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RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0064/01/19, RPT/0065/01/19, RPT/0066/01/19.

In the Matters of: 93, 73, 3 Claude Road, Roath, Cardiff.

In the Matter of an Application under Paragraph 31 and 33 of Part 3, Schedule 5 of the Housing Act 2004 regarding conditions of an HMO Licence.

APPLICANT : Mr Assan Khan

RESPONDENT: Cardiff County Council

Tribunal
Legal Chair: Richard Payne
Surveyor member: John Singleton.
Lay Member: Bill Brereton.

Hearing: 3rd July 2019 at The Tribunal Offices, Oak House, Cleppa Park, Newport, NP10 8BD.

DECISION

1. The Applicant's three separate appeals against the conditions in the HMO licences granted to him for numbers 93, 73 and 3 Claude Road Roath, Cardiff are dismissed under regulations 19 and 41 of the Residential Property Tribunal procedures and Fees (Wales) Regulations 2016. The Applicant is to pay the Respondent costs of £1,500 within 21 days of the date of this decision.

REASONS FOR DECISION

2. Before dealing with the substantive matters we wish to explain how we have dealt with these applications. This is a lengthy decision containing a lot of detail about the procedural background and the evidence that has been provided both in writing and orally at the hearing. Whilst we would normally wish to summarise evidence succinctly and do not wish to be accused of prolixity, we consider that it is appropriate in the circumstances of this case to set matters out in detail. This is for two principal reasons. The first is to ensure that we have fully considered the points that the Applicant makes and to ensure that his arguments are accurately recorded so that he can see that they have been appreciated and properly dealt with, and secondly, since the matter at issue is a serious one, namely the dismissal of applications because of the conduct of one party, we consider that in order to fully appreciate the way in which the Applicant has pursued these cases, it is appropriate to set this out in detail. We have thus set out the procedural background, other relevant background information, details of the hearing and issues that arose relating to credibility, before dealing with the Applicant's cross application and costs.

BACKGROUND

The Procedural background.

The directions order of 8th of March 2019.

3. The Applicant Mr Khan owns a number of properties in the Cardiff area that have been licensed as Houses in Multiple Occupation (HMOs) by the Respondent local authority. The Applicant has been granted licences in relation to his properties but he has upon a number of recent occasions, appealed to this tribunal against the conditions in the various licences as he is perfectly entitled to do. In the appeals to this tribunal, the Applicant typically completes his application form in general terms, for example in the appeals for the three properties in Claude Road his grounds for appealing (in number 73) were as follows;
    i. The draft licence conditions restrict the number of occupiers less than it could be.
    ii. Licence badly drafted and ambiguous. Difficult to follow.
    iii. Property may not be licensable.
    iv. There has been lack of disclosure and the appellant requires this information.
    v. Works required are not reasonably required and time frame unrealistic.
    vi. Infringes the Human Rights Act.

   The appeals for numbers 3 and 93 were substantially to the same effect.

4. It is the practice of the tribunal to issue directions orders which typically require the Applicant, as the appellant, to provide further details and submissions in relation to his case so that it can be seen precisely what his arguments are. As will be appreciated the simple listing of his grounds for appeal as set out above is insufficiently detailed and the directions order provides the Applicant with the opportunity to properly set out his case. Typically the directions will then require a response from the Respondent and then give the Applicant the opportunity to effectively have the last word and to comment upon any evidence/submissions of the Respondents. The directions are plainly given to enable both parties to properly set out their cases in the appropriate detail, to identify the relevant issues and prepare the matter for hearing.

5. In these cases a directions order dated 8 March 2019 said that the three applications shall be heard together and required the Applicant to file his statement by 12 noon on 2nd April 2019 and ordered that the statement should contain all relevant information, evidence submissions and documents that he wished the tribunal to take into account. For ease of reference a separate statement should be provided for each of the three properties, unless the issues and arguments were identical for each property in which case one statement would suffice. The Respondent was ordered to serve their statements by 23 April 2019 with the Applicant being given permission to file a further statement in response by 12 noon on 7 May 2019. The parties were also to give their dates of availability for the hearing window of 13th of May – 28th of June 2019 by 12 noon on Tuesday, 2 April 2019.

The first application.

6. By email to the tribunal of 1 April 2019 at 13:28 the Applicant sent a witness statement and application dated 26th March 2019 to vary the directions in relation to the three Claude Road properties ("the first application"). The Applicant asked that the applications should all be dealt with independently. He also said at a numbered paragraph 3 "*the Applicant believes that the issue regarding building regulations is a material issue to resolve in these proceedings and require proper determination using an expert, rather than rely on the Respondent's representative who does not have the requires [sic] knowledge, skills, or qualifications to make such determination."* Later in his statement/application the Applicant complained that the Respondent has failed to appoint a qualified building surveyor to determine whether the property complies with the building regulations at the time of conversion and have delegated this authority to Ms Rachel Stickler of the Council who has a Masters degree in Environmental Health but not in building surveying. He went on to say that "*the Applicant requires that the tribunal considers and appoints an independent third- party qualified building surveyor being an expert appointed by the tribunal to make such determination regarding compliance with Building Regulation in respect of the properties and to give effect to the overriding objective of dealing with cases fairly and justly."* For shorthand, we will refer to this as **'the independent expert point'.**

7. The Applicant's statement further said that "*the Respondent's persistent failure to disclose the information, is infringing the appellant's case under article 6 and Article 47 the Human Rights Act 1998, a right to a fair trial. The Respondent has failed to disclose the requested documents which are still outstanding since the request of 18th of September 2018. These documents are in the Respondent's possession or control, which relates to* the *issue in these proceedings and is paramount to ensure a fair trial for the Appellant."*

8. As can be seen above, the Applicant has in very general terms in his application said that there has been a lack of disclosure and that he requires this information. The Applicant also referred to a copy of a complaint that had been lodged with the Information Commissioner's office and he referred to having attached a copy of this complaint although in fact no such copy was attached to his statement dated 26th of March 2019. Again for ease of reference this will be referred to as **'the disclosure point'.**

9. In further support of the disclosure point the Applicant said "*In Tower Bridge Limited, the upper tribunal stated that there is a presumption that both parties will disclose all material to each other and not self certify the relevance. This to include, any document/material/information that might advance or hinder a party's case, or which might lead to a train of enquiry that might advance or hinder a party's case. The Respondent has continued to withhold information/documents/data which may advance the Appellant's case or hinder the Respondent's case."* The Applicant also referred to "Tower MCashback 2011" and that "*the Supreme Court stated that tribunals will need to be more active in the use of case management duties/powers, to prevent organisations pursuing a strategy of litigation by ambush and dealing with the proceedings unfairly and unjustly."* The Applicant also referred to rule 31 of the Civil Procedure Rules (CPR) relating to disclosure of documents and information and to the case of HMRC v BPP (2017) UKSC 55. The Applicant said that this case confirmed that the First tier Tribunal should generally

follow the approach in the CPR even when those rules do not formally apply to proceedings before it. He also stated that the tribunal "*must guard against the cloaking practice that the Respondents are using, whereby they disguise an unwillingness to disclose documents/information that may be unhelpful to a party's case. The Respondent is using this process by cloaking and disguising disclosure of internal information under its control and or possession."*

10. The Applicant further stated *"The Respondents cannot and must not be allowed this behaviour for resisting disclosure simply because it is a public body. The Respondent is continuing to withhold information which the Appellant requires and using this process has litigation by ambush, thereby unfairly under minding the Appellant case unjustly as well as the overriding objective."* He then said "*the Appellant requests that the tribunal direct at this stage of these proceedings,* ***the Respondents to disclose all the information/data/documents that has been requested, which is in the Respondents control or possession.*** *The Respondents have other information which will assist the appellant's case and undermine the Respondents."* (Our emphasis).

11. It is extremely important to note the broad nature of the Applicant's request as highlighted in the previous paragraph. It is equally important to note that whilst the Applicant refers to documents that he requested on 18 September 2018, he does not at any stage specify the request he made on 18 September 2018, or indicate what documents he is seeking with sufficient particularity to enable an order to be contemplated or made, nor does he at any stage in this application/statement set out the relevance of any documents requested to any issue in the case before this current tribunal.

12. This then is the statement that the Applicant submitted in purported compliance with the directions order of 8 March 2019. It did not contain the relevant information, evidence submissions and documents in support of his case but largely contained complaints about the Respondent and sought orders in relation to the independent expert and disclosure points as well as seeking an order giving him permission to file a further witness statement following disclosure of the information and seeking a variation in the potential listing of the matter for hearing until after 20 June 2019. The original directions order had asked for dates of availability for the hearing window to be given by 12 noon on 2nd April 2019. The Respondent did provide dates of availability, albeit by an email sent at 15:40 on the 2nd of April 2019, the Applicant did not.

13. Mr Khan's application of 26th of March 2019 was considered and dealt with by the Vice President of the tribunal Trefor Lloyd in a written decision dated 5th of April 2019. Mr Lloyd held that it would be disproportionate to hold three separate hearings on three separate dates and the properties could be inspected and the matters heard upon the same date. With regard to the independent expert point, Mr Lloyd made it clear that either party could adduce their own expert evidence if they wished to do so and could with the leave of the tribunal ask for their experts to give evidence orally at any hearing. He made it clear that Mr Khan was free to challenge the Respondent's evidence by adducing his own expert evidence on any point that he disputed from a suitably qualified building surveyor. The decision said "*It is not for the tribunal to appoint such an expert…….*

The tribunal is not obliged, prepared ***or indeed able to make such an*** *appointment. Accordingly, his application in this regard is dismissed."* (Our emphasis).

14. With regard to the disclosure point, Mr Lloyd stated that "*No detail is given as to the actual documents or their nature and/or significance. In accordance with the current directions the Respondent is to file and copy the Applicant its statement of case and other documents upon which it relies by noon 23rd of April 2019. In the circumstances on any view it cannot be said the Respondent is withholding documents until that date has passed."* He goes on to say; *"Following the filing of documents by the Respondent Mr Khan will of course be at liberty to, if he is still of the view that relevant documents have not been disclosed to make a further application, that application will however need to be far more specific identifying the document(s) required so that the Tribunal can consider the request upon an informed basis."*

15. Further in the decision of 5th of April 2019, Mr Lloyd extended the hearing window to 1st July – 19th of July 2019. He also noted that Mr Khan should have filed and served his evidence by 2 April 2019 and that despite the directions order having been dated 8 March, that Mr Khan had not applied to vary them until 26 March 2019. Mr Lloyd noted that as a consequence the date for filing his evidence had expired and he amended the timetable, having dismissed the application for disclosure, to extend the time for Mr Khan to file his witness statement, until 12 noon on Wednesday 1st of May 2019. In summary Mr Lloyd dismissed the applications to hear the three cases separately, the application for the tribunal to appoint an independent expert, and the application for an order for disclosure. He extended the hearing window and the time for Mr Khan to serve his witness statement until 12 noon on 1st May 2019 and the time for the Respondent to file its statement until 22nd May 2019. Mr Lloyd further ordered that Mr Khan be at liberty to file "a further statement in response to the Respondent's statement" by no later than 12 noon on Tuesday 7th of May 2019. This was clearly an error that regrettably was not picked up by the tribunal before the order was sent out. However examination of the wording of the order made it clear that it was an error since the Respondent's statement was not due until 22nd May. He also ordered that the parties were to provide dates of availability for the new hearing window by 12 noon on 12th April 2019.

