HM Courts & Tribunals Service

Property Chamber
Northern Residential Property
First-tier Tribunal

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Your ref: 10/DB/82868/1
Our ref: MAN/30UG/HML/2014/0001

Date: 14 July 2014

Mr Richard Jones
Bury & Walkers LLP Solicitors
4 Butts Court
Leeds
West Yorkshire
LS1 5JS

15 JUL 2014

Dear Sirs

RE: Housing Act 2004 - Schedule 5 Paragraph 31(1)

PREMISES: 112 Dowry Street, Accrington, Lancashire, BB5 1AW

The Tribunal has made its determination in respect of the above application/appeal and a copy of the decision with reasons is enclosed. A copy is being sent to all other parties to the proceedings.

If you are considering appealing, you are advised to read the guidance attached to this letter.

Any application from a party for permission to appeal to the Upper Tribunal (Lands Chamber) must normally be made to the Tribunal within 28 days of the date of this letter. If the Tribunal refuses permission to appeal you have the right to seek permission from the Upper Tribunal (Lands Chamber) itself.

Yours faithfully

Ms Lesley Warburton
Case Officer

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/30UG/HML 2014/0001**
Property	:	**112 Dowry Street, Accrington, BB5 1AW**
Applicant	:	**Mr Paul Brown**
Respondent	:	**Hyndburn Borough Council**
Type of Application	:	**Schedule 5 paragraph 31(1) Housing Act 2004**
Tribunal Members	:	**Mr John Murray LLB** **Mr Jack Roston MRICS**
Date and venue of hearing	:	**19 May 2014** **SSCS 2nd Floor Soho Foundry Cicely Lane Blackburn BB1 1HQ**
Date of Decision	:	**26 June 2014**

DECISION

ORDER

1. The conditions of the Selective Licence granted by the Respondent to the Applicant in relation to 112 Dowry Street, Accrington, BB5 1AW shall be varied in accordance with the Schedule attached to this Order.

APPLICATION

2. The Applicant issued an appeal dated 3 February 2014 in response to the conditions attached to a Licence granted by the Respondent on 13 January 2014 under Part 3 of the Housing Act 2004 under a selective licensing scheme and in particular the following conditions:

   (a) Condition 6 : Carbon Monoxide Detector
   (b) Condition 7: Production of Energy Performance Certificate
   (c) Condition 8: Electrical Installation Condition Report
   (d) Condition 11: Anti Social Behaviour
   (e) Condition 15: Training Requirement
   (f) Condition 20: The Home Safety Fire Checks

BACKGROUND

3. The Applicant stated in his appeal that he was acting in conjunction with 346 other property owners who were member of Hyndburn Landlords Association (HLA) of which the Applicant is chairman.

4. The Applicant made reference to an earlier Selective Licensing scheme established by the Respondent which had been quashed following Judicial Review proceedings. Subsequently negotiations took place between the Applicant, HLA and the Respondent. A new scheme was established on 1st December 2012.

5. The Applicant applied for a Licence under the new scheme on 30 November 2012. The Licence was granted, with conditions, on 13 January 2014. The Applicant submitted his application to the Tribunal on 27 January 2014.

6. Directions were made by a Judge of the First Tier Tribunal (Property Chamber) on 20 February 2014.

7. The Applicant was directed to provide a bundle of specified documentation and a statement in support of their appeal by 13 March 2014.

8. The Respondents were directed to provide documentation and a statement in response within 21 days of receipt of the Applicant's documentation.

THE PROPERTY

9. The Application stated that is a two bedroomed mid terraced house with lounge dining kitchen two bedrooms and fitted bathroom.

10. No inspection of the Property was conducted by the Tribunal.

THE LEGISLATION

11. The relevant legislation is contained in Part 3 of the Housing Act 2004.

12. **s90 Licence conditions**

(1) a licence may include such conditions as the local housing authority consider appropriate for regulating the management, use or occupation of the house concerned.

(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.

(3) A licence may also include—

(a) conditions requiring facilities and equipment to be made available in the house for the purpose of meeting standards prescribed for the purposes of this section by regulations made by the appropriate national authority;

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

(c) 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.

