



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

Case Reference	: CHI/00MR/HML/2024/0001 & 0002
Property	: 1 Sheffield Road, Fratton, Portsmouth, PO1 5DP and 38 Hudson Road, Southsea, PO5 1HD
Applicant	: Simon Fletcher Mrs Iva Fletcher
Representative	: Felicity Thomas of Counsel
Respondent	: Portsmouth City Council
Representative	: Matthew McDermott of Counsel
Type of Application	: An appeal against a decision by the LHA to grant or refuse to grant a Licence. Schedule 5, para 31 (1), Housing Act 2004
Tribunal Members	: Regional Judge Whitney Ms C Barton MRICS Ms J Dalal
Date of Hearing	: 5 th , 6 th and 7 th March 2025
Date of Decision	: 17 th June 2025

DECISION

Background

1. The Applicant seeks to appeal against certain conditions attached to two Licences in relation to the two named properties granted by the Local Housing Authority.
2. The Notices of the decisions to grant the Licences were dated 29 January 2024. The applications to the Tribunal were received on 2 February 2024.
3. Directions setting down dates for compliance by the parties were issued on 12 July 2024. Subsequent case management applications were made. The original listing was vacated and further case management directions were given on 30th October 2024 including listing the matter for two days commencing upon 5th March 2025.
4. The initial listing proved inadequate but with the agreement of the parties and their representatives the Tribunal continued to sit for a third day on 7th March 2025.
5. A hearing bundle consisting of 1398 pdf pages was produced and references in [] are to pages within that bundle.

The Law

6. The relevant law is set out in the Housing Act 2004 (“the Act”). The relevant section for the purposes of this appeal is section 67 of the Act:

“Section 67 Licence conditions

(1)A licence may include such conditions as the local housing authority consider appropriate for regulating all or any of the following—

(a)the management, use and occupation of the house concerned, and

(b)its condition and contents.

(2)Those conditions may, in particular, include (so far as appropriate in the circumstances)—

(a)conditions imposing restrictions or prohibitions on the use or occupation of particular parts of the house by persons occupying it;

(b)conditions requiring the taking of reasonable and practicable steps to prevent or reduce anti-social behaviour by persons occupying or visiting the house;

(c)conditions requiring facilities and equipment to be made available in the house for the purpose of meeting standards prescribed under section 65;

(d)conditions requiring such facilities and equipment to be kept in repair and proper working order;

(e)conditions requiring, in the case of any works needed in order for any such facilities or equipment to be made available or to meet any such standards, that the works are carried out within such period or periods as may be specified in, or determined under, the licence;

(f)conditions requiring the licence holder or the manager of the house to attend training courses in relation to any applicable code of practice approved under section 233.

(3)A licence must include the conditions required by Schedule 4.

(4)As regards the relationship between the authority's power to impose conditions under this section and functions exercisable by them under or for the purposes of Part 1 ("Part 1 functions")—

(a)the authority must proceed on the basis that, in general, they should seek to identify, remove or reduce category 1 or category 2 hazards in the house by the exercise of Part 1 functions and not by means of licence conditions;

(b)this does not, however, prevent the authority from imposing licence conditions relating to the installation or maintenance of facilities or equipment within subsection (2)(c) above, even if the same result could be achieved by the exercise of Part 1 functions;

(c)the fact that licence conditions are imposed for a particular purpose that could be achieved by the exercise of Part 1 functions does not affect the way in which Part 1 functions can be subsequently exercised by the authority.

(5)A licence may not include conditions imposing restrictions or obligations on a particular person other than the licence holder unless that person has consented to the imposition of the restrictions or obligations.

(6)A licence may not include conditions requiring (or intended to secure) any alteration in the terms of any tenancy or licence under which any person occupies the house."

Hearing

7. The hearing took place at Havant Justice Centre and was recorded. As a result what is set out below is a precis only.
8. The Applicant was represented by Ms Thomas of counsel and the Respondent by Mr McDermott of counsel. The Applicant was in attendance. Representatives of the Respondent attended throughout.
9. Both parties had supplied skeleton arguments and authorities.
10. At the commencement of the hearing Mr McDermott submitted that Mrs Iva Fletcher the Applicant's wife should be joined given she is a party to the licence.
11. Mr McDermott pointed out whilst she was listed as an interested person within the original application [12] he did object as she was now out of time for appealing the licence. He accepted that there was no prejudice to his client but he suggests there must be a good reason as to why we would allow an appeal out of time. He suggested if Mrs Fletcher was not joined the appeal in respect of 1 Sheffield Road would fall to be dismissed as the same was not made by both licence holders.
12. Mrs Fletcher was in attendance and she wished to be joined. It was said she and her husband had acted as Litigants in Person and no one had raised the point previously.
13. The Tribunal indicated it would hear submissions on this in closing and the hearing would continue.
14. Ms Thomas confirmed the current position in respect of the proposed changes following negotiations between the parties was in the bundle [184-189].
15. She wished to call Mr Riddle. Mr Riddle confirmed his statement was true [284-290]. He confirmed he was a landlord who only let to students and held licences subject to similar conditions.
16. Mr McDermott cross examined.
17. Mr Riddle was a member of the Portsmouth District Private Landlord' Association and had been a member since 2012. He believes he first saw the new conditions the Respondent was proposing for its amended Licensing Scheme in or about December 2023. He understood the Association had provided a response in respect of the draft terms.
18. He confirmed he had challenged the imposition of conditions included in his draft licence which were similar to those being appealed by Mr Fletcher. He had a response and had raised a complaint with the

Respondent. He had not appealed to the Tribunal the conditions in his licence.

