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Case Nos: CO/5141/2017 & CO/1068/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/05/2020

Before :

LORD JUSTICE DINGEMANS
and
MRS JUSTICE ELISABETH LAING

- -

Between :

CO/5141/2017	**Regina** **on the application of** **(1) Mohamed Lahrie Mohamed &** **(2) Shehara Lahrie**	**Claimants**
	- and -	
	Mayor and Burgesses of the London Borough of Waltham Forest	**Defendant**
	- and -	
	Secretary of State for Housing, Communities and Local Government	**Intervener**
	And between:-	
CO/1068/2019	**Regina** **on the application of** **(1) Mohamed Lahrie Mohamed &** **(2) Shehara Lahrie**	**Claimants**
	- and -	
	Wimbledon Magistrates' Court	**Defendant**
	- and -	
	(1) Mayor and Burgesses of the London Borough of Waltham Forest **(2) Station Estates Limited** **(3) Thames Magistrates' Court**	**Interested Parties**
	- and -	
	Secretary of State for Housing, Communities and Local Government	**Intervener**

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Imran Khan QC and Paul O'Donnell (instructed by **Imran Khan and Partners Solicitors**) for the **Claimants**
Ashley Underwood QC and Dean Underwood (instructed by **Sharpe Pritchard LLP**) for the **Defendant and the First Interested Party**
Andrew Byass (instructed by **Government Legal Department**) for the **Intervener**

Hearing dates: 22 April 2020
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Approved Judgment

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 10.30 on Thursday, 7 May 2020.

Lord Justice Dingemans :

Introduction

1. This is the judgment of the Court, to which we have both contributed. These claims for judicial review raise, among other issues, an issue about the mental elements of the offence of having control of or managing a house in multiple occupation ("HMO") which is required to be licensed but which is not so licensed, contrary to section 72(1) of the Housing Act 2004 ("the 2004 Act").

2. The Claimants in both actions, Mohamed Lahrie Mohamed and Shehara Lahrie ("Mr Mohamed and Ms Lahrie"), are husband and wife and directors of property companies operating, and owners of property, in the London Borough of Waltham Forest. The Mayor and Burgesses of the London Borough of Waltham Forest ("the council") are the local housing authority for the London Borough of Waltham Forest and responsible for, among other matters, the prosecution of offences under the 2004 Act relating to HMO's.

3. Summonses alleging offences against Mr Mohamed and Ms Lahrie were issued in the Thames' Magistrates Court, and proceedings were later transferred to Wimbledon Magistrates' Court, which explains why both of the Courts are named in the proceedings. Neither Court has been represented or taken any part in the proceedings before us. The Secretary of State for Housing, Communities and Local Government ("the Secretary of State") appeared as an intervener to make submissions about section 72(1) of the 2004 Act.

The facts

4. On 6 January 2017 the council laid informations before Thames Magistrates' Court alleging section 72(1) offences in relation to several properties owned by Mr Mohamed and Ms Lahrie. The informations consisted of a schedule of offences. The Magistrates' Court, acting by the Legal Team Manager using delegated powers under rule 5 of the Justices Clerks Rules 2005, granted the summonses on 6 January 2017 and issued them to the council on 9 January 2017.

5. There was correspondence between Mr Mohamed and Ms Lahrie and the council, although we have not been provided with copies of all of the correspondence. On 13 June 2017, Mr Beach, Head of Selective Licensing and Regulation of the council, wrote to Mr Mohamed. He referred to a recent audit inspection of 24 Eastfield Road ('the property'). This had been done to check the property, which was the subject of a current application for a selective licence under Part 3 of the 2004 Act. The inspection had revealed that the property was 'currently let out to multiple unrelated adults or households' and was therefore a HMO. The letter told Mr Mohamed that the property must have a mandatory HMO licence. The council said that an urgent application had to be submitted. The legal obligation to do this rested with both the owner of the property and any agent who received rent from tenants in the property. The letter stated that Mr Mohamed had 'demonstrable prior knowledge of mandatory HMO licensing provisions, being associated with several HMO licence applications over a number of years'. The letter noted that investigations would continue and a prosecution might follow, even if there was an application for a licence. It was noted that on conviction a

person was liable to an unlimited fine, or the Council might impose a financial penalty of up to £30,000. Mr Beach asked for an urgent response.

