



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

**Case reference** : **BIR/00GA/HML/2020/0013  
BIR/00GA/HML/2020/0014**

**Properties** : **87 Ryelands Street, Hereford, HR4 0LN;  
45 Broad Street, Leominster, Hereford  
HR6 8DD**

**Applicant(s)** : **Herford Housing Solutions Limited;  
Mayya Kostyuk,**

**Respondent** : **Herefordshire Council**

**Type of application** : **Appeal in respect of a refusal to grant an  
HMO licence - Section 64 & Part 1  
paragraph 8 of Schedule 5 to the  
Housing Act 2004 (“the 2004 Act”).**

**Tribunal** : **Judge D. Barlow  
Mr R Chumley Roberts MCIEH, J.P.**

**Date of Decision** : **17 December 2020**

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*Corrected* **DECISION**

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*I have corrected this decision in accordance with the power under Rule 50(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The amendment is to show the correct name of Mr Gavin Kemp in paragraph 9. Judge D. Barlow*

## **DECISION**

- (1) The Tribunal confirms the decision of the Respondent dated 10 March 2020, to Refuse to Grant an HMO Licence for the property 87 Ryelands Street, Hereford HR4 0LN
- (2) The Tribunal confirms the decision of the Respondent dated 10 March 2020, to Refuse to Grant an HMO Licence for the property 45 Broad Street, Leominster, HR6 8DD

## **REASONS**

### **Background**

1. This case concerns two HMO licence applications made under Part 2 of the 2004 Act for properties at 45 Broad Street, Leominster, Herefordshire, HR6 8DD and 87 Ryelands Street, Hereford, Herefordshire, HR4 0LN (“the Properties”). Both properties are currently occupied and operating as HMO’s without a licence. The Properties are owned by Mr Martin ROHDE (“Mr Rohde”). The licence applicant and proposed manager is Herford Housing Solutions Limited (“the Company”). The Company is wholly owned by Ms Mayya KOSTYUK (“Ms Kostuyk”) who is the sole director.
2. The licence applications were received by the Respondent Council on 1 November 2019 (dated 30 October 2019). Formal notices of refusal to grant the licences were sent to the Applicants on 10 March 2020, stating that neither the proposed holder of the licence or the proposed manager were fit and proper persons to hold a licence or manage the Properties.
3. The Applicants’ filed an application with the Tribunal appealing the Notices of Refusal on 13 May 2020. Initial directions were issued by the Tribunal to the parties and Mr Rohde on 13 May 2020. Mr Rohde had been joined as a party to provide him with an opportunity to file evidence and be heard on the Council’s allegations concerning breaches of housing law.
4. By letter received on 26 May 2020, Mr Rohde objected to being joined as a party because he did not have a pending application with the Council and confirmed that he would not take any part in the case. Mr Rohde was therefore removed as a party by the Tribunal and he has not participated further in the proceedings.

### **The Law**

5. Section 64 of the 2004 Act deals with the power to grant or refuse an HMO licence. The relevant sections are:

*(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.....

(a) .....

(b) .....

(3) The matters are—

(a) that the house is reasonably suitable for occupation .....

(b) that the proposed licence holder—

i. (i) is a fit and proper person to be the licence holder,

ii. (ii).....;

(c).....

(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.

6. Section 66 of the Act (as amended) details the test for deciding whether a person is a fit and proper person to be a licence holder or manager and provides:

s. 66 Tests for fitness etc. 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).....;

(b).....;

(c) contravened any provision of the law relating to housing or of landlord and tenant law; or

(d).....

*(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.*

7. The licence holder, or any relevant person, may appeal to the First-tier Tribunal (Property Chamber) against a decision by the local housing authority to refuse vary or revoke a licence, under Part 3 of Schedule 5 to the Act.
8. On an appeal against a refusal to grant a licence, the Tribunal has power under paragraph 34(3) and (4) of Schedule 5 to confirm, reverse, or vary the decision; or to direct the local authority to grant the licence to the applicant on such terms as the Tribunal may direct.

### **Hearing**

9. A remote hearing was held on 17 December 2020 using the Cloud Video Platform (CVP). The Applicant, Ms Kostuyk, attended the hearing and represented herself and the Company. The Respondent Council was represented by Mr Gavin Kemp, Principle Environmental Health Officer with the Council.
10. As this was a rehearing of a Council's refusal to grant of HMO Licences', the Respondent was invited to present its case first.