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

(5) 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 (in accordance with subsection (3)) licence conditions relating to the installation or maintenance of facilities or equipment within subsection (3)(a) 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.

(6) 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.

(7) 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.

Appeals

13. Appeals are permitted by Schedule 5 Housing Act 2004, and by paragraph 31(1) the applicant may appeal to the Tribunal against a decision by the local housing authority on an application for a licence (a)to refuse to grant the licence, or (b)to grant the licence; an appeal under sub-paragraph (1)(b) may, in particular, relate to any of the terms of the licence.

THE HEARING

14. A Tribunal was convened and a hearing arranged in the SSCS Blackburn Hearing Centre.

15. The hearing was heard consecutively with MAN/30UG/HML 2014/0002.

16. The two Applicants, Mr Brown and Mr Barron were represented by Mr Jones, Solicitor, of Bury and Walkers, Solicitors.

17. The Respondent Authority was represented by Mr Paul, of Counsel.

18. As a preliminary Issue Mr Paul objected to the Applicants solicitor producing a 24 Page Skeleton Argument on the day of the hearing. Mr Paul asserted that if new or novel points were raised then the hearing ought to be adjourned, with a costs order against the Applicants.

19. The Tribunal had been provided with copies of correspondence between the parties whereby agreement as to exchange of skeleton arguments in advance had been sought but not been reached. One party had sought sequential, and the other had sought mutual exchange. No direction had been made by the Tribunal governing exchange. On Mr Jones assurance that his skeleton was merely an expansion of his argued case the Tribunal was prepared to accept it as his submissions as being a written version of what he might otherwise put orally.

20. The Tribunal heard from both Applicants Mr Barron and Mr Brown, by way of general evidence, and thereafter specifically to each Licence term objected to. A separate order has been made in relation to each application but by necessity both orders are based on very similar facts, albeit with different precise grounds of appeal. The orders are by identical save for the differing conditions each has appealed.

The Evidence and Submissions

21. Mr Barron gave evidence as to his career history. A qualified Surveyor since 1994, he had worked in the Valuation Office and subsequently joined Lancashire County Council as a Principal Surveyor. He left in 2006, going to work at HW Petty and Co in Burnley, and subsequently set up his own business AJB Surveyors.

22. During this time he had built up a portfolio of properties mostly in Accrington. Four of these properties were in the Selective Licensing Area the subject of this application. He explained to the Tribunal that he had been concerned about a number of issues and along with Mr Brown had formed the Hyndburn Landords Association, who had taken the Respondent to the High Court to judicially review the original version of the Licensing Scheme. The High Court quashed the Scheme. The Respondent re-introduced a new scheme.

23. Mr Barron said that the discretionary terms of the scheme were never discussed with local landlords prior to introduction. He and Mr Brown had made it clear to the Respondent that they would challenge the terms of the licences through the Tribunal (as opposed to a second Judicial Review) if necessary in the absence of what he considered to be appropriate consultation.

24. The subject matter of the appeal was described by Mr Barron as a two bedroomed dwellinghouse, with inner leaf walls. It had a kitchen/dining

room, lounge, one double and one single bedroom and a bathroom. Smoke Detectors and Carbon Monoxide detectors were fitted. It had a small garden to front, yard to rear. UPVC windows throughout and was constructed c.1910. The passing rent was £405 per calendar month.

25. In answer to the Tribunal's question, Mr Barron confirmed that the property was usually occupied (he did not feel it was situated in a "low demand" area, and that the only time he had experienced a major void (of six months) co-incided with the introduction of the Selective Licensing Scheme.

26. Mr Brown, who works as an Estate Agent and manages around 450 properties in the area told the Tribunal that demand in the street where the subject property is situated is high. He said that in his view 40% of the designated area was low demand, but conversely 60% of the scheme is high demand. He said that he would have advocated the scheme in the right areas. He said that 90 council properties had been purchased by agreement to be regenerated, and currently three whole streets are boarded. One property in the area had sold at auction last week for £18,000 or 19,000. Average rents were £300 pcm in these lesser areas, less than the Local Housing Allowance of £346 pcm.

