of accommodation in the Respondent's portfolio available to let to the marginalised group of tenants. This risk is mitigated by the fact that a Banning Order would have no immediate impact on the terms of the current tenancy agreements for those tenants. Also it would appear from the Respondent's evidence that there was a compromise between the standards offered in those properties and the rent charged, and that the Respondent would have been reducing the capacity of low rent accommodation if she was allowed to continue to manage her portfolio. The Tribunal concludes that the tangible risk of reduced capacity for the marginalised group of tenants is not sufficient to outweigh the potential benefits of a Banning Order arising from the professional and legally compliant management of managing agents. The Tribunal accepts, however, it may be a consideration when deciding the terms of the Banning Order.

164. Counsel made the point that the Respondent's convictions only affected a small proportion of her property portfolio, and that this was a factor in determining the seriousness of her offending and the proportionality of any sanction. The Tribunal has not given weight to this because it reflects more on the limitations and the reactionary nature of the regulatory regime. The Tribunal is satisfied from the evidence that the Council was not aware of the existence of all the properties owned by the Respondent until the introduction of the additional licensing schemes for three and four bedroom HMOs. Further the evidence showed that once the Council adopted a targeted approach it discovered contraventions of the 2006 standards in the Respondent's properties. Finally the Tribunal relied on the undisputed evidence that the Council had concerns with the Respondent's management of her properties dating back to 2016.

Decision

165. The Tribunal is satisfied that the Respondent has flouted her legal obligations in respect of the management of her property portfolio and has rented out accommodation which was substandard, and that the Respondent has failed to follow up on her agreements with the Council to improve the management and conditions of her properties. The Tribunal, therefore, determines that the making of a Banning Order is both necessary and proportionate to ensure that her property portfolio is managed to the appropriate standards.

166. The Tribunal gave an indication at the hearing on 31 March 2022 that if it made a Banning Order it would invite representations on the length and the terms of the Banning Order, and exceptions to it. Counsel indicated that if an Order was made he could not argue against the five year period proposed by the Council. The Tribunal wishes to reserve its position on length until it has heard the parties' submissions but it indicates at this stage that the length of the Order would be no more than five years.

167. The Tribunal invites the representations from the parties on the length and terms of the Order by 20 June 2022 which should be filed and served by email to rpsouthern@justice.gov.uk. The Tribunal would then fix a video hearing for two hours in the 14 days commencing 27 June 2022 to finalise the terms of the Banning Order. The parties are to provide dates to avoid by 14 June 2022.

168. The Tribunal advises the parties to refrain from publishing the decision until the Order has been finalised. The right to apply for permission to appeal the decision will start on the date the Order is finalised and distributed.