16. Mr Lloyd's amended directions order and his separate decision on the application to vary the directions were both dated 5th of April 2019 and were sent to the parties by letter of 5 April 2019, the letter to Mr Khan being sent by recorded delivery. There was no appeal against the decision.

17. By email to the tribunal of 12th of April 2019 at 11:19, Rachel Stickler on behalf of the Respondent provided updated dates of availability in accordance with the directions order of 5th of April. The Applicant Mr Khan failed to comply with the directions order and did not provide his dates of availability.

Mr Khan's application of 30th April 2019 ("the second application").

18. The Applicant was to have provided his statement giving further information about his grounds for appeal and his evidence in support by 12 noon on 1st May 2019. The Applicant

did not do so. Instead by an email sent to the tribunal (but not copied to the Respondent) at 17:00 on 1st May 2019 the Applicant sent in a document that was described as "1. Witness statement. 2. Application for disclosure of information. 3. Application to vary directions .4. Vary the dates to avoid. 5. Application to propose draft directions."("The second application.") This statement/application was dated 30th of April 2019. The Applicant stated that the Respondent had failed to provide evidence that the properties were licensable under the Housing Act 2004 and said that he *"believes that the issue regarding building regulations is a material issue live to resolve in these proceedings and require proper determination using an single joint expert building surveyor as a witness in this case, rather than rely on the Respondent's representative who does not have the requires knowledge, skills, or qualifications to make such determination and is affected by actual and apparent bias. The tribunal would error in law and fact by refusing to appoint a single joint chartered surveyor to make a determination given that it is reasonable required."* Whilst inelegantly expressed the Applicant was again seeking an appointment of an independent expert.

19. Further in his application the Applicant appeared to set out for the first time in these proceedings what he meant by the building regulations issue. He suggested that "*The Respondent has failed to allow the appellant an opportunity to explore all options regarding building control regularisation to include and not limited to relaxation and dispensation of building control regulations. The Respondents have carried out a very basic level of enquiries regarding building control and simply adopted the Draconian approach that building regulation completion certificates cannot be located on their systems and then simply pursued a strategy of HMO registration. To be very blunt, the Respondents have failed to allow the appellant an opportunity to consider all options regarding building control regulation at the expense of inappropriate HMO registration. The situation with retrospective Building Regulations approval is rather different in that, you can always find a solution that both parties can live with when you are trying to solve an issue regarding lack regulation approval. This can take the form of retrospective application of building regulations or the more common/favoured approach of relaxation or dispensation of building control regulations by a local authority. In summary, the tribunal should allow the appellant to explore and pursue building regulation regularisation rather than avenues of HMO registration."* Again, although the appellant had not expressed himself in an easy to follow manner, his point appeared to be that the Respondent did not have evidence that the subject properties had been converted in accordance with the relevant building regulations and that the Respondents should meet with him to try other informal approaches to waive or retrospectively approve the works undertaken in the properties as being in accordance with the Building Regulations. His statement/application did not seek any particular order in this regard other than as expressed above asking the tribunal to allow him to explore and pursue building regulation regularisation rather than avenues of HMO registration. As an aside at this stage, that was not an order that the tribunal could make. HMO licences had been issued to the Applicant in respect of the three properties in Claude Road and the property at 87 Connaught Road and he had appealed and sought to vary the conditions of those licences. The tribunal is empowered and duty-bound to hear and deal with those applications.

20. The Applicant then repeated his application for disclosure in almost identical terms to that of his application of 26 March 2019. The Applicant had clearly cut and pasted most of this part of the application although he added that he had originally been told that the Respondent was going to provide the information that he had requested by 25 April, the Respondent was now saying that as this was a complex matter they would be unable to do so and hoped to respond to him by no later than 26 June 2019. He further added comments about the licence being poorly drafted and the details of the works being difficult to determine and being onerous and inappropriate but these comments appeared to be submissions and did not form part of any request. However the Applicant again stated; "*The appellant disagrees with the local authority assessment and will wait until the tribunal's and the joint expert surveys the property and meets the necessary conclusions regarding this matter."*

21. The Applicant also asserted that the Respondent had infringed article 14 of the Human Rights Act 1998 and was discriminating against individuals from ethnic minority backgrounds and continuing to adopt a culture of institutional discrimination. He alleged that the local authority had continued to treat individuals from ethnic minorities less favourably than others and that Cardiff Council was behaving in a prejudiced manner. He did not make any application in this regard but again these were submissions or comments contained within his statement.

22. The Applicant's statement concluded with him seeking another 30 days from 26th June 2019 to prepare a further witness statement and saying that he would need a new window of hearing dates as a result.

The tribunal's decision and directions order of 7th May 2019.

23. Mr Khan was thus making independent expert and disclosure applications that had previously been dealt with and refused. Upon consideration of the matter the tribunal by **a decision of 7th May 2019** stated that it appeared that in persistently making applications upon grounds that have previously been refused it is at the very least arguable that the applications are frivolous, vexatious or an abuse of process. The tribunal gave notice of its intention to dismiss the second application received on 1 May 2019 as well as to dismiss the substantive applications. Directions were given to prepare for the strike out hearing and application.

24. In the order of 7 May 2019 which gave directions upon the question of whether the applications should be struck out, the Applicant was ordered to make any representations upon this issue and to file them at the tribunal and serve a copy upon the Respondent by no later than 4 PM on Tuesday 21st of May 2019. The Applicant sent an email to the tribunal at 13:39 on 21st of May 2019 with his application/statement dated 20th May 2019 opposing the proposed strike out **("the third application").** This application repeated submissions and points about the building regulations made in his previous applications and criticised Miss Stickler's qualifications and said "*the applicant requires the tribunal disregards the evidence of Ms Stickler regarding building control determination and compliance with building regulations"*. He repeated the disclosure point although did not make a specific application for disclosure and referred to the works required at the

property as being onerous. He said that he disagreed with the local authority's assessment and "*will wait until the tribunals [sic] and the Joint Expert surveys the property and meets the necessary conclusions regarding this matter*". The tribunal note this curious assertion because there was no joint expert. The applicant also repeated allegations of discrimination against him by the Council and said he wanted further time to provide evidence.

25. The statement/third application also contained a section resisting the application to strike out and said that he believed he had complied with the tribunal's orders. He pointed out the error of the date of 7th May in the directions order of 5 April 2019. He also said that he had been awaiting historic information regarding building control and planning from the Council. This is the information that was the subject of his disclosure request which he originally expected to receive on 25 April 2019 but which he then said was not expected until 26 June 2019. He said *"the applicant has submitted information at the earliest possible time any small delay by few hours, is explained by the fact the applicant was at another hearing and also in hospital thereafter and simply could not be avoided."* He referred to relief from sanctions and the Mitchell/Denton test and contended that he was making reasonable attempts to obtain information from the Respondent and they failed to provide it to him and to communicate with him properly. He further said "*the applicant had no actual notice knowledge of the proceedings that the tribunal required further clarification in his information. The Applicant has never willingly or even knowingly failed to comply with his obligation to respond to the tribunal."* He also argued that no costs order should be made against him.

26. Mr Khan's e mail of 21st May to the tribunal which attached the third application said "a copy has been posted to the Respondents." On 28th of May 2019 the tribunal received an email from Miss Stickler explaining that she had been on leave since 6 May and had returned today. Miss Stickler pointed out that the Applicant was to provide his statement by 21 May 2019 but that the Council had not received a statement from him.

27. The tribunal emailed Mr Khan and Miss Stickler on Friday 31st of May 2019 at 12:01 referring to the order of 7 May and the requirement to serve a copy of Mr Khan's statement on the Respondents by no later than 21 May 2019 and indeed that email was appropriate as a method of service. The tribunal pointed out that it had received an email from Miss Stickler saying that the Council had not received any statement from the Applicant and reminded the Council that any correspondence with the tribunal must also be copied to the Applicant. The tribunal stated *"Mr Khan is to inform the tribunal by return of the situation (and emails to the tribunal **MUST** be copied to the Council), to explain how and when he says that the witness statements were served on the Respondents and to explain why he did not email the statements to the Respondent Council."*

28. On 31st of May 2019 at 14:06 Miss Stickler emailed Mr Khan (and copied in the tribunal) and explained that she was emailing him direct having been instructed to do so by the RPT even though Mr Khan had previously said that she was not to contact him by email. The heading of this e mail referred to 10 Connaught Road and 43 Pen y Wain Road which are other properties owned by Mr Khan. Miss Stickler confirmed that she had only

returned from leave on 28 May and realised she had not received any correspondence from him either via email or post but a copy of her witness statement was hand-delivered before 12 midday to 68 Paget Street on 30th May. She said that she acknowledged that she should have informed him that she had not received his statement by post but had decided to contact the tribunal to request a copy of the statement. Miss Stickler made it clear that she still did not have a copy of any representations that Mr Khan was to have submitted by 21 May 2019 in relation to numbers 3, 73 and 93 Claude Road and although she was aware that she was to have responded to the tribunal by 12 noon on the 31st May she had not been able to do so because she did not have a copy of Mr Khan's representations. She explained that she would be requesting that the tribunal accept late representations and that she would be copying him in on the email unless he expressly requested it by post.

29. Subsequently Miss Stickler sent a second email to the tribunal and copied to Mr Khan, at 16:34 on 31st of May 2019 and this contained representations stating that the Respondent believes the applications to appeal should be struck out on the grounds that they were vexatious. The email representations said *"Throughout the process the Appellant has sought to disadvantage and frustrate the Respondents in their duty to comply with the tribunal's directions orders. He has repeatedly failed to provide hard copies of his witness statement to the Respondents and they have been obliged to contact the RPT to provide them with copies. In the tribunal's directions order the Appellant has been afforded further opportunity to respond to the Respondent's witness statements but the Appellant has again not provided them with any copies of additional statements. The Appellant has expressly stated that the Respondent are not to correspond with him via email despite corresponding with other departments in the Council and with the RPT by email.*
The Appellant has demonstrated and encouraged disrespectful behaviour towards the Respondents. On 27th of April 2019 the Respondent attempted to hand deliver the statement folder… to a correspondence address, 68 Paget St, Cardiff. The Appellant instructed the occupier of the property to refuse to accept the folder and they threw the folder back at the Respondent. The Respondents have complied with all the tribunal directions to the best of their ability. The appeal statements provided by the RPT from the Appellant have in all cases been vague which have not allowed the Respondents to fully and appropriately respond. The Respondents have had to anticipate arguments in their responses to statements causing additional and unnecessary work even though many of the arguments have previously been decided upon. Furthermore recent hearings between the parties have had to been extended over two days because the Appellant has not followed the tribunal directions orders."

The fourth application of 4th June 2019.

30. Mr Khan did not inform the tribunal by return how the witness statement had been served on the Respondent as he had been ordered to do by the email of 31 May 2019. On 7th of June 2019 the tribunal received another statement/application ("the fourth application"), from Mr Khan dated 4th of June 2019. In the statement he said he had served a copy of his representation by first class post on the morning of 20 May 2019 on the Respondent.