27. In his submissions as to the Tribunal's powers on appeal, Mr Paul asserted that the Tribunal could not interfere with a particular condition unless that condition was found to be "wrong". He referred the Tribunal to the Hope and Glory case [2011], a review of a Licensing Committee's decision by the Magistrates Court, drawing analogy between the Tribunal's powers under the Housing Act 2004 and stating that tests in Housing Act appeals are no different to those under s181 of the Licensing Act, where the Appeal Body's powers are to dismiss the appeal, substitute it's own decision or remit for re-hearing. In that case the Court determined that the reviewing court could only reverse the decision if it was wrong.

28. He said that when considering if the condition was wrong, the Tribunal should place substantive weight on the Respondent Local Authorities' opinion, as under s90 Parliament had given them a wide discretion to attach conditions, "which appear to the Local Authority to be appropriate" and the Respondent had put in place conditions taking into account "conditions on the ground".

29. The Respondent's case was that the Tribunal should give substantial weight to the discretion that the Respondent is given by Parliament. "Conditions which appear to the Local Authority to be appropriate", not which "are" appropriate.

30. Mr Jones for the Applicants pointed out that previously the Respondent had indicated that the test to overturn a condition was the test of "irrationality". The new suggested test of "right or wrong" might allow the Tribunal to infer it was something that was not agreed with. No evidence had been led as to why the Council's decision was the "right" decision, or how they had formed their subjective viewpoint.

31. His view was that the Appeal took place by way of a rehearing and not a review, and the powers of the Tribunal are wide. New matters could be taken into account at paragraph 5, which cannot be consistent with the idea that the Council must be "wrong". The wide words of the section were analogous with the council's own powers, and the appeal was necessarily different from a Judicial Review.

32. The Tribunal determined that it has powers under Schedule 5 of the Housing Act 2004 to conduct a re-hearing, taking into account fresh information, and may confirm, reverse or vary the decision of the Local Housing Authority., and subsequently direct an Authority to grant a licence on such terms as the Tribunal may direct.

33. It is clear that the Tribunal might substitute its own conditions, using its own expert and local knowledge of the situation, and in so doing exercise its discretion afresh. The Tribunal is not constrained to quashing only irrational decisions.

34. Mr Paul submitted that the Tribunal decisions provided by Mr Jones could not bind the Tribunal – as they were not authoritative. He discounted previous Tribunal decisions that there could be no "blanket conditions" and that Licences should be "tailor made" for each property and landlord. He pointed out that the mandatory conditions provided for by Schedule 4 were of necessity blanket conditions, and that there was nothing in the legislation to prevent their imposition.

35. In relation to each specific ground of appeal, the condition, evidence, submissions and Tribunal determinations were as follows:

36. **Condition 4:** "The licence holder must supply the occupiers of the house with a written statement on the terms of occupation of the house (tenancy agreement). The Licence Holder shall provide a copy of the said terms to the Authority on demand. The Licence Holder shall also ensure that the Tenancy Agreement complies with current legislation".

37. The last sentence of condition 4 (that the Tenancy Agreement complied with current legislation) was cited as a mandatory condition imposed by the Housing Act 2004. The objection was introduced by the Applicants as a late ground of appeal. The Council conceded that the condition as

drafted was not referred to in Schedule 4 as a mandatory condition, and the final sentence should be withdrawn.

38. **Condition 6 :** "If gas is supplied to the property a suitable carbon monoxide detector must be provided, maintained in good working order and tenants made aware as to its operation"

39. In evidence, Mr Brown confirmed that he did fit carbon monoxide detectors in his properties, because on principle he wanted his tenants to be safe. He objected to being criminalized for noncompliance with a notice if for any reason systems broke down. Landlords in a non selective licensing area would face no such penalty as there is no general legal obligation to provide a detector.

40. He pointed out that many properties are now fitted with power balanced flues which will not emit carbon monoxide within a property. He was not aware of a single carbon monoxide death in the last ten years.

