



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

Case Reference : **CAM/38UC/HMV/2021/0002**

HMCTS : **Face to face**

Property : **162 Abingdon Road, Oxford OX14 4BT**

Applicant : **Maria Natividad Lopez de Armentia Najera**

Respondents : **Oxford City Council**

Type of Application : **An appeal of in respect of the Revocation of an HMO Licence (Section 70 & Schedule 5 Part 3 Housing Act 2004)**

Tribunal : **Judge JR Morris
Mrs M Wilcox BSc MRICS**

Date of Application : **10th November 2021**

Date of Directions : **14th January 2022**

Date of Hearing : **16th May 2022**

Date of Decision : **30th June 2022**

DECISION & ORDER

© CROWN COPYRIGHT 2021

DECISION

1. The Tribunal varies the Notice of Revocation as follows:

Under section 70(2)(b) of the Housing Act 2004 (the 2004 Act), Natividad Lopez De Armentia Najera is no longer considered to be a fit and proper person to be the licence holder because there is evidence that Deja-Ville Room Lets Limited has under section 66(2)(c) of the 2004 Act contravened a provision of the law relating to housing or of landlord and tenant law, being in breach of its contractual obligations by failing to pay:

- a) the rent specified in several leases; and

b) an award under a Redress Scheme leading to its expulsion from the Scheme.

Deja-Ville Room Lets Limited is under the Housing Act 2004, section 66(3)(a), a person associated or formerly associated with Natividad Lopez De Armentia Najera as Deja-Ville Room Lets Limited's sole director, and, under section 66(3)(b) of the 2004 Act, the evidence is relevant to the question whether Natividad Lopez De Armentia Najera is a fit and proper person to be the licence holder because it goes to show that Natividad Lopez De Armentia Najera failed to make suitable funding arrangements in respect of properties for which she was a licence holder to ensure the obligations as to rent were met.

REASONS

Application

2. On 5th November 2021, the Respondent served a Notice of Decision to revoke the House in Multiple Occupation licence granted on 24th August 2021 (the HMO Licence) for 162 Abingdon Road, Oxford OX1 4RA (the Property) on the Applicant and owner of the Property (Copy Provided). The reason for the revocation was that the Respondent no longer considered the Applicant to be a fit and proper person to be a licence holder due to her expulsion from the Property Redress Scheme.
3. On 2nd December 2021, the Applicant, appealed to the Residential Property Tribunal. The Appeal was made within 28 days of the Decision and therefore the operative date of the Notice of Decision is suspended pending the final outcome of the appeal Application pursuant to paragraph 33 of Part 3 of Schedule 5 of the Housing Act 2004.
4. Directions were issued on 14th February 2022 and the Appeal was heard on 16th May 2022.

The Law

5. The legislation relating to the issues raised is sections 64, 66 and Schedule 5 of the Housing Act 2004, the relevant sections of which are set out in Annex 2 of this Decision and Reasons, and The Enterprise and Regulatory Reform Act 2013 and The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to belong to a Scheme etc) (England) Order 2014.

Inspection

16. No inspection of the Property was considered necessary.

Notice of Decision to Revoke

17. The Notice of Decision to revoke stated the reason for revoking the Licence was:

Under section 70(2)(b) of the Housing act 2004, the Authority no longer consider that the licence holder is a fit and proper person to be the licence holder because Natividad Lopez De Armentia Najera of Deja-Ville Room Lets Limited has been expelled from the Property Redress Scheme and is not permitted to trade. Under the Housing Act 2004, section 66(2)(c) the authority must consider any evidence that the proposed licence holder has contravened any provision of the law relating to housing or of landlord and tenant law. This would include the requirement for letting agents to belong to a redress scheme. Given the expulsion from the scheme, the Authority no longer considered Ms Lopez De Armentia Najera to be a fit and proper person.

Hearing

16. The Hearing was attended by the Applicant, Ms Maria Nati Lopez and was assisted by Ms Penny O’Nions. The Respondent was represented by Ms Katherine Conley, Principal Lead Officer employed by the Respondent in the Private Sector Safety Team, Ms Hemma Maran and Helen Broadhurst, Environmental Health Officer in the Private Sector Safety Team. Also in attendance were Mr Graham Garner, Ms Haldi Sheahan and Mr Alan Zeb.
17. As this is an appeal against the decision of the Respondent to revoke a licence for House in Multiple Occupation (HMO) the Respondent’s case for revocation is set out first and the Applicant’s response follows.

Respondent’s Case

18. The Respondent provided a written statement of case which was confirmed at the hearing. The Respondent throughout its statement of case conflated the Applicant and Deja Ville Room Lets Limited whereas each are separate legal entities. In essence the Respondent’s case is that because the Applicant is the sole director of Deja Ville Room Lets Limited the expulsion of Deja Ville Room Lets Limited from the Redress scheme, which the Respondent contends it was required to join, has tainted the Applicant to the extent that she is no longer a fit and proper person to hold a House in Multiple Occupation (HMO) Licence. In the course of summarising the Respondent’s case in detail the Tribunal has distinguished and identified the Applicant from Deja Ville Room Lets Limited.