6. On 7 July 2017, Cavendish Legal ("Cavendish"), who were then representing Mr Mohamed in the criminal proceedings, wrote to Mr Beach replying to two letters which are not before us. It appears from the text of this letter that Mr Beach had sent Cavendish a redacted application for an HMO licence for the property. Cavendish made complaints that the council was not following its own prosecution policy, repeated requests to be given the evidence on which the council relied, and asserted that the council was not treating Mr Mohamed as 'innocent until proven guilty' by assuming that he was in control of and/or managing an HMO which was not licensed and that it was for him to show that he had reasonable excuse for failing to license the property. Cavendish said it was wrong to assert that Mr Mohamed was an experienced HMO landlord as he was an experienced landlord but 'specifically and deliberately avoids letting properties as HMOs'. The copy of the licence application was consistent with the letting of the property to, and its continued occupation by, a single household. Cavendish stated that Mr Mohamed was not obliged 'to continuously monitor and police his tenants' occupation of' the property.

7. The letter went on to refer to many other properties which Mr Mohamed owned and operated in partnership with his wife Ms Lahrie. Cavendish said that Mr Mohamed and Ms Lahrie also owned a company, LMSL Limited, which owned 'a number of other properties' in Waltham Forest. Mr Mohamed and Ms Lahrie were experienced landlords, but they were also responsible landlords. The property and another property at 57 Oakdale were 'simply the two most recent examples of properties which our clients have let in good faith to single households, having discharged their extensive statutory duties as landlords on letting and with covenants intended to ensure that the occupancy remains that of single households, but which the council upon later inspection, has asserted or found to be being occupied as HMOs'. Cavendish asserted that the Council should instead work with Mr Mohamed and Ms Lahrie to enforce the covenants in the leases. Cavendish repeated demands that the council should undertake not to prosecute Mr Mohamed and Ms Lahrie. Cavendish threatened to apply to bring proceedings for judicial review.

8. It appears that by letter dated 21 July 2017, Mr Beach of the council indicated an intention to invite Mr Mohamed and Ms Lahrie to an interview under caution in respect of an offence under the 2004 Act. By letter dated 9 August 2017 Mr Beach said he was writing further to an earlier letter, in which he had advised that Mr Mohamed would be given the opportunity to attend a formal interview under caution in relation to the failure to license the property under Part 2 of the 2004 Act. He invited Mr Mohamed to an interview on 25 August 2017. He confirmed that 'the purpose of the interview is to obtain information formally, to consider any defence and to give you the opportunity for comments to be made in respect of … A failure to licence the above property as a 'mandatory HMO' in accordance with the provisions of part 2 of the Housing Act 2004'. Mr Beach said that Mr Mohamed was entitled to be legally represented at the interview, and that it would be conducted in accordance with the provisions of the Police and Criminal Evidence Act 1984, using tape recording equipment. The letter continued that if Mr Mohamed declined 'the opportunity of stating [his] case, the matter may be referred for legal proceedings without further notification', or the council might issue a financial penalty of up to £30,000.

9. Imran Khan & Partners Solicitors ('IKP') responded on 24 August 2017 with a pre-action protocol letter, threatening an application for judicial review to challenge the decision to invite Mr Mohamed to a formal interview under caution. This letter asserted that the council appeared, in the letter dated 13 June 2017, to have assumed that Mr Mohamed was criminally liable without approaching him to find out if he knew what was going on, 'contrary to the express terms of the tenancy agreement'. It was asserted that such an approach could not be right. It would allow the council to prosecute any landlord whose property was being unlawfully sub-let without the knowledge of the landlord, and it was said that Mr Mohamed and Ms Lahrie had already made clear that they did not know that the property was being occupied as an HMO. It was said that it was clear from the invitation to the interview that the Council was treating the section 72(1) offence as an offence of strict liability which it was said was wrong. The letter raised the issues of the elements of the offence of section 72(1) of the 2004 Act.

