FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BH/HBA/2023/0001**
Property	**:**	**81A St. Georges Road, London E10 5RQ**
Applicant	**:**	**London Borough of Waltham Forest**
Representative	**:**	**Mr Riccardo Calzavara (counsel) instructed by in-house legal department**
Respondent	**:**	**Ms Mamataj Begum Konica**
Representative	**:**	**Neither present nor represented**
Type of application	**:**	**Application for a banning order under section 15(1) of the Housing and Planning Act 2016**
Tribunal members	**:**	**Deputy Regional Judge Nikki Carr** **Mr Stephen Mason BSc FRICS**
Date of decision	**:**	**12 June 2024**

DECISION

Decision

The Tribunal makes a banning order, prohibiting Ms Mamataj Begum Konica from letting housing in England, engaging in English letting agency work; engaging in English property management work; or being involved in any body corporate that carries out an activity that she is banned from carrying out, in the terms of the Banning Order annexed to this decision.

REASONS

The application

1. The Applicant seeks a banning order pursuant to section 15(1) of the Housing and Planning Act 2016 ('the Act').

2. It relies on the following seven convictions for banning order offences, obtained in the Thames Magistrates' Court on 22 November 2022, in respect of the Ground Floor Flat and separate Annexe at 81A St Georges Road, Leyton, London E10 5RQ (hereafter 'GFF', 'the Annexe', and jointly 'the Property'):

GFF

Contrary to section 72(1) and (6) of the Housing Act 2004.
On 18/08/2020 at London Borough of Waltham Forest the defendant had control of or managed a House in Multiple Occupation which was required to be licensed under Part 2 of the Housing Act 2004, namely 81A St Georges Road, Leyton, London E10 5RQ, but which was not so licensed.
Plea: Not Guilty – 23/08/2021
Verdict: Proved in absence 01/11/2022
Fine: £1,000

On 18/08/2020 at London Borough of Waltham Forest the defendant failed to comply with regulations, namely CONTRARY TO regulation 4(2) of the Management of Houses in Multiple Occupation (England) Regulations 2006 and section 234(3) of the Housing Act 2004, made in respect of a house situated at 81A St Georges Road, Leyton, London E10 5RQ which was in multiple occupation in that did fail to ensure that fire alarms within that house in multiple occupation were maintained in good order and repair.
Plea: Not Guilty – 23/08/2021
Verdict: Proved in Absence – 01/11/2022
Fine: £500

On 18/08/2020 at London Borough of Waltham Forest the defendant failed to comply with regulations, namely CONTRARY TO regulation 4(4) of the Management of Houses in Multiple Occupation (England) Regulations 2006 and section 234(3) of the Housing Act 2004, made in respect of a house situated at 81A St Georges Road, Leyton, London E10 5RQ which was in multiple occupation in that did fail to take all measures reasonably required to protect the occupiers from injury in that there was no fire blanket, fire door or carbon monoxide alarm in the kitchen of the property, and there were no fire doors to any of the bedrooms.
Plea: Not Guilty – 23/08/2021
Verdict: Proved in Absence – 01/11/2022
Fine £500

On 18/08/2020 at London Borough of Waltham Forest the defendant failed to comply with regulations, namely CONTRARY TO regulation 7 of the Management of Houses in Multiple Occupation (England) Regulations 2006 and section 234(3) of the Housing Act 2004 made in respect of a house situated at 81A St Georges Road, Leyton, London E10 5RQ which was in multiple occupation in that did fail to ensure that all common parts of the property were maintained in good and clean decorative repair in that there

was damp in the hallway walls, a broken panel to the bath, a defective window in the bathroom, mould present in the kitchen, rubbish located in the rear garden and a large gap between the door frame and door leading to the rear of the property.
Plea: Not Guilty – 23/08/2021
Verdict: Proved in Absence – 01/11/2022
No separate penalty

The Annexe

Contrary to section 72(1) and (6) of the Housing Act 2004.
On 18/08/2020 at London Borough of Waltham Forest the defendant had control of or managed a House in Multiple Occupation which was required to be licensed under Part 2 of the Housing Act 2004, namely 81A St Georges Road, Leyton, London E10 5RQ, but which was not so licensed.
Plea: Not Guilty – 23/08/2021
Verdict: Proved in absence 01/11/2022
Fine: £1,000

On 18/08/2020 at London Borough of Waltham Forest the defendant failed to comply with regulations, namely CONTRARY TO regulation 4(2) of the Management of Houses in Multiple Occupation (England) Regulations 2006 and section 234(3) of the Housing Act 2004, made in respect of a house situated at 81A St Georges Road, Leyton, London E10 5RQ which was in multiple occupation in that did fail to ensure that fire alarms within that house in multiple occupation were maintained in good order and repair.
Plea: Not Guilty – 23/08/2021
Verdict: Proved in Absence – 01/11/2022
Fine: £500