He said that he was unable to send any emails to the Respondent due to the risk of any data breach by the Respondent's housing department and he said that Ms Stickler sent emails from an umbrella Rent Smart Wales email address. He stated that on 3 February 2017 Rent Smart Wales shared personal email addresses of landlords unlawfully and is subject to action for data protection breaches by the Information Commissioner. He said that he is unable to email the Respondents under any circumstances because of its cavalier attitude to these data protection breaches.

31. Mr Khan also said that the Respondent had failed to file at the tribunal and serve upon himself representations as they had been ordered to do by 12 noon on Friday, 31 May. Mr Khan also applied to strike out the Council's case and complained that the bundle of documents and information that had been prepared by the Respondent was defective as they had not first provided for disclosure of all facts regarding the relevance of each document to the proceedings. He said that the Respondent's approach was unjust and prejudice [sic] and failed to narrow down the issues for the substantive hearing and that "*it is the Respondent's statement of case and compliance with the tribunal orders that are seriously defective and require the appropriate actions in order to avoid irreparable harm."*

32. The tribunal reminds itself that the bundles that were to be served on the Applicant and filed at the tribunal by 22nd May 2019 (as per the amended order of 5th April) were filed and served on 30 May following Ms Stickler's return from leave. The tribunal's order of 7th of May 2019 required the Respondent to provide representations upon the striking out by 12 noon on 31st of May 2019. As seen above, those representations were in fact provided by email by Ms Stickler at 16:34 on 31st of May to Mr Khan and the tribunal. It is this failure to comply by 12 noon that is the basis for Mr Khan's application to strike out the Council. His statement, at paragraph 10, describes this as "a serious failing on the Respondents to investigate the compliance with the tribunal on 21st of May 2019"(sic). (In fact it was the applicant who was to respond by the 21st of May 2019 not the Respondent). Mr Khan goes on to claim that there is clear prejudice to him for having to wait for further directions and the tribunal not providing a punitive sanction for the Respondent's behaviour would leave him without a remedy for his prejudice. He does not explain in what way he has been prejudiced by email representations from the Council arriving four and a half hours later than ordered.

33. The above describes the numerous procedural steps and issues that arose before the matter came to be heard. However, there have been other cases between the parties in the tribunal recently that are also of relevance since they concern many of the same issues that are before us.

Further background information – previous cases between Mr Khan and Cardiff Council on HMO licensing matters.
152 and 154 Mackintosh Place, 2018.

34. On 13th September 2018 the tribunal issued a written determination in relation to 152 and 154 Mackintosh Place, Cardiff (RPT/0015/10/17 and RPT/0016/11/17). Those cases were conceptually similar to the current ones, being appeals by Mr Khan against HMO

licences for those properties and the conditions of such licences. It is clear from reading the earlier tribunal's decision that Mr Khan raised similar issues as he has done in these cases, apparently using near identical language in relation to his contention that documents relating to the building regulations are of relevance. The tribunal in Mackintosh Place said this at paragraphs 47-50 of the decision;

> *"47. In relation to both Number 152 and Number 154 it is asserted by the Respondent that the design and construction of the Premises is unsafe. In respect of several flats in both Premises it is said that, in the event of a fire in the kitchen blocking access or egress through that room, the occupiers could be trapped in bed or living rooms that can only be accessed through the kitchen areas. This is said to be an acute concern because the most likely source of any fire is the kitchen.*
>
> *48. Having inspected the Premises it is incontrovertible that the present configuration and design of the Premises would make escape difficult or impossible in the event of fire in any of the kitchen areas in question (i.e. those through which escape might be necessary). Based on that inspection, it is of no surprise to us that there are no completion certificates in existence because we do not believe that these conversions would have been "signed off" as sufficiently safe for building regulation compliance.*
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> *49. It follows from the foregoing conclusion that both Number 152 and Number 154 qualify as HMOs for the purposes of section 77, section 254 and section 257 of the 2004 Act. This means that the regulatory regime requiring that the Applicant has an HMO Licence and complies with any Licence conditions applies in this case.*
>
> ***50.** We should add, however, **that the Applicant asserts that the Respondent could waive any breaches of the building regulations and he complains that they have not done so and that they have not explored possible options for doing so with him. In his written submission, the Applicant summarises his position thus: "In summary, the tribunal should allow the appellant to explore and pursue building regulation regularisation rather than avenues of HMO registration". This Tribunal has no power, however, to direct any local authority to waive, or consider waiving, building regulation breaches. Rather, the short point is that we have determined that the Premises do not comply with the appropriate building regulation standards and, whether or not the breaches could have been waived, as they have not been the Premises are HMOs and the Applicant's argument on this point does not advance matters."*** (Our emphasis).

35. Mr Khan was told in September 2018 that the tribunal had no power to direct any local authority to waive or consider waiving building regulation breaches and that his argument did not advance matters. Mr Khan did not wish to accept this and applied for permission to appeal. That application was dealt with by our colleagues in a written decision dated 16th October 2018 which said about this ground; *"…the Applicant asserts that the Tribunal should have allowed him to explore and pursue Building Regulation regularisation. This is, however, precisely the same point as was made by the Applicant in his written submissions at the trial. It was addressed in the substantive decision of this Tribunal at*

paragraph 50 and, for the reasons given there, we consider that this ground of appeal has no prospect of success." The decisions of the tribunal that sat in 2018 in respect of the properties in Mackintosh Place are not binding upon the current tribunal. However we entirely accept the decision and reasoning of the 2018 tribunal, but more importantly for the purposes of the current case, it demonstrates that Mr Khan has previously raised precisely the same point about "building regulation regularisation", and has been informed that the tribunal does not have the power to do what he asks and moreover that the point does not assist him since the properties are HMOs and subject to HMO licences, they will of necessity be considered in relation to their current state and the statutory definitions of HMOs.

94 and 99, Mackintosh Place, 2019.

36. These cases (case numbers RPT/0061/12/18 and RPT/0055/10/18) are between the same parties and again relate to Mr Khan's appeals against conditions in HMO licences granted to him. On 1 March 2019 Mr Khan applied to the tribunal to vary the existing directions order that had been made on 18 February 2019. He made the single joint expert point and the disclosure point that he has made in the current cases. The tribunal dealt with this in a decision dated 8 March 2019 which refused his applications and pointed out that if Mr Khan wished to instruct his own surveyor at his own expense then he was at liberty to do so. The tribunal also pointed out in relation to the disclosure point that although he had referred to a request of 18 September 2018 to the Council, it was not clear what that request referred to since he had not elaborated upon it in his statement. The tribunal noted that his disclosure request pre-dated the licences for numbers 94 and 99 Mackintosh Place and that there was no question of the Council litigating by ambush and withholding information when they were not required to respond until 22nd March 2019 under the existing directions order. Mr Khan had also sought to extend the hearing window until a date after 20th June 2019 but this was rejected as Mr Khan had not provided sufficient reasons or evidence for such a request. He was given further time until 13th March 2019 to provide a witness statement and to provide his dates of availability for the existing hearing window.

37. Mr Khan did not provide a statement setting out his reasons and evidence for the appeal and amplifying his grounds for appeal as ordered but instead made a further application/statement to the tribunal dated 12th March 2019 repeating his application for orders for a single joint expert and for disclosure. Mr Khan again applied for the hearing to take place after 20 June and provided a revision timetable for the Bar vocational course and simply said he was undergoing a training course and assessments. The information that he provided did not justify extending the hearing window. This application required another written decision of the tribunal dated 15th March 2019 which did not revisit the expert or disclosure points and refused and dismissed Mr Khan's extension application. Again, this application made by Mr Khan is instructive. **Within 4 days of the joint expert and disclosure refusals he apparently ignored that decision and made identical applications.**

38. The matter was listed for hearing on 30th April 2019 and the parties were informed of this by letter dated 18th March 2019. On 21st March 2019 the tribunal received a document

dated 19th March 2019 from Mr Khan in which he sought permission for leave to appeal against the decisions of the 8th and 15th March. He asked the Upper Tribunal to order the appointment of a single joint expert and for disclosure and asked for the hearing listed on the 30th April to be postponed. In a written decision of 5th April 2019, the tribunal refused his application on all of the grounds and gave further reasons; again indicating that Mr Khan was at liberty to obtain his own expert evidence. The refusal decision of 5th April made it clear that Mr Khan had failed to comply with directions and failed to make his case but instead had chosen to make a succession of applications to the tribunal. Mr Khan then sought permission to appeal against the decision of the 5th April 2019 directly to the Upper Tribunal.

39. Mr Khan subsequently made another application dated 15th April 2019 to postpone the hearing listed for 30th April 2019 saying for the first time that he was unavailable on the 30th April 2019 owing to a "personal hospital diagnostic assessment", although he did not supply any evidence in support of this. By a decision of 26th April 2019 his application to postpone was refused.

40. The hearing for numbers 94 and 99 Mackintosh Place took place on 30 April 2019 and the detailed written reasons and decision were sent out and dated 11 June 2019. The tribunal Vice President Trefor Lloyd chaired that case and the lay member was Bill Brereton, the lay member in the present case. This recorded that Mr Khan had made a further application to adjourn the hearing which had been listed for 30 April, but, as set out above, this was refused by a written decision of the tribunal of 26th April. Mr Khan sent in further correspondence at 16:15 p.m. on 29 April 2019 saying that he would be unable to be present at the site visit listed for 9:30 a.m on 30th of April, but would attend at the tribunal office to make a fresh application to adjourn and vacate the hearing. Mr Lloyd therefore postponed the inspection and heard the application to adjourn/vacate at 9:45 a.m on 30th April. It transpired that the Applicant had a scheduled MRI scan at 11 a.m on 30th of April, information that he had not previously produced. The tribunal, allowing very considerable leeway to Mr Khan, put the start of the hearing back until 2 p.m on 30th of April and adjourned the inspection until the following day, namely 1st May 2019. Although Mr Khan was late to the hearing that commenced at 2pm on 30th April, he remained for the duration of the proceedings.

41. During the hearing on 30th April 2019 the tribunal assessed the credibility of the Applicant and recorded at paragraph 28 of the decision; "*The Applicant's evidence at times was in our view unreliable, being especially so, when he found himself in difficulty explaining answers given that contradicted documentary evidence in the Trial Bundles.* ***An example was in the light of a question put to him when dealing with Cardiff County Council's recycling process he said he did not know how it worked, as he did not live in the City, but lived outside. Against this background he was then asked why he had presented various addresses in Cardiff, and a correspondence address for Tribunal documentation as 68 Paget Street, if that was not his home address. In reply he stated that a postal address was different to a home address.*** *Another example was that in evidence he said that in the context of having owned the properties since 2004 and 2005 respectively all consumer boards situated in escape routes were metal, whereas upon inspection, none proved to be so."* (Our emphasis).