19. He was questioned by the Tribunal.
20. He confirmed his licence had not been varied save in respect of a separate condition re carbon monoxide alarms. He thought the appeal would apply to all.
21. He confirmed the conditions had not caused a problem for him in his lettings.
22. The Applicant's next witness, Mr Silman was due to attend the hearing remotely by video however there was a problem with his internet and he made his way to Havant to give evidence in person. A short adjournment was granted to allow him to attend.
23. Upon resumption Mr Silman confirmed the contents of his witness statement were true [268-277].
24. Ms Thomas, with Mr McDermott's agreement asked supplemental questions.
25. Mr Silman confirmed that the Association that he was representing had concerns that the conditions, if complied with, could cause a landlord to breach GDPR. Further conditions were in his opinion too vague.
26. Mr McDermott then cross examined.
27. Mr Silman confirmed he had been the Association chair for about 10/12 years. He had liaised with Mrs Hardwick, Head of Private Sector Housing for the Respondent over the conditions to be attached to licences under the amended scheme. He referred to extensive discussions focussing on the conditions.
28. He was referred to an email from Mrs Hardwick to him [1242]. He agreed this set out her recollection of a meeting and what was agreed but he did not accept it reflected his view. He had produced a list (although it appeared it was not within the bundle) which he described as focussing on broader issues.
29. Ms Thomas questioned Mr Silman in reply who confirmed he was not a mandatory licence holder. He felt the Respondent had not listened to the Association. He agreed a presentation had been given to the Association, [303] but in his opinion this was very generic and high level. There was no discussion of the likely conditions which were to be attached.
30. Ms Thomas then called Mr Fletcher. He confirmed his statement was true [125-145]. He confirmed he had proposed amendments [184]. He agreed that at [249] there were the questions he posed to the

Respondent and at [255] there was an addendum to his statement. His statement at [253 & 254] and reply [176-182] were true.

31. the Tribunal agreed he could be asked questions about the failure to include his wife, Mrs Fletcher on the initial application.
32. He explained he was inexperienced in applying to the Tribunal. Both applications should have been made in joint names. He explained his wife travels abroad and he did not want the fact she was away to delay a hearing. He thought he had properly completed the form. He was surprised to learn this was an issue but he made the application within the timeframe and believed it was valid.
33. He referred to the fact that this point had not been raised at any earlier hearings.
34. Mr McDermott then cross examined Mr Fletcher.
35. He confirmed there were 5 student tenants in each Property. His business model was to accommodate students so it was not continuous and allowed time in the Summer for maintenance. He had let people occupy on licence during the Summer on occasion.
36. As to Condition 20[187] he objected as he did not undertake references or credit checks. Many of the students had never lived away from home before and so he believed such checks added no value to his business given such checks will cost about £20 per person. In his view provided they are registered as a full time student with the University that is all he requires.
37. He confirmed he keeps a copy of the tenant's passport to comply with right to rent checks. He sees the original and keeps a copy as his record.
38. At [395] was an example of the record he keeps. This provided confirmation of the Guarantor and the information he maintains.
39. Whilst he objects to condition 22 [188] (requirement to provide to the council copies of tenancy agreements) he confirmed he does get agreements signed. Further he does secure all deposits in a Government approved deposit protection scheme.
40. He objects to condition 24 [188] in its entirety (need to provide neighbouring properties with contact details). He feels he would be compelled to give information or risk losing his licence and being prosecuted. He believes it is hard to identify who such information should be given to, particularly as he was aware that one of the neighbours was an HMO. He stated there is at least one neighbour to whom he did not want to disclose information. He was concerned that he did not know what approach the Respondent may take to non-compliance. He suggests the wording lacks clarity.

41. He objected to the whole of Condition 7 (need to provide certificates issued by a competent person). He suggests the wording is not precise where as the law as to what certificates he is required to have in place is precise.
42. In respect of condition 8 he objects to the words "...and details of how the manager will address them." In his view this would be onerous as a new tenant may consider this a contractual term and he is unclear as to who he can provide such details for every eventuality.
43. As to condition 9 [185] he suggests the manager and the licence holder may be different. In his view simply because someone is out of the country does not preclude them from managing. He referred to having on occasion managed his Property from overseas.
44. For him the key issue was the need to provide details of any alternative arrangements when the licence is applied for. Given the licence is typically granted for 5 years these details may change.
45. He confirmed he provides to all tenants his address, email, whatsapp and 'phone number. He does not specifically provide response times as this is intuitive.
46. In respect of Condition 10 save for the "red" wording [186] he could accept this condition. He states he doesn't feel competent to keep up to date with the penalties for fly tipping.
47. He explained given he enters into joint tenancies for the whole property there is an obligation upon the tenants to maintain garden areas. However the garden areas of his two Properties are mainly concrete. He undertakes works to the shrubs and the like during the Summer and takes the waste away himself.
48. Mr Fletcher stated that condition 11 is not required as covered by condition 15 and is effectively a duplication. As to condition 15 he proposes amended wording [187]. He does not believe the requirement over electrical certification should go beyond the statutory requirements.
49. Condition 18 [187] is unduly restrictive. In his view the requirement should not be restrictive. He referred to the fact whilst he typically issues 10 or 11 month tenancies he has issued licences over the Summer. He referred to an occasion when a tenant had paid him €7000 in cash.
50. He confirmed he does provide inventories
51. Mr Fletcher did not accept he should have a written procedure for nuisance or that he should have to keep records of complaints. He accepted he did typically keep some records but this was based on the