On 18/08/2020 at London Borough of Waltham Forest the defendant failed to comply with regulations, namely CONTRARY TO regulation 4(4) of the Management of Houses in Multiple Occupation (England) Regulations 2006 and section 234(3) of the Housing Act 2004, made in respect of a house situated at 81A St Georges Road, Leyton, London E10 5RQ which was in multiple occupation in that did fail to take all measures reasonably required to protect the occupiers from injury in that there was no fire blanket or carbon monoxide alarm in the kitchen of the property, there were no fire doors to any of the bedrooms, and there was an exposed light fitting and white goods plugged into electrical extension cables in the bathroom.
Plea: Not Guilty – 23/08/2021
Verdict: Proved in Absence – 01/11/2022
Fine £500

3. Notice of Intention to Apply for a Banning Order was given in accordance with the requirements of section 15 of the Act on 21 March 2023, giving the Respondent the required 28 days to make representations. It relied, in a section it called '*Previous track record*', on a further conviction on 20 September 2017 of having control or management of a property at 117-119 Napier Road that was required to be licensed under Part 3 of the Act, but was not so licensed, contrary to section 95(1).

4. The Respondent made no representations in connection with the Notice.

Relevant procedural background

5. The Applicant made its application to the Tribunal by Application Notice dated 24 August 2023, before the convictions were spent. Directions were given by Ms Hamilton-Farey on 27 October 2023. The Applicant was to provide its full statement of case on or by 24 November 2023, and the Respondent to provide hers on or by 15 December 2023, to which the Applicant was permitted to reply. A hearing was listed for a determination of the Application on 29 February 2024.

6. On 24 November 2024 the Applicant sent to the Respondent its bundle by registered post. It was returned to the Applicant marked as 'not called for'. On 1 February 2024, a process server delivered the Applicant's bundle to the Respondent's address at 13 Arun, East Tilbury, RM18 8SX. A lady answered the door but claimed not to be Ms Konica. A gentleman identified himself as the Respondent's brother, and took the bundle from the process server to give to the Respondent.

7. On 15 December 2023, the Respondent asked for an additional 30 days to submit her bundle, on the basis of some purported medical issues she identified. No supporting evidence was provided. It appears that email was not retrieved until shortly before the hearing on 29 February 2024, and a case officer emailed to require medical evidence. No such bundle was forthcoming.

8. At the hearing on 29 February 2024, the Respondent did not attend. It appears that the panel had an application to adjourn the hearing on those medical grounds, and reviewed what purported to be medical records in support. Those 'medical records' have clearly been through some optical scanning software, and frankly do not support the matters set out in the Respondent's email of 15 December 2024. Nonetheless, the panel adjourned the hearing on 29 February 2024, but directed as follows:

> 2. By 4pm on **28 March 2024** the Respondent must send to the Tribunal at London.Rap@justice.gov.uk and the Applicant a single digital indexed and paginated Adobe PDF bundle. The bundle must be indexed, have numbered pages and, so far as possible, be in chronological order. The bundle must include:
> (i) a statement setting out:
> (a) the reasons for opposing the making of a banning order, which should include any grounds upon which the Respondent wishes to rely and any response to the LHA's case; and
> (b) any exceptions that the Respondent argues should be for made for some or all of the period that the banning order is in force, if one is made by the Tribunal. Exceptions could include:

- enabling a landlord to manage a property for a specified time if there are tenants at the property and the landlord is unable to bring those tenancies to an end; or

(ii) any witness statements of fact to be relied upon.

(iii) any other documents to be relied upon including, where appropriate, copy correspondence, plans and colour photographs.

3. If the Respondent does not fully comply with paragraph 2 above, she will be debarred from defending the application.

9. The Respondent did not comply, nor provide her dates to avoid for a further hearing. By notice dated 17 April 2024, I debarred her from further participation in these proceedings pursuant to rule 9(3)(a) of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013, and set out in the debarring notice how she might apply to lift the bar.

10. The Respondent wrote to the Tribunal on 18 April 2024, setting out further medical complaints, accompanied by a GP fit-note signing her off from work from 23 March 2024 – 14 April 2024 for 'on medication stress'. I wrote to the Respondent to remind her that the debarring notice set out the directions she needed to comply with on order to apply to lift the bar. No such application has been made. The last day for doing so was 16 May 2024.

11. After the hearing had concluded, at 11.40am on 11 June 2024, Ms Konica wrote to the Tribunal as follows. No supporting evidence accompanied that email:

"*I am unable to participate in the video call that was supposed to take place today due to the unanticipated death of my grandmother. Currently living outside of the UK, my mother's unexpected loss of my grandma has left her absolutely distraught. I don't have family members because my mother doesn't have any other children. As a mother of a singel, I recently gave birth to my second daughter, another daughter who is now three years old. I need my mother's presence right now, as well as mental and emotional support. In addition, I suffer from self-harming and numb feet. In my words, I would like to highlight that Waltham Forest Council has provided me with band in the past, and they now wish to expand it and intentionally provide me more.*

Kindly, sir, take this subject under consideration with full transparency. I lac k the financial resources to pursue this matter further or legal counsel to repr esent me, and I was unable to obtain support for this topicduring the hearing today. I apologise deeply for the rural area's inability to return earlier owin g to inadequate internet access. I'm merely emailing while using someone els e's phone."

