

**Jonathan Manning and Alexander Campbell, barristers at Arden Chambers
who appeared for the claimant, consider the recent decision in *R (Gaskin) v
Richmond Upon Thames***

**The Queen on the application of Mr Peter Gaskin v Richmond Upon Thames
LBC and another
[2017] EWHC 3234 (Admin)
Bean LJ, Carr J
December 11, 2017**

The Administrative Court has held that local authorities when renewing HMO licences under Part 2, Housing Act 2004, are not entitled to demand information from landlords other than that specified by the Secretary of State in the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 (the “2006 Regulations”) as amended. The regulations specify the information that is to be provided and do not merely set minimum requirements.

HMO licence renewals: information to be provided

Part 2 of the Housing Act 2004 (the “2004 Act”) makes provision for houses in multiple occupation (HMOs) to be licensed by local authorities. Section 63(2) provides that an application for a licence must be made in accordance with such requirements as the authority may specify. An authority’s power to specify requirements is, however, “subject to” any regulations made by the Secretary of State (s.63(4)).

The Secretary of State’s power to make Regulations includes power, in particular, to specify the manner and form in which applications are to be made and “specify the information which is to be supplied in connection with applications” (s.63(5) and 63(6)(a), (c)).

By reg.7 of the 2006 Regulations, applications for licences must include the information listed at Sch.2 to the Regulations. As originally drafted, the information specified was identical whether the application was a first or a renewal application.

The 2006 Regulations were amended by the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (Amendment) (England) Regulations 2012 (the “2012 Regulations”). The amendment limited the paragraphs of Sch.2 applicable to a renewal application, thus reducing the amount of

information required to be provided by landlords seeking to renew their licences. In particular, the amendment removed the requirement to state the number of occupants in the building. The explanatory memorandum to the 2012 Regulations, and attached impact assessment, stated that the amendment was intended to reduce the regulatory burden on landlords and authorities and hopefully also the cost of renewing a licence.

HMO licence applications: fees

By section 63(3), (7), 2004 Act, the authority may require a licence application to be accompanied by a fee fixed by the authority. When fixing the level of the fee, the authority may take into account the costs incurred in carrying out their functions under Pt 2 (and Pt 4, Ch.1), 2004 Act.

HMOs: criminal offences

By s.72, 2004 Act, it is a criminal offence to operate a licensable HMO without a licence.

Facts

G owned and operated an HMO. In 2009 the authority granted him a five-year HMO licence. In 2013, they varied his licence, at his request, to increase the maximum number of occupants of the building. They did not ask for the details of the occupiers. In 2014, G applied to renew his licence. The authority required him

- (a) to provide names and other details of the occupiers of each room and
- (b) to pay a fee of £1,799 (calculated on £257 for each of the seven units of accommodation in the building).

G refused to provide the information, arguing that the 2012 Regulations rendered it unlawful to ask for it. He also refused to pay the fee which he believed to be excessive given that the authority could not explain its basis to his satisfaction. He paid £850.

The authority refused to process G's application without the information and the fee, and returned the £850 to him. They then commenced a prosecution against him for operating a licensable HMO without a licence, contrary to s.72, 2004 Act.

The Magistrates' Court refused to entertain G's public law defences as to the information and fee, stating that he could only raise them on judicial review. Rather than appeal, G issued a judicial review claim and stayed the prosecution.

The Court's Decision

The Administrative Court allowed G's claim in part. The authority had not been entitled, on a renewal application, to require information not specified in the 2006 Regulations as amended by the 2012 Regulations. Section 63(6), 2004 Act, empowers the Secretary of State to specify *the information* to be provided in connection with an application, not just to specify information. The use of the definite article showed that the list of information at Sch.2 to the 2006 Regulations is exhaustive and not, as the authority contended, a minimum requirement that they were entitled to supplement.

The authority had, however, been entitled to demand its fee. Although G had filed evidence supporting his argument from a former senior local government officer who had helped DCLG to introduce HMO licensing, and although the authority's HMO licensing accounts contained substantial reserves increasing over a number of years, G had still not cast an evidential burden on to the authority to explain the basis on which its fee had been established.

Despite, therefore, the authority having filed no evidence at all to explain the fee or the account balances, and having given no more than a rudimentary explanation in its pleaded grounds of resistance, G had not proved that the level of fee was unlawful n domestic law. Nor does the 2004 Act require a renewal fee to be lower than a fee on a first application even if renewals may take less time to process.

Hemming

The court did not deal with the issue raised in the claim that the fee was unlawful under EU law. G's argument is that operating an HMO constitutes the provision of a service for the purposes of the Provision of Services Regulations 2009 (which translate into domestic law EU Directive 2006/123/EC). He argues that in the light of the CJEU decision in *R (Hemming t/a Simply Pleasure) v Westminster CC* (C-316/15) [2017] 3 WLR 317) it was unlawful to charge an upfront application fee covering not just the costs of processing the application but the general costs of running the scheme. The Court decided to deal with this issue at a subsequent hearing if G wishes to pursue it.