	FIRST-TIER TRIBUNAL **PROPERTY CHAMBER (RESIDENTIAL PROPERTY)**
Case reference	**CAM/00KF/HBA/2024/0002**
Applicant	**Southend-on-Sea City Council**
Respondent	**Mr Ruhul Mohammed Shamsuddin**
Application	**Application for a banning order**
Tribunal members	**Judge David Wyatt** **Mr C Gowman BSc MCIEH MCMI**
Date of decision	**19 June 2024**

DECISION

Decision of the tribunal

The tribunal has decided to make a banning order, which is attached to this decision notice, against the Respondent in the terms and for the three-year period set out in the order.

Reasons

1. On 11 December 2023, the tribunal office received an application by the Applicant local housing authority under section 15 of the Housing and Planning Act 2016 (the "**2016 Act**") for a banning order against the Respondent for five years.

2. The Applicant also sought provision in such order banning the Respondent from being involved in any body corporate carrying on banned activities. They referred to Lordsons Limited (now named Zenblaze Limited), Lordsons Estates Limited (now named NOPQE Limited) and Conker Property Management Limited (the "**Companies**") in particular.

Banning order offences re. 12 Clifftown Road, Southend

3. On 17 May 2023, the Respondent (having pleaded not guilty) was convicted in his absence of the following offences in relation to 12 Clifftown Road, Southend-on-Sea, the first under section 72(3) and the remainder under section 234 of the Housing Act 2004 (the "**2004 Act**"):

on "*or before*" 8 December 2021:

a. failing to comply with an HMO licence condition by allowing a second-floor room, where a maximum of two occupants were permitted, to accommodate a family of five;

b. non-compliance with regulation 3 of the Management of Houses in Multiple Occupation (England) Regulations 2006 (the "**Regulations**"), in that the requisite contact details of the manager were not displayed;

c. non-compliance with Regulation 7(2)(a), in that the third floor balustrade had missing spindles;

d. non-compliance with Regulation 7(2)(b), in that there was a lack of an additional handrail to the staircase down to the first floor;

e. non-compliance with Regulation 7(2)(c), in that the coverings on the entrance hallway, and the stairs down to and from the first floor, were not safely fixed and in good repair;

on 6 January 2022:

f. non-compliance with Regulations 7(2)(d) and 4(2) in that the fire alarm control panel was not maintained in good working order (this was treated as two separate offences);

g. non-compliance with Regulation 4(2) in that the alarm (meaning the detector) in the first floor hallway was not maintained in good working order;

on 6 January 2022 and 1 February 2022:

h. non-compliance with Regulation 7(1)(c) in that the passageway from the external staircase into the street was not clear (this was treated as two separate offences, one on each date).

Banning order offences re. 90-90a West Road, Westcliff

4. On 27 June 2023, the Respondent (having changed his pleas to guilty) was convicted of the following offences in relation to 90-90a West Road, Westcliff-on-Sea, the first under section 72(1) and the remainder under section 234 of the 2004 Act:

between 1 July 2021 and 15 June 2022:

a. control or management of an HMO which was required to be licensed but was not;

on 1 April 2022:

b. non-compliance with Regulation 3, in that the requisite contact details of the manager were not displayed;

c. non-compliance with Regulation 4(2), in that the fire alarm system was not maintained in good working order;

d. non-compliance with Regulation 4(2), in that the fire extinguishers were not maintained, and adequate means of escape free from obstruction was provided; and

e. non-compliance with Regulation 4(1)(b), in that the "letting doors" were damaged and in poor repair in rooms 2 and 6.

Procedural history

5. On 19 February 2024, the application was referred to the judiciary. On 20 February 2024, a procedural Judge gave case management directions. Pursuant to those directions, the Applicant produced a bundle of their case documents. The Respondent failed to comply with the directions, which required production by 5 April 2024 of a bundle of the case documents he wished to rely upon.

6. At the hearing by video on 30 May 2024, the Applicant was represented by Ms Karolina Zielinska of counsel. Paul Oatt and Jasmine Zawadzki, both regulatory services officers employed by the Applicant, attended to give evidence. The Respondent attended and represented himself.