10. Proceedings for judicial review, CO/5141/2017, were brought challenging the decision by the council to invite Mr Mohamed and Ms Lahrie to be interviewed and seeking a declaration of the Court "as to the mens rea required of an offence under section 72(1)" of the 2004 Act. No further progress was made with the criminal proceedings in the Magistrates' Court.

11. A separate claim for judicial review had been made by IKP on behalf of Mr Mohamed and Ms Lahrie in June 2017. This appears to have been a challenge to the decision to issue the summonses in January 2017, but by the time the claim was issued it was out of time. Permission to apply was refused on the papers and at a renewed oral hearing. There was an unsuccessful attempt to seek permission to appeal to the Court of Appeal, which lacked jurisdiction to hear any appeal because the proceedings related to a criminal cause or matter. In the meantime the application for permission to apply for judicial review in CO/5141/2017 appears to have been overlooked until the papers were referred to Supperstone J. and permission to apply for judicial review was granted on 20 December 2019.

12. The criminal proceedings in the Magistrates' Court recommenced. After the criminal proceedings restarted there was an application to transfer the proceedings to another Magistrates' Court because it was contended that the Legal Team Manager who had issued the summonses was well known to the Magistrates. It was not apparent from the information before us why that fact necessitated a transfer of proceedings but in any event the proceedings were transferred from the Thames Magistrates Court to Wimbledon Magistrates Court.

13. A preliminary issue was heard before District Judge (Magistrates' Court) Sweet ("the judge") about whether the summonses were lawfully issued. It was contended on behalf of Mr Mohamed and Ms Lahrie that there was insufficient information to justify the issue of the summonses, and it was said that if sufficient information had been provided it would have been seen that the informations and summonses were out of time. On 12 January 2019 the judge delivered a written judgment and held that the summonses were lawfully issued. He held that even if there had been a failure to provide sufficient information the criminal proceedings would not have been a nullity, and that the summonses were in time because the offence under section 72(1) of the 2004 Act was a continuing offence being committed each day the person who has control of or who is managing the HMO does not have the licence.

14. Mr Mohamed and Ms Lahrie applied in claim CO/1068/2019 for judicial review of the judge's decision, seeking an order quashing the decision. The grounds of the claim were that the summonses were not lawfully issued and in any event were out of time. At the hearing of a renewed application for permission to apply for judicial review on 4 September 2019 Supperstone J. gave permission to apply for judicial review on two grounds: (1) the summonses were not lawfully issued and (2) the summonses were out of time.

Issues

15. We are very grateful to Mr Imran Khan QC and Mr Paul O'Donnell on behalf of Mr Mohamed and Ms Lahrie, Mr Ashley Underwood QC and Mr Dean Underwood on behalf of the Council, and Mr Andrew Byass for Secretary of State, and their respective legal teams, for their helpful written and oral submissions.

16. By the conclusion of the oral hearing it was apparent that the issues for the Court were: (1) whether sufficient information was provided by the council to Thames Magistrates' Court to justify the issue of the summonses against Mr Mohamed and Ms Lahrie and, if not, whether the summons should be quashed; (2) what are the mental elements of the offence of managing or controlling an unlicensed HMO contrary to section 72(1) of the 2004 Act; and (3) whether the informations against Mr Mohamed and Ms Lahrie were in time.

Whether sufficient information was provided to Thames Magistrates' Court (issue one)

17. We deal first with the issue whether sufficient information was provided by the council to Thames Magistrates' Court and, if sufficient information was not provided, whether the summonses ought to be quashed.

