

Powers setting selective licencing requirements for landlords (Brown v Hyndburn Borough Council)

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Local Government analysis: Adam Heppinstall, barrister at Henderson Chambers (London) considers a recent Court of Appeal decision relating to the use of conditions attached to landlord licences issued by local authorities under the Housing Act 2004 (HA 2004). A number of landlords appealed local authority-derived provisions requiring landlords to provide and maintain carbon monoxide detectors and to ensure that the premises are covered by an electrical installation condition report (EICR). The Court of Appeal has removed the conditions after they were reinstated by the Upper Tribunal (UT).

What are the practical implications of this case?

The Court of Appeal has given guidance on the use of conditions attached to landlord licences issued by local authorities under the selective licensing regime in place under [HA 2004](#). The Court has made it clear that conditions imposed on such licences for 'regulating the management, use or occupation of the house concerned' cannot include conditions relating to 'facilities and equipment' in the house. Conditions relating to those matters can only be imposed for the purposes of meeting standards which have yet to be prescribed in secondary legislation.

The case calls on local authorities to think very carefully about the purpose and content of any conditions they are considering imposing on landlords under the selective licensing regime. The power to impose conditions 'regulating the management, use or occupation of the house concerned' cannot be used as an aid to enforcing the [HA 2004, Pt 1](#), Housing Health and Safety Rating System (HHSRS).

As [HA 2004, s 90\(5\)](#) makes clear, and the Court of Appeal highlights this, conditions can be used to the same effect as enforcement powers under the HHSRS system, but those conditions cannot be conditions aimed at 'regulating the management, use or occupation of the house concerned'. Instead they must be conditions relating to 'facilities and equipment' which cannot yet be imposed because we are still awaiting the necessary secondary legislation.

Therefore currently, conditions must either be strictly related to 'regulating the management, use or occupation of the house concerned' or be those which are mandatory under [HA 2004, Sch 4](#), or be otherwise permitted under [HA 2004, s 90\(2\)](#) (which relates to use or occupation of particular parts of a house or which are steps taken to prevent or reduce anti-social behaviour).

What was the background?

It would appear that Hyndburn Borough Council, in common with many other local authorities, have been using the [HA 2004, s 90](#) condition setting powers to require landlords to provide, maintain and make tenants aware of carbon monoxide detectors. Further they were used to try to ensure that the premises are covered by a EICR report (and to take action to deal with any issues covered by that report within a certain time period).

The landlord in this case, Mr Paul Brown, appealed those conditions to the First-tier Tribunal (FTT) seemingly on behalf of 346 other landlords who had similar conditions imposed on their licences by this council. The FTT set aside the EICR condition and replaced the carbon monoxide condition with one which only required the landlord to produce written confirmation as to whether it or the tenant was responsible for maintaining it (ie limiting the condition to management of the house). The UT set that decision aside and restored the conditions finding that they were consistent with the management of the house in general terms.

The UT (HHJ Butler) found that 'whatever can properly be regarded as concomitant with the proper and safe management of a house by a landlord falls within the ambit of what the local housing authority can condition when deciding whether to regulate that management by imposing any discretionary conditions additional to those mandated by Parliament.'

What did the court decide?

The Court of Appeal (leading judgment given by Hildyard J, with whom Underhill and King LJ agreed) disagreed with the UT and restored the position to that before the FTT. This decision is not surprising. [HA 2004, s 90](#) clearly limits conditions relating to 'facilities and equipment' so that they can only be imposed 'for the purpose of meeting standards prescribed for the purposes of this section by regulations made by the appropriate national authority' which have not yet

been made. That express limitation, set down by Parliament, would make little sense if facilities and equipment conditions could be made under the regulating management, use or occupation condition setting power.

The confusion may have been caused by [HA 2004, s 67](#), which relates to the conditions which can be imposed in house in multiple occupation (HMO) licensing cases and which does permit conditions to be made generally relating to the 'condition and contents' of the HMO as well as 'management, use and occupation.' Underhill LJ, in particular, also noted that landlord licensing (as opposed to HMO licensing) under [HA 2004](#), was for the purpose of combating low housing demand or anti-social behaviour and not for any wider purpose, such as improving safety, which is covered by the separate HHSRS scheme under [HA 2004, Pt 1](#). He also noted that the Court's interpretation of [HA 2004](#) was consistent with guidance issued by the Department for Communities and Local Government in January 2010.

Underhill LJ also noted the Smoke and Carbon Monoxide Alarm (England) Regulations 2015, [SI 2015/1693](#), do now (but not at the material time) require a [HA 2004, Sch 4](#) condition to be attached to all such licences requiring a carbon monoxide alarm to be installed in any room used as living accommodation which contains a solid fuel burning appliance.

Local authorities, while they wait for the national authorities to enact regulations relating to 'facilities and equipment' conditions, must ensure that any conditions they do set are either mandatory under Schedule 4 or are properly 'for regulating the management, use or occupation of the house concerned' or otherwise permitted under [HA 2004, s 90\(2\)](#) (with which this appeal was not concerned.)

Case details

Court: Court of Appeal, Civil Division

Judge: Underhill, King LJ and Hildyard J

Date of judgment: 21 February 2018

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