### **The Respondents submissions**

11. Mr Kemp filed an electronic Bundle of evidence in support of the Respondent's case on 25 September 2020, comprising a Chronology, a statement of case, a supplemental statement of case and 24 Exhibits ("the Respondents Bundle") Mr Kemp also filed some late rebuttal evidence concerning Ms Kostuyk's address and the outcome of a Crown Court appeal in 2019 against housing offences convictions by Hereford Magistrates Court in May 2017.
12. At the hearing Mr Kemp confirmed his written submissions concerning the sequence of events leading to the Council's decision to refuse to grant the licences. His submissions both written and oral, are set out in the following paragraphs.
13. On 6 January 2015, a one-year HMO licence was granted to the Company for 45 Broad Street. The Company was also named as the proposed

manager. Mr Kemp confirmed at the hearing, that a one-year licence was highly unusual and reflected concerns the Council had about Ms Kostuyk's background and suitability to manage an HMO. She was the sole director and shareholder of the Company, which would in effect manage the property through her and was in Mr Kemp's words, an unknown quantity. The Council already had concerns about the character of the owner of the property, Mr Rohde and the possibility of a close connection between him and Ms Kostuyk.

14. Within three months of the HMO licence being granted the Council were alerted to breaches of the licence condition concerning permitted occupancy and other conditions, which eventually led to the Company and Ms Kostuyk being prosecuted (and subsequently convicted) for breaches of the licence conditions. The licence lapsed on 5 January 2016.
15. On 2 September 2019, Ms Kostuyk and Mr Rohde attended a meeting at the Council's offices with Ms Lucy Harries, a housing enforcement officer and Mr Kemp to discuss the licensing of the Properties. It was explained at the meeting, that given the breaches of the HMO licence granted for 45 Broad Street, which led to the prosecution and conviction of the Company and Ms Kostuyk in 2017, upheld by the Crown Court on appeal in 2018 ("the 2017/18 Convictions"), it would be unlikely that the Council would deem either the Company or Ms Kostuyk to be fit and proper persons on any new HMO application. Mr Rohde would also not be deemed a fit and proper person because he had been refused a licence for three properties in Powys by Rent Smart Wales ("RSW") in 2018, due to his lack of fitness. Mr Rohde explained at the meeting that it would be difficult to find anyone willing to take on management of the Properties and to assist Mr Rohde with this, the Council agreed to provide a list of alternative property managing agents operating in the area that he could consider.
16. A letter summarising the meeting points was sent to Mr Rohde on 2 September 2019 which enclosed a list of 7 agents/management companies operating in Herefordshire. The letter asked for details of any alternative persons/company to be submitted by 16 October 2019, failing which the Council would process the applications on the forms submitted (Exhibit 001 of the Respondent's Bundle).
17. On 1 November 2019, Ms Kostuyk submitted HMO licence applications for 45 Broad Street and 87 Ryelands Street still with the Company named as proposed licence holder and manager on both applications (Exhibit 002 and 003 of the Respondent's Bundle). The Applications confirmed that Ms Kostuyk was the person at the Company responsible for submitting the applications, that she had attended landlord training with RSW on 25 October 2016 and had been a member of the National Landlords Association (NLA) since April 2013.
18. Mr Kemp undertook pre-licensing visits to the Properties on 20 November 2019 (87 Ryelands Street) and 2 December 2019 (45 Broad Street). Some category 1 and 2 hazards were identified which are not relevant to this

decision, but a conversation with two of the leaseholders of 45 Broad Street is relevant and is referred to below.

19. On 6 January 2020, Mr Kemp attended a case review to consider the Council's Fit and Proper Person Review Form (F&PP) (Exhibit 009 of the Respondent's Bundle) in the context of the Council's Supplementary Environmental Health Enforcement Policy (Exhibit 010 of the Respondent's Bundle) and the findings of the Residential Property Tribunal Service (Wales), in the decision on appeal referred to in paragraph 22 (vii) below ("the RSW Decision"). Appendix 1 of the Council's F&PP review form lists a number of housing related offences and enforcement actions recorded against the Company, Ms Kostuyk and Mr Rohde which were considered by the Council.
20. Mr Kemp confirmed that in deciding whether a person is a fit and proper person to be the licence holder or manager of the property, the 2004 Act states that the Council must have regard (among other things) to whether a person has contravened any provision of the law relating to housing or of landlord and tenant law. There had been several contraventions by Ms Kostuyk and Mr Rohdes which the Council believed were highly relevant when considering Ms Kostuyk's fitness. The Council believed Ms Kostuyk had a close association with Mr Rohde and were concerned that Ms Kostuyk might be a front for Mr Rohde, who was actually managing or influencing management of the Properties.
21. In May 2017, the Company and Ms Kostuyk were convicted by Hereford Magistrates of breaches of conditions attached to the 1 year HMO licence granted for 45 Broad Street. The convictions were appealed by Ms Kostuyk to the Crown Court in Hereford and the appeal heard on 18/19 January 2018 ("the 2017/18 Convictions"). Mr Kemp's rebuttal evidence included an email from counsel representing the Council on the appeal, which confirmed that the appeal was dismissed on all grounds save one (in relation to occupancy of the kitchen). The fine imposed on the Company was increased to £1,500.00. Ms Kostuyk was fined £800.00 (reduced from £900.00 imposed by the magistrates) and costs of £3,500.00 were ordered to be split evenly between the Company and Ms Kostuyk.
22. The previous offences and enforcement actions recorded against Mr Rohde, referred to in Mr Kemp's statement and at the hearing are as follows:
  - (i) Mr Rohde was convicted by Hereford Magistrates Court in 2014 for breach of an Emergency Prohibition Order prohibiting property to be occupied. Mr Kemp said that he believed there were fire safety concerns at the property but Mr Rohde allowed tenants to remain in occupation.
  - (ii) An Improvement Notice was served on Mr Rohde in 2011 in relation to an HMO property in Leominster, the RSW Decision refers to the notice not having been revoked until 2014.