Relevant statutory provisions in the Magistrates' Court Act 1980, the Magistrates Court Rules, and the Criminal Procedure Rules

18. Section 1 of the Magistrates' Court Act 1980 provides a power to issue a summons when an information is laid before a Justice of the Peace showing that a person 'has, or is suspected of having, committed an offence'. The summons is directed to that person, requiring him to appear before the Magistrates' Court to answer the information.

19. Rule 100(1) of the Magistrates' Court Rules 1981 provides that every information laid for the purposes of or in connection with any proceedings before the Magistrates' Court for an offence is sufficient if it describes the offence with which the accused is charge in ordinary language 'avoiding as far as possible the use of technical terms and without necessarily stating all the elements of the offence' and 'gives such particulars as may be necessary for giving reasonable information of the nature of the charge'.

20. The Criminal Procedure Rules 2015 are also relevant. Part 7 of the Criminal Procedure Rules 2015 ('the Rules') is headed 'Starting a prosecution in a magistrates' court'. Part 7 applies when a prosecutor wants the court to issue a summons under section 1 of the MCA (rule 7.1(1)). A prosecutor must serve a written information on the court officer (rule 7.2(2)). That must be done 'not more than 6 months after the offence alleged' (rule 7.2(5)). An allegation of an offence in an information must: contain a statement of the

offence that describes the offence in ordinary language; identify the legislation which creates it; and contain such particulars of the conduct constituting the commission of the offence as to make clear what the prosecution alleges against the defendant (rule 7.3(1)). The Magistrates' Court may issue a summons without giving the parties an opportunity to make representations and without a hearing (rule 7.4(1)).

21. It might be noted that Rules 7.2, 7.3 and 7.4 of the Criminal Procedure Rules have been amended since the informations in this case were sent to the Thames Magistrates' Court. Private prosecutors who are not represented by legal representatives and who are not local authorities have obligations to provide further information. The judge at the hearing of the preliminary issue in this case was inadvertently referred to the current Criminal Procedure Rules rather than those applicable at the relevant time that the decision to issue the summonses was made. It was common ground that, although referred to by the judge, the relevant changes to the rules were not material to the decision made by the judge. This was because the material provisions of the Magistrates' Court Rules and rule 7.3 of the Criminal Procedure Rules were the same.

Relevant legal principles relating to the sufficiency of information and the effect of providing insufficient information

22. The issuing of a summons by a Magistrates' Court has been considered in a number of authorities. In *R v West London Metropolitan Stipendiary Magistrate ex parte Klahn* [1979] 1 WLR 933 at 935H Lord Widgery CJ noted that "the duty of a magistrate in considering an application for the issue of a summons is to exercise a judicial discretion in deciding whether or not to issue a summons". In *R(DPP) v Sunderland Magistrates' Court* [2014] EWHC 613 (Admin) the importance of carrying out a review of what was supplied to the magistrate by the prosecutor was highlighted. At paragraph 23 it was said that "no summons may be issued `on the nod' nor in reliance of an irrelevant fact … the issuing magistrate must be scrupulous to ensure all elements of the offence are established". In that case it appears that a threat of judicial review had been taken into account when deciding whether to issue a summons and in any event the information in that case did not disclose all elements of the offence of misconduct in public office and it was quashed. In *R(Kay) v Leeds Magistrates' Court* [2018] EWHC 1233 (Admin); [2018] 4 WLR 91 the Court emphasised the duty of candour on prosecutors when they apply ex parte for the issue of a summons. It was noted that when issuing a summons "the magistrate must ascertain whether the allegation is an offence known to the law, and if so whether the essential ingredients of the offence are prima facie present; that the offence alleged is not time-barred; that the court has jurisdiction; and whether the informant has the necessary authority to prosecute". In *Johnson v Westminster Magistrates' Court* [2019] EWHC 1709 (Admin); [2019] 1 WLR 6238 the court emphasised the need for the magistrate to consider the factors set out in *Kay v Leeds Magistrates' Court*.