Background and Reasons for Decision to Revoke HMO Licence

19. The Respondent provided a background to its decision to revoke based on a chronological account interspersed with its legal argument. The following is a précis and paraphrase of the Respondent’s case.

20. On 24th August 2021 the Applicant was granted an HMO licence for the Property as HMO licence holder and manager. The Housing Act 2004 Section 64 (3)(b) and (3)(c) states that the licence holder and manager must be "Fit and Proper Persons" the test for which is outlined in section 66 of the 2004 Act. At the time the intention and decision notices were granted, the Respondent had no concerns regarding the Applicant's suitability to be an HMO licence holder or manager for the Property.
21. On 23rd September 2021 the Respondent was notified by National Trading Standards Estate & Letting Agency Team (NTSELAT) that Deja-Ville Room Lets Limited had been expelled from the Property Redress Scheme. The Respondent was advised to investigate the matter because there is a duty of enforcement on authorities to enforce the requirement for letting agents to belong to an approved redress scheme and in addition the expulsion and associated conduct may have a bearing on their fit and proper person status under the Housing Act 2004 if this agent is a property licence holder or associated manager.
22. A person's "fit and proper person" status can be reviewed and action taken where they are considered to be no longer fit and proper as stated in Section 70 which gives the power to revoke an HMO licence.
23. When considering whether persons are "fit and proper persons" in relation to being an HMO licence holder or a manager of an HMO, the Housing Act 2004 section (2)(c) states evidence should be considered where a person has "contravened any provision relating to landlord and tenant law". The Respondent submitted that this included being expelled from a Redress Scheme where membership is a legal requirement. The Housing 2004 states "contraventions" must be considered.
24. The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 passed pursuant to The Enterprise and Regulatory Reform Act 2013 ("the 2013 Act") sections 83 & 84 requires persons who engage in "letting agency work" or "property management work" to belong to a redress scheme.
25. The Respondent stated that under the 2004 Act a "person" means a named individual or a "person in law" which included a registered company or other legal entity. The Respondent recognised that the Applicant was a "person" and that Dela-Ville Room Lets Limited Company number 11807249 was also a "person" and therefore both were separate persons.
26. As a separate person Deja-Ville Room Lets Limited carried out "letting agency work" and "property management work" within the meaning of the 2004 Act and was required to be a member of a Redress Scheme. The Respondent stated that it had checked Deja-Ville Room Lets

Limited's website and this stated that the business is "a professional lettings and management service" and "Whether it's' booking a viewing, asking for help with your portfolio... no task is too small". As a separate person the Applicant held an HMO licence and was required to be a "fit and proper person".

27. Although they were separate persons with separate obligations nevertheless the Applicant was named at Companies House as the sole director of Deja-Ville Room Lets Limited. A complaint had been brought against Deja-Ville Room Lets Limited which had been dealt with under the PRS Redress Scheme to which the Deja-Ville Room Lets Limited belonged. An award had been made against Deja-Ville Room Lets Limited which had not been paid leading to the expulsion of Deja-Ville Room Lets Limited from the Scheme. Therefore, Deja-Ville Room Lets Limited was not able to carry out "letting agency work" and "property management work" under the Act.
28. The Respondent submitted that the expulsion from a Redress Scheme was a "contravention" within the meaning of section (2)(c) of the 2004 Act and showed that the Applicant as the sole director of Deja Ville Room Lets Limited had not fulfilled her contractual obligations and so could not be considered to be a "fit and proper person" to hold an HMO licence.
29. In addition, the Respondent referred to section 64 which states that for the authority to grant a licence it must be satisfied not only that the Applicant as licence holder and manager is a fit and proper person but also that the proposed management arrangements for the house are otherwise satisfactory. In doing so under section 66(5) and (6) it must have regard to considerations which include:
 - (a) whether any person proposed to be involved in the management of the house has a sufficient level of competence to be so involved;
and
 - (c) whether any proposed management structures and funding arrangements are suitable.
30. The Respondent submitted that the expulsion from the Redress Scheme demonstrated a lack of competence and the management arrangements could no longer be satisfactory because the Applicant (as the licence holder and manager) could not lawfully trade without being a member of a Redress Scheme and so was not a fit and proper person.
31. On 27th September 2021, the Respondent said it wrote to Deja-Ville Room Lets Limited regarding the expulsion from the scheme and asked for proof of registration with one of the other schemes or to give reasons in writing why it was exempt from the requirements to join a Redress Scheme (copy provided).
32. On 13th October 2021, the Applicant contacted the Respondent and explained that she felt the landlord of the Property for which she held

the HMO licence had taken advantage of her and made a complaint to the PRS Redress Scheme whose decision she considered was unfair. She subsequently explained that she believed that Deja-Ville Room Lets Limited did not need to join a Redress Scheme because it operated as “rent to rent/ guaranteed rent” business and Deja-Ville Room Lets Limited had done so “voluntarily” to give clients' reassurance.