type of issue, how quickly it could be resolved, and he knew what to do and didn't need to write this down.

52. He agreed he had an inventory for his Property's and would typically visit a couple of times each term to undertake minor maintenance works. Whilst there he will inspect but doesn't undertake inspection only visits and doesn't keep records.
53. Mr Fletcher was questioned by the Tribunal.
54. He believes the wording should be "occupiers" not tenants as not everyone will necessarily be a tenant.
55. He explained he makes checks on would be tenants and guarantors using online low cost resources. He doesn't undertake specific credit checks.
56. He explained he runs the business from his home address using his personal email address and 'phone numbers. He doesn't have ones specifically for his letting business. He compiles all inventory's himself. He does keep some records for his own purposes including of requests to provide access.
57. He explained his practices have evolved over the years including the tenancy he issues. He has not specifically taken legal advice. He uses a specialist insurer to provide buildings cover only, no contents cover.
58. Ms Thomas then re-examined Mr Fletcher.
59. He explained he had had an email exchange with the Information Commissioners Office (ICO) copies of which were in the bundle. This related to a number of the conditions and he had produced a table of what he considered to be the core issues [178].
60. This concluded the evidence for the Applicant and the first day.
61. Upon resumption Mr McDermott called Mrs Hardwick.
62. Mrs Hardwick confirmed the contents of her witness statement were true [154-175].
63. She was cross examined by Ms Thomas.
64. Mrs Hardwick confirmed she had seen and read the skeleton arguments filed in this matter.
65. She agreed Mr Fletcher is a data controller and has responsibility for the data he holds. She accepts Mr Fletcher would have to make a decision as to whether to release information to the Respondent. She acknowledged there may be circumstances when in supplying

information as required under the conditions that Mr Fletcher would have to redact the same.

66. Mrs Hardwick stated the Respondent would only request information it considered pertinent if for example it was investigating allegations of anti social behaviour. She accepted that to an extent tenants have an expectation of privacy.
67. She was referred to the Data Protection Act 2018 [359]. Mrs Hardwick referred to the exceptions and stated any request for data would relate to a relevant exemption.
68. Mrs Hardwick agreed with the Report to the Respondent's cabinet [650] that the purpose of the conditions was to align the mandatory licensing scheme with the other schemes throughout the City. There were various reasons why this was a good idea and not simply a question of administration. They had received feedback on the running of the scheme and had undertaken consultation on the additional licensing scheme. This had led to variations resulting on the final scheme.
69. She confirmed that the Respondent was consulted on the mandatory scheme.
70. She agreed whilst not identified as a purpose very clear feedback was received as to the high proportion of perceived anti social behaviour arising from Houses in Multiple Occupation. The consultation demonstrated a clear link to anti social behaviour and so part of the scheme was to alleviate this.
71. Mrs Hardwick was adamant the Respondent had listened to the feedback it received after a City wide consultation which demonstrated that people identified a clear link to anti social behaviour. There was no clear correlation to any specific area and hence in respect of the additional licensing scheme opted for a City wide approach.
72. Mrs Hardwick agreed the Applicant's renewal was dealt with early on in the new scheme. The majority renewed during December 2023 to Summer 2024.
73. She confirmed, save for Mr Fletcher, no other appeals had been lodged against conditions attached to the HMO Licences.
74. Mrs Hardwick was taken to The Management of Houses in Multiple Occupation (England) Regulations 2006 [401]. She agreed these were the main regulations and requirements for managing an HMO. She agreed they were part of management but she wouldn't say they set out all that was required.
75. She did not accept that the conditions requesting documents was a subversion of the powers contained with Section 235 of the Housing Act

2004 [433]. The conditions set out the expectation that a licence holder will have the documents available. Section 235 gives powers that can be used in the moment but you have no way of knowing whether a person will have those documents.