42. The tribunal sat until 6.45pm on 30th April 2019 and arranged to inspect the properties in Mackintosh Place the next morning. It is clear from reading the decision of the tribunal (and indeed Mr Brereton confirmed it in open court in the hearing of 3rd July 2019) that the issues of the single joint expert and disclosure had been raised during the hearing and it had again been made clear that the tribunal did not have the power to appoint an expert and that there had been insufficient information given in support of the disclosure point.

43. It transpires that Mr Khan's permission to appeal against the decision of this tribunal of 8th March 2019 in respect of the expert and disclosure points, was refused by Judge Elizabeth Cooke of the Upper Tribunal on 1st July 2019 as having no prospects of success. The Upper Tribunal decision was sent out by letter of 3rd July 2019 and so was not in the contemplation of the parties or the tribunal when the dismissal application was heard on the same day. This is mentioned for information only and played no part in this tribunal's decision.

Summary of background information.

44. In September 2018 in another HMO case, the tribunal had dealt with and explained that the building regulation and disclosure points raised in almost identical terms in the current case, were of no assistance to Mr Khan, and had reiterated this when refusing Mr Khan permission to appeal on the same point.

45. Mr Khan had been in a hearing before a differently constituted tribunal until 6.45pm on 30th April 2019 in relation to properties at 94 and 99 Mackintosh Place, Cardiff. During the course of that hearing, he had been told that the tribunal has no power to order a single joint expert report and that his application for disclosure was refused. He had previously been told that the disclosure and expert applications in that case were refused in decisions of the tribunal dated 8th and 15th March and 5th April 2019 which also explained why and pointed out that Mr Khan had failed to comply with the existing directions (even when the timetable had been extended to enable him to do so). The tribunal's decision of 26th April 2019 refused to postpone or adjourn the hearing. Mr Khan has previously said that he was unavailable until after 20th June 2019 but it transpired that he was available during most of 30th April 2019 and on 1st May 2019.

46. During the preparatory stages for the current cases for the properties in Claude Road Mr Khan had made an application dated 26th March 2019 but sent on the 1st April seeking orders for a single joint expert and disclosure. These were refused in a decision of the tribunal dated 5th April 2019 that extended the time for supplying evidence until 12 noon on 1st May 2019.

47. On 1st May 2019 but after the 12 noon deadline, Mr Khan sent in the second application seeking the appointment of a single joint expert and disclosure. His statement and application were dated 30th April 2019 and were presumably prepared after spending until 6:45 pm in the tribunal for the Mackintosh Place cases in which the expert and disclosure points had been raised and explained to him again. In the circumstances the

tribunal gave directions in relation to whether the substantive applications should be dismissed in a decision dated 7th May 2019 that also said this;

"*2. By a decision dated 5th of April 2019, applying to numbers 3, 73 and 93 Claude Road, the tribunal dismissed the disclosure and independent surveyor applications and varied the directions, providing an amended directions order of 5 April 2019.*

3. There was no appeal against the decision of 5 April 2019. On 1 May 2019 the Applicant, by email at 17:00 hours sent in an application for disclosure of information and to vary directions. The Applicant again made the same request that the tribunal should order an independent report. It is difficult to see why the Applicant has made such a request. The tribunal's decision of 5th of April 2019 dismissed this request and informed the Applicant that the tribunal was not able to make such an order. On 30th of April 2019 the Applicant was present at an oral hearing before this tribunal in relation to other of his properties at 94 and 99 Mackintosh Place, Cardiff and similar appeals against conditions of HMO licences in relation to those two properties. In the course of preparing for the cases to be heard on 30 April 2019, the Applicant had repeatedly made similar applications in relation to the appointment of an expert and disclosure despite those applications being refused. That hearing did not conclude until approximately 6:45pm on the 30th April, which is the date of Mr Khan's statement accompanying his application of 1st May 2019.

4. *The Applicant therefore persists in making an application which consists largely of the same statement and arguments that have previously been dismissed in both this case and another case between the same parties. The Applicant is an intelligent man who is certainly able to grasp and understand when an application has been rejected and why. This tribunal is committed to dealing with cases in accordance with the overriding objective and the Residential Property Tribunal Procedures and Fees (Wales) Regulations 2016 ("the Regulations"). Regulation 41 relates to frivolous and vexatious applications. This gives the power to the tribunal to dismiss an application in whole or in part where it appears to the tribunal that an application is frivolous; vexatious; or an abuse of process. Further, under regulation 41 (2) where it appears to the tribunal that an Applicant has failed to comply with a direction issued by the tribunal in connection with the supply or provision, disclosure or inspection of information or documents in connection with attendance at the tribunal, the tribunal may dismiss the application in whole or in part.*
5. *It appears to the tribunal that in persistently making applications upon grounds that have previously been refused, it is at the very least arguable that the applications are frivolous, vexatious or an abuse of process. I note that the Applicant was, by the amended directions order of 5 April 2019 required to file at the tribunal by 12 noon on Wednesday, 1 May 2019 and to provide a copy to the Respondent, a witness statement containing all relevant information, evidence, submissions and documents that the Applicant wishes the tribunal to take into account in support of his appeals. It was the Applicant's opportunity to set out and state his case and the grounds for his appeal. The Applicant failed to comply with that order. Whilst the Applicant has applied to vary the directions, he did not do so until 17:00 hours on 1 May 2019. I am aware from the interlocutory decisions that I have made in the cases relating to 94 and 99 Mackintosh Place that in those cases the Applicant did not attempt to comply with the directions orders but instead made multiple applications of a nature very similar*

to his application in these cases made on 1 May 2019. The Applicant has not complied with the directions order of 5 April 2019.

6. *Under regulation 19 of the regulations the tribunal may make an order dismissing the whole or part of the application where a party has failed to comply with the tribunal's directions orders. The Applicant must therefore bear in mind that the tribunal are entitled to dismiss his application under rule 19 upon the basis of his failure to comply with the tribunal's order.*
7. *It therefore appears to the tribunal that the application of 1 May 2019 is frivolous, vexatious or an abuse of the tribunal's process. It also appears to the tribunal that in accordance with regulation 41 (2), the Applicant has failed to comply with a direction issued by the tribunal and that the tribunal may dismiss the application in whole or in part. The tribunal is minded to dismiss the applications. For the avoidance of doubt Mr Khan must understand that the tribunal is minded to dismiss not only the application of 1 May 2019 but the substantive applications to vary the licences in relation to numbers 3, 73 and 93 Claude Road received by this tribunal on 16 January 2019. In passing I note that when the applications were sent in, the fees required to accompany the application were not sent in until 11 February 2019. The tribunal has thus already exercised considerable leeway to Mr Khan given that regulation 14 on the payment of fees states that if a fee is not paid within a period of 14 days from the date on which the application is received, the application is deemed withdrawn unless the tribunal is satisfied that there are reasonable grounds not to do so. The fee should have been paid by 30th of January 2019.*
8. *Therefore in accordance with regulation 41 (4) this decision and directions order constitutes the notice to the Applicant of the tribunal's intention to dismiss his application to vary the directions and to dismiss the three substantive applications in relation to numbers 3, 73 and 93 Claude Road. The grounds upon which the tribunal is minded to dismiss the application are that the Applicant has failed to comply with directions orders in this particular case, that the Applicant is again seeking orders and applications in relation to matters that have been adjudicated upon and dismissed in these cases and in other cases. I consider it to be a particularly relevant factor that this application was sent in the day after another of Mr Khan's applications was dealt with by the tribunal and in that other case Mr Khan had repeatedly made the same applications and points that have been dismissed. Indeed the statement of Mr Khan is dated the same day, 30th April 2019. All of Mr Khan's applications seek further time and to delay the tribunal process, contrary to the tribunal's overriding objective and the need to avoid delay so far as is compatible with a proper consideration of the issues. The parties and Mr Khan in particular, are reminded that they must help the tribunal to seek to give effect to the overriding objective and cooperate with the tribunal generally. "*

The hearing of 3rd July 2019.

48. The Respondent was represented by Mr Grigg and Miss Stickler was present to give evidence. The Applicant Mr Khan represented himself. The panel first asked Mr Khan whether he lived at 68 Paget Street, Grangetown, Cardiff, the address that he had given. The reason for this was that on 27th April 2019 the Council had delivered documentation to this address but a female living there had refused to accept it on his behalf. Mr Khan

said that he had lived at 68 Paget Street for 3 years he said "I live in the upstairs flat have done for 3 years" and he described two flats or apartments at the address one upstairs and one downstairs and he said the documentation was refused by a lady who lived downstairs and was going out to a hospital appointment. Mr Khan was challenged by the tribunal's lay member Mr Brereton who had sat upon the cases for numbers 94 and 99 Mackintosh Place on 30th of April 2019, and put to Mr Khan that he had previously said in that hearing "I don't live in Cardiff". Mr Khan responded that he had said he doesn't live in the area and he did not remember saying that he did not live in Cardiff. The tribunal's surveyor member Mr Singleton had sat upon the 152 and 154 Mackintosh Place cases in 2018 and recalled that Mr Khan needed to catch a train. Mr Khan explained that he was catching a train to London on that occasion.

49. Mr Khan was also asked about his studies. He had with him various legal texts including a copy of what is known to lawyers as "The White Book", published by Sweet and Maxwell and viewed as the authoritative guide to civil procedure in the High Court and County Court. Mr Khan has previously indicated that he is studying at the Bar Vocational Course. He was defensive when asked about his studies and challenged the relevance. The tribunal explained that Mr Khan was repeatedly citing case law and was equipped with legal textbooks and the tribunal wanted to be scrupulously fair to him and to know whether, despite not having any legal qualifications, he should be treated as someone with legal knowledge or as an ordinary litigant in person. For example, he was asked whether or not he was familiar with the cases that he has cited in his various statements and would be happy to be questioned about them or whether in fact he had for example obtained the case titles and information from general sources on the internet and would not be happy to be questioned about them. The tribunal did not wish to ask questions and explore matters relating to the cases that Mr Khan had cited if in fact it would be unfair to him and beyond his competence to expect him to argue in support of them.

50. Mr Khan explained that he was studying at the University of Law on the Bar Vocational Course in London and he was at the end of the second year of a three-year course. He said he undertakes 20 hours a week face-to-face study time in lectures and tutorials for three days a week and he explained that his last exam had been on 20 June 2019.

51. In the light of all of the evidence heard by the tribunal and Mr Khan's written and oral arguments, we wish to make it clear that notwithstanding his possession of legal textbooks and his current position as a student on the Bar Vocational Course, the tribunal have treated Mr Khan as a litigant in person with no special legal knowledge. The tribunal bear this in mind throughout and that the Respondent was professionally represented by a qualified solicitor.

Consideration as to whether the applications should be dismissed.

52. There were a number of issues to consider.

Had the applicant sent his statement by post to the Respondent?

53. As seen earlier, upon returning from leave on 28th May 2019, Ms Stickler realised that she did not have a copy of a statement from Mr Khan that should have been sent to the Council by 12 noon on 21st May 2019. The tribunal e mailed the parties at 12:01 on 31st May 2019 requiring Mr Khan to confirm the position by return and explain how he had served his statement on the Respondent. Mr Khan initially denied having received the tribunal's email until it was pointed out to him that the tribunal asks for delivery receipts and upon inspection of the tribunal's files, there was a delivery receipt to confirm that the email had been sent to Mr Khan's address. This was shown to him and he then accepted that he had received that email and said "I read that at 16:30".