- (iii) An HMO declaration served by Hereford County Council on Mr Rohde in October 2014 following complaints to the police about anti-social behaviour and problems with multi-occupancy. The declaration was served to establish that the property was subject to the 2006 HMO regulations, (although not required to be licensed at that time). Mr Rohde appealed the decision to the Upper Tribunal where the declaration was upheld (*Herefordshire Council v Martin Rohde [2016] UKUT0039(LC)*).
- (iv) A section 4 Prevention of Damage by Pests Act 1949 notice served on Mr Rohde in 2014 regarding an accumulation of rubbish at one of his properties.
- (v) Abatement notices under s80 of the Environmental Protection Act 1990 served on Mr Rohde in 2012 and 2015 due to water leaks from his property into neighbouring flats and in one case causing the ceiling to collapse.
- (vi) An Emergency Prohibition Order served on Mr Rohde by Hertfordshire Council in December 2017 prohibiting occupation of the property. Mr Kemp confirmed that the EPO had been made because a family (including two children) were occupying a dangerous second floor (attic) flat with no fire precautions in place while the remainder of the building was undergoing extensive building works. Mr Rohde's appeal against the EPO was dismissed by the First-tier Property Tribunal on 10 July 2018 (*Case Ref BIR/00GA/HEP/2018/0001*).
- (vii) A refusal by Rent Smart Wales in 2018 to grant a landlord licence for management or letting activities at three properties in Powys ("the RSW Decision"). This was a joint application with Ms Kostuyk. The appeal decision states that on 13 July 2018, RSW wrote to Mr Rohde and Ms Kostuyk separately refusing to grant a licence due to Mr Rohde's close association with Ms Kostuyk who had current convictions for housing related offences. Mr Rohde's appeal to the Residential Property Tribunal Service (Wales) (*Reference RPT/0047/07/18*) was dismissed on 7 February 2019 (Exhibit 011 of the Respondent's Bundle).

23. Mr Kemp submitted at the hearing, that the matters recorded against Mr Rohde demonstrated that he was happy to disregard the health and safety of tenants and to put people at risk. The Council could have no confidence that he would actively manage his properties without the need for the Council to serve enforcement notices to ensure compliance and that given his close association with Ms Kostuyk, who the Council believed was subject to his influence, were material in assessing whether she was a fit and proper person.

24. The outcome of the case review was, that on 13 January 2020, a Notice of Proposal to Refuse a Licence was issued for both Properties to the Company (Exhibit 015 and 016 of the Respondent's Bundle). The reasons for the refusal are stated to be:

- (a) that the applicant had failed to provide details of a fit and proper person to hold the HMO licence and manage the Properties. The Company had previously been convicted of housing offences including failure to comply with licence conditions when issued with a 1-year licence for 45 Broad Street, including allowing 18 persons to occupy the property which had a stated maximum of 12 on the licence and allowing an occupier to live in a windowless boiler room despite a licence condition prohibiting this.
- (b) Ms Kostuyk, the sole director was also found guilty of the above breaches.
- (c) Ms Kostuyk had failed to provide evidence of suitable training undertaken or demonstrate that she is suitable to manage the property.
- (d) No evidence of the fitness of the Company had been provided despite numerous indications that it was unlikely to be deemed fit.
- (e) Ms Kostuyk is closely associated with Mr Rohde who has previous convictions for failing to comply with a housing prohibition order and fly tipping. He also has been served with a number of enforcement notices on other housing he owns including an EPO, an Improvement Notice and an Abatement Notice.
- (f) All meetings and inspections in relation to this and other properties have been attended by both Ms Kostuyk and Mr Rohdes.
- (g) In 2019, RSW deemed Mr Rohde and Ms Kostuyk not to be suitable persons to be granted a landlord licence.
- (h) There are numerous issues at 45 Broad Street, including fire safety and non-compliant cooking facilities.

25. Ms Kostuyk responded to the notices by letter on 23 January 2020 (Exhibit 017 of the Respondent's Bundle). Mr Kemp confirmed at the hearing that the Council had considered the Response, but was not persuaded that Ms Kostuyk had put forward any new evidence that would affect the Council's decision. Mr Kemp explained that the submissions largely sought to excuse the conduct leading to the 2017/18 Convictions and did not adequately address the Council's concerns about her close association with Mr Rohde. Ms Kostuyk did eventually provide evidence of two training course she had completed with Rent Smart Wales. A



Landlord Training course on 25 October 2016 and a certified Agent Training Course on 29 August 2019. Mr Kemp confirmed at the hearing that both were courses approved by the Council but neither were the three-day course Ms Kostuyk said she had attended in her Response.