12. The hearing had already concluded. Ms Konica had been barred from participation two months earlier. No application had been made to lift the bar. The email continued to fail to set out any substantive response to the proceedings, which has been due from the Respondent for nearly six months.

Since she had been barred, she had no standing to make such an application in any event.

Law and Guidance

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

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

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

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

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

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

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

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

20. Section 15 requires a local authority to give the person a Notice of Intent before applying for a banning order. The Notice of Intent may not be given after the end of the period of six months beginning with the day on which the person was convicted of the offence to which the notice relates, and must by subsection (3):

(a) inform the person that the authority is proposing to apply for a banning order and why;
(b) state the length of each proposed ban; and
(c) invite the person to make representations within a period specified in the notice of not less than 28 days.

21. The LHA must consider any representations made during that notice period and must wait until the notice period has ended before applying for a Banning Order.

22. Section 17 provides that a ban must last at least 12 months but may contain exceptions to the ban for some or all of the period to which the ban relates. The exceptions may also be subject to conditions. In addition, a person who is subject to a Banning Order that includes a ban on letting may not make an unauthorised transfer of an estate in land to a prohibited person. Nor can a banned person hold an HMO licence or a licence under Part 3 of the Housing Act 2004 in respect of a house. In addition, an HMO licence or Part 3 licence must be revoked if a Banning Order is made against the licence holder. Interim and final management orders may be made in cases where a Banning Order has been made and a property has been let in breach of the Banning Order.

23. Section 14(3) defines a "Banning Order offence" as an offence of a description specified in regulations made by the Secretary of State. The relevant regulations are the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 ("the 2018 Regulations") which sets out the Banning Order offences in the Schedule to the Regulations. The 2018 Regulations only apply to offences committed after the coming into force of the regulations, on 6th April 2018. One of the specified offences is the section 95 licensing offence in the Act.

24. Section 16(4) provides that in deciding whether to make a banning order against a person, and in deciding what order to make, the Tribunal must consider:

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

25. That list is not exhaustive (*Knapp v Bristol City Council* [2023] UKUT 118 (LC)).

26. Section 4 of the Rehabilitation of Offenders Act 1974 ('the 1974 Act') provides that:

(a) no spent conviction is admissible before a judicial authority to prove that someone has committed, charged with, prosecuted for, convicted of, or sentenced for any offence which was the subject of a spent conviction; and

(b) a person shall not, in proceedings before a judicial authority, be asked about, or required to answer, any question relating to his past which cannot be answered without acknowledging or referring to a spent conviction or any circumstances ancillary to it.

27. Section 5 of the 1974 Act provides that a conviction in respect of which (only – section 6) a fine is imposed is spent, and a person considered rehabilitated, one year after the date of conviction provided no further offence has been committed.

28. Section 7 of the 1974 sets out the following in relation to the discretion of a judicial authority as regards spent convictions (emphasis added):

(3) If at any stage in any proceedings before a judicial authority in [England and Wales] … the authority is satisfied, in the light of any considerations which appear to it to be relevant (including any evidence which has been or may thereafter be put before it), that **justice cannot be done in the case except by admitting or requiring evidence relating to a person's spent convictions or to circumstances ancillary thereto**, that authority may admit or, as the case may be, require the evidence in question notwithstanding the provisions of subsection (1) of section 4 above, and may determine any issue to which the evidence relates in disregard, so far as necessary, of those provisions.

29. It is apparent that therefore sections 4(1)(a) and (b) are both subject to the section 7 test.

30. In *Hussain & Ors v London Borough of Waltham Forest* [2020] EWCA Civ 1539, the Court of Appeal were concerned with a case in which the local authority had revoked HMO licences held by Mr Hussain, relying on his spent convictions. The two questions before the court were whether the underlying conduct, resulting in a conviction that was now spent, was nevertheless admissible even if the conviction itself was not under section 4(1)(a); and whether a local authority is a 'judicial authority' for the purposes of section 7(3) of the 1974 Act.

31. On the first issue the court found that even if a conviction was not admissible because spent, the underlying conduct that had led to the conviction was not inadmissible under section 4(1)(a). The conviction and the conduct are two separate considerations. *Per* Hickinbottom LJ at paragraph 40:

> *"In my view, the wording of section 4(1)(a) and (b) is unambiguous: whilst, in proceedings before a judicial authority, (a) provides that evidence of the conviction and what might be termed "the prosecution process" is inadmissible, (b) concerns disclosure, extending that protection so that a rehabilitated person cannot be asked (nor is he or she required to answer) questions about the conviction or circumstances ancillary thereto including conduct constituting the offence for which he*

or she has been convicted…. In my view it is clear that the different words used in section 4(1)(a) and (b) were intended to have different effects so far as scope of the provisions is concerned: the admissibility prohibition in the former is deliberately drafted not to include evidence of conduct constituting the relevant offence(s)."