23. It is right to note that where summonses have been issued and there is insufficient information to show that the elements of the offence might be proved the summonses have been quashed. *Johnson v Westminster Magistrates' Court* was an example of such a case. In *Nash v Birmingham Crown Court* [2005] EWHC 338 (Admin); (2005) 169 JP 157 the appellant was prosecuted in the Magistrates' Court for causing unnecessary suffering to 75 cats, convicted, appealed to the Crown Court and the appeal was dismissed. On an appeal by way of case stated complaint was made that the information provided to the Magistrates to justify the issue of the summons was insufficient and the

Crown Court asked whether there was reasonable information about the charge and if not whether the proceedings were a nullity. In that case the information and summons were held to be defective because insufficient particulars had been provided of the nature of the charge because the information and summons did not specify the way in which unnecessary suffering had been caused to the cats, for example whether there was a lack of space, or whether the premises were not sufficiently clean, see paragraph 22 of the judgment. Particulars were later provided in the course of the proceedings. The Court held that the failure to provide sufficient particulars in the information "of itself did not render the proceedings a nullity or any resulting conviction unsafe, provided that the requisite information was given to the appellant in good time for her to be able fairly to meet the case against her".

24. In our judgment if, in breach of the Magistrates' Court Act 1980, the Magistrates Court Rules and the Criminal Procedure Rules, insufficient information has been provided by a prosecutor to a magistrate to justify the issue of a summons, but a summons has in fact been issued, the subsequent criminal proceedings do not become a nullity. This is because, as was decided in *Nash v Birmingham Crown Court* the subsequent provision of sufficient information may remedy the earlier deficiency of information so that the criminal proceedings are fair. It is also apparent however that if sufficient information could never be provided to the magistrate the Court may quash the decision to issue a summons based on the insufficient information, see *Johnson v Westminster Magistrates' Court*.

The information and summons in this case

25. The information sent on 6 January 2017 to Thames Magistrates Court in this case consisted of a schedule which, subject to changes for different properties and dates, was in the following terms: "On 7 July 2016 you did manage or have control of the property at 24 Eastfield Road, London E17 3BA which was required to be licensed under Part 2 of the Housing Act 2004 but which was not so licensed CONTRARY TO section 72(1) of the Housing Act 2004".

26. As Mr Khan emphasised no further information was provided by the council to the magistrates and on 9 January 2017 Thames Magistrates Court emailed the summonses saying that they were "granted and ready for you to issue". Mr Underwood noted that further information and evidence was subsequently provided in the course of the prosecution.

Sufficient information

27. We are satisfied that the council provided sufficient information in this case to justify the issue of summonses by Thames' Magistrates Court. This is because the schedule described the offence charged in ordinary language and gave such particulars as were necessary to give reasonable information of the nature of the charge. There was a statement of the offence which was managing or controlling 24 Eastfield which was required to be licensed under Part 2 of the Housing Act 2004 but which was not so licensed. This statement was in ordinary language and identified the relevant legislation which created the offence. The description of the conduct made it clear what was alleged, namely that Mr Mohamed in that particular case managed or controlled the property which was required to be licensed but which was not. The effect of Mr Khan's submissions tended to confirm what the correspondence between Cavendish and the

council suggested, namely that Mr Mohamed's real complaint was that the council had not, at that stage, disclosed the evidence on which the summonses were based, because of the references in the submissions about showing what was required to prove the offences.

28. We can confirm that if we had found that the information provided was insufficient to justify the issue of the summonses, then we would not have quashed the decision to issue the summonses. This is because further information has been provided to Mr Mohamed and Ms Lahrie in the course of the criminal proceedings in the Magistrates' Court. This means that the criminal proceedings can be fairly determined.