76. She was referred to the Respondent's response to questions posed by the Applicant [251]. She agreed there was no mention of redaction or giving an explanation. She stated the Respondent consider these to be reasonable requests. As an example she stated they wanted to be satisfied that licence holders in granting tenancies had a clear policy of due diligence.
77. Mrs Hardwick stated that Section 235 can be used after an event. The Respondent can make a request but if the person does not have the documents they cannot provide the same. In her opinion most landlords fulfil these requirements and she does not consider it unreasonable to impose a condition which encourages the following of good practice.
78. The purpose of seeking documents is for the use in investigations the Respondent is conducting. She did not believe the conditions were disproportionate.
79. Mrs Hardwick explained the conditions are for the licence holder and the wording used is intended to make them easy to understand hence use of the word "tenant".
80. Turning to condition 7 [165] the inclusion of the word "competent person" is to help. The reference to the website is to assist. It is not intended that they must use the website.
81. Mrs Hardwick accepted there are statutory requirements in respect of gas and electricity but does not see why the reference to competent person in the condition should not remain. Some landlords are inexperienced and struggle, the aim is to assist. If Mr Fletcher is complying with his statutory obligations he should not be concerned.
82. Mrs Hardwick agreed there was a "fit and proper person" test for the granting of a licence but licences had been revoked due to non-compliance. In her view it was appropriate to include the condition and she did not accept in imposing conditions they should not duplicate statutory requirements. She did not see it imposing an added burden.
83. Mrs Hardwick [166] did not accept that condition 8 was unduly burdensome. In her view it simply required a notice to tell tenants how they may report issues to a landlord and how they can expect it to be addressed. She accepted it will require a written procedure but did not believe this was burdensome. She believed tenants are entitled to understand what service they can expect if they draw matters to the licence holders attention how they will be dealt with.

84. Condition 9 is intended to ensure that the property is managed by someone who is a “fit and proper” person if the licence holder is not available. If the person to be nominated changes throughout the course of the licence she would expect the licence holder to tell the Respondent.
85. In her view “out of the country” is easier for people to understand than “out of contact” as proposed by the Applicant.
86. In respect of condition 10 Mrs Hardwick felt it was reasonable to require the licence holder to provide details of the offence. HMOs often give rise to seasonal waste issues in her opinion and it is important to make tenants aware. She did not consider the requirement overly prescriptive. It is designed to signpost people. She explained the Respondent regularly deals with cases relating to garden waste and improper disposal of the same.
87. Condition 11 [169] is intended to make clear electrical works must be undertaken by a competent fully qualified person. Mrs Hardwick referred to regularly seeing issues when this is not complied with and the purpose of the condition is to make this requirement very clear.
88. Condition 18 was included as feedback from tenants was that not all landlords provide such information. The intention is to protect tenants, particularly students.
89. As to condition 24 Mrs Hardwick felt most people would be able to understand what adjoining properties meant. The provision of contact details is reasonable and she did not accept this was necessarily personal data for the purposes of GDPR.
90. In respect of conditions 25 and 26 she did not accept it was disproportionate to require a written policy. It is important that landlords think about how they will deal with anti social behaviour.
91. Mrs Hardwick was questioned by the Tribunal.
92. Upon completion it was agreed that the following day each counsel would have 90 minutes to make closing submissions. Day 2 then concluded.
93. Upon resumption on day 3 the Tribunal confirmed it had the parties skeleton arguments and the updated bundle of authorities. Ms Thomas made her submissions.
94. Ms Thomas suggested the value to be placed upon the evidence of Messrs. Riddle and Silman was that it provided context. It was accepted any decision made would only be in respect of the two licences subject to this appeal. Mr Fletcher was an honest witness who was a small self managing landlord.

95. Ms Thomas accepted Mrs Hardwick was also an honest witness. However she would suggest at times her evidence was overly rigid and she would not accept natural concessions. She suggested this echoed Mr Fletcher's experience. He never felt his representations were listened to.
96. She suggested that use of the words "tenancies" and "tenants" was discriminatory and uneven creating different categories of occupiers. Further the conditions created unnecessary bureaucracy for the Applicant.
97. Ms Thomas suggested that the Tribunal should keep at the forefront of its mind the fact that a breach of a condition is a criminal offence.
98. She suggested that we should have regard to the words used. When queried the Respondent added detail which was not included within the condition. In her submission the condition should be clear and not require further explanation.
99. She suggested that by not having written procedures and the like this gave Mr Fletcher a competitive edge in providing a personal service. He operates from his home office.
100. It was submitted that Section 235 of the Housing Act 2004 provides sufficiently wide powers already. In her submission this was an inappropriate use of conditions.
101. Ms Thomas relied upon Nottingham City Council v. Parr [2018] UKSC 51. She accepts the Respondent has a broad discretion but it is not unlimited. A condition must be tied to the purpose.
102. Conditions have a specific remit and conditions should be able to stand alone without any gloss.
103. Ms Thomas referred to R (Gaskin) v Richmond upon Thames LBC [2018] EWHC 1996 (Admin). She referred to paragraph 116 and stated that the Respondent was a service provider.
104. She suggested that conditions 18, 20, 22 and 25 do not satisfy section 67(5) & (6) of the 2004 Act.
105. Turning to arguments under GDPR she suggests the need to provide information is in breach of the licence holders responsibilities. She submits these are not required as a condition.
106. Ms Thomas relied upon the Provision of Services Regulations 2009 ("POS").
107. She suggests these set out best practice. She submitted that the presentation to cabinet showed that the rationale was alignment. The list of conditions itself was not consulted upon and some are duplicates

contrary to Regulation 15 of POS. She suggests regulations 14-20 are applicable to this case. Such regulations now apply to UK businesses only.