33. The Tribunal noted that under the “rent to rent/guaranteed rent” arrangement a head landlord grants a tenancy to a head tenant under an agreement which allows the head tenant to sub-let. In the present case the head landlord was the freeholder of the Property and the head tenant was Deja-Ville Room Lets Limited. The Property was sublet as an HMO and the Applicant as sole director of Deja-Ville Room Lets Limited held an HMO licence.
34. The Respondent said that the Applicant had stated it did not need to be a member of a Redress Scheme because of its business model. However, the Respondent stated that it needed to make a decision regarding the HMO licence based on the facts and business model of the Applicant and her company, Deja-Ville Room Lets Limited, but the Applicant had failed to provide any further evidence of the exact nature of the agreements and work or details of the contractual arrangements between Deja-Ville Room Lets Limited, the Head Landlord and the Applicant. The Applicant provided copies of eight lease agreements between Mr Yousef Ali and Deja-Ville Room Lets Limited. However, no copy of the Lease for the Property was provided although it was said to be on the same terms as the eight Leases provided except for rent. It was agreed by the parties that under the terms of these agreements Deja-Ville Room Lets Limited could sublet the house and so in this respect, could be considered to be the “landlord” and not required to belong to a redress scheme for “letting agency work”.
35. Deja-Ville Room Lets Limited’s webpage advertised itself as being “lettings and management professionals” which implied it operated as a traditional letting and property management agent, or could offer that as an option. This would include “letting agency work” and “property management work”. Based on the evidence available, the Respondent judged that Deja-Ville Room Lets Limited, was required to be a member of a Redress Scheme and was a member. Under a Redress Scheme a landlord may make a complaint which in this case led to an award which Deja-Ville Room Lets Limited did not pay which has resulted in its expulsion from the Redress Scheme.
36. On 14th October 2021, the Applicant raised concerns about the landlord with the Respondent and made complaint regarding the Redress Scheme which the Respondent stated it could not alter.
37. On 15th October 2021, the Respondent served a notice of intention to issue a financial penalty on Deja-Ville Room Lets Limited for failure to belong to the Redress Scheme, although this was not carried forward and is not part of these proceedings.

38. On 18th October 2021, the Respondent issued a notice of intention to revoke the Applicant's HMO licence for the Property.
39. On 4th November 2021 the time for representations against the Notice of Intention to Revoke the HMO licence lapsed without the Applicant contacting the Respondent.
40. On 5th November 2021, the Respondent served a notice of decision to revoke the HMO licence for the Property on the Applicant and Property owner (copy provided).
41. On 15th November 2021, the Respondent checked with the Redress Scheme and it was confirmed that the award had not been paid and Deja-Ville Room Lets Limited was still expelled from the Redress Scheme. Although the Respondent found Deja-Ville Room Lets Limited's website was still live (screen shot provided).
42. In its response to the Applicant's case the Respondent acknowledged that a decision on whether a person/business needs to belong to a Redress Scheme or not has to be made on each specific case. Each business may operate in a different way. What needs to be determined in each case is whether the person meets the definition of letting agency work and /or property management work, as defined by The Enterprise and Regulatory Reform Act 2013 sections 83 and 84. Reference was made to two previous First-tier Tribunal Decision which were provided.
43. In the present case the Respondent submitted that notwithstanding that Deja-Ville Room Lets Limited was the Head Tenant under the Lease for the Property (a copy of which was not provided) the Applicant was the HMO licence holder and manager and for the Property, there are specific obligations that would fall under the definition of "letting and property management work". If this is the case then the Applicant would need to belong to a Redress Scheme. This work would include:
 - Conditions to ensure occupants have a statement of terms of occupation and an inventory (this would be associated with letting agency work)
 - Conditions to ensure smoke alarms are in working order, ensure electrical appliances supplied are safe, ensure carbon monoxide detectors (if needed) are in working order, ensure a gas safety certificate is supplied to the Respondent, ensure an electrical safety certificate is supplied to the Respondent, ensure an' EPC (if required) is supplied to the Respondent, keep the fire escape route clear, provide notices on what to do in the event of fire (these are all associated with property management work).
 - The Respondent referred the Tribunal to the Leases provided which stated that Deja-Ville Room Lets Limited under paragraph 17 "Notify Defects" was required "To give notice to the Property Owner of any defect or want of repair to the Property, for which the Property Owner may be responsible under this lease or any law". It was submitted that as there was no express

permission for Deja-Ville Room Lets Limited as the Tenant to remedy the defects then the Property Owner could Instruct the Applicant to make arrangements, to repair the issue which would fall into the definition of “Property manager”

44. The Respondent submitted that the references provided in the bundle indicated that Deja-Ville Room Lets Limited had undertaken letting agency work, for example:
- Ahmad Saleem “she has managed my properties and if anything goes wrong, she rectifies it quickly” and “co-ordinated the work”.
 - John & Kathryn Price “We have found all aspects of Deja Ville Room Lets Limited management services to have been...”