Initial conditions/considerations

7. The offences described above are all designated 'banning order offences', so section 15(1) of the 2016 Act is satisfied. It was not disputed that the Applicant had complied with the pre-application procedure required by section 15(3). On 11 September 2023, they sent notice to the Respondent that they intended to apply for a banning order against him and explained why. They warned this could prevent him from letting housing in England, engaging in English letting agency work and engaging in English property management work. They detailed the relevant offences and other alleged offences. They warned they were seeking a banning order to last for five years. Their notice was given within six months of the relevant convictions and they gave him 28 days in which to make representations. No representations were made during the 28-day period. The Applicant waited until after that period had ended before making their application to the tribunal on 11 December 2023.

8. Generally, the tribunal can only make a banning order against a person who was a 'residential landlord' (defined in s.55 of the 2016 Act) or property agent (defined in s.56) at the time they committed the banning order offence (s.16(1)(b)). Where a banning order application is made against an officer of a body corporate, the tribunal may make a banning order against that officer even if that condition is not met (s.16(3)). The relevant bodies corporate in this case are summarised below.

9. Lordsons Limited was incorporated in 2017, describing its business as: "*other letting and operating of own or leased real estate*". The Respondent (who was born in 1982) is the sole director and shareholder. After 22 January 2024, the name of the company was changed to Zenblaze Limited.

10. Conker Property Management Limited was incorporated in 2019, describing its business as: "*real estate agencies*". Apart from one director who was appointed in 2020 and then resigned two days later, the Respondent has been the sole director, and appears to be the sole shareholder.

11. Lordsons Estates Limited was incorporated in 2020 describing its business as: "*real estate agencies*". The Respondent is the sole director and shareholder. E-mail correspondence from the Respondent in 2021 and Zeenat Shamsuddin in 2022 indicates this was the company then trading as Lordsons estate agents ("*Lordsons Estates Limited T/AS Lordsons*") from 14 Clifftown Road. After 22 January 2024, the name of the company was changed to NOPQE Limited.

12. Those three Companies are each currently subject to proposed administrative strike-off because documents are overdue. Lordsons Estate Agents still appear to be trading from 14 Clifftown Road, but this now appears (from more recent e-mail correspondence) to be a trading name used by Chapter 77 Limited, a company incorporated in December 2022 describing its business as: "*other letting and operating of own or leased real estate*". The Respondent was the sole director until 19 May 2023, when he resigned. He was replaced by Zeenat Shamsuddin, who was born in 1983, to whom it appears he transferred his share(s) in the company.

13. The Respondent was a residential landlord (as defined) at least in respect of some of the rooms at 12 Clifftown Road (being the landlord named in the tenancy agreements with occupiers, and the holder of the lease from the freeholder, as described below), as was Lordsons Estates Limited, a company of which he was a director, in respect of at least one other. Similarly, Lordsons Limited and/or Conker Property Management Limited, companies of which the Respondent was a director, were a residential landlord at least in respect of some of the rooms at 90-90a West Road (being respectively the landlord named in tenancy agreements with the occupiers and the tenant under the lease from the freeholder, as described below). None of these matters were disputed.

14. Accordingly, the condition in s.16(1)(b) is satisfied at least in relation to 12 Clifftown Road and there is no need for it to be satisfied in relation to 90-90a West Road. Even if a body corporate of which the Respondent was a director would for the purposes of s.16(3) need to be a residential landlord at the time the relevant offences were committed, we are satisfied that at least one of them was.

15. The non-statutory guidance "Banning Order Offences under the Housing and Planning Act 2016" says (at 3.4): "*A spent conviction should not be taken into account when determining whether to apply for or make a banning order*." By sections 1 and 5 of the Rehabilitation of Offenders Act 1974 (the "**1974 Act**"), where an "*individual*" has been convicted of an offence, the rehabilitation period (for the sentences imposed in this case) is the end of the period of 12 months: "*…beginning with the date of the conviction in respect of which the sentence is imposed*". By section 7(3), if a judicial authority is: "*…satisfied, in the light of any considerations which appear to it to be relevant … 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 that evidence.