108. Ms Thomas relied upon her written skeleton argument and invited the Tribunal to have that in mind.
109. Ms Thomas reminded the Tribunal that consideration of this appeal is a re-hearing and not a review. There is no requirement to find errors of law. If the Tribunal is satisfied there is a good reason it can amend, vary or remove a condition. She accepts the burden of proof is upon the Application.
110. Ms Thomas suggested the Tribunal Rules can allow Mrs Fletcher to be included and the Tribunal should do so. In her submission it is proportionate to allow the amendment to include.
111. Mr McDermott suggested that there is no jurisdiction in respect of Sheffield Road as Mrs Fletcher was not included. He accepts there is no prejudice to the council however he suggests no good reason has been advanced. The application should have been made by both. He suggests the authorities show that Rules apply to Litigants in Person and not simply represented parties.
112. He suggests the delay is excessive being 13 months. He does accept not raised until his skeleton argument.
113. Mr McDermott suggested that Parliament gave the council broad powers. As a result he suggests the Tribunal should be slow to interfere. Section 67(2) of the Act gives examples of the type of conditions which may be included.
114. He suggests that a condition must be shown to not be permissible under section 67. If the condition comes within the same it is permissible.
115. He referred to the fact extensive consultation was undertaken. This was a fact specific evaluative process. The council wishes to set conditions which are appropriate across the whole City. He suggested the evidence is clear that detailed consideration was given (see [1106] for example).
116. Turning to the conditions he suggests the question is: are they permitted? The burden rests on the Applicant. He submits that all fall within section 67(1) of the Act.
117. Mr McDermott suggests signposting is appropriate. It is not for the Applicant to tinker with the wording. He suggests the Applicant did not suggest the wording was misleading. The intention is for the scheme to cover the whole City.

118. Mr McDermott addressed the individual conditions.
119. As to GDPR he suggests if and when a demand is made consideration will have to be given. He suggests the processing of the data in this way is lawful since a condition is imposed under statute. The Applicant is being asked to comply with a legal obligation and therefore he would not be in breach of any obligation.
120. As for adjoining owners he suggests that this is clear in that it relates to those properties sharing a boundary with the subject property. If the Applicant has a reasonable excuse for not providing information this would afford him a defence to any action. He suggests it is clear from the consultation that the requirements are not too onerous to overcome the issues identified.
121. As to POS he suggests that the Applicants interpretation is not correct. He suggested neither counsel could find any binding authority and in his submission if it applied in this way this is surprising. He suggests that the scheme in this case is not covered by POS.
122. Finally he suggests that Section 235 of the Act can be subverted. Section 235 only applies when a party has the documents. The conditions here require the licence holder to obtain and keep such documents.
123. Ms Thomas replied. She placed weight on the fact Mrs Hardwick could not provide a definition of management and expressly what that covers.
124. The hearing concluded.

Decision

125. We wish to thank both counsel and their clients for the manner in which the hearing was conducted. This greatly assisted the Tribunal in the hearing and determination of this case.
126. As a preliminary matter we were invited to determine that the application in respect of 1 Sheffield Road should be dismissed on the grounds that the application was made by Mr Fletcher alone whereas the licence was granted in the joint name of Mr Fletcher and his wife.
127. For the avoidance of doubt we record it was agreed and accepted that the appeal in relation to 38 Hudson Road was properly made by Mr Fletcher and such application was made in time.
128. Mr McDermott raised the point within his skeleton argument and at the commencement of the hearing. He candidly accepted that the point had not previously been raised and that he identified no prejudice to his client. It went to the heart of the Tribunal's

jurisdiction in his submission. We indicated we would proceed with the hearing, hear submissions and make a determination as part of this our final decision.

129. We record that Mrs Fletcher was in attendance on the first day and confirmed she wished to be joined as a party.
130. We heard evidence from Mr Fletcher. Both counsel in closing made submissions.
131. It was accepted that Mrs Fletcher was not named as an Applicant within the appropriate box on the form. It was unfortunate this was not raised at earlier case management hearings. Mr Fletcher refers to it being an oversight and that he had not named his wife as she is often overseas and did not want this to delay the appeal. We record that he did name her as an interested party on his application form [11]. It was apparent and we find that at all times Mrs Fletcher was aware of the appeal and supported the same.
132. The licence is dated 29th January 2024 and any appeal must be made within 28 days of service. The appeal form is dated 1st February 2024. An oral application to add Mrs Fletcher was made at the commencement of the hearing.
133. Paragraph 33(3) of Schedule 5 of the Housing Act 2004 provides that:

“The appropriate tribunal may allow an appeal to be made to it after the end of the period mentioned in sub-paragraph (1) or (2) if it is satisfied that there is a good reason for the failure to appeal before the end of that period (and for any delay since then in applying for permission to appeal out of time).”
134. We have a broad discretion as to what is a “good reason”. We were not referred to any specific authorities. Plainly a failure to appeal in time is a serious matter. We agree with Mr McDermott simply because an Applicant is a Litigant in Person does not mean they are forgiven from complying with the Rules. Likewise we agree that the application must be properly constituted to amount to a valid appeal for which we have jurisdiction.
135. The Licence was granted to both Mr and Mrs Fletcher. We find the application should have been made in joint names.
136. Mr McDermott conceded there was no prejudice to his client. The Application form refers to Mr Fletcher as the Applicant but lists Mrs Fletcher as an Interested Party. She was plainly aware of the Application and as was apparent by her attendance and involvement at the hearing, and has taken an active part in the appeal. We accept the reasons given by Mr Fletcher and that he misunderstood the requirements and this was a technical error.