54. Mr Khan said he did not email his statement of 20th May to Miss Stickler because he has concerns over emails. He also denied receiving Miss Stickler's first email of 14:06 on 31st May but said he subsequently received it attached to her later email sent at 16:34. Miss Stickler confirmed that she had changed the heading on her email because the 14:06 email referred to other of his properties and the 16:34 email referred to the correct Claude Road properties. Mr Khan was asked by the tribunal what steps he took to get his statement of 20 May to Miss Stickler and he said that he didn't know until 31st May that she had not received the statement and he argued that Miss Stickler could have contacted him by phone to request the statement.

55. Mr Khan maintained that he had sent his statement of 20th May by post without a covering letter to Miss Stickler at City Hall in Cathays Park, Cardiff on 20th May 2019 and it would have been deemed served after that date. Miss Stickler explained how mail is sorted at a central point, date stamped, scanned, linked to the appropriate property and then given to the relevant officer. She explained that if the post was addressed to her then it would have been delivered to her even if there was no property address. She confirmed that was not aware of any other member of staff called Stickler and that she had not received the statement.

56. Mr Khan explained that documents do go missing and he had sent documents to the Council on 30 December 2016 in relation to another of his properties by recorded delivery addressed to Miss Stickler requiring a signature and these had gone missing. In relation to the current particular case he said he had sent the documents by first class post on 20th May and 4th June 2019. The latter document was the fourth statement/application prepared by Mr Khan dated 4th of June 2019 which was an application by him that the Respondent's representations of 31st of May 2019 should be disallowed and that the Respondent's case should be struck out. The tribunal received a hard copy of this statement on 7 June 2019. Miss Stickler confirmed that she had not received either of these statements, that the only statement of Mr Khan's that she had received was that dated 30 April (and date stamped 1 May 2019) which had been sent to her by the tribunal. Miss Stickler also confirmed that she has not had this problem of correspondence going missing with other properties. Miss Stickler and Mr Grigg only had sight of the 4th June statement at the hearing but indicated that they were happy to continue with the case.

57. Mr Khan gave evidence that on a previous occasion he had supplied documents to the Council and they had lost them. He referred to a document (at page 37 Appendix C of the Council's bundle) which referred to gas safety certificates and said that Mr Khan had

provided certificates which were acknowledged as valid "but electronic copy lost in scanning and not noticed until certificates returned." Mr Khan said this showed that his certificates had been lost and that the Council had acknowledged losing them. Miss Stickler said that she and a colleague Mr Peter Evans had checked the certificates as being valid and returned the certificates to Mr Khan. She pointed out that the document said that the electronic copy had been lost in scanning and denied that Mr Khan's original documents had been lost or mislaid. She explained that the entry in the document simply meant that there was no electronic copy on the system but that the certificates had been checked as being valid. Miss Stickler said that Mr Khan had not previously complained about losing documents, although this was disputed by Mr Khan.

58. The relevance of this exchange was that Mr Khan claimed that the Council would lose documents and therefore he was adamant that he had sent his statements in by post to the Council and it was his case that they must have been lost as had previously happened with gas safety certificates. With regard to the tribunal's email to Mr Khan and Miss Stickler on 31st of May 2019 at 12: 01, this referred to Mr Khan's claim that he had posted a copy of his statement to the Council but pointed out that Miss Stickler said that she had not received any statement from the Applicant. The tribunal said that Mr Khan was to inform the tribunal by return and emails to the tribunal must be copied to the Council to explain how and when he says those witness statements were served.

59. Mr Khan said in evidence that he had an exam on 31 May 2019 and he did not see either the tribunal's email of 12:01 or Miss Stickler's emails of 14:06 to him or 16:34 to the tribunal copied to him until later that evening. (This contradicted what Mr Khan had told us a little earlier in the hearing about seeing the tribunal's e mail at 16:30).Mr Khan claimed to have been confused about the email of 14:06 because the heading referred to other properties. The tribunal took Mr Khan to the penultimate paragraph of that email which said *"Furthermore, in my email sent to the RPT dated 28th of May 2019 I informed them I have not received a copy of any representation from you via email or by post which you are asked to submit by 21st of May 2019 as directed in a letter dated 7th of May 2019 in relation to 3, 73, 93 Claude Road, Cardiff. I still do not have a copy. In order to meet the tribunal directions I was required to respond to your statement by today, 31 May 2019 by 12 midday. I have not been able to respond within the timeframe as you have not provided me with a copy of your representation."* The tribunal asked Mr Khan what was confusing about that paragraph? He did not answer. Mr Khan then said that he had read Miss Stickler's email to the tribunal of 28th of May and said that he assumed she had a copy of his statement. Again, it is impossible for this tribunal to see how Mr Khan could have reached this conclusion when the penultimate paragraph of that email of 28th of May says "*We have not received any statement from the Appellant."*

60. Miss Stickler said that she had attempted to serve the Council's folder of documents upon Mr Khan on 26 April at 68 Paget Street.(We note that there was previous reference to the 27th April but we were satisfied that Miss Stickler was referring to the same incident.) She said a lady who she believed was called Mrs Patel said "she'd been instructed by Mr Khan to receive no documents from the council after the 21st." Miss Stickler told the lady that the date had been changed and phoned Mr Khan who told her that he had spoken to the tribunal the previous day and he was going to contact the judge to get the Council struck

out. She said that as she was on the phone the lady threw the documents back at her. Miss Stickler said she was cycling and she had six new messages on her phone from Mr Khan and he had said that any reasonable person would phone in advance and tell him that she was going to deliver documents. Miss Stickler said that hand delivery of documents was relatively frequent but it was not normal practice to ring ahead.

61. Under questioning from Mr Grigg, Miss Stickler said that of the four sets of documents/applications from Mr Khan in these cases, she had not received any in the post. She had received two sets from the RPT but had not received the last two statements at all until seeing them at this tribunal hearing. She confirmed that upon her return from leave on 28 May 2019, there were a number of letters for her from the RPT but none from Mr Khan. When asked if there had been any issues regarding receiving correspondence from Mr Khan she said that the only time that the Council received documents from Mr Khan is when he hand-delivered them but he also sends a letter with them. She confirmed to Mr Grigg that the Council do not have a problem with receiving appeal documentation from other landlords in the post.

62. The evidence from Miss Stickler therefore was that no documents in this case had been received in the post from Mr Khan. It was Mr Khan's evidence that he had posted the statements on 20th May and 4th June respectively. If that was the case then the statements would have been deemed served on 22nd May and the 6th June 2019 respectively, namely after the dates in the directions orders.

63. We prefer the evidence of Miss Stickler on this issue for the following reasons (in addition to our findings on credibility below). The Applicant says that he sent the statements by post without a covering letter. He therefore has no copy covering letter to produce. Miss Stickler gave evidence about the procedures for receipt of documentation at City Hall and that she is the only person employed there that she is aware of, with her surname. She was clear that no documents had been received from Mr Khan. In the past when he has hand delivered them on other cases he has sent a letter with them. There have not been problems with receiving documentation from other landlords. It is simply not credible that not one but two statements sent by the Applicant should go missing. We reject the Applicant's submission that the Council's systems are faulty based on the Council allegedly losing documents in 2016. We find that he has misinterpreted the document at Appendix C that refers to electronic copies lost in scanning and find that this refers to the scanned internal copy and not the physical copy and in any event relates to other documentation that was delivered in different circumstances. In the order of 7th May 2019 it specifically said that "*This order will not have been complied with unless Mr Khan ensures that he serves the Respondent with a copy of any relevant representations. E mail service upon the Respondent is permitted provided the tribunal are copied into this e mail."* That was intended to make the Applicant particularly vigilant. We find, on the balance of probabilities that the Applicant did not send either of these statements/applications to the Council and failed to comply with the directions orders.

Service of documents by e mail.

64. Mr Khan gave evidence that he did not e mail Miss Stickler because he was concerned about data breaches. His statement of 4th June 2019 exhibited a screen grab of a BBC news item from 3rd February 2017 and other documents which indicated that Rent Smart Wales had sent an e mail to landlords who were yet to complete their registration process but the e mail addresses of all recipients were included. Rent Smart Wales said that they were aware of an issue but were working to ensure it would not happen again according to the article. Mr Khan says that because of this data protection breach he is not able to email the Respondent because of what he described as "their cavalier attitude" to data protection. He says that Miss Stickler sends e mail from "her umbrella branch Rent Smart Wales" e mail address. In fact, Miss Stickler confirmed that her e mail address is a Vale of Glamorgan one and that she works for Shared Regulatory Services. At the bottom of her e mails there is reference to people who rent out property in Wales needing to be registered and the Rent Smart Wales logo and web address are clearly detailed for further information. Miss Stickler confirmed that the RSW servers are different to the Council Shared Regulatory services servers and that she is not part of RSW. She confirmed that she could search the RSW data base but could not use it without applying to RSW for permission to do so and going through the appropriate procedures.

65. Miss Stickler confirmed that the HMO register contains information that is in the public domain and that she had been dealing with Mr Khan for more than five years and was previously dealing with him by e mail and that RSW had only been set up in 2016. Mr Khan said he couldn't remember if he had e mailed her before but that he was concerned about people hacking into his data files.

66. The tribunal carefully considered all the evidence in this regard but conclude that the Applicant is using this past limited data breach on the part of RSW over two years ago as an excuse rather than a reason for failing to e mail the Council. The directions orders in this case specifically refer to the use of e mail and it would clearly be in Mr Khan's interests to simply copy Miss Stickler into e mails to the tribunal. There would then be no doubt as to the service of documents by e mail. The tribunal are not satisfied, on the balance of probabilities that the Applicant's refusal to use e mail is because of fears of a data breach. There was no evidence that he had sought any information about the different servers used by Regulatory Services and RSW before now nor that he had sought to explore the data security arrangements with Miss Stickler. The footer on Miss Stickler's e mail that contains RSW's details is clearly in the form of an advert or reminder as it says "Don't delay, comply now" and gives the contact details and information about the need to register. Further, Mr Khan will by definition have registered with RSW and have previously had separate dealings with them in relation to his obligations under the Housing (Wales) Act 2014 as opposed to the HMO licensing issues that we are concerned with here.

67. The tribunal are satisfied that Mr Khan's wilful refusal to use e mail to serve applications and statements upon the Respondents is part of a pattern of conduct designed to obstruct the smooth running of the appeal and the tribunal process and to cause further problems for the Respondent. There is no valid reason for it and if Mr Khan has any existing or future proceedings before the tribunal with the Respondent he will be expected to serve statements and documents by e mail where it is appropriate to do so.

Council Tax records for 68 Paget Street.

68. Mr Grigg explained that for Council tax purposes particular properties may have a responsible person and that will be the owner of the property and a liable person or party and this will be the person/people who are living at the property and liable to pay Council tax. The Council tax liability report for 68 Paget Street named two other individuals, not Mr Khan. The responsible parties, namely the owners, were listed as Mr Khan and three other people. Mr Grigg said that the land registry proprietorship register for 93 Claude Road (exhibited within the Council's documents) showed that Mr Khan's address when he purchased it in August 2007 was 6, Cherry Orchard Road in Lisvane Cardiff and he had, since 2005 been the sole liable party paying full council tax at that Lisvane address. The records showed that the Applicant Mr Assan Khan had not been liable since November 2000 for Council Tax payments at 68 Paget Street. Mr Grigg provided copies of the Council Tax Liability Report for both properties to the tribunal and to Mr Khan.