16. In Hussain v London Borough of Newham [2023] UKUT 287 (LC), the Upper Tribunal confirmed that, notwithstanding the guidance, the words: "*has been convicted of a banning order offence*" in sections 15(1) and 16(1) of the 2016 Act do not refer only to convictions which are not spent. The effect of the 1974 Act is that: "*…evidence of spent convictions will be inadmissible, unless the FTT is persuaded, pursuant to section 7(3), that "justice cannot be done" except by admitting that evidence*." [32]. In considering that, the Upper Tribunal confirmed, it is right not to focus on personal circumstances but on whether the tribunal could do its job at all in the absence of the evidence. In that case: "*For justice to be done, the FTT had to at least look at the evidence. That did not mean that it was necessarily going to make a banning order; it was simply that consideration of the local housing authority's application could not get off the ground unless evidence of the spent convictions was admitted*."

17. While the convictions were not spent when the banning order application was made, the rehabilitation period in respect of all the offences relating to 12 Clifftown Road expired shortly before the hearing. Those convictions are now treated as spent and generally no evidence would be admissible to prove that the offences were committed etc (sections 1 and 4 of the 1974 Act, respectively). The Respondent confirmed he had no objection to us taking into account all the convictions and evidence relied upon. We are satisfied that justice cannot be done unless we do so. The application was made promptly, in December 2023. The spent convictions, from May 2023, relate to conduct from late 2021 up to February 2022, became spent only two weeks before the hearing in May 2024, and are said to indicate a pattern of behaviour. The other convictions, relating to 90-90a West Road, are unspent; their rehabilitation period expires later in June 2024.

General law

18. In Knapp v Bristol City Council [2023] UKUT 118 (LC), the Deputy Chamber President described the relevant statutory provisions and non-statutory guidance in relation to banning orders, at [15-29] and [30-33].

19. The effect of a full banning order is severe, preventing a person from lawfully letting housing or engaging in letting agency or property management work in England, or being involved in any body corporate that carries out any such activity. All those expressions are defined widely in the 2016 Act. Breach of a banning order is a criminal offence for which an offender is liable to imprisonment and/or fines, or may result in a substantial financial penalty. By section 29 of the 2016 Act, a local housing authority must also enter in the rogue landlord database the name of any person against whom a banning order is made, if they have not already entered them on the database in respect of the relevant banning order offence(s). In line with all this, the non-statutory guidance states (at 1.7) 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*". Mr Oatt confirmed that the Applicant had not yet developed their own policy in relation to banning orders at the relevant time.

20. Section 16(4) requires the tribunal to consider: (a) the seriousness of the offence(s); (b) any previous convictions for a banning order offence; (c) whether the person has at any previous time been included in the database of rogue landlords and property agents; and (d) the likely effect of the banning order on them and anyone else who may be affected by the order. Ms Zielinska said, it was not disputed and we note it was agreed by the parties in Knapp [23] that these are not the only matters which may be taken into account.

12 Clifftown Road

21. 12 Clifftown Road is subject to a lease from 2007 which "*Rahul Shamsuddin*" acquired on 26 March 2015 for £1. This expires on 8 March 2027. In August 2015, the freehold title was acquired by an unconnected person, Ms Goldsmith. In 2017, the Respondent applied to the Applicant in his own name for an HMO licence, paying £900. In his application form, he indicated that he was the freeholder. He did not disclose the mortgage on the freehold title, left blank the details for any leaseholder and left blank the section asking for details of any other person who might be interested in the application. An HMO licence was granted in his name permitting up to eight occupiers. He was the council tax payer.

22. On 25 November 2021, Mr Oatt wrote to the Respondent about allegations from a tenant of 12 Clifftown Road that after complaining about disrepair he had been threatened and attacked by "Mihai" and other people from "Lawsons" attempting to evict/harass him. On 26 November 2021, the Respondent replied, disputing what had been said. Mr Oatt replied that

he was perfectly willing to hear what the Respondent said had happened. It appears there was no answer to this.