We also have regard to the fact that no other party, including the Tribunal picked up on this point until more than 12 months after the initial application was made.

137. The Tribunal has a discretion as to whether or not it will extend time. We are satisfied that we should exercise our discretion and add Mrs Fletcher as a Joint Applicant and extend time for the making of the appeal. In doing so we take account of all the facts of this case and pay particular regard to the overriding objective of this Tribunal contained in Rule 3 of the 2013 Rules. All the circumstances are such, notwithstanding the Respondent's objection that we should allow the necessary extension.

138. We note that the appeal is limited to various of the conditions and the Applicant's challenge and suggested amendments are at [184-189]. We limit our decision to those matters subject to challenge being certain of the conditions attached to both of the licences in similar form.

139. That aside we make clear our findings relate to the Property's which are the subject of this appeal. Our findings have no broader application to the licensing arrangements generally in place across Portsmouth. We make this point given the nature of certain comments made by, in particular Mr Riddle, who appeared to be under a misapprehension that the outcome of this appeal, if successful, would bind the Respondent in respect of all licences issued. Each appeal is considered on its own individual merits and is binding in so far as it applies to the licence subject to the appeal.

140. We attach marked Schedule A

"UPDATED 27/08/2024: Addendum to Applicant's Statement of Case: Proposed Changes to Licence Conditions"

We have included the version which includes the Applicants latest proposed additions and deletions and shall refer to these conditions within this decision.

141. In respect of the witnesses we were satisfied that all tried their best to help the Tribunal and were honest and truthful. The evidence of Mr Riddle and Mr Silman did not assist the issues we had to determine. We found both Mr Fletcher and Mrs Hardwick were at times very rigid in providing their answers.

142. It was accepted that the Respondent had adopted the correct procedure in considering and granting the licences. The appeal was limited to the extent of the conditions to be attached to the same.

143. We consider firstly the issues relating to the Provision of Service Regulations 2009. Both counsel agreed they could find no

authorities directly upon the point beyond the reference within R(Gaskin) v Richmond upon Thames LBC [2020] 1 WLR 3187.

144. It was suggested by Ms Thomas that these provisions prevent a licence condition duplicating a requirement already imposed by law.
145. Mr McDermott suggested that this did not apply and referred to Section 67 of the Act and the wide powers this gave to the Respondent in determining what conditions should be attached. He suggests that Gaskin being a judicial review case relating to payment of a fee for the licensing scheme and involving no consideration relevant to conditions may be distinguished.
146. Ms Thomas' arguments are set out in paragraphs 35 to 48 of her skeleton argument.
147. We prefer the arguments of Mr McDermott and are not satisfied that such provisions apply to this case. We note that the case referred to was a judicial review relating to the payment of the fee for seeking a licence. This case is a statutory appeal and it has not been suggested the scheme itself has been challenged by way of judicial review which would have been open to Mr Fletcher or the Portsmouth and District Private Landlord's Association. We agree that the decision in Gaskin and reference to the Regulations may be distinguished. We are not satisfied that these provisions place a limit on the conditions which can be imposed under section 67 of the Act. We would suggest that the section is deliberately broad to ensure that local authorities can impose conditions relevant to their own individual scheme and the circumstances applying to the particular area. We find that Section 67 does not prevent a condition duplicating any existing statutory obligation. Further we are satisfied that the Regulations do not limit the discretion as provided by section 67. We reject this argument.
148. We next consider the arguments advanced in connection with section 235 of the Act. It was agreed that such section allows a local authority to request various documents. Mrs Hardwick suggested whilst it did so this only required a landlord to produce documents which they actually held. It placed no obligation upon a landlord to actually keep such documents or records. The purpose of the conditions (relevant to this argument) was that it placed a positive obligation upon a landlord to keep and retain such records. Therefore if a request was made for such documents the licence holder would be expected to have the same and so they could be produced.
149. Ms Thomas suggested that by including conditions which covered the provision of documents which could be requested under this statutory provision such a condition would subvert the intent and purpose of section 235.