Respondent’s Guidance Regarding Revocation of HMO Licence

45. The Respondent referred to its Guidance regarding enforcement.
46. The Respondent acknowledged that classing a "person as not fit and proper" is a very serious sanction as it will prevent them from holding an HMO licence. There is guidance issued by the Government in relation to the Fit and Proper Person test. For this reason, the Respondent has developed a guidance note outlining the factors to be considered (copy provided), under the Respondents' Enforcement Policy (copy provided).
47. The Respondent Guidance Note explains the reasons why persons must be “fit and proper” as key requirements to:
- tackle criminal landlords; and
 - improve standards in the private rented sector; and
 - protect tenants; and
 - ensure persons responsible for managing HMOs are of sufficient integrity and
 - character so they do not pose a risk to tenants as they are in position of trust.
48. The Fit and Proper person test applies to both the licence holder and manager in this case, the Applicant is both the licence holder and manager. The Respondent’s Guidance Note explains what it considers to be “involved in the management” as:
- Management of tenancies including dealing with the rent, deposit, advertising and letting and tenant enquiries;
 - Management and provision of services to the building and grounds, including repairs
49. The Respondent referred to section 66(2)(c) of the Housing Act 2004 which states that a person is not a fit and proper person if that person has “contravened any provision of the law relating to housing or of landlord and tenant law.” The Respondent’s Guidance note states: A contravention is to act contrary to a rule, order, regulation or law, or of not fulfilling an obligation, promise or agreement. The Guidance also

states that this includes a contravention of any legal requirement as a letting or management agent which led to civil or criminal proceedings resulting in a judgement being made against them.

50. The Respondent stated the following:
- It would not be possible for the Applicant to fulfil her obligations as a licence holder or manager without membership of the Redress Scheme and there could not be any satisfactory management arrangements.
 - The high level of award clearly demonstrates serious misconduct had occurred.

51. The Respondent then said it applied the Respondent's Enforcement Policy as follows:

Severity of offence:

- The PRS had upheld a complaint and determined the Deja-Ville Room Lets Limited had to pay back £25,000. The lack of payment led to expulsion. The high level of award clearly demonstrated the PRS scheme considered this was very serious misconduct.
- The Respondent then made a statement regarding the conduct of the Applicant which was unfounded and inappropriate and so not repeated here as this is a public document.

Harm caused to the tenant:

- Apart from the gas leak incident (which the Respondent had not been made aware of at the time), there was no known harm to tenants.

Mitigating factors:

- The complaint was by one landlord. When the Respondent contacted other landlords about the situation, these landlords supported the Applicant stating they received good service and wished to retain her services.
- The Applicant had previously joined the Respondents' Accreditation Scheme and had a good history.
- There was no record of complaints being made by tenants for disrepair or other tenancy related matters.

Culpability and serial offending:

- There is no history of non-compliance by the Applicant. it appears this
- is an isolated incident.

Punishment of offender:

- The Award was very high and would give substantial punishment if this had been paid, the Respondent would consider this to be sufficient punishment.

Deter repeat offences

- The requirement to belong to a Redress Scheme is a statutory obligation. The expulsion from the Redress Scheme had occurred because the Deja-Ville Room Lets Limited had not paid the award. While the award remained unpaid, the Deja-Ville Room Lets Limited could not re-join Redress Scheme. This meant that Deja-Ville Room Lets Limited could not legally trade and to do so would be a contravention of the Redress Scheme regulations.

52. Therefore, the Applicant was not a fit and proper person and the decision to revoke the licence should be confirmed.

Applicants Case

53. The Applicant stated that the business model Deja-Ville Room Lets Limited operated was a rent-to-rent type. Under this a landlord let the Property to Deja-Ville Room Lets Limited as the tenant. Deja-Ville Room Lets Limited paid an agreed rent. Deja-Ville Room Lets Limited then sublet rooms in the Property on its own account as an HMO, as it was permitted to do under the Lease. Irrespective of whether the rooms were let or not Deja-Ville Room Lets Limited paid the agreed/guaranteed rent to the landlord. The Property owner was the head landlord and Deja-Ville Room Lets Limited was the sub or mesne landlord collecting rents on its own account. The Applicant was the HMO licence holder and manager for Deja-Ville Room Lets Limited.
54. In respect of these proceedings Deja-Ville Room Lets Limited had entered a Lease as a Tenant with the Landlord. A copy of the Lease was not provided but the terms of which were said to be the same as other Leases which were provided except for the name of the Landlord and the rent payable. The Applicant confirmed that Deja-Ville Room Lets Limited was the Tenant.
55. The Applicant stated that notwithstanding what was on the website, Deja-Ville Room Lets Limited only undertook rent-to-rent agreements. Deja-Ville Room Lets Limited did not need to join a Redress Scheme, it had done so “voluntarily” to give clients' reassurance. The Applicant said that the UK Association of Letting Agents had advised her that the above business model did not require an agent to belong to a Redress Scheme and provided a press statement that she had received from them (copy provided).
56. Although Deja-Ville Room Lets Limited did not need to be a member it had joined a Redress Scheme. Due to the coronavirus pandemic, it had not been possible to sublet all the rooms of a number of properties which were rented from a particular landlord. Deja-Ville Room Lets Limited failed to pay the rent specified in these Leases and the landlord complained to the Redress Scheme which found that the rent was payable. The rent outstanding was found by the Redress Scheme to be in excess of the £25,000 which the Redress Scheme could order and so

it made an Award of £25,000.00 stating that any amount outstanding over this amount could be pursued in the County Court.