Elements of the offence under section 72(1) of the 2004 Act (issue two)

29. We turn then to consider the submission made on behalf of Mr Mohamed and Ms Lahrie that the offence under section 72(1) required "mens rea". We were referred to numerous authorities on the approach to be taken by a court in deciding whether an offence was one requiring "mens rea" or was an offence of strict liability, but it was not until the oral submissions that any detail about what it was said needed to be known by the defendant to prove the offence under section 72(1) of the 2004 Act was given. We will set out the relevant statutory provisions and authorities before addressing the elements of the offence under section 72(1) of the 2004 Act.

The 2004 Act

30. The 2004 Act was preceded by a consultation paper in April 1999 and a Green Paper in April 2000. The consultation paper described the health and safety concerns caused by HMOs and proposed the creation of a regime for licensing them. The view of the Government was that such a regime would reduce risk to life and other risks, and improve the living conditions for tenants. The sanction of refusing or revoking a licence was likely to be taken seriously, and the need for a licence would mean that the landlords of HMOs would identify themselves to local authorities, freeing the resources of local authorities so that they could ensure acceptable standards.

31. Section 55 of the 2004 Act provides for the licensing of HMO's. Part 2 of the 2004 Act provides for licensing in two main situations. The first situation is for what is sometimes called "mandatory HMO's" or "mandatory HMO licensing" where houses in multiple occupancy which satisfy certain prescribed criteria are required to be licensed, irrespective of their location. The HMOs which are required to be licensed are described in sections 254-259 of the 2004 Act, see in particular section 254(2) of the 2004 Act and the relevant secondary legislation. The second situation is for what is sometimes called "designated HMO's" or "additional HMO licensing" which is where the local housing authority has designated an area using powers conferred by section 56 of the 2004 Act, and has imposed additional criteria to those applying to mandatory HMO's which, if satisfied, require the property to be licensed as a HMO. Section 61 of the 2004 Act requires HMO's to which Part 2 of the 2004 Act applies to be licensed.

32. Section 61(4) requires local housing authorities to take all reasonable steps to ensure that licences are applied for. Section 63 explains how an application for a licence is made. Sections 64-68 provide a framework for the licensing regime, including the criteria which must be satisfied before a local housing authority grants a licence, and

the conditions which licences must, and may, contain. Section 70 gives local housing authorities the power to cancel licences.

33. Section 72 of the 2004 Act is set out below. We have set out subsections (1) to (5) of section 72, because it is relevant to consider other offences created by section 72(2) and 72(3) and the defences set out in section 72(4) and 72(5) of the 2004 Act. The relevant subsection creating the offence in section 72(1) is set out in bold.

> "(1) **A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.**
>
> (2) A person commits an offence if–
>
> (a) he is a person having control of or managing an HMO which is licensed under this Part,
>
> (b) he knowingly permits another person to occupy the house, and
>
> (c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.
>
> (3) A person commits an offence if–
>
> (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and
>
> (b) he fails to comply with any condition of the licence.
>
> (4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time–
>
> (a) a notification had been duly given in respect of the house under section 62(1), or
>
> (b) an application for a licence had been duly made in respect of the house under section 63,
>
> and that notification or application was still effective (see subsection (8)).
>
> (5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse–
>
> (a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

…"

34. A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine (section 72(7)). Section 72(7A) refers to section 249A, which provides for financial penalties as an alternative to prosecution for certain housing offences in England. By section 72(7B), if a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under section 72, that person may not be convicted of an offence under section 72 in respect of the same conduct.

35. Section 263 of the 2004 Act defines who is a "person having control" or a "person managing" for the purposes of section 72(1) of the 2004 Act. Section 73(1) defines 'unlicensed HMO' for the purposes of rent repayment orders under section 73. By section 73(3), the fact that an HMO is unlicensed does not affect the validity or enforceability of provisions for periodic payments in connection with a lease or licence of part of an unlicensed HMO, or any other provision of such an agreement. The amounts of such payments, may, however, be recovered in accordance with the Housing and Planning Act 2016 (section 73(4)). Section 75 limits the ability of a landlord of an unlicensed HMO to terminate a shorthold tenancy of part of an unlicensed HMO.