32. In a decision dated 15 February 2023, the Tribunal (Ms Bowers, Judge Sheftel and Mr Lewicki) were concerned with a case in which seven convictions for banning order offences were obtained on 1 October 2021 and therefore spent by the time the application for a banning order was considered at a hearing by the Tribunal – *London Borough of Newham v Jahangir Hussain* LON/00BB/HBA/2022/0001. The Tribunal determined that it was able to impose, and did impose, a banning order despite the fact that the convictions were spent, reasoning as follows:

> 22. *The second preliminary matter was in regard to the nature of the spent convictions. When the application was made on 31 May 2022 the convictions were unspent. However, they became spent on 30 September 2022.*
>
> 23. *The Applicant's position is that it cannot be the intention of Parliament to exclude such evidence of the convictions when hearing an application for a Banning Order. The non-statutory MHCLG Guidance at paragraph 3.4 states that 'A spent conviction should not be taken into account when determining whether to apply for and/or make a banning order". None of the convictions were spent when Newham decided to make the application. It is the Applicant's position that justice could not be done unless the Tribunal admits the evidence in relation to the convictions and that the Tribunal should admit the evidence in accordance with section 7(3) of the Rehabilitation of Offenders Act 1974 (the 1974 Act). The case of Hussain v Waltham Forest LBC [2020] EWCA Civ 1539 supports this principle. The convictions were recently spent, and it would not be in the interest of justice to exclude this evidence. Neither the offences nor the circumstances in which they were committed are subject to the protection of section 4 of the 1974 Act. As section 20 of the 2016 Act envisaged situations when convictions had been spent, then Parliament had the issue of spent convictions in mind and the statute would have explicitly excluded the making of Banning Orders if convictions had been spent. Section 20 (4) should not be used to imply that a Banning Order could only be made on the basis of an unspent conviction.*
>
> 24. *Mr Bryant submits that the Tribunal should not take into account the convictions and should not make a Banning Order. A pre-condition to making a Banning Order under section 15 of the 2016 Act is that the Respondent "has been convicted". But those convictions were spent after 30 September 2022. It is for the Applicant to show at the hearing that there was a conviction for a Banning Order offence. Section 4 (1) of the 1974 Act provides that a person is "a rehabilitated person" if the conviction is spent and so the Respondent should be treated as a person*

neither having committed nor been convicted of a Banning Order offence. By section 4(1)(a) no evidence shall be admissible to prove that a person has committed or been convicted of an offence once it is spent. Mr Bryant considers Hussain v Waltham Forrest can be distinguished from the current case on the basis that the local authority was not obliged to prove the conviction but chose to do so.

25. *It is accepted that the Tribunal may admit evidence under section 7(3) if justice cannot be done except by admitting the evidence. However, the Respondent's position is that justice can be done by declining to admit the evidence for the following reasons. Whilst not binding, the Tribunal should give weight to the MHCLG Guidance. It is clear that the Government thought it was unjust for spent convictions to be taken into account in making any Banning Order. This is supported by section 20(4) of the 2016 Act that sets out that if a conviction is spent then the Tribunal may vary or revoke a Banning Order. As such a Banning Order cannot be made once a conviction is spent as once made, the Respondent may immediately apply to have the Banning Order revoked. Under section 15(6) of the 2016 Act, the Applicant had six months from 1 October 2021 to give the Respondent a Notice of Intended Proceedings and as the Applicant waited until 29 March 2022, it took the risk that the convictions would be spent by the time the matter was heard. The offences took place in 2018 and that the offences are now 'stale'. The Respondent's evidence is that he has taken steps to and has "proactively reorganised the management structure of my properties …. to ensure that the reasons behind my 2021 convictions are not repeated" and as such he has improved his behaviour.*

26. *As accepted by both parties the MHLCG Guidance is non-statutory. Whilst the Tribunal have taken it into account, we do not consider it to be a tool of interpretation of the 2016 Act. Given the steps that need to be taken by a Local Authority in proceeding with a Banning Order and the length of time before any matter could come before a Tribunal for determination, it would seem extraordinary that convictions that were spent at the time of a hearing could not be taken into account. We consider that section 20 sits alone and describes a scenario when a conviction is unspent at the time of making a Banning Order but subsequently becomes spent. We do not agree that section 20 implies that the convictions need to be unspent at the time of making the Banning Order. It is accepted that in contrast to Hussain v Waltham Forest, in this case one of the 'ingredients' of section 16 of the 2016 Act is that the Respondent, is a person who has been convicted of a Banning Order offence. However, we consider that the crucial part about whether the fact that the Respondent has been convicted can be admitted is dealt with by section 7(3) of the 1974 Act. The Tribunal is a judicial authority and by section 7(3) is satisfied that for justice to be done in our consideration of this application for a Banning Order, we need to know about Mr Hussain's convictions. Therefore, we admit the evidence relating to the convictions that were spent on 30 September 2022. However, the fact that the convictions are spent is a factor we take into account when making our determination below."*

33. On 6 December 2023 the Upper Tribunal (Judge Elizabeth Cooke) upheld the decision of the FTT: *Jahangir Hussain v London Borough of Newham* [2023] UKUT 287 (LC).