57. The Applicant was aggrieved that the Redress scheme found against Deja-Ville Room Lets Limited and excluded it from the Redress Scheme. She was of the opinion that she, as the sole director of Deja-Ville Room Lets Limited did not have a fair hearing, the award was not justified and therefore Deja-Ville Room Lets Limited should not have been expelled. The Applicant said in her role as sole director of Deja-Ville Room Limited that the company could not have sufficient funds to pay the compensation Award and therefore was not able to re-join a Redress Scheme.
58. Most of the Applicant's very substantial Bundle of documents related to her grievance with the landlord who had complained and the Redress Scheme. The Tribunal stated that it could not rehear the Redress Scheme complaint or alter the Scheme's award or reverse the expulsion from the Scheme.
59. The Applicant submitted that notwithstanding its expulsion Deja-Ville Room Lets Limited was able to continue renting the Property lawfully and that therefore she was able to continue as the HMO licence holder and manager. She referred the Tribunal to section 64(4) of the Housing Act 2004.
60. In addition, the Applicant submitted that she was experienced and had been an HMO licence holder and manager for 12 properties without incident and the Respondent had agreed that until the present proceedings she had an excellent record. She referred to a number of testimonials in support of the statement.
61. Therefore, the revocation should be quashed.

Discussion

62. The Tribunal considered all the evidence and the submissions of the parties. The Tribunal found that the parties respective cases lacked clarity. The Applicant was too focused on the dispute she had with the landlord who had complained through the Redress Scheme and the grievance she had over the award against Deja Ville Room Lets Limited. Much of her evidence and most of her submissions were not relevant as a result, as the Tribunal could not rehear or alter the Award. The Respondent did not distinguish between the legal identities of the Applicant and Deja-Ville Room Lets Limited, as a result the reasons for revocation lacked clarity and some confusion was caused by the implementation of an Enforcement Policy designed for civil penalties which had limited application to the present circumstances.
63. The only issue for the Tribunal to determine is whether the licence, which is specific to the licence holder and manager and the Property for which it is granted, should be revoked. In making its determination it

found that the legislation is to be followed rather than the Respondent's Guidance. Also, the Respondent's Enforcement Policy is not appropriate in respect of the present case although may be for a civil or financial penalty.

64. Under Paragraph 34 of Part 3 Schedule 5 the Appeal is by way of re-hearing and may be determined having regard to matters of which the Respondent authority was unaware. The Tribunal may confirm, reverse or vary the decision.
65. Under section 70(3)(b) of the 2004 Act in determining whether or not the HMO licence should be revoked the Tribunal must consider, if, on the day of the hearing, the Applicant had applied for an HMO licence for the Property, whether it should be granted or refused having regard to sections 64 and 66 of the Housing Act 2004.
66. The Tribunal referred to the Notice of the Decision to Revoke a Licence for a House in Multiple Occupation dated 5th November 2021. This stated the reason for the revocation was the evidence that, the Applicant as licence holder and manager of the Property or a person associated with the Applicant, was in contravention of a provision of the law relating to housing or of landlord and tenant law and that the contravention made the Applicant not a fit and proper person to be the licence holder or the manager of the Property.
67. The Tribunal considered the evidence and submissions made by the parties to determine whether the reason for the Decision to Revoke was justified.
68. First, the Tribunal found that no evidence had been adduced to show that the Applicant was in contravention of a provision of the law relating to housing or of landlord and tenant law. The Tribunal does not find that there is any legal obligation on a licence holder or manager to be a member of a Redress Scheme provided he or she is acting on his or her own account and not taking instructions from another so as to be undertaking "letting and property management work" under the 2013 Act.
69. Secondly, the Tribunal found that the Applicant was associated with Deja-Ville Room Lets Limited being the sole director. This was confirmed by the Tribunal by reference to the entry for Deja-Ville Room Lets Limited at Companies House. In addition, the Applicant had confirmed that Deja-Ville Room Lets Limited was the Tenant of the Lease for the Property.
70. The Tribunal considered whether Deja-Ville Room Lets Limited was in contravention of a provision of the law relating to housing or of landlord and tenant law.
71. First, the Tribunal determined whether the business model of rent-to-rent requires the tenant to be a member of a Redress Scheme. The

Tribunal found that persons who rent a residential property with a view to subletting do not need to belong to a Redress Scheme provided they are letting and managing the property for themselves and are not taking instructions from anyone e.g., the head landlord. However, the UK Association of Letting Agents provides a warning to agents who use this as a business model. They must keep their traditional agency work, where they are instructed and act for clients, separate from the rent-to-rent 'work' where they are acting for themselves. The Association's concern was not only that as agents they need to belong to a Redress Scheme but also there are insurance implications.