23. On 8 December 2021, Mr Oatt inspected 12 Clifftown Road. He described it as a terraced property, with a burger shop/restaurant on the ground floor. The areas which were used for residential purposes are on the first and second floors, with additional rooms on the third floor (described as the attic), all accessed using a metal external staircase at the rear. Lordsons estate agents, at 14 Clifftown Road, are next door but one. An occupier told Mr Oatt that there were 10 people living in the property; himself and his brother (from Bulgaria) and two families from Romania. He paid his rent to "Mihai" in the Lordsons office. Another, the tenant of a room on the second floor, produced a tenancy agreement which identifies the landlord simply as "Lordsons" and provides for a monthly rent of £500 and deposit of £500 with no apparent deposit protection. That tenant lived in that room with her husband and three children (all under the age of five). Mr Oatt measured the room at 11.89m2 and noted that the Essex HMO amenity standards would allow occupation by a maximum of two people (even apart from the maximum permitted occupiers in the HMO licence and the specific limit in the HMO licence of no more than two occupiers for that room). Mr Oatt found that all three rooms in the attic were too small to be occupied.

24. Later that day, Mr Oatt sent a notice to the freeholder requiring information. The freeholder responded promptly, saying the Respondent was the tenant through her agent, Sorrells, and as far as she was aware he should be using the property as a restaurant, not an HMO. She expressed concern, asking how the HMO licence had been granted when she had not been consulted. The lease held by the Respondent demises the entire building. It permits use of the basement, ground and first floors as a restaurant, with staff accommodation above. It prohibits any underletting of part and any underletting of whole or change of use without permission. Rent statements were produced showing arrears owed to the freeholder.

25. In response to a similar request for information, the Respondent produced documents including a spreadsheet of rents from occupiers naming "Lordsons" as owner, and copy tenancy/licence agreements. Most of the "room rental" agreements named the Respondent ("Ruhul Shamsuddin") as the landlord. One showed "Lordsons" as landlord. As noted above, "Lordsons" was at the time a trading name used by Lordsons Estates Limited.

26. The Applicant arranged a more detailed inspection, giving notice on 4 January 2022, for 6 January 2022. The Respondent telephoned Mr Oatt and said, amongst other things, that contractors would be on site then, carrying out work. On inspection, there were no contractors on site and no work was being carried out. A range of problems, including disrepair and inadequate heating were noted, as considered below. One of the conditions in the HMO licence from 2017 had required that defective

windows in room 4 and the kitchen be repaired, overhauled or replaced by 28 February 2018. That had not been done.

27. On 12 January 2022, the Applicant gave notice (dated 4 January 2022) of proposed revocation of the HMO licence, and wrote to the Respondent about what had been found on inspection. They warned that they intended to serve an improvement notice and a prohibition order for part, giving 14 days for representations. On 28 January 2022, Zeenat Shamsuddin contacted Mr Oatt to ask about the scope of works, saying works had been carried out. She also said that the property was now empty; all the tenants had gone. Mr Oatt asked if they had been rehoused. He was told the tenants were all gone, they needed to empty the property because of his notice, and the walls forming the undersized rooms on the third floor had been knocked through to avoid the need for a prohibition order.

28. Mr Oatt arranged to re-inspect on 1 February 2022. He was asked to delay this until the end of that week. On 1 February 2022, he inspected externally and met the tenant of the upper floor front room. She confirmed that she and her family were still living at the property; all the other occupiers had left. He found some works (such as clearing gutters and dealing with faults displayed on the fire alarm system and alarm detectors covered with foil) had been carried out, but most had not.

29. Accordingly, on 1 February 2022, Mr Oatt served an improvement notice, requiring the Respondent and "*Lordsons*" to within two months from 3 March 2022 carry out specified works. These included renewal of wood-framed single glazed windows, removal of an accumulation of refuse around the external stairs, provision of an adequate gas or electric heating system (only a single fixed electric heater in one room, and portable electric heaters elsewhere, had been provided, with the boiler providing only hot water), and remediation of walls and ceiling areas affected by damp. In view of the work which had been carried out, he decided not to serve a prohibition order, but expressed concern about roof support following removal of the third floor walls.