34. In paragraph 42 of the decision of the Upper Tribunal in *Irvine v Metcalf and others* [2023] UKUT 283 (LC), Deputy President Martin Rodger KC set out as follows at paragraph 72: "*A failure to licence an HMO is always a serious matter, although generally of lesser significance than the other housing offences listed in section 40(3), 2016 Act. Where there is little or no evidence that licensing would have been conditional on changes being made to the condition of the property the particular failure may be regarded as lower in the scale of seriousness".*

35. The MHCLG (as DLUHC then was) provided *Banning Order Offences under the Housing and Planning Act 2016: Guidance for Local Authorities*, published in April 2018, which is non-statutory in nature('the Guidance'). The stated intention of the Guidance is to help local authorities understand their new powers to ban landlords from renting out properties in the private sector. Its recommendations are not mandatory, but it is good practice for an LHA to follow them, and the Tribunal may take them into account when coming to its own decision.

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

37. Paragraph 1.7 of the 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*".

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

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

- **The seriousness of the offence**: the Guidance sets out that all banning order offences are serious. The LHA should consider the sentence imposed by the Court for the banning order offence: the more severe the sentence, the more appropriate a banning order is likely to be. This factor is said to go to both the making of and the duration of a banning order;

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

40. The Guidance at paragraph 3.4 states that '*A spent conviction should not be taken into account when determining whether to apply for and/or make a banning order*".

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

<u>The offences</u>

42. As set out in the memorandum of conviction above, the seven offences on which the Applicant relies are in relation to management and licensing off the Property.

43. A body of evidence is presented by the Applicant. The basic factual background leading to the convictions is as follows.

44. The freehold title in the Property has been held by Maneck Edulji Kalyaniwalla and Perin Maneck Kalyaniwalla since 30 July 2015. Those same individuals have held the lease of the GFF since 3 November 2009. At an earlier date than that at which those individuals acquired the whole freehold, on 20 April 2015 a 999 lease was granted for the Annexe (described in the lease document as a 'garage') by Mrs Farzana Abdul Mayet to Mr Sulaiman Mayet. It is unclear how this came about or how Mrs Mayet held the title, or why that lease was granted for nil premium at only a peppercorn rent if demanded.

45. On 24 June 2024, someone named Mr Younus Bhaila obtained a selective license in respect of the GFF, which expired on 31 March 2020. In around October 2020, Maneck Kalyaniwalla applied for a further selective licence. In that application, he named Sulaiman Mayet his 'fiscal agent', and In Estates Limited as the managing agent, for the GFF. Sulaiman Mayet was the proposed license holder.

46. In Estates Limited's director is Kasaki Raga. It employs around four property/administrative agents. One of those agents is Imran Mayet. Imran Mayet is Sulaiman Mayet's brother-in-law. Sulaiman engaged Imran to 'manage the property', which included finding and referencing tenants, collecting rents, and ensuring the legal compliance of the Property.

47. By tenancy agreement dated 1 February 2016, In Estates Limited organised for an assured shorthold tenancy agreement between the landlords and (1) Mr Devarajulu Atmakur and (2) Miss Mamataj Konica to be entered into. That agreement lets the GFF and 'garage', for a period of 18 months to 31 July 2018. That agreement contained a provision against subletting, and against the taking in of lodgers or paying guests without the landlord's written consent. Mr Atkakur and Miss Konica were required to use the premises as a single private residence only.

48. In around February 2020, just shortly prior to the first national lockdown for Covid-19, the managing agents attended the property on a routine inspection and identified a number of suspect individuals at the property, about which something didn't seem right. It is said that this was reported to the Applicant.

49. On 25 June 2020, while conducting inspections in the local area, Ms Lobsang Palmo, Environmental Health Enforcement Officer, was approached by a member of the public making complaint of people living in a garage at the back of the property, and about ongoing noise from the address. Visits to the GFF and Annexe were made on 3 July 2020, 21 July 2020, 17 August 2020, 18 August 2020, 21 August 2020, 28 August 2020 and 1 September 2020. These visits resulted in identifying 12 individuals living in the GFF and Annexe (6 per building respectively). Statements were obtained from the individuals, in

three of which the individuals stated they were paying rent to the Respondent or her partner, Mr M D Shalauddin. The total rent being paid monthly by the individuals concerned was £4,240 per month, via cash or bank transfer.