41. His concern about the conditions as drafted was that in his view he would have to remove existing and fully functioning carbon monoxide detectors and replace them with ten year battery life or mains versions, with the accompanying expense and administrative burden of going into properties and carrying out this work, because there was otherwise chance that the existing detector would be removed or disabled, leaving him facing criminal sanctions.

42. In his evidence he told the Tribunal he had seen detectors being removed from a property by tenants within three months of fitting, and of batteries being removed.

43. He said that initial compliance (provision of the detector) was not difficult or particularly expensive. He stated that it ought to cost around £25-30 for the equipment and around £40 for fitting.

44. In his submissions, Mr Jones stated that S90(1) Housing At 2004 relates to the regulation of management use or occupation of the house concerned, and that the term "management", could not be stretched so as to enable the Council to impose conditions relating to what was an improvement. This proposed condition was, in his view ultra vires the Council's powers.

45. He referred the Tribunal to s234 of the Housing Act 2004 which provides for regulations to be made for the management of Houses in Multiple Occupation (HMOs). S234(2) extends that power to include repair and maintenance, but not improvements; there was no parallel requirement in s90.

46. Mr Jones submitted that there is no requirement for HMOS to install carbon monoxide detectors; no regulations had been made under s90(3) and the introduction of a mandatory scheme for the provision of carbon monoxide detectors was a matter for Parliament, going beyond the Local Authorities' powers to impose the condition under the Selective Licensing Scheme. In his view the sector should await the outcome of ongoing consultation.

47. Mr Jones further submitted that the Statute made it clear that in general, Local Authorities should use Part 1 functions in preference to using licence conditions. The Part 1 functions would enable authorities to recover costs from transgressors, rather than impose them across all Landlords in the Selective Licensing Area. This proposition was supported by the Welsh Tribunal case of **11 Diana St Roath Cardiff CF24 4TS [RPT/WAL/HMO/1]** – it was held that Councils should use the Housing Health and Safety Rating System (HHSRS) powers under Part 1 Housing Act 2004 to avoid the costs of that regulation falling on the shoulders of the Licence holders. Although dealing with the HMO licensing scheme, the provision was equivalent to s90.

48. **Kexgill (Middlesbrough) Ltd v Middlesbrough BC [MAN. EC.HML. 2008.001-5]** was put forward by Mr Jones as authority for stating that the Council should make out a "strong case " for using licence conditions not HHSRS, and no evidence had been put forward by the Council as to why blanket conditions were appropriate for the subject area when Part 1 enforcement might be used.

49. The Tribunal noted that previous Tribunals had been critical of Local Authorities imposing blanket conditions failing to take into account the circumstances of individual properties.

50. Following the reasoning of other Tribunals, which he submitted may be persuasive if not binding, Mr Jones asserted that the Respondent should consider each case on its' merits, and not adopt a blanket approach. Those Tribunals were following draft guidance on the licensing of HMOs which endorsed this stance, and were analogous, in Mr Jones view, to the current situation.

51. Mr Jones argued for the applicants at paragraph 40 of his skeleton argument that the Respondents are not entitled to request information about carbon monoxide detectors in their application form (at 12.2) , given the purpose of the scheme. It is not for this Tribunal to review the application form or process, but to consider only the conditions attached to a licence.

52. Mr Paul for the Respondent authority submitted that the Tribunal decisions could be no more persuasive as legal authority than the

outcome of a jury decision. The Tribunal rejects that submission. It is settled law that Tribunal decisions might be persuasive, if not binding, and earlier decisions that have not been over-ruled by higher authority are clearly helpful.

53. He submitted that the installation of a carbon monoxide detector, and attending to Health and Safety issues such as the monitoring and repair of electrical installations were clearly the job of a manager, and consequently matters of management that the Respondent could impose terms upon. He asked rhetorically what might management otherwise consist of, aside from collecting rents?

54. Owing to the very nature of Carbon Monoxide leaks, there was generally no way of predicting when they might occur. They are an unseen hazard that would not be picked up on a Part 1 HSHRS inspection; only a detector could guard against the potential danger, not a valid gas safety certificate.

55. The provision of the detector could not be considered to be overly burdensome and given what was at stake was a relatively low cost.