30. On 11 February 2022, the Applicant revoked the HMO licence. They also wrote to the Respondent noting allegations that occupiers had been threatened with eviction, warning again about the offence of unlawful eviction. The remaining tenant had been re-housed by the Applicant, after alleging that the landlords had changed the locks. That was disputed by the Respondent, who said the tenants had abandoned the property. Mr Oatt confirmed that ultimately the view had been taken that the Applicant did not have sufficient evidence of unlawful eviction to prosecute, and did not rely on this in relation to the banning order application. On 17 March 2022, Mr Oatt and the Respondent met on site with the freeholder's agent. Mr Oatt saw that the property was now empty.

31. On 30 December 2022, referring to earlier correspondence about failure to carry out the works required by the improvement notice of 1 February 2022 and confirmation that the property remained empty, the Applicant

served a prohibition order. This prohibits use of the first, second and third floors for residential accommodation. On 21 February 2023, the improvement notice was revoked. The relevant notice confirmed the specified works had not been carried out, but the improvement notice was being revoked because it had been superseded by the prohibition order (which sets out essentially the same works, which must be carried out before the property can be used for residential accommodation).

32. The Respondent and Lordsons Estates Limited were prosecuted for the offences summarised above as persons managing (or the licence holder, in the case of the licensing offence). At a preliminary hearing on 14 October 2022, the Respondent pleaded not guilty to all of the charges. Other charges were dropped. The trial was fixed for 17 and 18 May 2023 at Colchester Magistrates Court, but only one day was needed because the Respondent did not attend and was found guilty of the 10 banning order offences summarised above relating to 12 Clifftown Road. The Applicant said, and it was not disputed, that Lordsons Estates Limited were also found guilty of nine of those offences.

33. The Respondent attended the sentencing hearing on 7 July 2023, when Basildon Magistrates Court were said to have imposed total "fines" of £17,291 including costs and victim surcharge. When we asked, the Applicant confirmed the actual fine imposed on the Respondent was £2,344 plus a victim surcharge of £190 and costs of £6,112.50. They told us that the same amounts again were imposed on Lordsons Estates Limited, which indicates total fines of £4,688 for the relevant offences.

90-90a West Road

34. On 25 March 2022, Ms Zawadzki was dealing with an outstanding HMO licence application made for this property in 2020. The applicant's representative then contacted her, explaining that the property had been sold in 2021 as an HMO with tenants in situ and they believed the property was being managed by Lordsons Estate Agents. The freehold title was purchased on 23 June 2021 by Valentine Lodge Ltd, whose directors were Mr and Mrs Sanghera.

35. On 1 April 2022, Ms Zawadzki made an unannounced visit with her colleague, Ashish Shinde. She said the property has three floors, with 10 letting rooms and one self-contained flat accessed at the side. They found 12 adults and five children in occupation of seven of the rooms, and no answer from the other rooms, at the time. Occupiers confirmed the property had been taken over by "*Lordsons*" in 2021. The tenant of room 6 produced his tenancy agreement, which names the landlord as "*Lordsons Limited*". The front page of the copy HMO licence displayed in the hallway is for the previous owner and makes it clear that it expired in 2019 and the maximum number of persons permitted in the house was 15.

36. On 5 April 2022 at 3pm, the same officers re-inspected on notice (given the previous day) to Lordsons Limited and Valentine Lodge Ltd. The

Respondent and a member of staff named Lauren, with Mr Sanghera of Valentine Lodge Ltd and his son, met them outside the property. They were able to identify 19 occupiers (including children) plus unnamed other(s), apparently making a total of 16 adults and five children.

37. On 19 April 2022, the Respondent provided documents including a copy lease (for 12 months from 23 June 2021 to 24 June 2022 and on a monthly basis thereafter) between Valentine Lodge Ltd and Conker Property Management Limited for a rent of £3,500 per month. He produced copy tenancy agreements for some of the rooms from 2021, naming the landlord as "*Lordsons Limited*". He also produced some tenancy agreements which had been entered into with the previous owner. Rents under the 2021 agreements appear to have ranged from £400 to £550 per room. On 21 April 2022, Ms Zawadzki inspected again to access the remaining room.