50. Three bedrooms were found in the Annexe. Ms Palmo observed that the premises consisted of three bedrooms, a kitchen, living room and toilet. In it, a heat detector was exposed and defective in the kitchen, there was no fire blanket and no carbon monoxide monitor in the kitchen area, no self-closure or fire doors to the bedrooms, an exposed bathroom light, no source of natural light to the front bedroom, no fixed heating to the Annexe (portable heaters were in each bedroom), and rubbish and overgrown vegetation to the garden (including a microwave, numerous broken chairs, and wooden pallets).

51. In the GFF, Ms Palmo observed a defective smoke alarm in the hallway, suspected rising damp in the hallway and an uncontrolled draught due to a gap between the frame and the door leading to the rear of the property, no fire blanket or carbon monoxide alarm in the kitchen, no fire door to the kitchen, no self-closure or fire doors to the bedrooms, no fixed hearing to the GFF (portable heaters were in each bedroom), inadequate heating, broken floor tiles in the bathroom and a broken window transom in the bathroom.

52. On 17 August 2020, one of the occupants had called Ms Palmo to state that the electricity had been cut off to the Annexe (Ms Palmo discovered a fuse had been removed from the fuse box). Occupants also advised that the Respondent and her husband had attended to try to disrupt the gas supply.

53. On 21 August 2020, Ms Palmo gave notice of intention to serve Improvement and Prohibition Notices in respect of the GFF and Annexe respectively.

54. On 28 August 2020 one of the occupants had called Ms Palmo to complain about attempts to illegally evict the occupants of the GFF. On attending, Ms Palmo was informed that Ms Konica and Mr M D Shalauddin had tried to change the locks, and had taken away the occupants of the rear room's belongings. They had called the police, who had arrested Mr M D Shalauddin. Ms Palmo observed that the rear bedroom door had been removed, mattresses and duvets had been removed and dumped in the rear garden, the electric switch in the bedroom was exposed, the slide bolt lock to the rear door had been removed, and that there were pests present. The Applicant carried out immediate emergency repairs.

55. Various investigations were made and Final Notices issued. Ms Konica has made various statements at various stages on connection with the Property and various notices (Witness Statement accompanying appeal against Prohibition Order dated 7 December 2020 **[301]**); letter from Archbold's Solicitors dated 9 September 2020 **[259]**; 4 paragraph Witness Statement dated 30.12.2020 **[490]** wholly failing to deal with the Applicant's 62 written questions put to her when she was allegedly 'too ill' to be interviewed under caution **[462]**). Those statements have been inconsistent.

She has been non-cooperative with both the Respondent and with the Tribunal.

56. Mr Sulaiman Mayet, 'Fiscal Agent' (whatever that might mean) answered questions under caution at the Applicant's PACE interview, stating that In Estates Limited had full management responsibility for the Property. He acknowledged that he had an interest in the 'garage'.

57. Imran Mayet, for In Estates Limited, answered questions under caution at the Applicant's PACE interview. He disclosed the tenancy agreement with the Respondent, and highlighted the terms of the tenancy requiring the use of the premises as a single residential dwelling, to include the garage, which he described as a 'chillout area', not for residential usage. As soon as In Estates Limited had carried out the inspection in February 2020, they had given notice by section 21 to terminate the Respondent's tenancy, but had been delayed in obtaining a court order due to the covid-19 moratorium on possession proceedings. He made it clear that the Respondent did not have permission to have any other persons in occupation at the Property.

58. In the Thames Magistrates' Court, the Respondent entered 'not guilty' pleas to all offences. The Magistrates convicted her of all seven offences in her absence. The Magistrates were therefore clearly satisfied beyond reasonable doubt that the Respondent was a residential landlord, who had committed the offences listed above. There is no need or requirement for us to go behind those findings.

'***Previous track record***'

59. Ms Julia Morris provided witness evidence, dated 23 February 2024, in which *inter alia* she provided details respect of the offence said to have been committed in respect of 117-119 Napier Road contrary to section 95(1), including the findings of DJ Clarke (Magistrate) as follows:

"*This allegation exists because of a new licencing scheme in the London Borough of Waltham Forest. There is a chronic shortage of housing in this city. Unscrupulous landlords exploit this to cram houses with as many people as they can fit in them. Where, as in this case, a house is a House of Multiple Occupancy, there must be a selective private rented property licence.*

I have looked at the efforts the LB Waltham Forest have made to bring this to their residents' attention. Because of people's lack of means and resources, they have to occupy these sorts of premises. This scheme was introduced to try to combat antisocial behaviour that might take place, but in many cases people living in accommodation like this are just poor. These are vulnerable people and the scheme exists to protect them. Ignorance of the law is no excuse. The fact you may not have realised you were committing a criminal offence is neither here nor there.

The house was not licenced and that was required. The question is whether the prosecution have proved that you were a person managing or having control of the premises. This need not be exclusive- it is common to be split through a chain of command. We don't need to argue about what it means, s.263 Housing Act defines it.

You were receiving rent. The tenants were paying around £5,000 per month on the face of it. You are therefore guilty of the offence because you were in control of the property at the material time.