69. Mr Khan was challenged robustly by the tribunal's lay member as to whether he lived at 68 Paget Street or not. This was because Mr Khan had described 68 Paget Street as being "loosely divided". He said there are two bathrooms, one upstairs and one downstairs and two kitchens. He then suggested that at the moment there are three kitchens with another one upstairs. This information was of course at odds with his clear earlier description of 68 Paget Street as being divided into two apartments.

70. With regard to 6 Cherry Orchard Road Mr Khan said that the property was empty at the moment and had been for at least 3 months, there is nothing in there at all and no one living there. He was asked when he last lived there. His response was; "I'm trying to think" and after a long pause he said "I'm not sure". He did say that there had been times when it had been his home address.

71. Mr Khan was asked by Mr Grigg why he was not liable for Council Tax at 68 Paget Street, the address he says he lives at. Mr Khan said that there is a liable person living there who is the owner namely Mrs F Khan. He was asked about a Mr Tague Khan who is also shown as being liable but the Applicant replied that he didn't know who this person was, that he was not resident there and never had been. When he was asked by Mr Grigg who was resident he replied "Mrs Farida Khan and myself".

Disclosure.

72. It has been seen that the Appellant has persistently made vague applications for disclosure which have been repeatedly refused. In his statement and application to resist strike out dated 20th of May 2019 he again repeated that he was waiting for a reply to his request for further information from the Respondent which he had originally expected to receive on 25 April 2019 "in order to use this historic information regarding building control and planning in his evidence." He pointed out that the Respondent had applied for an extension to release the information until 26 June 2019. Mr Grigg explained that the Applicant's request was for all information that the Respondent holds on all of his properties since 1995 and he has 28 properties. He said that the Freedom of Information Unit of the Respondent had explained that because the Applicant does not specify

precisely what he wants that it would take around 214 hours to copy all of the documentation. Mr Khan said that he received an email from the Respondent on 25 June 2019 saying that they had 2517 documents and were refusing to release them as they would need to be redacted. Mr Khan believed that this was an arbitrary figure and says that he has appealed this to the information Commissioner, and he believes that they are resisting disclosure because there will be something of benefit to him in his argument that the properties are not licensable.

73. Miss Stickler said that he has made two applications regarding disclosure, the previous one being on the appeal regarding 152-154 Mackintosh Place. She explained that Anita Weir from their Freedom of Information Unit dealt with that and the information ran to over 1000 pages. She also referred to an e mail exchange of 24th and 27th April 2015 (at Appendix B page 2 of the Respondent's bundle) mentioned by Mr Khan. This related to a request from Miss Stickler to her colleagues to check that works to convert 3 Claude Road and 97 Connaught Road into flats were undertaken in accordance with the 1991 Building Regulations and had completion certificates. The answer was that there was no record of the conversion to flats and that it may be that the works to convert the flats were carried out prior to 1989/1990. However, Miss Stickler said that even if the works had been carried out before 1989 then he would still need an HMO licence for the properties at present.

74. Mr Khan has complained that Miss Stickler is not a chartered surveyor and does not have the relevant building knowledge, experience and skills regarding building control determination and compliance with Building Regulations and urges in his statement of 20th of May 2019 that Miss Stickler's evidence should be disregarded. He accuses the council of dealing with him in a cavalier fashion. Miss Stickler accepted that she is not a chartered surveyor but explained that she has been in post since 2009 and deals with HMO licensing matters every day and is familiar with them. She said that a lot of time and effort goes into identifying HMOs and there will be surveys undertaken to see if they can implement additional licensing schemes.

75. Miss Stickler further explained that when they are going to issue an HMO licence they give the landlord the opportunity to make representations and like to work with landlords. She pointed out that a 14 day consultation period is given to landlords to comment upon draft licences and although on other properties with Mr Khan, for example previously for 99 Mackintosh Place, they had offered to meet with him and a builder, he had come on his own and still appealed to the RPT. Miss Stickler said that on another one of the draft licences for Mr Khan there was the wrong number of occupants, but rather than discussing this with the Council to have it altered, he appealed to the RPT.

The Applicant's compliance with directions in these cases.

76. As seen earlier in this decision under procedural background, the Applicant did not comply with the orders in these cases and persisted in raising the inspection and disclosure points that had previously been dealt with and refused by the tribunal on this and previous cases.

Assessment of the Applicant's credibility.

77. The tribunal had the opportunity to listen to the Applicant at length and to assess his written and oral evidence and submissions and to consider how he dealt with Mr Grigg's cross-examination and the tribunal's questions.

78. In short, the tribunal found the Applicant's evidence to be untruthful, unreliable and wholly lacking in credibility in a number of respects as follows.
    i. 68 Paget Street. Mr Khan gave contradictory information during the course of the hearing, first describing the building as being divided into two apartments at the outset of the hearing and giving an entirely different description a couple of hours later. Under questioning he was unsure of the number of bathrooms and kitchens in the property and was unable to answer simple questions about this and who was living there. We bear in mind too, the Council Tax information about this address which does not record him as a liable party and the fact (which he appeared to have forgotten) that in a hearing on 30th April 2019 relating to 94 and 99 Mackintosh Place, that he told the tribunal that he did not live in the city of Cardiff but lived outside and that a correspondence address (Paget street) was different to a home address. The tribunal's lay member put it to him directly that, upon the evidence he did not live at 68 Paget Street. Whilst Mr Khan asserted that he did live there, we find it inconceivable that anyone would describe their residence as comprising two separate apartments if it does not. Likewise Mr Khan told this tribunal that he had lived there for the last three years yet clearly told another tribunal on 30th April that he did not live in the city and this was a correspondence address. These are irreconcilable statements. On the balance of probabilities we are not satisfied that Mr Khan lives there as he claims. We are satisfied that he was not being truthful about this.
    ii. Likewise when being questioned by Mr Grigg about 6, Cherry Orchard Road, Lisvane, Cardiff (for which he remains liable and responsible for Council tax), an address at which he accepted that he had lived, he was unable to say when he last lived there or for how long it had been empty, saying instead "at least three months". Notwithstanding that Mr Khan owns a number of properties, this had been his residence and it is simply not credible that an individual would not be able to provide this information. To be clear, the tribunal did not expect Mr Khan to provide an exact date, but the totality of his evidence on this issue was halting, general and evasive. As Mr Grigg observed in submissions, "he couldn't even answer where he lives". The tribunal had no doubt that Mr Khan's evidence on this issue was not truthful.
    iii. Mr Khan had at the hearing initially denied receiving an e mail from the tribunal dated 31st May 2019 sent at 12:01. The tribunal showed him the delivery receipt to his e mail address on the tribunal's original file. He then accepted that he had received it but during the course of the hearing he again gave contradictory information about when he had read it. The panel noted that his first instinct was to provide an untruthful response until confronted with evidence of that untruth.
    iv. The tribunal had sent a letter to both parties dated 7th May 2019 containing Mr Khan's application of 1st May 2019 and the tribunal's decision and directions order of 7th May 2019. The letter to Mr Khan, as is the tribunal's practice, was sent

recorded delivery with a traceable reference number. Mr Khan in evidence said that he had not received the covering letter and that "I had the directions but not the decision". This is simply not credible for two principal reasons. Firstly the directions and the decision were actually part of the same document, which made it clear that "*This order will not have been complied with unless Mr Khan ensures that he serves the Respondent with a copy of any relevant representations. E mail service upon the Respondent is permitted provided the tribunal are copied into this e mail."* It appears therefore that Mr Khan was again being untruthful. Secondly, the order/decision was definitely sent with the letter by tribunal staff. This was checked with the Tribunal's Business Manager and communicated to the parties during the hearing and offered to give evidence if required. Miss Stickler accepted that the Respondent had received both together and Mr Grigg described Mr Khan's claims on this point as 'not credible' and we agree with that description.

v. Mr Khan gave contradictory evidence about the e mails sent by Miss Stickler on 31st May at 14:06 and 16:34. He first stated that he had not received the 14:06 e mail at all and then said that he had received it attached to the second e mail of 16:34. Mr Khan clearly said at the hearing in the morning that "I read that at 16:30". Later on during the afternoon of the hearing, he was asked about the tribunal's e mail of 31st May sent at 12:01 (see iii. above), and he clearly said that he had an exam on 31st May 2019 and didn't see the 12:01 e mail until "the late evening" on Friday 31st May. He then said that he saw Miss Stickler's e mails of 31st May that same evening as well. Mr Khan provided the detail that he had an exam on that day and purported to check the same. His accounts are irreconcilable and again the tribunal had no doubt that he was not telling the truth.

vi. We reject Mr Khan's evidence that he had sent his statements by post to the Council without any covering letters. We prefer the evidence of Miss Stickler who explained the Council's processes and said that there is no problem with receiving documents from other landlords by post. Mr Grigg pointed out that there were four separate documents/statements that Mr Khan said that he had sent by post to the Council and none of them had arrived by post. Two had been provided by the tribunal and two had been provided to the Respondent for the first time today and it was not credible to say that all four had been lost in the post. We agree with Mr Grigg and find that on the balance of probabilities, Mr Khan did not post those statements to the Council at all and has deliberately given untruthful evidence to the tribunal about this.

The law.

79. As previously indicated the Residential Property Tribunal Procedures and fees (Wales) Regulations 2016 ("the Regulations") apply. Regulation 19, "**Failure to comply with an order to supply information and documents"** says as follows;

"*Where a party has failed to comply with an order made under regulation 18(1), (2) or (4) the tribunal may-*

(a) draw such inferences as it thinks fit: or

(b) make an order dismissing or allowing the whole or part of the application."

Regulation 41 is "**Frivolous and vexatious etc applications."**

(1) Subject to paragraph (2), where it appears to the tribunal that an application is-
(a) frivolous;
(b) vexatious; or
(c) an abuse of process,
The tribunal may dismiss the application in whole or in part.
(2) Subject to paragraph (6) where it appears to the tribunal that an applicant has failed to comply with a direction issued by the tribunal in connection with the supply or provision, disclosure or inspection of information or documents in connection with attendance at the tribunal, the tribunal may dismiss the application in whole or in part. .....
(5) An application may not be dismissed under paragraph (1) unless- .....
(b)where the applicants makes such a request, the tribunal has heard the applicant and the Respondent or such of them as attend the hearing, on the question of the dismissal of the application.
(6) The tribunal may not dismiss the whole or part of the application under paragraph (2) without first giving the applicant an opportunity to make representations in relation to the proposed dismissal.

Mr Khan's application to strike out the Respondent's case.