150. We do not accept this argument. We are not satisfied there is any reason why a condition cannot or should not require a licence holder to keep and retain records. We accept the evidence and explanation given by Mrs Hardwick that this places a positive requirement upon a licence holder which goes beyond Section 235 of the Act. We do not find that any conditions requiring a landlord to keep and retain records which could be requested under Section 235 of the Act subverts the intent of that section. To the contrary we can see how this furthers the aim by placing a positive duty on licence holders to retain and hold such documents so if a request is made they produce the same.
151. We now turn in general terms to the UK GDPR and Data Protection Act 2018 arguments. We will deal with these issues in relation to Condition 24 separately when we consider the same.
152. It was agreed and accepted that for the purpose of these arguments Mr Fletcher would be a “data controller” and as a result there is an expectation that he will comply with the legislation and generally keep all such data confidential and private.
153. As was acknowledged there are specific provisions dealing with exemptions. The position of the Respondent is that it will only request such information if it has a particular reason to do so. It will be for the Respondent if and when it requests documents to explain the purpose of requesting the same. Further it accepts that it may be that the licence holder should redact particulars but it appears to suggest that if data is supplied it also will become a data controller.
154. We record that one of the purposes of the legislation was to assist local authorities in improving the housing sector generally and in particular to assist it to deal with issues typically seen in areas with large volumes of houses in multiple occupation, notably anti social behaviour. Mrs Hardwick made mention of this within her evidence and we accept that this may be forefront in the mind of a local authority in determining what conditions to attach to a licence.
155. Overall we were not persuaded that a condition requiring provision of documents held by the licence holder would fall foul of these requirements. Such a condition is imposed under statute and is a statutory obligation. It is for a licence holder to make clear to all persons supplying data to them the basis upon which he might be required to disclose the same. Equally if no good reason is provided by the Respondent for its request as they acknowledged such data may be redacted or would provide a reasonable excuse defence to the licence holder. For these reasons we were not persuaded that conditions fundamentally breached GDPR requirements imposed upon the licence holder.

156. We turn now to the conditions themselves. We remind ourselves in considering this appeal it is by way of a re-hearing. We can take account of all evidence put before us, even matters not before the local authority. It is for us to make up our own mind as to those matters subject to the challenge. In respect of conditions we must be satisfied that they fall within section 67 of the Act. When considering the conditions individually and generally we have had regard to section 67 of the Act which is set out above.
157. We are told the Applicants earn their livelihood from the letting of three properties. Mr Fletcher personally manages the properties and he gave evidence as to his practices, some of which differ, from letting agent businesses and the like. He submits this is a unique selling point for his business. We accept that later part and that he is a diligent landlord and manager of his properties. That was clear from his evidence and nothing to the contrary was suggested by the Respondent.
158. It was the evidence of Mrs Hardwick that the scheme was adopted to apply to the whole City. It was designed in this way to address issues, some of which had been identified by consultations. Equally we find that the conditions were drafted and imposed to ensure certainty across the City and to ease the administration for the Respondent. Equally the Respondent considered the wording carefully to ensure that the conditions were intelligible to all licence holders and generally. We find nothing wrong with this approach.
159. On behalf of Mr Fletcher, it was suggested that certain of the conditions were imprecise, unclear or produced a disproportionate or unnecessary administrative burden upon Mr Fletcher.
160. We do not accept that as a general point. We prefer the submission of the Respondent that the scheme and conditions were designed to be readily understandable by licence holders. Further that in running a business some administrative burden is inevitable and nothing within the conditions was unreasonable in this regard.
161. To that end whilst it was suggested by the Applicant that the use of the word “tenant” and “tenancy” within the conditions should be changed we do not agree and find the use of those words is acceptable. We accept and adopt the Applicant’s submissions that on occasion a licence holder may have people within their property who are not strictly speaking “tenants”. However we find the use of such words within the conditions provides clarity as generally it would be understood by a licence holder as to whom is being referred to.
162. We will address below the individual conditions. We only have considered below those which have been challenged as to the wording. For the sake of completeness we did consider the

conditions in their entirety we are satisfied and so find that all other conditions are properly imposed.

163. Condition 7: We find that such condition is reasonable save we delete the following words: “A register of competent persons is available from: www.competentperson.co.uk)”
164. We are satisfied that whilst there are statutory duties on licence holders in respect of gas and electrical installations we accept the evidence of Mrs Hardwick that not all landlords are aware of their duties. We accept that such a condition may be said to be a “belt and braces” approach but equally we can see force in the argument that there is no prejudice in reminding a landlord. Plainly Mr Fletcher complies in having appropriately qualified trades people conduct work on his behalf.
165. We do however delete the words relating to the website as when we considered the link to this website it was far from clear as to the information it gave. We accept that reference to this could lead persons to think it is only those contained on this website who are competent. Mrs Hardwick agreed that was not the intention and we are satisfied such words should be deleted particularly given the website does appear to be a commercial site not listing all appropriate qualified contractors within the City of Portsmouth.
166. Condition 8. We decline to vary this condition. We note the Respondent’s in their reply suggested the type of information they would expect [106]. We are satisfied that the requirement to have information at the Property as envisaged by this condition is a prudent and reasonable management requirement. Equally we find providing the tenants with details as to how such matters may be remedied is a reasonable condition pursuant to Section 67(1)(a) of the Act.
167. Condition 9: We are not satisfied that the variations sought should be made.
168. We consider it appropriate that the reference is to the Licence holder given they are responsible for compliance with the terms of the licence and its conditions. We are satisfied that the use of “out of the country” ensures that the condition is readily intelligible to all who look at the same. “Out of contact” would in our judgment be less clear and open to a wider interpretation. We are satisfied that it is reasonable to require landlords to provide details of whom may deal with matters in the licence holders absence and if during the course of the licence there is a change then this could be notified to the local authority. Whilst it may be that currently Mr Fletcher has not turned his mind to such a situation we would suggest it may be said to be prudent business planning to consider what would happen if he was indisposed. In our judgment and experience many businesses do today turn their minds to making

plans for such eventualities, even if unlikely. We are satisfied this is a proper condition.