56. Under the mandatory conditions imposed on Selective Licensing schemes by Schedule 4 of the Housing Act 2004 Landlords were required to install and maintain smoke alarms; by analogy and extension it was therefore appropriate for the Council to impose a condition for the installation and maintenance of carbon monoxide detectors. Mr Paul submitted that in his view, Parliament had made it clear that this was plainly a matter of management, rather than a Home Improvement.

57. In response to the proposition put forward by the Applicants that Part 1 functions should "in general" be used, Mr Paul said that conversely there was nothing to stop conditions being used to support Part 1, and that Part 1 functions could not operate to warn when a device might fail.

58. The Tribunal accepted the Applicants submissions that the powers to impose conditions to regulate "management, use or occupation" of a Property do not empower the Respondent to impose conditions to install equipment where there was no duty to provide it under the provisions of the tenancy agreement or statute. In the absence of any government regulations introduced under s90(3) of the Housing Act 2004 in the Tribunal's determination the condition was not within the conditions intended by Parliament and available to the Respondent.

59. Parliament has specifically directed in Schedule 4 of the Housing Act 2004 that mandatory conditions be included in all licences in selective areas to provide and maintain smoke alarms, but no similar obligation has been imposed in respect of Carbon Monoxide Detectors.

60. There is currently no statutory requirement to fit a carbon monoxide detector, either for owner occupiers or the wider rented sector.

61. In all the circumstances the Tribunal agreed with the Applicant's submissions that the Respondent could not impose licence conditions to *provide* a carbon monoxide detector.

62. The Tribunal understands the Respondent's wishes to improve property conditions in selective licensing areas and there is no criticism of their well-motivated desire to reduce risks to health and safety of occupants of rented accommodation and to drive up standards.

63. All parties agreed that a carbon monoxide detector is clearly desirable in a residential property with gas appliances.

64. The Tribunal, whilst recognizing that there is no legal duty for a Landlord to install a carbon monoxide detector in a property, there are obviously serious risks presented by carbon monoxide in residential properties, given the low costs of provision it would be desirable if responsible agencies were to introduce legal responsibility in rented accommodation.

65. Where a carbon monoxide detector is installed in a property, but is not maintained it may give all parties a false sense of security. Where there is no legal or contractual obligation as to where responsibility lies for its maintenance, both landlord and tenant may believe there is protection, when there is none. That situation would be clearly not desirable.

66. In the circumstances the Tribunal determined that where a detector is already installed, management/allocation of responsibility for that existing equipment could validly be a condition of the licence.

67. This condition should be amended to read as follows: "If a carbon monoxide detector is provided in the Property, the licence holder must produce to the tenant (and the Council on request) written confirmation as to which party, landlord or tenant is responsible for maintaining the detector in good working order, including testing and replacing any batteries, and tenants made aware as to its operation."

68. **Condition 7:** "If the house is legally required to have an Energy Performance Certificate then it must be produced to the Council."

69. In his submissions on behalf of the Applicants, Mr Jones pointed out that regulations and EU directives require production of Energy Performance Certificates (EPCs) at point of letting or sale of a property. Regulation of this area is a matter for Trading Standards Departments, , and the introduction of a condition with a criminal sanction for non-compliance

was an inappropriate and unnecessary administrative burden that ought not to be put in place.

70. There should be no requirement to go beyond the legislation, and the Council did not provide any evidence as to why it was considered necessary for the management of rented property.

71. Non-compliance with the legal requirements surrounding EPCs attracts a civil penalty; non-compliance with a licence condition would evoke a criminal sanction, and the Council had failed to provide a valid reason to support this double jeopardy situation.

72. The condition of the production of a certificate could not form part of the definition of management of a house.

73. The Council were unable to produce any reason at all as to why it was considered necessary, other than that production of the EPC was a function of management, a legal requirement and un-burdensome, and it was appropriate for the Council to ensure that landlords were complying with legal requirements to assess energy efficiency of properties under their control.

74. The Tribunal was satisfied that there was no good reason for this provision to be included in the Licence conditions. The matter is under the control and supervision of Trading Standards Authorities and is monitored and regulated whenever a property is sold or let, and has little to do with ongoing management or use or occupation of a property.