72. Secondly, the Tribunal considered whether Deja-Ville Room Lets Limited was operating a rent-to-rent business model in such a way that it did not need to belong to a Redress Scheme. The Tribunal examined the Leases provided which it was agreed by the parties were in like form except as to the landlord and the rent. The Tribunal found that there were no provisions which indicated that Deja-Ville Room Lets Limited was anything other than the Tenant acting on its own account. Paragraph 17 of Schedule 1 requires the Tenant, referred to in the Lease as the renter, to notify the Landlord, referred to in the Lease as the Property Owner, of defects. In the knowledge and experience of the Tribunal, this provision is included in many tenancies and leases and does not carry with it any requirement for a tenant to engage a contractor to remedy the defect on a landlord's behalf as submitted by the Respondent.
73. Thirdly, the Tribunal found that the comments identified from the testimonials referring to "managing" the properties and "correcting anything going wrong" and "coordinating work" were not sufficient to show that Deja-Ville Room Lets Limited was going beyond its obligations as a Tenant and undertaking "letting agency work" and "property management work". To show otherwise the testimonial writers would need to be called as witnesses.
74. Fourthly, the Tribunal found that the Deja-Ville Room Lets Limited did advertise itself as "a professional lettings and management service" on its website which implied it operated as a traditional letting and property management agent, or could offer that as an option. In addition, the nature of its business at Companies House is stated as "Renting and operating of Housing Association real estate". This would include "letting agency work" and "property management work" for which membership of a Redress Scheme would be needed. The Tribunal was not required to make a finding as to whether it had actually carried out "letting agency work" and "property management work" but in any event until it was expelled it had been a member of a Redress Scheme.
75. Fifthly, the Tribunal found that Deja-Ville Room Lets Limited, being a member of a Redress Scheme was contractually obliged to comply with the Scheme whether it is required by law to be a member or not. The PRS Redress Scheme specifically states that its remit includes the

hearing of complaints regarding rent-to-rent leases. The parties agreed that following a complaint regarding non-payment of rent, an award of £25,000.00 was made against Deja-Ville Room Lets Limited by way of compensation. The total amount of rent claimed was higher but £25,000.00 is the maximum amount permitted under the Scheme. Contrary to comments made by both parties, this is not a fine, and no evidence of criminality has been adduced and it is not a civil or financial penalty as might be understood by local authorities. It is a civil debt incurred under a contract between Deja-Ville Room Lets Limited and the complainant to the Redress Scheme.

76. Sixthly, the Tribunal found that Deja-Ville Room Lets Limited is contractually liable to pay the compensation and until it does so it is expelled from the Scheme. As such it is not able to undertake “letting agency work” and “property management work” as this would require it to be a member of a Redress Scheme. Unless the Applicant has personally guaranteed the indebtedness of Deja-Ville Room Lets Limited, as a limited company any debt will normally be paid from its own assets. If it has insufficient funds, as the Applicant said it had, then it will be subject to the laws of insolvency, which are outside the jurisdiction of the Tribunal.
77. Seventhly, the Tribunal found that the reference in section 66(2)(c) of the 2004 Act to “contravention of a provision of the law relating to housing or of landlord and tenant law” included the laws of contract. In this instance the person determining the complaint under the Property Redress Scheme found that Deja-Ville Room Lets Limited was in breach of its contractual obligations by failing to pay the rent specified in several leases and made an award of £25,000.00 compensation. Deja-Ville Room Lets Limited was also in breach of its contractual obligations by failing to pay the award. The Tribunal therefore found that Deja-Ville Room Lets Limited was in contravention of a provision of the law relating to housing or of landlord and tenant law.
78. The Tribunal then considered whether this evidence made the Applicant not a fit and proper person to be an HMO licence holder and manager of the Property.
79. Although limited companies are separate legal entities, they are artificial persons whose actions are directed by real persons. Whereas the Tribunal is reluctant to pierce the veil of incorporation nevertheless section 66(3) of the 2004 Act gives authority to do so by its reference to associated persons.
80. The Tribunal therefore considered whether the Applicant is a fit and proper person to be an HMO licence holder and manager of the Property taking into account the Applicant’s association with the Deja-Ville Room Lets Limited as sole director and Deja-Ville Room Lets Limited as Tenant of the Property.