Relevant legal principles relating to the interpretation of the mental element in section 72(1) of the 2004 Act

36. There was no material dispute about the relevant legal principles so I will set them out shortly. Reference was made to *R v Warner* [1969] 2 AC 256; *Sweet v Parsley* [1970] AC 132 at 149F-G, *Gammon v Attorney General of Hong Kong* [1985] AC 1 at 14B-D, *R v Muhamad* [2002] EWCA Crim 1856; [2003] QB 1031 at paragraphs 7, 15 and 16.

37. The question of what, if any, mental element is required to be shown in order to prove any criminal offence created by statute is one of statutory interpretation. It is common ground that there is a presumption of law that mens rea is required before a person can be found guilty of a criminal offence. The presumption is stronger when the offence is, what has been called in the authorities, "truly criminal in character", "more serious", or where "a stigma still attaches" because of the truly criminal nature of the offence. The presumption can be displaced where the statute relates to an issue of "social concern" such as public safety or involves "less serious offences" which are "quasi-criminal" in the areas of public health, licensing and industrial legislation. Some of the phrases which have been used have been criticised as being circular or unhelpful, because a criminal offence created by statute is "criminal in nature" and criminal offences all engage what can be generally called "social concern", but the effect of the authorities is still clear. Further, even in a situation where the presumption that mens rea is required is weaker, the presumption will still apply unless it can be shown that the creation of an offence of strict liability will be effective to promote the objects of the statute by encouraging greater vigilance to prevent the prohibited acts. However the effect of the

authorities is to make it clear that the presumption that there will be a mental element to the offence is less strong in regulatory licensing offences such as those contained in the 2004 Act.

The elements of the offence of section 72(1) of the 2004 Act

38. In his oral submissions Mr Khan submitted that to manage or have control for the purposes of section 72(1) of the 2004 Act it was necessary to show that there was "guilty managing". Mr Khan submitted that in order to prove the offence under section 72(1) of the 2004 Act it was necessary to show that the defendant who had control of or managed a HMO, knew that he was managing or controlling a HMO, which was therefore required to be licensed.

39. In practical terms it was common ground that in order to prove the offence under section 72(1) of the 2004 Act the prosecution will need to make the relevant tribunal sure that: (1) the relevant defendant had control of or managed, as defined in section 263 of the 2004 Act; (2) a HMO which was required to be licensed, pursuant to sections 55 and 61 of the 2004 Act; and (3) it was not so licensed. Mr Khan's submission would lead to a fourth element namely proving that (4) the relevant defendant knew that the property he had control of or managed was a HMO, and therefore was required to be licensed.

40. This raises the issue of statutory interpretation of the 2004 Act. In our judgment it is plain that there is no requirement to prove that the defendant knew that the property he had control of or managed was a HMO, and therefore was required to be licensed, for a number of reasons which are set out below.

41. First there is a comprehensive and full definition of a "person having control" and a "person managing" in section 263 of the 2004 Act. That defines a person managing to include a person who "would so receive rents or other payments" for a HMO "but for having entered into an arrangement … with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments". It is no part of the definition to show the defendant's state of mind about the way in which the property is actually occupied. The whole of the definition section refers to the objective arrangements by which the defendant has control of or manages the HMO for the purposes of the 2004 Act. This suggests that actual knowledge of the nature of the occupation of the property, which means that the property is a HMO which therefore needs to be licensed, is not required.

42. Secondly section 72 creates a number of distinct criminal offences, including in section 72(1), 72(2) and 72(3). Section 72(2) expressly requires the prosecution to prove that the defendant "knowingly permits" another person to occupy a house. Although a mental element may be required even where other offences created in the same statute use the word "knowingly", see *Sweet v Parsley* at page 149D, the fact that an offence created by the same section used the word "knowingly" suggests that the person drafting this section of the 2004 Act was well aware of how to make clear Parliament's intentions about the mental element in each of the offences created by section 72.