80. In the fourth application and statement of 4th of June 2019, Mr Khan submits that the Respondent failed to comply with the direction order of 7th May 2019 to file at the tribunal by no later than 12 noon on Friday 31st of May 2019 and serve on the applicant any representations upon the applicant's witness statement and application of 30 April 2019 and upon the question of whether or not the applications should be struck out (email service was specifically permitted). Mr Khan cited the BPP Holdings Limited v Revenue and Customs Commissioners [2017] UKSC 55, saying "*the Supreme Court confirmed in the BBP [sic]Holdings case, it is for the* ***public authority*** *to be a "****bastion of good conduct and behaviour"*** *which will avoid sanctions that tribunal's will have to impose for non-–compliance of rules, directions and orders. Cardiff council conduct has clearly fallen well below this standard again and it is paramount that an appropriate sanction is made to justify this breach."* He further added *"to put it simply in broad terms, the public authority Cardiff Council has taken it upon itself to brush over the* ***REAL reasons for default*** *without providing the appropriate evidence. There should be no relaxed approach to compliance in the tribunal's than in the higher courts.* ***As the Supreme Court noted in the BPP Holdings case, very few breaches will ever be excusable, and it is important that an appropriate sanction is imposed to avoid the party getting away with it."*** (Mr Khan's emphasis).

81. Mr Khan had also complained about the bundle of documents provided by the Respondent, saying that it contained large amounts of photocopied information without leading the tribunal or himself as a litigant in person to the relevant passages. He said that the Respondent's approach failed in its principal purpose to narrow down the issues before the substantive hearing and was unjust and prejudicial to him. He complained of the "unnecessary delay" caused by the Respondent's default and urged a punitive sanction for the Respondent's behaviour "*to avoid irreparable harm to the appellant*."

82. As mentioned earlier, because Mr Khan had not served this statement/application upon the Respondent, they had first seen it at the hearing. Nevertheless Mr Grigg was content to deal with it on the day.

83. It became apparent, as set out in the previous paragraphs, that the delay referred to by Mr Khan was the Respondent's failure to provide representations by 12 noon on 31 May 2019. As has been seen, in fact Miss Stickler sent an email to the tribunal and Mr Khan at 16:34 on 31 May containing representations. We have also noted how Mr Khan gave an inconsistent account of when he saw this email before settling upon the his position that he had had an exam during the afternoon of Friday 31st of May 2019 and had therefore not seen the emails until that evening. The tribunal explained this to Mr Khan and asked him to consider carefully whether or not he wished to continue with his application to strike out the Respondent's case on the basis of one email being sent four and a half hours after the tribunal deadline when, upon his own evidence, no prejudice had been caused to him as he would not have had the opportunity to see the email in any event until the evening.

84. Miss Stickler explained that she returned from leave on 28 May 2019 and only then became aware of the deadline of 31st May. She did not have a copy of Mr Khan's statement because it had not been sent to her and she needed to think of the implications and consult a manager and therefore did not send the representations email until 16:34 on 31st of May. Mr Khan insisted that he did wish to proceed with his application to strike out the Respondent although he accepted that Miss Stickler's "behaviour in those circumstances was not unreasonable". We duly heard from him on this issue when he repeated the representations made in the fourth application and, urged the tribunal to strike out the Respondent.

85. We reject Mr Khan's application to strike out the Respondent's case. Regrettably, our conclusion is that he made the application as a 'tit for tat' measure. With regard to his complaint that the Respondent provides a large number of documents without leading him to the relevant passages, Miss Stickler said that it is the Applicant's failure to set out or make his case that makes it very difficult to respond. Instead of complying with directions and setting out his case with evidence, Mr Khan makes the vague applications to the tribunal that have characterised these matters. This does not narrow down the issues as the Council do not know exactly what conditions he is objecting to in the HMO licences that have been granted to him. This makes a lot more work for the Council. We accept Miss Stickler's evidence upon this point. Mr Khan seemed unable to make the connection between his own failure to comply with directions and make a positive case, and the difficulties that this causes for the Respondents.

86. The tribunal are of the view that to pursue this application to strike out the Respondent's case, near the end of the hearing day in which he had given inconsistent and untruthful evidence was of itself unreasonable conduct and an abuse of the process of the tribunal. It was entirely misplaced and had no prospect of success. We find that the Respondent's short delay in sending the e mail to the tribunal and to Mr Khan was excusable in the circumstances and bear in mind that Mr Khan had defaulted in failing to send his

statement and representations to the Respondent. There was no prejudice to Mr Khan and his claim that the Respondent should be struck out to avoid '*irreparable harm to the appellant'* is exaggerated, baseless and nonsensical.

Submissions and determination on dismissal of the applications.

87. As noted above, Mr Khan interpreted the BPP Holdings case in a draconian fashion, urging strike out of the Respondent's case for a very minor failure to meet a deadline, apparently unaware of the numerous and more serious failings on his own part to comply with the directions orders in this case. In his 20th May 2019 representations against being struck out, he argued the disclosure point again, saying that he was still waiting for further information from the Council and complaining about the documents and the statements provided by the Respondent. He referred to the three stage test and the Mitchell/Denton principles (after the cases of Denton v TH White Limited [EWCA Civ 906] and Mitchell v New Group Newspapers Limited [2013] EWCA Civ 1537, although he did not properly cite them). These cases referred to the approach to be taken by the courts to the issue of relief from sanctions pursuant to the Civil Procedure Rules 3.9. which do not apply in the tribunal although the principles are to be accorded weight.

88. Mr Khan characterised the test as being firstly whether the default was serious or significant, secondly whether there was a good reason for it and thirdly to consider all of the circumstances of the case. Mr Khan said that he believed that at all material times he has complied with the directions in a timely manner, however he again said that he was waiting for further information to be provided to him from the Respondents who are persistently delaying him. He also relies again on the disclosure point in his submissions on all of the circumstances of the case and points out that he is a litigant in person.

89. Mr Grigg submitted that with regard to the Mitchell/Denton principles that Mr Khan had defaulted, he had not served the statements as ordered and he keeps making applications for the same things that have been previously turned down. With regard to disclosure, he does not say what he wants and cuts and pastes his applications. His behaviour throughout the case has been unreasonable, asking for adjournments and making applications to try and delay things and failing to comply with directions resulting in more work for the Council. Mr Grigg addressed Mr Khan's evidence to the tribunal during the hearing and throughout the process and described it as "not being credible in any way at all."

90. Mr Khan submitted that he had a serious issue that would succeed at trial and mentioned in his closing submissions about measurements and the incorrect calculation of room sizes. He had not mentioned this previously. He continued to complain about the Council's failure to disclose documents to him.

DECISION

91. This case relates to both the failure to comply with directions and to whether the applications are frivolous, vexatious and /or an abuse of process. Application has a dual meaning here. Under the Regulations, an "application" means an "application or appeal

to a tribunal under the Housing Act 2004" (regulation 2(b)) but a party may also request that the tribunal make directions orders and we are treating such requests too and describing them as an application. The tribunal accepts that Mr Khan's initial appeals to the tribunal to appeal against conditions in his HMO licences for the relevant properties were proper applications to make, but the issue now is whether the manner in which he has conducted the proceedings is such that the original applications (appeals against the conditions of the HMO licences) should be dismissed.

92. There is no doubt that Mr Khan has failed to comply with directions orders (as set out in the body of this decision) and that the tribunal has the power to dismiss his applications under regulation 19 as a result. With regard to the Denton/Mitchell principles and general three stage test, Mr Khan was incorrect in his assertion that he has complied with the directions orders as we have found. We also consider that the failure to comply with the directions order is serious and goes beyond the trivial. Mr Khan's appeals to this tribunal are couched in the vaguest of terms and when ordered to set his case out with evidence and submissions, he refuses to do so with any particularity or at all and instead responds with applications criticising the Council and its staff (in particular Miss Stickler) and repeatedly making the disclosure or expert witness points, despite the fact that these same points have been previously litigated and decided upon by the tribunal in this and other cases involving the same parties.

93. The making of repeated applications and refusal to set out and advance his case has the practical effect of frustrating the tribunal process, creating more work and expense for the Council and indeed the tribunal which, as part of its function, is obliged to deal with applications before it. The practical implication for the Council of having to provide their own bundle of documents and statements when they have not had Mr Khan's statement, is that they are obliged to spend a lot more time collating many more documents than may be required and dealing with matters in a general rather than focused fashion, through no fault of their own. This is not a trivial consequence of default- it is a drain on public money and resources and the repeated failure to comply with the directions orders is significant. In these cases the Council have prepared a bundle comprising two lever arch files of documents as well as representations and a statement from Miss Stickler dated 3rd May 2019. Mr Khan then complains that this bundle is not focused on the issues which of course he has failed to identify as ordered.

94. Is there a good reason for failing to comply? Mr Khan relies upon the Council having failed to deal with his generalised disclosure requests. This does not constitute a good reason on account of the following factors.
    i. Firstly, the disclosure requests to the Council and his applications to this tribunal citing the disclosure point are made in very general terms which do not relate to any specific issues identified in the appeals process. In common parlance, they are fishing expeditions (for example asking for all documents that the Council hold in relation to his properties) Mr Khan has been told this on a number of occasions and still does not further particularise disclosure requests or relate them to specific points in his appeals.
    ii. Secondly, Mr Khan has made general assertions about wanting to discuss 'Building Regulations regularisation' with the Council after his disclosure requests have

been dealt with. However it has previously been held by this tribunal and made clear to Mr Khan in paragraph 50 of the determination for the 152 and 154 Mackintosh Place cases (RPT/0015/10/17 and RPT/0016/11/17) cited above, that the tribunal has no power in any event to consider or order such matters, and whilst that decision is not binding upon us we see no reason to depart from it and we concur with it.

iii. Thirdly and in any event, if Mr Khan had complied with the directions and set out his case with sufficient particularity, he may have found that the Council's response would then contain the relevant documents. It is a feature of Mr Khan's approach that he complains about lack of disclosure before the Council supply him with their statements and documents in accordance with directions. The tribunal would expect litigants, including litigants in person, to then consider the statements and documents disclosed and, if there were relevant documentation missing, to make a tailored and specific application for the same, tied in to the points and issues that the individual litigant wishes to make. It is noteworthy that Mr Khan has not at any stage sought to do this and to consider the information and documentation with which he has been provided, save as to complain in vague terms that the information is too general.

95. The second question could be posed in the alternative way, namely was it possible for Mr Khan to comply with the directions orders? In our view it plainly was. Mr Khan has been informed upon a number of occasions that his time might be more profitably used by complying with the original directions orders. For example in the tribunal's decision and directions order of 7 May 2019 the final paragraph stated *"the applicant may wish to reflect that it is open to him to seek to comply with the existing directions orders (albeit late) and ask that the time for complying with the directions order be extended."* As has been seen, not only did Mr Khan ignore that suggestion, but he proceeded to make further applications to the tribunal after that date.

96. The third point on the Denton/Mitchell principles requires us to consider all of the circumstances of the case. We have set matters out in considerable detail so that the background on the progress of these cases can be seen, and both Mr Khan's applications and this tribunal's deliberations with regard to dismissal can be placed fairly into context. We have found that Mr Khan has made a number of applications in which he has repeated points already decided against him, that he has failed to comply with directions and that he has given wholly unreliable, untruthful and contradictory evidence to this tribunal. In our view, consideration of all of the circumstances of the case fortifies our decision that it is appropriate that the applications should be dismissed.