38. On 26 April 2022, Ms Zawadzki sent to Valentine Lodge Ltd, the Respondent, Lordsons Limited and Conker Property Management Limited notifications of hazards (one in respect of the main property and one in respect of "Flat 4", the self-contained flat). She proposed to serve an improvement notice, and a prohibition order in respect of rooms 1, 2, 3 and 8 because they were undersized. She said the hazards (other than those the subject of the convictions) included absence of fixed space heating to letting rooms, an insecure front entrance door, risks of burns or scalds from poorly located standalone cookers, unrestricted windows on the second floor risking falls, extensive damp and mould in the shared bathing facilities and concerns about overloaded power sockets.

39. On 17 May 2022, the proposed improvement notices (requiring works to be completed within two months from 16 June 2022) and the proposed prohibition orders prohibiting use of the undersized rooms for residential purposes (suspended for up to three months to allow the occupiers time to find alternative accommodation) were served.

40. The Applicant had no responses from the Respondent to any of this. On 15 June 2022, a representative of Mr Sanghera applied for an HMO licence, confirming there were 11-15 people occupying from 11 households. The freeholder engaged contractors to carry out works and appointed a new managing agent, Ocean Residential, from June 2022.

41. The Respondent, Lordsons Limited, Conker Property Management Limited, Mr and Mrs Sanghera and Valentine Lodge Ltd were prosecuted for the banning order offences summarised above as persons managing (or, in the case of the licensing offence, the persons managing or in control). They were also prosecuted for the offence, under section 236 of the Act, of failure to produce documents demanded on 4 April 2023 under section 235 about where money collected from occupiers had been paid to.

42. At the first hearing on 25 January 2023, the Respondent pleaded not guilty to all offences and a trial was fixed for two days from 27 June 2023. On the first day of the trial, the Respondent changed his plea to guilty and

arrangements were made for sentencing on 7 July 2023, at the same time as the offences relating to 12 Clifftown Road. We were told that Valentine Lodge Ltd also pleaded guilty to the offence of failure to licence and the charges against Mr and Mrs Sanghera were withdrawn.

43. The Applicant had failed to provide sufficient evidence of all the convictions and fines they sought to rely upon. They could demonstrate, in relation to the Respondent, a fine of £1,517 plus a victim surcharge of £152 and costs of £2,542.57, and the same amounts again in relation to Conker Property Management Limited. The Applicant said other fines had been imposed, on Valentine Lodge Ltd or others, taking the total of the fines, surcharges and costs to £16,846. However, even at the hearing, they could not confirm the figures. Their total appears to be about four times the total fine, surcharge and costs imposed on the Respondent. As arranged at the hearing, we proceed on the basis that the total fines imposed for these offences were at least £3,034 (and probably twice that) plus victim surcharges and costs.

Assessment

44. The relevant offences were serious, particularly in relation to fire safety matters. 12 Clifftown Road extended for three storeys above a restaurant, a potential fire risk. It had only two fire alarm detectors (one in a first floor hallway and one in a first floor bedroom, which had both been covered with foil, the Respondent said by a tenant), when detection was obviously also needed in the other areas, and the alarm system panel was displaying faults. The only access/escape route was using the small internal staircase to reach the external metal staircase, which was cluttered with rubbish. At 90-90a West Road, in addition to similar fire safety failings, extinguishers and some fire doors were not maintained.

45. Both properties were overcrowded, which greatly increased the risks of fire and of injury or loss of life in the event of fire. Only one overcrowding matter had been prosecuted, in relation to the family of five living in a room at 12 Clifftown Road which should not have been occupied by more than two people, but that was obviously serious. The relatively modest fines imposed do not seem to indicate very serious offences, but that appears to be the result of the narrow and specific charges which were pursued, including some which seem trivial. We were told that the only sentencing remarks referred generally to the seriousness of fire safety matters. The low fines imposed on the Respondent personally may partly be the result of others being prosecuted at the same time, with total fines divided between them. The level of the fines might also be the result of the separate sentencing hearing at a different Magistrates Court following convictions in absence and guilty pleas, if a fuller review of the evidence was not possible.