26. Ms Kostuyk asserts in the Response that she has been managing the Properties for 9 years without complaint. In this context Mr Kemp raises his concern about witnessing Ms Kostuyk putting pressure on a tenant not to complain. Mr Kemp explained that during the inspection of 45 Broad Street on 2 December 2019, he had concerns about two men, who appeared to be strangers, sharing a room, which is not appropriate. He began asking one of the tenants about his relationship to the other and although the tenant's English wasn't good, he was happy to talk to Mr Kemp. The tenant started to confirm that the other tenant was just a friend, when Ms Kostuyk interrupted, speaking over him a number of times in a foreign language (which Mr Kemp thought might be Ukrainian). Mr Kemp asked her to stop interrupting, but by then the demeanour of the tenant had changed considerably and he refused to speak to Mr Kemp further. Mr Kemp formed the impression that following Ms Kostuyk's interruption, the tenants' were scared to make any complaint about the property.
27. Mr Kemp stated that a letter was sent to the Company on 17 February 2020 which provided advice on the Council's HMO amenity standards and requested original copies of the training certificates. The letter also asked the Company to confirm that it did not intend putting forward any alternative persons to licence and manage the Properties. A reply was received on 25 February 2020, enclosing copies of two training certificates referred to above. The letter states that the landlord may well consider employing another company or person if the licence application was refused (Exhibits 018 and 019 of the respondent's Bundle).
28. On 4 March 2020, further meeting was held by the Council officers to consider the Applicants' additional responses. Apart from the two training certificates no relevant evidence had been put forward to demonstrate fitness and the decision to refuse the grant of the licences was confirmed. Two Notices' of Refusal to Grant an HMO Licence were sent to the Company on 10 March 2020 (Exhibits 020 and 021 of the Respondent's Bundle).
29. On 20 May 2020 the Council received notice of the Applicants' appeal and a copy of Mr Rohde's letter to the Tribunal confirming that he would not take any part in the proceedings.
30. Mr Kemp then commented of the Applicants' ground of appeal which is that the Council are not entitled to rely on spent convictions in its decision to refuse to grant the licences.
31. Mr Kemp acknowledged that technically, the 2017/18 Convictions have become "spent" under section 1(1) of the Rehabilitation of Offenders Act 1974, for the purposes of s4(1) of the 1974 Act. However, he relies on s7(3)

of the 1974 Act, which provides that in ‘proceedings before a judicial authority’ such authority can admit evidence relating to a person’s spent convictions, notwithstanding s4(1), if satisfied that justice could not otherwise be done in the case. Mr Kemp submitted that the 2017/18 Convictions could not be more material or relevant to the current application. Within three months of an HMO licence being granted for one of the Properties, the Applicants’ had committed serious breaches of the licence conditions leading to conviction and the imposition of fines. It would, he submitted, be manifestly unjust if the conviction was not taken into account.

32. Mr Kemp also relies on the decision of the Upper Tribunal in the case of *Nassim Hussain (and others) -V- London Borough of Waltham Forest [2019] neutral citation UKUT 0339 (LC)* as authority for submitting that the Council can lead evidence and rely on relevant evidence of the conduct or behaviour of the Applicants’ and Mr Rohde that amounts to a breach of housing law or landlord and tenant law (as opposed to the spent convictions themselves) and that the Tribunal can take account of such relevant conduct and behaviour when determining the application.
33. Mr Kemp submitted that the conduct giving rise to the offences and the enforcement actions demonstrated a pattern of behaviour which called into question the character and integrity of Ms Kostuyk and Mr Rohde and their willingness to comply with regulatory requirements and licence conditions. Mr Kemp also submitted that their conduct demonstrated a complete lack of care for the safety and comfort of occupiers of the properties owned and managed by Mr Rohde and Ms Kostuyk.
34. During the hearing Mr Kemp submitted that a principal concern was Ms Kostuyk’s continuing refusal to accept the courts’ and authorities’ findings on the offences and enforcement matters outlined above. Ms Kostuyk’s responses had invariably been to minimise the seriousness of the offences, to justify her actions and to blame others, including the Council, for the breaches. Mr Kemp said that the Council needed to be confident that a proposed licence holder or manager of an HMO would take their responsibilities seriously. Ms Kostuyk’s responses to the Notices of Proposal to refuse the licences, demonstrate her reluctance to take responsibility for her actions. She continues to dispute the findings of the court on the 2017/18 Convictions and states that the convictions were obtained purely on hearsay. She excuses herself for the breaches and denies any awareness that there were breaches of the licence conditions. Although Ms Kostuyk states on the second page of the Applicants’ Response that she has to respect the court’s decision regarding the 2017/18 Convictions, she also says that she hopes she is not put in that position again and requests that as some three years have now past, she is rehabilitated in line with the 1974 Act.

