



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

**Case Reference** : **MAN/00EX/HBA/2021/0001**

**Applicant** : **Blackburn with Darwen  
Borough Council**

**Respondent** : **Mr Sakib Zarif**

**Type of Application** : **Application for a Banning Order  
Housing and Planning Act 2016 – s 15**

**Tribunal Members** : **Judge J Holbrook  
Regional Surveyor N Walsh  
Mr H Thomas MRICS**

**Date and venue of  
Hearing** : **11 March 2022  
Manchester**

**Date of Decision** : **1 April 2022**

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**DECISION**

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## DECISION

- A. **The Council’s application for a banning order is struck out.**
- B. **Mr Zarif’s application for a costs order is refused.**

## REASONS

### The application

1. On 13 July 2021, Blackburn with Darwen Borough Council (a local housing authority) applied to the Tribunal for a banning order under section 15 of the Housing and Planning Act 2016 (“the 2016 Act”). The respondent to the application is Sakib Zarif of 146 Redlam, Blackburn BB2 1XQ.
2. A ‘banning order’ is an order made by the Tribunal, banning a person from:
  - (i) letting housing in England;
  - (ii) engaging in English letting agency work;
  - (iii) engaging in English property management work; or
  - (iv) doing two or more of those things.
3. The application sought an order banning Mr Zarif from doing any of those things for a period of six years.

### Relevant statutory provisions

4. Section 16 of the 2016 Act empowers the Tribunal to make a banning order on an application by a local housing authority. However, before it makes a banning order, the Tribunal must be satisfied that certain conditions are met. Those conditions include the requirement (in section 15(3)) that the local authority must give the person concerned a notice of intended proceedings:
  - informing the person that the authority is proposing to apply for a banning order and explaining why,
  - stating the length of each proposed ban, and
  - inviting the person to make representations within a specified period of not less than 28 days.
5. By virtue of section 15(6) of the 2016 Act, a notice of intended proceedings may not be given after the end of the period of six months beginning with the day on which the person was convicted of the offence to which the notice relates.

## **The hearing and the preliminary issue**

6. On 11 March 2022, a hearing was held at the Tribunal's offices at Piccadilly Exchange in Manchester. The Council was represented at the hearing by Mr M Hope of counsel. Mr Zarif was represented by Mr R Ahmed of counsel. We are grateful to both of them for their assistance.
7. In advance of the hearing, Mr Zarif had given notice that he intended to ask the Tribunal to strike out the Council's application on the ground that it had no reasonable prospect of success. More particularly, he alleged that the Council's application for a banning order was invalid because it had failed to give a notice of intended proceedings in accordance with section 15(3) of the 2016 Act.
8. We agreed to deal with the strike out application as a preliminary issue at the outset of the hearing and, for this purpose, we heard oral evidence from Mr Zarif and from Ms Victoria Holmes (a Community Safety Officer employed by the Council) as well as submissions from both counsel. We were also referred to various documents in the hearing bundles provided by the parties.
9. In the event, our decision in respect of the preliminary issue was determinative of the proceedings generally. We announced our decision at the hearing and outlined the reasons for it. This document records those reasons in greater detail.

## **Arguments and discussion**

10. On 16 January 2020, Mr Zarif was convicted of an offence of theft at Preston Crown Court. There is a dispute (which, in the event, it was unnecessary for us to resolve) as to whether the offence in question is a 'banning order offence' for the purposes of the 2016 Act. Nevertheless, it is not disputed that, if the Council wished to rely on that offence as a basis for applying for a banning order, the latest date on which it could have given Mr Zarif a notice of intended proceedings in compliance with section 15 of the 2016 Act was 15 July 2020.
11. The Council's position is that it did give such a notice (albeit on the last possible day for doing so). More particularly, Ms Holmes' evidence was that a notice of intended proceedings in an envelope addressed to Mr Zarif had been hand-delivered by an officer of the Council: the envelope was posted through the letterbox of a residential property at 48 Preston New Road, Blackburn BB3 6AH at approximately 8pm on 15 July 2020.
12. Mr Zarif does not dispute these underlying facts. Nor does he deny receiving the envelope containing the notice of intended proceedings. However, his evidence was that he does not (and did not at the time) live at 48 Preston New Road in Blackburn. He says that he has lived at 146 Redlam in Blackburn for over ten years, and that 48 Preston New Road is his parents' home address. Whilst he visits his parents regularly, he does not live with them. As far as the envelope delivered on 15 July 2020

is concerned, Mr Zarif says that it did not come to his attention until it was handed to him by his mother, several days after it was delivered to her home. The Council has not challenged this assertion.