75. This condition would be unnecessarily burdensome on both parties, and would introduce a potential criminal sanction when otherwise a civil penalty applied, for failure to provide information that was in any event readily available to any interested party, and in the public domain on www.epcregister.com.

76. **Condition 8:** "The licence holder must ensure, throughout the period of the licence, that the premises are covered by a Valid Electrical Installation Condition Report (EICR), where the report states the installation is unsatisfactory this must be remedied within 28 days and the licensing team notified upon completion of such works. If a report recommends a re-test during the term of the licence, an up to date report must be provided to the landlord licensing team within 7 days of the re-test date."

77. Mr Jones for the Applicant objected to this condition on a number of grounds.

78. He submitted that this was a matter that came within the scope of Part 1 Housing Act 2004 and consequently a matter for HHSRS assessment, unless there was good reason to put conditions in place. He submitted that no such reasons existed here.

79. These were blanket conditions, not imposed because of a need identified for a particular property, or a particular landlord and in accordance with draft guidance for HMOs and earlier Tribunal decisions blanket conditions should be avoided.

80. Mr Jones produced evidence that both properties had an electrical report in place which ran concurrently with the term of the licence.

81. 112 Dowry Street had a certificate dated 11th October 2013, which was valid until 2018.

82. The Government have not imposed any legislative requirement for Landlords to produced EICRs; the requirement was not placed in the mandatory conditions of Schedule 4, and is currently part of the Government Review on the Private Rented Sector. There is no similar requirement for home owners to carry out such works. It was asserted that it was almost inevitable that electricians would be encouraged to use the situation as an opportunity to obtain work.

83. The Tribunal was told that the cost of a report would be in the region of £100-£120 and each property would be likely to need £5-600 worth of works. Added to the licence fee of £769 for a five year term these costs were going to increase substantially rents.

84. Evidence was given to the Tribunal that the properties in the Selective Licensing area were mostly built between 1850 and-1900 and that many properties would be unlikely to have earth bonding or RCD (Residual Current Device, or circuit breaker) protection – they would likely fail the test. A high percentage of properties would consequently need works.

85. This cost would introduce an artificial and competitive disadvantage between roads, with those just outside of the scheme (and presumably in an area of higher demand) would have lower costs upfront and could charge lower rent.

86. Mr Paul for the Respondent submitted that an Environmental Health Officer was not competent or qualified to assess a house's electrical system, and it was not part of the Authority's Part 1 inspection regime.

87. The Respondent's position was that s90(5) Housing Act 2004 did not apply, and the condition was not a duplication of their Part 1 functions, and that Lancashire Fire and Rescue Service had provided them with

evidence that 36% of house fires are caused by defective wiring. The Respondents countered this with evidence from the same Fire Officer that the percentage of actual fires was 5-6% and not 36%.

88. National Fire Statistics provided by the Electric Safety Council suggest 78% of fires are accidental, and of those, 10% are due to fixed electrical installations (as opposed to appliances).

89. Mr Paul asserted that the provision of an EICR and duty to retest if necessary could properly be said to relate to the management of a house, and maintained that it was appropriate and within the Authority's discretion to impose such conditions.

90. The hazard was more widespread than carbon monoxide poisoning and it was proportionate and could be properly considered a management function to impose this duty.

91. There is no specific obligation for Landlords to provide EICRs, outside of any provision in a tenancy agreement, and consequently there was no duplication of a Part 1 function or a statutory provision, and s90(5) would not therefore apply.

92. Mr Paul submitted that there was nothing to support Mr Jones' proposition that there could not be blanket conditions in that the Tribunal decisions were not authoritative and should not be accepted.

93. Having considered the evidence and submissions, the Tribunal determined that the Respondent could not, in the absence of legislative requirement impose a condition requiring the production of an EICR.

94. Regulations exist imposing a duty for Landlords to service gas appliances on a regular basis. No similar duty exists in relation to the servicing of electrical installations.