### **The Applicants’ submissions**

35. The Applicants’ single ground of appeal, set out in the application, is that the Council were wrong to rely on evidence of the spent 2017/18

Convictions, when considering whether the Applicants' were fit and proper persons to hold a licence or manage an HMO property and that Ms Kostuyk had since then attended some landlord training. The Applicants' did not file a statement of case in accordance with the Directions dated 13 May 2020, instead choosing to allow the grounds of appeal set out in the application to stand as the Applicants' statement of case.

36. Ms Kostuyk did however file a written Reply to the Respondent's statement of case on 29 September 2020, comprising 4 pages with 3 Exhibits as follows: a copy of the first page of the one-year HMO Licence granted on 6 January 2015 for 45 Broad Street; a Notice of Consolidation of the fines and penalties imposed by the Magistrates and Crown Courts; and her response to Mr Kemps letter dated 17 February 2020, concerning various issues including the fire door to the attic ("The Applicants' Reply").
37. Ms Kostuyk confirmed at the hearing that she is the sole director and 100% shareholder of the Company which did not employ anyone other than Ms Kostuyk. She said that the Company had been formed in 2014 following police and social services involvement with 45 Broad Street. A local night shelter had closed and Mr Rohde had been asked by the social department to accommodate homeless people at 45 Broad Street. Ms Kostuyk said that this had led to concerns about anti-social behaviour at the property and in July 2013 Mr Rohde was asked to put in an HMO application, but not with him as the licence holder. Ms Kostuyk said that Mr Rohde had asked if he could put Ms Kostuyk forward as licence holder, but the Council said no, "because he had an association with me the Council can't give me a licence" and that "the Council said maybe we could do it by forming a company and that is why we formed the company so that it could hold the licence".
38. Ms Kostuyk could not remember who at the Council had said this, because it was a long time ago, but she said that they formed the Company in September and then on 6 January 2015 a one-year licence had been granted for 45 Broad Street.
39. The Applicants' Reply states that an HMO application was first made for 87 Rylands Street in February 2015, re-submitted on 12 May 2017 and submitted again on 30 October 2019 with all fees paid. The application for 45 Broad Street was submitted on 10 January 2018 and then resubmitted on 30 October 2019 with all fees paid.
40. The Applicants' Reply acknowledges that Ms Kostuyk has an association with "the landlord" because it would be impossible not to have regular contact in the management of the houses. The Reply also states that Ms Kostuyk travels "on occasion" with the landlord to save on carbon emissions and to review the Properties but is paid to act as manager, "the salary being my motivation not influence".
41. Ms Kostuyk comments in the Reply on her Response dated 23 January 2020, to the Council's Notices of Proposal to Refuse the licences. Ms Kostuyk states, in terms, that she stands by her comments concerning her true belief that the Company was not in breach of the licence conditions for

45 Broad Street and that the 2017/18 Convictions were obtained purely on hearsay evidence and photos.

42. Ms Kostyuk expanded on this at the hearing, stating that when she first obtained the 1-year licence she was told that if certain works to improve the facilities were completed, she could increase the permitted numbers from 12 to 15. An inspection had been arranged after the licence was issued (the timing of which was unclear to the tribunal hearing Ms Kostyuk's evidence). Three weeks prior to the inspection she had completed the works. She therefore genuinely believed that she was not in breach for having 15 people at the property because the works needed to vary the licence had been completed. She was alerted to the inspection by one of the occupants who called her to say the police and the local authority were at the property. She arrived at the property about two hours later and found no evidence of anyone sleeping in the boiler room, there were in fact only 15 guests present.
43. Ms Kostyuk submitted in the Applicants' Reply and orally at the hearing, that the local authority had two licensing functions, to uphold the law but also to advise and assist landlords and work together with them. She stated several times that she had been waiting for an inspection of 45 Broad Street to confirm the variation to the licence to increase the numbers to 15, but when the local authority came "can you believe I then get fined for being in breach of the licence".
44. Ms Kostyuk was asked if she still disputed the 2017/18 Convictions and the evidence put forward by the Council. She said "I still don't understand why they didn't give me a consultation letter which I would have complied with, it's not right why they fined me". Ms Kostyuk also said that she would like to work with the Council, not against them and that when she agreed to put her name on the 2015 licence the Council had promised to help her in every way. However, once she agreed to be the manager the Council had harassed her in every way. She said, "for example, they didn't send me a consultation letter they just fined me - I expect them to help me not trick me". Ms Kostyuk said that if she made mistakes the Council should help her, that they should work together and that since the convictions she had been managing the Properties and nobody had complained.
45. In response to questions about her fitness to manage an HMO property Ms Kostyuk said that the onus was of the Council who had agreed to help her by sending her on a course for managers. She had attended courses and become a member of an association but the Council had said they would help her with accreditation. She mentioned a Mr Yana (possibly Yarnold), but this was not a name that Mr Kemp recognised. Ms Kostyuk said that she had tried to do an "on-line" course but it wasn't acceptable and instead did two courses with Rent Smart Wales.
46. The Tribunal asked Ms Kostyuk if she wanted to comment on the Council's concerns about the close association she appeared to have with Mr Rohde. Ms Kostyuk said that she has known Mr Rohde since 2006 when she rented a room from him while working at a nursing home in Coventry.