46. In this case, it is artificial to look only at the convictions. The Applicant had focussed on their improvement notices and other practical enforcement action to deal with other serious matters and seek to improve

the conditions in the properties as soon as possible. Their narrow prosecutions and the fines do not reflect the conditions in the properties, or the overall harm or potential harm to the occupiers (we note paragraph 3.3 of the non-statutory guidance). At both properties, occupiers including young children were exposed to life safety fire risks and unacceptable living conditions, as summarised below.

47. The overcrowding of 12 Clifftown was, as Mr Oatt said, concerning, with at least 10 people in occupation. Apart from the one family noted above, the previous tenancies showed rooms on the third floor had been let out in the past. Even if the smallest room (5 sq. m. with no windows) had only been let with another of those rooms, as the Respondent suggested, they should not have been occupied. The property had solid brick walls and dilapidated sash windows, so would have been cold and difficult to heat even with an adequate system. But it had no adequate means of heating. One of the rooms had a single fixed panel electric heater. All the other rooms relied on plug-in electric heaters, which significantly increase fire risks from the heaters themselves and from overloaded electrical sockets and extension leads. This left people, including young children, living and sleeping in cold (and at least in part damp) conditions.

48. The overcrowding at 90-90a West Road was also a serious concern. That overcrowding, the similar lack of fixed heating and reliance on portable heaters, and the use of stand-alone ovens, significantly increased fire risks and left the occupiers (around 16 adults and five children, it seems) living in unacceptable conditions. It was obvious from the front page of the HMO licence on display that it had expired, and what would be needed. Despite this, and having obtained an HMO licence for 12 Clifftown Road in 2017, and the investigation and action by the Applicant for 12 Clifftown Road since late 2021, the Respondent had made no application for an HMO licence or apparent attempt to deal with the similar risks and deficiencies at 90-90a West Road. That property was unlicensed for a year, from June 2021 to June 2022, when the freeholder arranged their own application and engaged a new agent. The Respondent, it seems, had done nothing.

49. We have accepted the evidence from the Applicant about these matters. The Respondent produced nothing to challenge it and chose not to cross-examine their witnesses.

50. The Respondent attempted, in his oral submissions, to give evidence about mitigating matters. Even if we take this into account, it has no weight. If the original complainant tenant was a problem and had covered the alarm detectors with foil, that makes no real difference to the overall severity of the conditions or the need to inspect, manage and maintain an HMO. Tenancy agreements may have been given to fewer people than were actually occupying (it is not unknown for couples to have children, or tenants to attempt to bring in others to share costs) but a manager has to use reasonable endeavours to monitor and control occupation. A new assertion, about false tenancy agreements being used to claim support

payments, was made far too late and unsupported. It may be that a property manager working for Lordsons brought in members of his family and friends to occupy 12 Clifftown Road. It is less credible that the Respondent was not aware of some problems there, particularly when Lordsons estate agents were next door but one. If he did not trouble to make himself aware, this makes no real difference to the responsibilities of a manager/landlord. Again, it does not change our overall assessment of the conditions in which people were housed or the culpability of the Respondent.

51. The Respondent had no previous convictions and had not previously been entered on the database of rogue landlords and property agents. Mr Oatt explained that the Applicant had difficulties accessing the database last year following the departure of staff who had the requisite access credentials, so had not sought to enter the Respondent on the database for the convictions.

52. In relation to the likely effect of the banning order on the relevant person and anyone else who may be affected by it, the non-statutory guidance refers (at 3.3) to the need to:

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

    b. deter the offender from repeating the offence (making any ban long enough to be likely to do so); and

    c. deter others from committing similar offences (it being important people realise the local housing authority is proactive in applying for banning orders where needed and the length of the banning order will be enough to both punish the offender and deter repeat offending).