95. Landlords have a duty under s11 Landlord and Tenant Act 1985 to keep such installations in repair, and the Council has powers under Part 1 of HHSRS where there are otherwise risks to health and safety. Those powers should be used unless there is otherwise good reason.

96. The Tribunal's view was that this did not consequently fall under the definition of management, and, whilst the Council's intentions were once again laudable, a condition imposing a duty to inspect and possibly improve a property in the Tribunal's view (there being little by way of government guidance or previous case law) goes beyond what Parliament intended when introducing the scheme.

97. Paradoxically the increased costs would lead to increased rents (in neighbouring areas of higher demand without any correlating obligations) which would in turn do nothing to address low demand, nor anti-social behavior, the raison d'etre of Selective Licensing.

98. The condition would be removed.

99. **Condition 11:** "The Licence Holder must take all reasonable and practical steps for preventing and dealing with anti-social behaviour and undertake a thorough process of incremental steps to deal with any complaints, which have been made directly to them, or via the Local Authority, regarding their occupiers. For the purpose of these conditions, anti-social behaviour is taken to comprise behaviour by the occupants of the house and/or their visitors, which causes a nuisance or annoyance to other occupants of the house, to lawful visitors to the house or to persons residing in or lawfully visiting the locality of the house. "

100. The Applicants were concerned about the provisions being too vague to be enforceable as licence conditions. There was no definition of incremental steps, and it was not possible to ascertain from the wording what steps a Landlord would be expected to take.

101. For the Respondent, Mr Paul stated that it was clear that there needed to be a series of incremental steps – i.e. a programme of escalating action to ensure that there was no repetition of ineffectual action. He accepted there needed to be an objective, not subjective test. Further prescriptive definition would be inappropriate to fetter a Landlord's ability to use the tools available to him.

102. The Tribunal determined that the word "incremental" ought to be replaced by the words "reasonable and effective". It is not always necessary to escalate action to address a situation. Sometimes a warning can be effective for a long period of time, and merit a second warning at the same level to respond to repetition. Action taken to combat anti-social behaviour should always be reasonable and effective.

103. **Condition 15:** "The Licence Holder and any manager must attend a Landlord Development Day within one year of date of issue of licence."

104. The parties agreed that this condition might be amended so that it will read as follows:- "The Licence Holder and any manager must attend a Landlord Development Day within one year of date of issue of licence or demonstrate to the Local Authority that they have undertaken five hours of relevant training or CPD within the preceding twelve month period. "

105. **Condition 20:** "The licence holder should advise all new tenants to contact the Fire Service for a free Home Safety Fire check."

106. The Applicants contended that the Council could not impose obligations on other third parties (the tenant and the Fire Service) If the Council had concerns about fire safety they should use their Part 1 powers.

107. The Respondent stated that this was a very easy condition for a Landlord to perform.

108. The Tribunal determined that this condition might remain. It only obliged the Landlord to provide information; it does not place obligations on third parties.

Schedule: Varied Order

112 Dowry Street Accrington BB5 1AW

Condition 4 : Tenancy Agreement complies with current legislation

The condition shall remain save that the following words will be removed:

"The Licence Holder shall ensure that the Tenancy Agreement complies with current legislation"

Condition 6 : Carbon Monoxide Detector

This condition shall be amended so that it reads as follows:

If a carbon monoxide detector is provided in the Property, the licence holder must produce to the tenant (and the Council on request) written confirmation as to which party, landlord or tenant is responsible for maintaining the detector in good working order, including testing and replacing any batteries, and tenants made aware as to its operation

Condition 7: Production of Energy Performance Certificate

This condition shall be removed

Condition 8: Electrical Installation Condition Report

This condition shall be removed

Condition 11: Anti-Social Behaviour

This condition shall be amended. The word incremental shall be removed and replaced with the words reasonable and effective

Condition 15: Training Requirement

This condition shall be amended so that it reads as follows:-

The Licence Holder and any manager must attend a Landlord Development Day within one year of date of issue of licence "or demonstrate to the LA that they have undertaken five hours of relevant training or CPD within the preceding twelve month period. "

Condition 20: The Home Safety Fire Checks

This condition shall remain