169. Condition 10: We would vary and delete the following words only: “by purchasing appropriate bins and payment of collection charge.”
170. We are satisfied that it is reasonable to include a condition that Licence Holders will remind tenants that there are penalties for fly tipping. We are satisfied the purpose is to try and ensure that fly tipping of waste does not occur and the measures contained within the condition are in our judgment, on the basis of the evidence we heard orally and within the bundle, reasonable. We would however delete the words as set out above as we are satisfied these go beyond what is required. We can see that a licence holder may make other arrangements (including collecting the waste themselves, being what Mr Fletcher tells us effectively he does). We are not satisfied that such condition should be prescriptive beyond the need to ensure proper procedures are in place for collection and disposal.
171. Condition 11: We would not vary this condition.
172. We accept that statutory requirements require all such electrical works to be undertaken by suitable contractors. However we accept the evidence of Mrs Hardwick that in her experience this is overlooked. Whilst it may be duplication we are satisfied that again it is a reasonable and prudent condition, even if a “belt and braces” approach to ensure licence holders are aware and comply with their obligations. We are satisfied the imposition of such a condition will further the objective of licencing to assist in raising the standards of private rented housing. It is a part of proper management.
173. Condition 15: We would not vary the same.
174. We are satisfied the wording used is reasonable and appropriate in ensuring a licence holder is aware of their obligations to have an electrical certificate. We heard argument that there may be occasions when, if the property is unoccupied such as during the Summer, there could be a delay in obtaining a new certificate. We agree with the Respondent that if this was the case then it is likely such circumstances would give rise to a reasonable excuse defence but this does not in our determination give rise to a requirement to vary the words as suggested or at all.
175. Condition 18: We would not vary the same.
176. We are satisfied that the condition as worded provides a clear explanation as to what requirements the Respondent considers suitable for such lettings. We agree. We note Mr Fletcher does provide agreements. Equally he provides inventories. We do not accept this condition would provide any additional administrative

burden and in fact contains requirements which aid and assist good management.

177. Condition 22: We vary and delete the same in its entirety. It does appear to be a duplication of condition 18 and we are not satisfied that it is required. We accept conditions can duplicate statutory requirements duplication within the conditions themselves of this type is not necessary.
178. Condition 24: We vary and delete the same in its entirety.
179. Mr Fletcher suggested the need to provide such information would be a breach of his own rights to privacy given he only uses his personal address etc for running his lettings business. This we did not find to be a good reason to vary the condition. It is a matter for Mr Fletcher how he conducts his business and could of course use a different address, email address and telephone number. We are conscious that in acting as a landlord he is conducting a business and his address etc are those of his business even if they are also his personal details.
180. However, we were persuaded that notifying the “occupants” may be problematic. Practically how one does so when they may be themselves tenants in a house in occupation may be problematic. It may be difficult for a Licence holder to identify and whilst we accept the Respondents argument that “adjoining owners” is direct neighbours this may, as described by Mr Fletcher involve a relatively large number of people being notified. Further it is unclear how frequently the Licence Holder should check that the occupants remain the same. Occupants of HMO properties may change frequently. We were not persuaded that this condition as drafted or with suggested amendments would be practicable or assist in furthering the aims of the scheme in respect of the Applicant’s Property’s. Obviously if issues are raised with the Respondent they will have the licence holders details and they can make contact.
181. After careful consideration of all the evidence on balance we were not satisfied that such a condition should be included in the licences of the Applicant.
182. Condition 25 & 26: We address these together as the issues are similar. We are satisfied such conditions should not be varied.
183. We heard much evidence from Mrs Hardwick as to the results of the consultations undertaken by the Respondent and we are aware of the general intention of such licencing schemes being to reduce anti social behaviour. This is a legitimate aim. Mr Fletcher suggested it would place an additional burden upon him as he does not have such written procedures or policies but he knows how to deal with such instances. He gave evidence as to his approach.

184. We accept Mr Fletcher would know what to do. He clearly is an experienced landlord who has given thought to such issues and how he would address the same. However we consider it reasonable, and prudent, for a business such as his to have a clear procedure. This is not complicated and would be effectively committing to writing what he explained to this Tribunal. Further the keeping of records is in our judgement reasonable and prudent for a licence holder or any landlord. Whilst it may therefore increase the administration Mr Fletcher has to undertake we are not satisfied this would be an unreasonable or disproportionate administrative burden. We are satisfied that the requirements of these two conditions are reasonable and proportionate and decline to vary the same.
185. Condition 32: We are satisfied that this is a reasonable condition.
186. Mr Fletcher suggested he undertakes visual inspections when he visits the properties to undertake works. He currently does not keep detailed records. He does tend to have some records of his visits. We are satisfied that a requirement to keep records is reasonable and prudent. Such records should include details of what was observed. We do not consider this to be burdensome or disproportionate. We consider this something a prudent landlord would do. We are satisfied that it is an appropriate condition in all the circumstances.
187. Save as set out above we are satisfied the conditions are appropriate and we approve the same save for the variations referred to.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