81. The Tribunal determined that under section 70(2)(b) of the Housing Act 2004 (the 2004 Act), the Applicant is no longer considered to be a fit and proper person to be the licence holder because there is evidence that Deja-Ville Room Lets Limited has under section 66(2)(c) of the 2004 Act contravened a provision of the law relating to housing or of landlord and tenant law, being in breach of its contractual obligations by failing to pay:
 - a) the rent specified in several leases; and
 - b) an award under a Redress Scheme leading to its expulsion from the Scheme.
82. Deja-Ville Room Lets Limited is under the Housing Act 2004, section 66(3)(a), a person associated or formerly associated with the Applicant as Deja-Ville Room Lets Limited's sole director. In addition, under section 66(3)(b) of the 2004 Act, the evidence is relevant to the question whether the Applicant is a fit and proper person to be the licence holder because it goes to show that she failed to make suitable funding arrangements in respect of properties for which she was a licence holder to ensure the obligations as to rent were met.
83. Whereas the Tribunal agreed with the Respondent that the Applicant is not a fit and proper person to be licence holder it did not agree with its reasoning. The reasons needed to distinguish between the two legal entities of the Applicant and Deja-Ville Room Lets Limited notwithstanding that they are associated and that the evidence adduced showed that there had been a contravention of a provision of the law relating to housing or of landlord and tenant law.
84. The Tribunal also agreed that part of the reasoning for finding the Applicant was not a fit and proper person was the failure of Deja-Ville Room Lets Limited to pay the award under a Redress Scheme. However, its expulsion from the Scheme and the inability of Deja-Ville Room Lets Limited to join another scheme did not necessarily prevent the Applicant from being a licence holder provided she did not undertake "letting agency work" and "property management work". As noted above, the Tribunal took the view that if Deja-Ville Room Lets Limited only operated a rent-to-rent Business model it did not need to be a member of a Redress Scheme.
85. The Tribunal took the view that it was the breach of contractual obligations by Deja-Ville Room Lets Limited while the Applicant was a licence holder and manager in respect of the properties that were the subject of the Redress Scheme complaint which went to show that the Applicant was not a fit and proper person to be a licence holder and manager of the Property.
86. The Tribunal varies the Notice of Revocation as follows:

Under section 70(2)(b) of the Housing Act 2004 (the 2004 Act), Natividad Lopez De Armentia Najera is no longer considered to be a fit and proper person to be the licence holder because there is evidence that Deja-Ville Room Lets Limited has under section 66(2)(c) of the

2004 Act contravened a provision of the law relating to housing or of landlord and tenant law, being in breach of its contractual obligations by failing to pay:

- a) the rent specified in several leases; and
- b) an award under a Redress Scheme leading to its expulsion from the Scheme.

Deja-Ville Room Lets Limited is under the Housing Act 2004, section 66(3)(a), a person associated or formerly associated with Natividad Lopez De Armentia Najera as Deja-Ville Room Lets Limited's sole director, and, under section 66(3)(b) of the 2004 Act, the evidence is relevant to the question whether Natividad Lopez De Armentia Najera is a fit and proper person to be the licence holder because it goes to show that Natividad Lopez De Armentia Najera failed to make suitable funding arrangements in respect of properties for which she was a licence holder to ensure the obligations as to rent were met.

Judge JR Morris

ANNEX 1 - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.

ANNEX 2 – THE LAW

Housing Act 2004

1. Section 64 Grant or refusal of licence
 - (1) Where an application in respect of an HMO is made to the local housing authority under section 63, the authority must either—
 - (a) grant a licence in accordance with subsection (2), or
 - (b) refuse to grant a licence.

- (2) If the authority are satisfied as to the matters mentioned in subsection (3), they may grant a licence either—
 - (a) to the applicant, or
 - (b) to some other person, if both he and the applicant agree.
 - (3) The matters are—
 - (a) that the house is reasonably suitable for occupation by not more than the maximum number of households or persons mentioned in subsection (4) or that it can be made so suitable by the imposition of conditions under section 67;
 - (aa) that no banning order under section 16 of the Housing and Planning Act 2016 is in force against a person who—
 - (i) owns an estate or interest in the house or part of it, and
 - (ii) is a lessor or licensor of the house or part;
 - (b) that the proposed licence holder—
 - (i) is a fit and proper person to be the licence holder, and
 - (ii) is, out of all the persons reasonably available to be the licence holder in respect of the house, the most appropriate person to be the licence holder;
 - (c) that the proposed manager of the house is either—
 - (i) the person having control of the house, or
 - (ii) a person who is an agent or employee of the person having control of the house;
 - (d) that the proposed manager of the house is a fit and proper person to be the manager of the house; and
 - (e) that the proposed management arrangements for the house are otherwise satisfactory.
 - (4) The maximum number of households or persons referred to in subsection (3)(a) is—
 - (a) the maximum number specified in the application, or
 - (b) some other maximum number decided by the authority.
 - (5) Sections 65 and 66 apply for the purposes of this section.
2. Section 66 Tests for fitness and satisfactory management arrangements
- (1) In deciding for the purposes of section 64(3)(b) or (d) whether a person (“P”) is a fit and proper person to be the licence holder or (as the case may be) the manager of the house, the local housing authority must have regard (among other things) to any evidence within subsection (2) or (3).
 - (2) Evidence is within this subsection if it shows that P has—
 - (a) committed any offence involving fraud or other dishonesty, or violence or drugs, or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (c. 42) (offences attracting notification requirements);
 - (b) practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business;
 - (c) contravened any provision of the law relating to housing or of landlord and tenant law; or