47. Ms Kostuyk said that she was currently living at 2 Cambrian Cottages, the same address as Mr Rohde, but that she had several addresses. Her permanent home was a caravan which was being renovated, and that was why she was currently renting a room at Mr Rohde's house. She confirmed that Mr Rohde also lived at 2 Cambrian Cottages and that she had been living there since September or November 2020.
48. Ms Kostuyk was asked about the documents submitted in evidence which showed 2 Cambrian Cottages as her address going back a number of years. She said that 2 Cambrian Cottages was also her correspondence address and that she worked from that address on a daily basis. When asked about the contractual arrangements between Mr Rohde and the Company for management of the Properties, Ms Kostuyk confirmed that there was no arrangement and that she was not paid by the Company. The Company neither received payment for her services from Mr Rohde or paid her, it was effectively a dormant company. Mr Rohde paid Ms Kostuyk in cash for her services. When asked about any management agreement between Mr Rohde and her for management of the Properties, Ms Kostuyk said that there was a verbal agreement, but that she was paid cash as Mr Rohde's employee, not as a contractor.
49. Ms Kostuyk also said that the Properties were the only properties that she managed for Mr Rohde and that she visited them "mostly daily". Ms Kostuyk said that she had no other employment, she had applied for jobs but given her age and the fact she suffered from asthma and vertigo, there were not many jobs she could do. Ms Kostuyk said that she did not own any properties jointly with Mr Rohde.
50. Ms Kostuyk confirmed when questioned, that 2 Cambrian Cottages were some 6 miles from Hereford with Leominster a further 14 miles on. She did not own a car but had the use of Mr Rohde's Porsche Panamera. However, because Ms Kostuyk suffers from vertigo Mr Rohde gave her a lift most days. Mr Rohde also visits the Properties regularly because he does all the repairs. Ms Kostuyk stressed that despite their association, she had her own brain and will stand up to Mr Rohde if he attempts to overrule her.
51. Ms Kostuyk said there were 10 occupants living at 87 Ryelands Street and 11 occupants at 45 Broad Street. She said there had been no material issues with the Properties, but that when the Council had raised some issues she had dealt with them quickly.
52. The Tribunal asked if Ms Kostuyk wanted to comment on Mr Kemp's allegation that she had attempted to influence one of the tenants when he was speaking to Mr Kemp. Ms Kostuyk had already commented on the incident in page 3 of the Applicants' Reply, accusing Mr Kemp of attempting to put an 'extra shine on the ball' by alleging that he had spoken to two tenants concerning overcrowding. In the Reply she states that the case officer had attempted to speak to one of the tenants in English but that the person in question only spoke Romanian. She refuted the accusation of obstructing the case officer in his duties and deemed his

comments to be further attempt to slander her character, accusing Mr Kemp of making up stories and of going to any lengths to attack her character (Page 3 of the Applicants' Reply).

53. Ms Kostuyk provided a more detailed explanation at the hearing. She said the incident concerned room 2 at 45 Broad Street. It was occupied by two persons who had told Ms Kostuyk that they were uncle and nephew. They were Romanian and did not speak much English, they only knew simple words. Ms Kostuyk confirmed that she did not speak Romanian (only Ukranian, Russian and a little bit of German and Polish). When she came into the room the officer was asking one of the tenants who the other was. He said "it's my colleague" and she interrupted to say "how is it your colleague he's your uncle and nephew". When asked, Ms Kostuyk said that she interrupted the conversation in English and explained that Mr Kemp may have thought she was speaking Ukranian because she has a tendency to use foreign sayings when angry and she was cross with the tenant for saying that he was sharing the room with a colleague, having told her they were uncle and nephew. She went on to say that she liked her tenants and often became friends with them, assisting with bank accounts and government forms. She also said that international tenants are often nervous of the local authority.
54. In closing Ms Kostuyk said once again, concerning the concerns about her close association with Mr Rohde, that she had her own brain and it was wrong to suggest that Mr Rohde could overrule her. She said, "if I have the position, I have the position" adding that "if you take that away from me I don't know what I'll do".

### **The Tribunal's Deliberations**

55. The Tribunal considered all the evidence submitted by the parties, both written and oral and summarised above.
56. Under the 2004 Act a local housing authority may not grant a licence for a house in multiple occupation under Part 2 unless it is satisfied inter alia that "the proposed licence holder" is "a fit and proper person to be the licence holder" (ss.64(3)(b)(i)).
57. The authority must also be satisfied that the proposed manager of the licensed house would be a fit and proper person for that role (ss. 64(3)(d)).
58. Under s.66(1) the authority must have regard (among other things) to any evidence falling within s. 66(2)-(3) when deciding whether someone is a fit and proper person to be either the licence holder or the manager of a licensed house. S66(2)(c) includes contraventions of any provision of the law relating to housing or of landlord and tenant law and it is this subsection on which the Respondent's decision relies.