13. In support of his contention that 146 Redlam is his home address, Mr Zarif has produced a copy of his driving licence; a poll card for a local election; a hospital appointment letter; and a bank statement, all of which show 146 Redlam to be his address. Although the bank statement covers a period which includes 15 July 2020, we note that all four documents post-date the alleged service of the notice of intended proceedings. However, Mr Zarif has also produced copy correspondence between himself and the Council which indicates that he has lived at 146 Redlam for several years. This includes copies of more than 15 letters sent to Mr Zarif at 146 Redlam by the Council's Environmental Health Department on various dates between 2011 and 10 June 2020. The subject matter of those letters concerned Mr Zarif's responsibilities as owner or manager of an HMO in Blackburn and included licences granted to him by the Council in 2014 and 2017 under Part 2 of the Housing Act 2004. Both the HMO licences and the covering letters which accompanied them were addressed to Mr Zarif at 146 Redlam.
14. The obvious question, therefore, is why did the Council choose to give Mr Zarif a notice of intended proceedings by delivering it to 48 Preston New Road? The officer responsible for the notice was Victoria Holmes, who works within the Council's Community Safety Department. She believed that Mr Zarif lived at 48 Preston New Road for two reasons: (1) the police officer with whom she had been liaising in relation to Mr Zarif's case had told her that, as of December 2019, the Police National Computer (PNC) indicated this to be his address; and (2) a search of the records held at Companies House had revealed that Mr Zarif was registered as a person with significant control over Atif Estates Limited and that his address for correspondence in this regard was 48 Preston New Road. We understand that Atif Estates Limited is a property company run by the Zarif family, and by Mohammed Zarif (Sakib Zarif's father) in particular.
15. Crucially, however, at the time when the notice of intended proceedings was prepared and delivered, Ms Holmes was unaware that the Council had been corresponding with Mr Zarif at 146 Redlam for many years. She said that, because copies of such correspondence were held by another department within the Council, she did not have access to it. Nor, regrettably, did either Ms Holmes or the Council's legal department make internal enquiries in the course of preparing to serve the notice of intended proceedings as to whether other departments might hold relevant information of this kind.
16. It is not clear what the address information recorded on the PNC was based on. However, it is clearly inconsistent with other information which the Council held about Mr Zarif and which, in our view, Ms Holmes should have known about before the notice of intended proceedings was delivered. It is also inconsistent with what Mr Zarif told

the police about where he lived when he was interviewed by them on 26 June 2019: the Council had a transcript of that interview which shows that, when asked, Mr Zarif confirmed that he lived at 146 Redlam.

17. As far as the information recorded at Companies House is concerned, Mr Zarif appeared to be unsure what that information was or why it had been recorded. He said that his father dealt with the company's administrative affairs and that 48 Preston New Road would have been given as a correspondence address for him because, at the time, that was the company's registered office. There is no doubt that any notice concerning Atif Estates Limited could have been given to Mr Zarif by sending or delivering it to him at 48 Preston New Road. The information recorded at Companies House is also evidentially relevant to the question of Mr Zarif's address for other purposes, but it is not conclusive evidence and it must be weighed against other, conflicting, evidence, such as that detailed at paragraph 13 above.
18. Having taken all of this evidence into account, we find that 146 Redlam in Blackburn is Mr Zarif's home address and that it has been so since 2011. Had the Council delivered the notice of intended proceedings to this address on or before 15 July 2020, then the notice would have been given in compliance with section 15 of the 2016 Act. However, the Council made insufficient checks to ascertain Mr Zarif's correct address: in particular, by failing to establish what information the Council itself held in this regard. Had the entirety of such information been taken into account, it would have been very clear that Mr Zarif had held himself out as residing at 146 Redlam for a period of several years. Moreover, the information held by the Council concerned Mr Zarif's activities as a landlord and it is therefore remarkable that it was overlooked given the purpose of the notice of intended proceedings.
19. The Council also asked us to take account of evidence about where Mr Zarif has been living more recently, following his release from prison, and during a period of convalescence following major surgery. However, we do not consider that such evidence – which clearly reflects significant changes in Mr Zarif's personal circumstances – assists us to determine the question of where he was living previously.
20. The onus is on the Council to show that a notice of intended proceedings was given (and that it was given in time). At common law, the requirement that a written notice be 'served' or 'given' (and the courts do not distinguish between those expressions) is treated as a requirement that the person serving or giving the notice must cause the notice to be received by, or come to the attention of, the recipient (or their properly authorised agent). By delivering the notice to the wrong address and at the eleventh hour, the Council failed to ensure that Mr Zarif received it before 16 July 2020. Although the notice did come to his attention some days later, it was not given within the six-month period required by section 15(6) of the 2016 Act. That is a mandatory requirement and the failure to comply with it is necessarily fatal to the Council's ability to apply successfully for a banning order against Mr Zarif.

21. Accordingly, the application for a banning order is struck out pursuant to rule 9(3)(e) of the Tribunal's rules.<sup>1</sup>

### **Costs**

22. Mr Zarif has applied for a costs order against the Council on the basis that the notice of intended proceedings was not given in time and that the Council has been on notice of this since Mr Zarif filed his response to the application in December 2021.
23. The Tribunal's powers to make orders for costs are governed by rule 13 of the Tribunal's rules. The general principle (set out in rule 13(1)(b)) is that the Tribunal may only make an order in respect of costs if a person has acted unreasonably in bringing, defending or conducting proceedings before the Tribunal. The application of rule 13 was considered and explained by the Upper Tribunal (Lands Chamber) in the case of *Willow Court Management Company (1985) Ltd v Alexander* [2016] UKUT 290 (LC). The correct application of the rule requires the Tribunal to adopt the following approach when determining an application for costs:
1. Is there a reasonable explanation for the behaviour complained of?
  2. If not, then, as a matter of discretion, should an order for costs be made?
  3. If an order for costs should be made, what should be the terms of that order?
24. The behaviour complained of in this case is the making of the application by the Council in the first place, given that the notice of intended proceedings had not been given in time, and then continuing the proceedings after that had been raised as an issue. However, whilst the Council's internal processes could clearly have been improved in order to avoid the error which has been highlighted above, we have no doubt that the banning order application was made in good faith and we do not consider that the Council acted unreasonably, either by making the application or by continuing the proceedings. The Council was obviously unaware of its procedural error at the time of making the application and it was not unreasonable for it subsequently to contest the issue of whether the notice had been given in compliance with the 2016 Act.
25. Mr Zarif's costs application is therefore refused.

Signed: J W Holbrook  
Judge of the First-tier Tribunal  
Date: 1 April 2022

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<sup>1</sup> The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013/1169.