97. It is important to bear in mind that although we have described the background of the case, the dismissal for failure to comply with directions only relates to the failure to comply in the cases before this tribunal and not any previous failures. We are also to consider separately whether the applications should be dismissed as being frivolous, vexatious, or an abuse of process. Whilst Mr Khan was entitled to make his original appeals against the HMO licence conditions, the manner in which he has conducted the case and the four interlocutory applications he has made since have constituted frivolous and vexatious conduct and an abuse of the process of this tribunal.

98. As we have found, rather than comply with directions and set out his case, the applicant Mr Khan has chosen to make repeated applications to the tribunal, often appearing to copy and paste his previous statement/applications making points such as the expert witness point and disclosure point which have already been determined. We do consider that it is appropriate when deciding whether this conduct is vexatious or frivolous or an abuse of process, to also take into account applications and decisions on previous cases between the same parties before this tribunal. Indeed, we consider that it would be perverse if we were constrained from taking such previous findings and applications into account as they place his conduct into context.

99. In our view, particularly striking examples of frivolous and vexatious behaviour are;

    i. Despite attending at a lengthy tribunal hearing on 30 April 2019 in respect of other properties, Mr Khan apparently spent that evening preparing an application/statement in the current case raising precisely the same points that have previously been adjudicated upon against him and pursuing the expert and disclosure points.
    ii. Mr Khan informs us that he is studying on the Bar Vocational Course in London. Notwithstanding that we have treated him very much as a litigant in person, it is of considerable concern to this tribunal that someone following that path of study should appear before us and give such extensive and misleading evidence upon a variety of issues. We have very carefully considered whether Mr Khan could have made simple mistakes about the matters pertaining to his credibility and whether he ought to be given the benefit of the doubt and treated as an essentially honest but confused witness. However, the fact that he gave such obviously untruthful evidence upon a number of different topics, and the manner in which he gave his evidence led us to the inexorable conclusion that he was attempting to mislead this tribunal and was, as Mr Grigg suggested, wholly lacking in credibility. If a witness is unable to answer questions on what he claims is his home address on a consistent basis, any court or tribunal is fully entitled to find that witness to be unreliable. As a result little weight or reliance could be placed upon any factual assertions that he made.
    iii. Mr Khan's application to strike out the Respondent's case, for the reasons given in this determination, was itself vexatious, frivolous and an abuse of process.
    iv. Refusing to accept documents by e mail from the Council for no good reason and being untruthful about having served documents by post. Instructing occupants of 68 Paget Street not to accept documents delivered there.
    v. Continuing to use what he terms lack of disclosure of documents as an excuse to fail to advance his case when he has not set out the disclosure sought and has previously been told that the tribunal does not in any event have the power to order 'building regulations regularisation'.
    vi. Repeatedly seeking an order for a joint expert despite being told that the tribunal lacked the power to order the same and failing to instruct his own surveyor despite being advised that he was at liberty to do so.

100. We have also very carefully considered whether the applications should be dismissed because this would then deny Mr Khan the opportunity to continue his appeals against the HMO licence conditions. However we have taken this into account and balanced this against the fact that Mr Khan has been afforded every opportunity to advance his appeals in accordance with directions and he has chosen not to do so but instead to conduct himself in the manner that we have described. If he now loses the right to pursue his appeals, that is entirely a matter of his own making. Whilst the overriding objective of the tribunal and its regulations is to deal fairly and justly with applications that it is to determine, it is also the case that rule 3 (3) of the Regulations states that "*Parties **must**- (a) help the tribunal to give effect to the overriding objective and (b) co-operate with the tribunal generally."* Mr Khan has failed to do this in both respects.

Costs.

101. Mr Grigg submitted that Mr Khan had behaved unreasonably and that as this tribunal was dealing with three applications in relation to three separate properties then we had the power to make three different orders up to £500 each. Mr Grigg referred to the email sent by Miss Stickler at 16:34 on 31st of May 2019 which gave details of preparing the appeal statements and bundle at her cost of £20 per hour totalling £506.59. Mr Grigg is charged at the modest local authority rate of £100 per hour and had done more than 10 hours work upon this matter in addition to the hearing. Miss Stickler's costs above did not include other preparatory work and attendance at the hearing. The point had been made that the Council had to undertake more work and spend more time upon this matter because of the failure of Mr Khan to state his case as directed. Mr Khan resisted the application for costs saying that "I feel I've suffered injustice."

102. Regulation 34 relates to the tribunal's power to make a determination on costs under paragraph 12 of Schedule 13 to the 2004 Act, but must first give a party an opportunity of making representations to the tribunal. Mr Khan was given that opportunity and he made representations against the making of any costs order. Paragraph 12 of schedule 13 states;

12(1) a tribunal may determine that a party to proceedings before it is to pay the costs incurred by another party in connection with the proceedings in any circumstances falling within subparagraph (2).

(2) the circumstances are where –

(a) he has failed to comply with an order made by the tribunal;

(b) ..... the tribunal dismisses, or allows, the whole or part of an application or appeal by reason of his failure to comply with a requirement imposed by regulations made by virtue of paragraph 5;

(c) ..... the tribunal dismisses the whole or part of an application or appeal made by him to the tribunal; or,

(d) he has, in the opinion of the tribunal, acted frivolously, vexatiously, abusively, destructively or *otherwise unreasonably in connection with the proceedings.*

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph must not exceed –

a. £500.....

103. Has Mr Khan behaved unreasonably? In Halliard Property Company v Belmont Hall Court and Elm Court LRX/130/2007 HHJ Huskinson sitting in the Lands Tribunal considered the provisions of paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 whose words mirror 2(d) above, and the meaning of the words "otherwise unreasonably". He concluded that they should be construed "*ejusdem generis* [of the same kind] *with the words that have gone before. The words are "frivolously, vexatiously, abusively, disruptively or otherwise unreasonably". The word "otherwise" confirms that for the purposes of paragraph 10, behaviour which was frivolous or vexatious or abusive or disruptive would properly be described as unreasonable behaviour".* Further HHJ Huskinson went on to consider the words of Lord Bingham MR on the meaning of "unreasonable" in Ridehalgh v Horsfield [1994] 3 All ER 848. That was a case concerning a wasted costs order but Lord Bingham said that *"Unreasonable' also means what it has been understood to mean in this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner's judgement, but it is not unreasonable".*

104. We are satisfied upon the basis of the evidence that the Respondent has incurred considerably in excess of £1500 in costs in relation to the three cases before us, and we are satisfied that it is appropriate for a costs order to be made as Mr Khan has failed to comply with orders made by the tribunal, we have dismissed his applications and in our opinion he has acted frivolously, vexatiously and otherwise unreasonably in connection with the proceedings for the reasons we have set out above. Applying Lord Bingham's "acid test" formulation to Mr Khan's conduct of this case we have considered whether there is a reasonable explanation and we have concluded that there is not. Set against our finding that Mr Khan has been persistently untruthful to this tribunal there is no reasonable explanation for repeatedly making applications for directions that have previously been refused, for failing to serve documents on the Respondent, for refusing to use e mail and for seeking to mislead this tribunal by giving deliberately false evidence. All of these examples are designed to frustrate the Respondent, the tribunal and the resolution of the case

105. Mr Grigg urges us to make in effect three orders for £500 each to reflect the three cases. Do we have the power to do this? We note that paragraph 12 of Schedule 13 set out above refers to both "*the proceedings*" and dismissal of "*an application*". Under the Regulations, as we have seen, an application means an application or appeal to a tribunal under the 2004 Act. Section 230 of the Housing Act 2004 relates to the powers and procedure of residential property tribunals in Wales and section 230(2) says *"The tribunal's general power is a power by order to give such directions as the tribunal considers necessary or desirable for securing the just, expeditious and economical disposal of the proceedings or any issue raised in or in connection with them."*

106. Part 3 of Schedule 5 to the Housing Act 2004 deals with appeals against licensing decisions. Under paragraph 31 (1) it is clear that the applicant may appeal to the tribunal against a decision "by the local housing authority on an application for a licence" and where granted then under 31(1)(b) the appeal may "relate to any of the terms of the licence." Paragraph 34 applies to appeals to the tribunal under paragraph 31 and refers to the tribunal's powers on appeal to confirm, reverse or vary the decision of the local housing authority or to grant a licence on such terms as the tribunal may direct. The emphasis here is on the individual appeal against a particular licence.

107. To what then does the term 'proceedings' relate? Is it only the final hearing, or is it wider and does it cover the conduct of the individual case itself as well as the hearing? We are of the opinion that 'the proceedings' is a term that means the individual case issued at the tribunal and the administrative and judicial progress of that case, to encompass the receipt of the appeal by the tribunal and all of the steps taken after that to prepare the matter for a final hearing, as well as the final hearing itself. The fact that paragraph 12 of Schedule 13 allows an order to be made "in connection with the proceedings" in a variety of circumstances including the failure to comply with an order made by the tribunal as well as the dismissal of the whole or part of an application by reason of a failure to comply clearly demonstrates that a costs order can be made for conduct prior to the final hearing itself. Further since paragraph 12 (2) (b) and (c) refer to the dismissal of the whole or part of **an application**, it is clear that the term 'proceedings' in effect encompasses and includes the individual application. 'Proceedings' reflects a process that more than one party are engaged in, whereas the application will have been made by one party, the applicant (or applicants where appropriate).

108. In this decision we are dealing with the applications that relate to three separate properties, three separate licences and sets of conditions, and three separate appeals. Earlier in this process, by a directions order dated 8 March 2019 the tribunal ordered that the cases for numbers 3, 73 and 93 Claude Road were to be heard together. Mr Khan had wanted each case to be heard separately and in his first application of 26 March 2019 applied to vary the directions to deal with each property separately saying "*the size of each property is different and thus raise different issues. Furthermore, as each property is large converted building it will take a substantial time to visit each property. It would take a long time to carry out site inspection of all three properties, as well as causing confusion if they were dealt with together."* Whilst that particular application was refused, it is indisputable that there were three different cases before this tribunal relating to the three different properties and licences and as reflected by the tribunal opening three separate files with different case numbers.

109. In the circumstances (notwithstanding that the cases were intended to be heard at the same time and the directions orders for them were consolidated) we are satisfied that there were three separate applications or proceedings that required discrete and different work by the Respondent, incurring costs before the hearing date, in respect of each application. We determine that we do have the power to award up to £500 in costs in relation to each application. We consider that we would have had the power to order up to £500 on each application had they been dismissed after considering written

representations but without an oral hearing, and it would be perverse and inconsistent if the same could not be done following an oral hearing in these circumstances. Since we are satisfied that costs of more than £500 have been incurred by the Respondent on each application we make an order that Mr Khan is to pay to the Respondent £500 on each application, a total of £1500 within 21 days of the date of this decision.

CONCLUSION.

110. The Applicant's appeals against the HMO licence conditions for 3, 73 and 93 Claude Road are dismissed. The Applicant is ordered to pay £500 costs in respect of each application to the Respondent within 21 days of the date of this decision.

DATED: 10th December 2019

Richard Payne
CHAIRMAN