You put yourself in a commercial position of collecting the proceeds. You were the point of contact for tenants. You even hired a cleaner. You purported to be the landlord, describing yourself as such on the tenancy agreement you gave to Mr. Enrique. Why is that? It is because you regarded yourself to be the landlord of the property.

I don't believe you are telling the truth. You collected rent, which puts you in control of the premises. I therefore find you guilty."

60. It is said that conviction led to a fine of £10,000.

61. The witness statement was served on the Respondent by a process server on 26 January 2024.

Our findings

62. Having heard evidence and submissions from the Applicant and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

(i) Admissibility of the spent convictions

63. Whilst the convictions for the seven index offences in this case have become spent during the course of the Applicant's application coming to a final hearing, we consider justice cannot be done without admitting them. They are the very foundation of the application; there is no penalty other than a fine available for them, and such convictions will therefore always become spent within a year; the Applicant needs sufficient time to gather evidence, give notices, and make decisions after convictions are obtained before it can make a banning order application; proceedings for a banning order always require both parties to have a fair opportunity to set out their case and therefore rarely will a final hearing be possible within the year from the date of conviction. All of those factors mitigate against the Guidance being given anything other than cursory acknowledgement in that regard. Mere Guidance cannot oust the Tribunal's jurisdiction to exercise its discretion under section 7 of the 1974 Act.

64. We therefore admit the seven offences for which convictions were obtained on 1 November 2022.

(ii) Admissibility of the 'previous track record'

65. Mr Calzavara conceded that, in terms of the question of whether a banning order should be made, the Applicant's case was that the index offences were sufficiently serious that there was no necessity to rely on the 2017 offence. It is therefore unnecessary to admit the 117-119 Napier Road offence in order to determine whether to make a banning order. He therefore did not press hard for the previous track record to be admitted, save to the extent that it established a course of conduct.

66. The question on the underlying conduct in respect of that offence is more nuanced. The factors in section 16(4) of the Act are not a complete list. The conduct underlying the conviction in 2017, identifiable from the District Judge's sentencing remarks, has a clear enough nexus with the conduct leading to the present convictions that a *modus operandi* can be identified. We consider that fact to be highly relevant to the question of duration/terms of a banning order, if we decide to make one. We do consider that in order to do justice, the underlying conduct of that earlier offence should be admitted under section 7 of the 1974 Act. It seems to us part of a factual matrix that we should be able to have regard in that context.

Should we make a banning order?

67. We are satisfied on the evidence, in particular the finding by the Magistrates' Court that the Respondent was in management or control of the Property, and the witness evidence obtained from the 12 individuals occupying the property that the Respondent was their landlord, to whom they paid their rent, that the Respondent was a residential landlord for the purpose of that definition in the Act.

68. We are also satisfied, on the evidence provided by the Applicant, that the Notice was properly given to the Respondent, and the relevant timescales complied with.

(i) Seriousness of the offences

69. The Applicant argues that the seven offences are serious, despite the low level of the fines imposed by the Magistrates on 1 November 2022. There are two failure to licence offences, aggravated by multiple breaches of the Management Regulations, in particular as regards fire safety and disrepair. The Applicant points to its policy in other sections, showing the seriousness with which it takes fire safety and repair obligations. However, that is not the question. The question is whether *we* consider the offences to be serious enough to justify the imposition of a banning order.

70. The Respondent has housed 12 people in accommodation designed to house 2 - maximum 4 (if the two bedrooms in the GFF are double rooms). If a fire were to break out, the occupants variously had no protection in place from fire

doors, a properly working fire alarm, heat detection or carbon monoxide detection system, fire blanket or other basic protections. Had there been an application for a licence, and the Applicant had the opportunity to inspect, it would have been refused given the danger the property presented to the occupants.

71. The occupants were also living with rising damp, no proper heating, ill fitting doors to keep out the elements (aggravating the insufficient heating), and mould (no doubt due to the other combined factors). Some of them were effectively living in a 'beds in sheds' arrangement, with no natural light. These were at best unhealthy living conditions, and at worst dangerous to the health of the occupants.

72. The individuals living at the property were vulnerable. They were nationals of Spain or the Gambia, and of the three Ms Lovett spoke to none spoke English. It was clear that they did not have much choice on the housing market, to accept accommodation that was so substandard.

73. We do not consider that the fine imposed by the Magistrates properly reflected the gravity of the offences. We do consider the offences serious enough that a banning order is justified. These are not simple failures to licence at the lower end of the scale. There are significant aggravating features.

(ii) Previous convictions/rogue landlord database

74. There are no previous convictions to be taken into account (on the above analysis), and while we heard evidence that the Respondent had been included on the Rogue Landlord Database for the index offences, there were no other entries to take into account.