43. Thirdly section 249A of the 2004 Act creates a system for the imposition of civil penalties for, among other, offences under section 72(1) of the 2004 Act in circumstances where the local housing authority is "satisfied, beyond reasonable doubt,

that the person's conduct amounts" to the offence. If the mental element of the offence were required to be proved, it would also need to be proved for the civil enforcement regime. It was common ground that the presumption that mens rea will apply, relied on by Mr Mohamed and Ms Lahrie, does not apply to the civil enforcement regime.

44. Fourthly there is a defence in section 72(5) of the 2004 Act for the defendant to prove that he had a reasonable excuse for having control of or managing a HMO which was required to be licensed. In those circumstances if a defendant did not know that there was a HMO which was required to be licensed, for example because it was let through a respectable letting agency to a respectable tenant with proper references who had then created the HMO behind the defendant's back, that would be relevant to the defence, see generally *Thanet District Council v Grant* [2015] EWHC 4290 (Admin) at paragraph 17. The existence of the statutory defence and the fact that a reasonable excuse for not having a licence can be made out, lessens the need to have the mental element as part of the offence. The dicta in *Thanet District Council v Grant* recognising that such an absence of knowledge might be relevant to the defence of reasonable excuse is incompatible with a requirement to prove knowledge that there was a HMO requiring to be licensed.

45. Fifthly the offence is a regulatory licensing offence where it is common ground it is easier to displace the presumption that mens rea will apply to the statutory offence.

46. Sixthly the absence of a requirement for a mental element of the type proposed on behalf of Mr Mohamed and Ms Lahrie will promote the objects of the 2004 Act by ensuring that those who control or manage a property which is a HMO take reasonable steps to ensure that their properties are registered as HMO's where necessary. This promotes proper housing standards for tenants living in HMO's.

47. Finally this conclusion accords with other decided cases on the elements of the offences under the 2004 Act including *Thanet District Council v Grant* and *IR Management Services v Salford CC* [2020] UKUT 81 at paragraph 27.

48. For all these reasons we find that the prosecution is not required to prove that the relevant defendant knew that he had control of or managed a property which was a HMO, which therefore was required to be licensed. As noted above the absence of such knowledge may be relevant to the defence of reasonable excuse.

Whether the summonses were out of time (issue three)

49. It was common ground that the setting of time limits for the prosecution of offences is designed to provide protection to the citizen who might have committed an offence and to encourage the efficient and timely investigation of offences, see *Tesco Stores v London Borough of Harrow* [2003] EWHC 2919 (Admin); (2003) 167 JP 657 at paragraph 25.

50. Section 127(1) of the Magistrates' Court Act 1980 is headed 'Limitation of time'. It provides that a Magistrates' Court must not try an information or hear a complaint unless the information was laid, or the complaint made, within six months of the time when the offence was committed, or the matter of complaint arose.

51. It was common ground that the offence under section 72(1) of the 2004 Act was a continuing offence, see generally *Luton Borough Council v Altavon* [2019] EWHC 2415 (Admin); [2020] HLR 4 at paragraph 8. This meant that every day that a person was managing or in control of a HMO which required to be licensed but was not licensed was a new offence. Mr Khan submitted that "the matter arose" for the purposes of section 127 of the Magistrates' Court Act 1980 when the council became aware of the circumstances requiring the property to be licensed as a HMO. The difficulty with this submission is that it ignored that part of section 127 which provides for a limitation period of six months from the time when the offence was committed. If the prosecution prove the commission of an offence within six months of the date of the laying of the information the summons is in time. In our judgment the judge was right to refuse the application to dismiss the criminal proceedings on the basis that they were out of time.

Conclusion

52. For the detailed reasons set out above we find that: (1) the council provided sufficient information to Thames Magistrates' Court to justify the issuing of the summonses; (2) there is no requirement on the prosecution to prove that the relevant defendant knew that he was in control of or managing a property which was a HMO, and which therefore was required to be licensed; (3) the informations were laid in time.

53. The applications for judicial review are therefore dismissed.