- (d) acted otherwise than in accordance with any applicable code of practice approved under section 233.
 - (3) Evidence is within this subsection if—
 - (a) it shows that any person associated or formerly associated with P (whether on a personal, work or other basis) has done any of the things set out in subsection (2)(a) to (d), and
 - (b) it appears to the authority that the evidence is relevant to the question whether P is a fit and proper person to be the licence holder or (as the case may be) the manager of the house.
 - (3C) A person is not a fit and proper person for the purposes of section 64(3)(b) or (d) if a banning order under section 16 of the Housing and Planning Act 2016 is in force against the person.
 - (4) For the purposes of section 64(3)(b) the local housing authority must assume, unless the contrary is shown, that the person having control of the house is a more appropriate person to be the licence holder than a person not having control of it.
 - (5) In deciding for the purposes of section 64(3)(e) whether the proposed management arrangements for the house are otherwise satisfactory, the local housing authority must have regard (among other things) to the considerations mentioned in subsection (6).
 - (6) The considerations are—
 - (a) whether any person proposed to be involved in the management of the house has a sufficient level of competence to be so involved;
 - (b) whether any person proposed to be involved in the management of the house (other than the manager) is a fit and proper person to be so involved; and
 - (c) whether any proposed management structures and funding arrangements are suitable.
 - (7) Any reference in section 64(3)(c)(i) or (ii) or subsection (4) above to a person having control of the house, or to being a person of any other description, includes a reference to a person who is proposing to have control of the house, or (as the case may be) to be a person of that description, at the time when the licence would come into force.
3. Section 70 Power to revoke licences
- (1) The local housing authority may revoke a licence—
 - (a) if they do so with the agreement of the licence holder;
 - (b) in any of the cases mentioned in subsection (2) (circumstances relating to licence holder or other person);
 - (c) in any of the cases mentioned in subsection (3) (circumstances relating to HMO concerned); or
 - (d) in any other circumstances prescribed by regulations made by the appropriate national authority.
 - (2) The cases referred to in subsection (1)(b) are as follows—

- (a) where the authority consider that the licence holder or any other person has committed a serious breach of a condition of the licence or repeated breaches of such a condition;
- (b) where the authority no longer consider that the licence holder is a fit and proper person to be the licence holder; and
- (c) where the authority no longer consider that the management of the house is being carried on by persons who are in each case fit and proper persons to be involved in its management.

Section 66(1) applies in relation to paragraph (b) or (c) above as it applies in relation to section 64(3)(b) or (d).

- (3) The cases referred to in subsection (1)(c) are as follows—
 - (a) where the HMO to which the licence relates ceases to be an HMO to which this Part applies; and
 - (b) where the authority consider at any time that, were the licence to expire at that time, they would, for a particular reason relating to the structure of the HMO, refuse to grant a new licence to the licence holder on similar terms in respect of it.
- (4) Subsection (5) applies where the authority are considering whether to revoke a licence by virtue of subsection (3)(b) on the grounds that the HMO is not reasonably suitable for the number of households or persons specified in the licence as the maximum number authorised to occupy the house.
- (5) The authority must apply the same standards in relation to the circumstances existing at the time when they are considering whether to revoke the licence as were applicable at the time when it was granted. This is subject to subsection (6).
- (6) If the standards—
 - (a) prescribed under section 65, and
 - (b) applicable at the time when the licence was granted,
 have subsequently been revised or superseded by provisions of regulations under that section, the authority may apply the new standards.
- (7) A revocation made with the agreement of the licence holder takes effect at the time when it is made.
- (8) Otherwise, a revocation does not come into force until such time, if any, as is the operative time for the purposes of this subsection under paragraph 35 of Schedule 5 (time when period for appealing expires without an appeal being made or when decision to vary is confirmed on appeal).
- (9) The power to revoke a licence under this section is exercisable by the authority either—
 - (a) on an application made by the licence holder or a relevant person, or
 - (b) on the authority's own initiative.
- (10) In subsection (9) "relevant person" means any person (other than the licence holder)—

- (a) who has an estate or interest in the HMO concerned (but is not a tenant under a lease with an unexpired term of 3 years or less), or
- (b) who is a person managing or having control of that house (and does not fall within paragraph (a)), or
- (c) on whom any restriction or obligation is imposed by the licence in accordance with section 67(5).

The Enterprise and Regulatory Reform Act 2013

4. Section 84 (7) defines:
- “lettings agency work” as “things done by any person in the course of a business in response to instructions received from—
- (a) a person seeking to find another person wishing to rent a dwelling-house in England under a domestic tenancy and, having found such a person, to grant such a tenancy (“a prospective landlord”);
 - (b) a person seeking to find a dwelling-house in England to rent under a domestic tenancy and, having found such a dwelling-house, to obtain such a tenancy of it (“a prospective tenant”).
- And
- “property management work” as “things done by any person (“A”) in the course of a business in response to instructions received from another person (“C”) where—
- (a) C wishes A to arrange services, repairs, maintenance, improvements or insurance or to deal with any other aspect of the management of premises in England on “C”s behalf, and
 - (b) the premises consist of or include a dwelling-house let under a relevant tenancy.”