59. It is important to note that that subparagraph (c) does not depend upon whether an offence has been committed or a conviction obtained. It applies to facts which were capable of amounting to an offence, but where the authority decided not to prosecute. The focus of ss.66(2)(c) is upon the conduct there described, not upon criminality.

60. In this case, the proposed licence holder and proposed manager are the Company, which acts only through its sole director Ms Kostuyk. It has no employees or other officers – it is therefore Ms Kostuyk’s conduct as the sole officer of the Company that is relevant.

61. Under s.66(3), the assessment of a person’s “fitness” should also have regard to relevant conduct of the kind described in subsection (2) attributed to another person associated (or formerly associated) with that first person, where relevant to the question of the first person’s fitness. In this case the relevant conduct of Mr Rohde may, if an association is established, be attributed to an assessment of Ms Kostuyk’s fitness .

62. In *R v Crown Court at Warrington ex parte RBNB* [2002] 1 WLR 1954, Lord Bingham, giving the leading judgment in the House of Lords, referred to “*fit and proper person*” as a “*portmanteau expression, widely used in many contexts*” and continued:-

*“It does not lend itself to semantic exegesis or paraphrase and takes its colour from the context in which it is used. It is an expression directed to ensuring that an applicant for permission to do something has the personal qualities and professional qualifications reasonably required of a person doing whatever it is that the applicant seeks permission to do.”*

Although given in relation to a justices licence, the statement applies equally to the fit and proper person test in Parts 2 and 3 of the 2004 Act. A licence holder (or manager of a house) must have the personal qualities and qualifications reasonably required of a person seeking to have the responsibilities of holding a licence under that legislation, including his or her ability and willingness to comply with relevant requirements of housing law comprised within the licensing regime itself.

63. In this case the Respondent has refused to grant HMO licences for the Properties having determined the Company, acting through its officer Ms Kostuyk, is not a fit and proper person to either hold an HMO licence or manage an HMO property. The Respondent relies principally on the following matters in support of the decision.

(a) The conduct of Ms Kostuyk leading to the 2017/19 Convictions and her refusal since to accept the findings of either the local authority or the courts concerning the offences.

(b) The conduct of Mr Rohde, who the Respondent claims is an associate of Ms Kostuyk, leading to the convictions and other enforcement actions listed in paragraph 22 above.

(c) The findings of the Residential Tribunal Service (Wales) in the RSW Decision dated 7 February 2019 that Mr Rohde is not a fit and proper person to hold a landlord licence.

(d) Concerns about Ms Kostyuk's character and integrity based on her conduct during the licensing process.

64. The Tribunal finds that the 2017/18 Convictions are highly relevant to this appeal, not least because they relate specifically to a previous HMO licence granted for one of the Properties. The Council is right to have concerns about the fitness of the Applicants' based on this factor alone. It was raised with Mr Rohde and Ms Kostyuk at a meeting prior to submission of the licence applications, so the refusal can hardly have come as a surprise to them, yet almost no evidence was provided with the applications, or since, that adequately addresses what are highly relevant concerns.

65. The Tribunal agrees with Mr Kemp's submissions concerning the application of s7(3) of the 1974 Act. The 2017/18 Convictions are relatively recent, they concern breaches of an HMO licence granted for one of the properties currently under consideration, the fact of the conviction and the conduct giving rise to the offences are highly relevant to any assessment of Ms Kostyuk's fitness and it is difficult to see how justice can be done in this case without taking account of the 2017/18 Convictions in addition to Ms Kostyuk's conduct before and after conviction.

66. Although in the Applicant's Response, Ms Kostyuk appears to accept that she cannot go behind the 2017/18 Convictions, the Tribunal finds that she does not really accept that her convictions were either correct or justified. She was given a number of opportunities to address the Council's concerns about the offences both within the appeal procedure and at the hearing, but rather than show any contrition or awareness of the seriousness of the offences, that might provide some hope of improvement, she routinely denied the facts, disputed the evidence or excused her conduct. The Tribunal found Ms Kostyuk's evidence consistent with a lack of any real understanding of the regulatory framework within which landlords should operate or the legal responsibilities that landlords and managers of HMO properties are subject to. She understands that the Council has an enforcement role but seemed to think it should be exercised as a last resort and only after extensive consultation with licensee/managers on any breach.

67. The Tribunal preferred the evidence of Mr Kemp concerning the incident that took place during his inspection of 45 Broad Street on 2 December 2019. They do not find Ms Kostyuk's evidence that she interrupted the conversation in English to be credible, or that she was seeking only to clarify what the tenants had told her about their relationship. In making that finding the Tribunal was influenced by Ms Kostyuk's failure to provide the explanation she put forward at the hearing, in her written Response, choosing instead to accuse the case officer of slander and deceit.