53. On 19 October 2023, the Applicant gave notice under section 19 of the 2016 Act requiring information, including all properties currently leased, owned or managed through the Respondent or the Companies and all tenancy/licence agreements. On 6 November 2023, the Respondent and "Lordsons" each replied that the Companies and Chapter 77 Limited: "*are exclusively engaged in sales activities, with none of the above companies having management or control of the premises as from 17th May 2023 or date of commencement thereafter in question … This decision is in direct accordance with the recent newsletter release on the City Council website and various prominent media outlets … this decision has been reinforced by the negative press coverage and the recent banning order I have*

received … I trust that this information adequately addresses any concerns…".

54. The Applicant relied on this. They said the Respondent had a newly established overseas agency to earn income even if he was banned here, and could continue to receive income from property sale activities. They said there was no need for transitional provisions for current residential tenancies or winding down a business. They pointed out that 12 Clifftown Road is still subject to the prohibition order, and 90-90a West Road is now licensed by the freeholder and managed by a new agent, without the involvement of the Respondent. However, their evidence also explained that on 29 February 2024 they had discovered that "*Lordsons Estates*" were advertising six properties (in the same building) to let. The advertisement was dated 22 February 2024 through Zoopla.

55. The Respondent did not dispute that he was a professional property agent. He said that he would not be managing any properties himself and would focus on sales, but also referred to investment companies. We checked that he understood the wording of the relevant definitions in the 2016 Act. He confirmed he was not carrying out any of the activities which would be banned by the order sought by the Applicant and was not going to associate with anyone who was. The investment companies he had mentioned deal only with commercial lettings. He told us that he was no longer involved in Chapter 77 Limited. He confirmed there had been a lot of negative press coverage following the convictions, so he had decided not to be involved in this type of work. He did not dispute that a banning order should be made, but asked us to consider "suspending" it or minimising the period.

Conclusion

56. We are satisfied that we should make a banning order against the Respondent for all of the potential activities, and that it should be for a period of three years. A longer ban would not be justified by the seriousness of the relevant matters, in view of the limited nature of the actual convictions (some of which have just become spent), the absence of previous convictions, the relatively limited (but it seems proportionate) evidence produced to us and the absence of evidence of problems outside these two properties. However, a shorter ban would not be sufficient. A suspended order certainly would not, even if we had power to make one.

57. The main purpose of this order is deterrence of the Respondent and others from repeat or similar offending, sending the message that fines/penalties cannot be absorbed as a cost of overcrowding tenants into unsafe and inadequate housing, particularly where fire safety risks are involved, and other enforcement action cannot simply be avoided.

58. The Respondent did not deny that he had misrepresented to the Applicant that he was the freeholder of 12 Clifftown Road so that he could obtain an HMO licence without the true freeholder being informed. He and his colleagues also misinformed the officers from the Applicant about

practical matters when they were seeking to investigate and require improvements. Even if other matters are simply the result of negligence on the part of the Respondent, they were serious and had continued for significant periods of time. The licence condition for 12 Clifftown Road from 2017 requiring overhaul of windows was not complied with years later. Even following the improvement notice, no real remedial works were carried out; instead, the property was emptied or allowed to empty. Similarly, the Respondent simply left, or was removed, following the later enforcement action in relation to 90-90a West Road, with no attempt on his part to licence or deal with the problems at the property.

59. We are satisfied that the banning order should also ban the Respondent from being involved in any body corporate which carries out any of the banned activities. He has worked through companies as sole or main director and shareholder in the past and appears to have transferred the current trading company to a family member. Without this type of provision, the banning order could be avoided or could be too difficult to enforce, so may not be effective.

60. The Applicant asked us to make any banning order take effect immediately. We agree that based on what the Respondent told us there should be no transitional provisions or long delay, but we do consider that we should allow a clear week so that the Respondent can make absolutely sure he has no remaining potential involvement in any banned activities or any body corporate that carries out any banned activities. Accordingly, the ban will take effect from 1 July 2024 and end on 30 June 2027.

Judge David Wyatt **19 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).