(iii) Effect of a banning order

75. Ms Lovett gave evidence that the potential harm to the occupants of the Property was serious, because of the hazards identified. A banning order was considered appropriate as it would deter the Respondent, who the Applicant considered had likely operated in this manner elsewhere, and had firm evidence had operated in the same way in respect of 117-199 Napier Road. A banning order would also protect others from risk of the same conduct. It would deprive the Respondent of substantial unlawful income through her exploitation of vulnerable individuals in the housing market. The banning order, if made, would be publicised and would deter others, including landlords signed up to the Applicant's newsletters, so that it would be demonstrated how seriously the Applicant took housing conditions and conduct.

76. We accept that the occupiers were caused significant harm by the Respondent's conduct. There were significant risks to their safety, and they were financially exploited because of their vulnerability. A banning order

would have the effect of removing the Respondent from the housing sector, and disturbing her obtaining significant unlawful income. We accept that a banning order, properly publicised, would potentially have the effect of discouraging similar shady dealings by other landlords. No evidence or submissions were put forward by the Respondent as to why such an order should not be made, or would be too draconian a step.

(iv) Conclusion

77. For the above reasons, we conclude that we should make a banning order.

Terms of the Banning Order

78. There is a range of culpability between non-compliance from a position of innocent negligence with no other aggravating features at the bottom end, and deliberate and conscious flouting of the law accompanied by additional evidence of blatant disregard for occupants' health and safety at the other. The Guidance makes very clear that banning orders are aimed at the worst offending Landlords, who behave egregiously and rent out unsafe and substandard accommodation.

79. We consider and repeat the analysis above. At this stage we also consider the factual matrix surrounding the conviction in 2017. We note that the decision by the District Judge demonstrates that the circumstances surrounding that offence were very similar to the ones surrounding this, and that despite a £10,000 fine having been imposed, nevertheless just under 3 years later the Respondent was still operating in the same way. She could no longer realistically suggest that she was ignorant of the law, after those proceedings had concluded and in light of the sentencing remarks.

80. We also consider the actions of the Respondent and her partner when the unlawful behaviour was discovered. They took steps to cut off gas and electrical services, and to attempt to illegally evict at least two of the individuals to whom they had unlawfully sublet.

81. We consider that both the Respondent's conduct in subletting to the individuals concerned, and in trying to illegally evict them after her actions were discovered, was deliberate, conscious, and culpable. That conduct was indeed egregious.

82. We are also satisfied that the Respondent repeatedly failed to engage with the Applicant in connection with its investigations for the Improvement Notice and Prohibition Orders, failed to engage with the Magistrates' Court in connection with the proceedings for the index offences (entering not guilty pleas and then failing to attend for trial), and has failed to engage with this Tribunal in the course of these proceedings, other than to repeatedly seek to delay them. Those are not the actions of someone with remorse or insight into their behaviour.

83. We are satisfied the requested 3-year banning order is justified and commensurate with the behaviour evinced, and that the terms of it should encompass management activity or company membership in case the respondent sees those other avenues as a means to circumvent the banning order, and in the knowledge that District Judge Clarke's fine of £10,000 has had no apparent effect on the Respondent's continuing conduct.

84. We therefore make a banning order, in the terms annexed to this decision.

Name: Judge Nikki Carr **Date:** 12 June 2024

Rights of appeal

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

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

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

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

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

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

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BH/HBA/2023/0001**
Applicant	**:**	**London Borough of Waltham Forest**
Respondent	**:**	**Ms Mamataj Begum Konica**
Date	**:**	**12 June 2024**

BANNING ORDER
PURSUANT TO THE HOUSING AND PLANNING ACT 2016

IMPORTANT

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

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

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

2. For the reasons given in the decision of the Tribunal dated 12June 2024

IT IS ORDERED:

i. The Respondent, Ms MAMATAJ BEGUM KONICA of 13 Arun, East Tilbury, Tilbury, RM18 8SX is, with effect from the date this Decision and Order are sent to her by the Tribunal by email until **30 June 2027,** banned from:

a. Letting housing in England;
b. Engaging in English letting agency work;
c. Engaging in English property management work; or
d. Doing one or more of those things.

ii. The Respondent, Ms MAMATAJ BEGUM KONICA of 13 Arun, East Tilbury, Tilbury, RM18 8SX is **also,** with effect from the date this Decision and Order are sent to her by the Tribunal by email until **30 June 2027,** banned from being involved in any body corporate that carries out an activity that she is banned from carrying out by paragraph 2(i) above.

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

Judge N Carr
12 June 2024

EXPLANATORY NOTES:

A. A person who is subject to a banning order that includes a ban on letting may not make an unauthorised transfer of an estate in land to a prohibited person. Any such transfer is void (section 27 of the Housing and Planning Act 2016).
B. A breach of a banning order does not affect the validity or enforceability of any provision of a tenancy or other contract.
C. A person against whom a banning order is made may apply to the Tribunal for an order varying or revoking the order, pursuant to section 20 of the Housing and Planning Act 2016.
D. The expressions "English letting agency work" and "English property management work" have the meanings given to them in sections 54 and 55 of the Housing and Planning Act 2016.
E. The expression "involved in a body corporate" has the meaning given to it in section 18 of the Housing and Planning Act 2016.