68. The Tribunal finds that Mr Rohde is closely associated to Ms Kostyuk and to the Company. Ms Kostyuk confirmed in evidence that the Company was only set up as a vehicle to hold the 2015 HMO licence of Mr Rohde's property and is, in effect, dormant. David Woods (Intelligence Officer of Herefordshire Council) provided a written statement of evidence (which was not challenged by Ms Kostyuk), confirming that searches undertaken by him with the National Anti-Fraud Network regarding Ms Kostyuk and Mr Rohde, indicated that they had been co-residents at 2 Cambrian Cottages, since 28th October 2012.
69. Mr Rohde employs Ms Kostyuk to manage the Properties and pays her in cash. It is her only employment and in her words, if it was to end, she doesn't know what she will do. Ms Kostyuk confirmed that she is currently residing at Mr Rohde's home, which is also her place of work and she shares the use of his car, having no car of her own. They both attend the Properties regularly using his car. Given Ms Kostyuk's vulnerability in her position with Mr Rohde was in any way compromised, the Tribunal finds that she is highly likely to be subject to his influence and that Mr Rohde, who has been deemed unfit by RSW to hold a landlord licence, is almost certainly influencing the management of the Properties.
70. The Tribunal considers the findings of the tribunal in the RSW Decision dated 7 February 2019, to be highly relevant to the issue of Mr Rohde's fitness. It was an appeal following the refusal of RSW to grant a landlord licence to Mr Rohde and refers to the application having been a joint landlord application with Mayya Kostyuk. The licence was refused by RSW because Mr Rohde was found to have an association with Ms Kostyuk who had been convicted of housing related offences. Mr Rohde's own housing related offences were also taken into account (which were substantially as those listed in paragraph 22 above). Mr Rohde made written and oral submissions to the tribunal on each of the housing related offences including the 2017/18 Convictions. The relevant findings of the tribunal were:
- (a) That Mr Rohde had a close association with both Ms Kostyuk and the Company.
  - (b) That the 2014 conviction was illustrative of the start of a pattern of behaviour which continued up until the 2017/18 Convictions and were relevant to the decision at issue, and should be considered.
  - (c) That Mr Rohde sought at virtually every opportunity to pass the blame onto others such as the local authority or seek to excuse his conduct and that on current evidence the tribunal considered there was little hope that Mr Rohde would reform.
  - (d) The unanimous finding that Mr Rohde was not a suitable landlord to obtain a licence.
71. In considering whether Mr Rohde has contravened relevant housing law, the Tribunal has also taken account of the enforcement actions taken

against him, as detailed in paragraph 22 above, and his conduct of allowing people to remain in occupation of a property in breach of an EPO leading to the now spent conviction in 2014. Mr Rohde's conduct in all these matters is relevant, they all relate to breaches of housing law and demonstrate a pattern of behaviour, also identified in the RSW Decision, of a landlord that does not comply with housing law or regulations, has scant regard for the safety or amenity of his tenants' and signally fails to take responsibility for his conduct when enforcement action is taken.

72. The Tribunal shares the concerns of the Respondent concerning the character of Ms Kostyuk and her suitability as a licensee or manager of an HMO property. Having been alerted to the Council's serious concerns about Ms Kostyuk's fitness and her association with Mr Rohde at the meeting on 2 September 2019, she nevertheless proceeded with a licence application for the Properties that proposed her company (in effect Ms Kostyuk) as both licence holder and manager. The application was submitted without any explanation of how the Council's stated concerns could be addressed. Her Response to the Notices of proposed refusal did not address these concerns, instead, as submitted by Mr Kemp, she continued to argue that the 2017/18 Convictions were not justified, that as three years had elapsed she should be treated as rehabilitated and that she was not involved in the Wales tribunal case leading to the RSW Decision. Furthermore, when given an opportunity within these proceedings to file a detailed statement of case addressing the Council's concerns, she declined to do so. Mr Rohde declined to participate in the proceedings in any way, despite being the owner of both Properties.
73. Throughout, Ms Kostyuk's responses to the Council's notices and evidence have shown a depressing similarity to those of Mr Rohde, as detailed in the RSW Decision. Neither it seems, are able to accept responsibility for what is now a long list of enforcement actions and offences, all relating to residential property owned and let by Mr Rohde. Without acceptance, it is unlikely that Ms Kostyuk is capable of learning from her mistakes.
74. For the above reasons, the Tribunal has had little difficulty in determining that the Company acting through Ms Kostyuk, is not a fit and proper person to either hold an HMO licence or manage an HMO Property.

**Name: Judge D. Barlow**

**Date: 15 February 2021**

### **Rights of appeal**

- By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.
- If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.
- The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.
- If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.
- The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.
- If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).