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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION
(JUDICIAL REVIEW)

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IN THE MATTER OF APPLICATION BY THE LANDLORDS ASSOCIATION FOR NORTHERN IRELAND FOR JUDICIAL REVIEW

AND IN THE MATTER OF A DECISION OF BELFAST CITY COUNCIL

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Donal Sayers QC and Lara Smyth (instructed by McCann & McCann, solicitors) for the Applicant
Gordon Anthony (instructed by Belfast City Council Legal Services Department) for the Respondent

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SCOFFIELD J

Introduction

[1] The applicant in these proceedings, the Landlords Association for Northern Ireland (LANI), is an organisation which represents landlords in the private rental sector in Northern Ireland. The respondent is Belfast City Council ("the Council") which, amongst other things, has had responsibility for the granting, refusal, variation and revocation of licences in respect of Houses in Multiple Occupation (HMOs) in the Belfast City Council district since the coming into force of the Houses in Multiple Occupation Act (Northern Ireland) 2016 ("the 2016 Act") on 1 April 2019. In addition, I was told that the respondent is responsible for managing the HMO licensing scheme application process for all other district council areas in Northern Ireland.

[2] By the present application, the applicant seeks judicial review of the respondent's decision to amend the 'Standard Terms and Conditions' attached to an HMO licence to include a requirement of an emergency 'out of hours' contact number for all HMOs within the Council's area. The applicant contends that this effectively puts such landlords 'on call 24/7, 365 days a year'.

[3] The applicant was represented by Mr Sayers QC, appearing with Ms Smyth of counsel; and the respondent was represented by Mr Anthony of counsel. I am grateful to all counsel for their helpful written and oral submissions.

Factual background

[4] In March 2020, the applicant became aware of the respondent imposing a condition that an 'out of hours' contact telephone number be provided in respect of a number of individual applications for HMO licences. As a result of this, the applicant sought to engage with the respondent in relation to these individual applications. In particular, there was an exchange of correspondence in this regard between August and October 2020. However, on 16 December 2020, the respondent amended the 'Standard Terms and Conditions for Houses in Multiple Occupation (HMOs) in Northern Ireland' ("the Standard Licence Terms") in respect of HMOs in its council area, by inserting a new condition 54a within Section 9. The new condition 54a reads as follows:

> "For HMOs situated within Belfast City Council area the licensee shall provide an emergency out of hours contact number to allow the landlord or managing agent to be contacted in circumstances where there is anti-social behaviour occurring at the HMO property and the co-operation of the tenants cannot be secured."

[5] In response to these proceedings, the respondent has exhibited a significant volume of material in relation to anti-social behaviour and the problems which it can cause in society. The problems in this respect which arise in some areas of the City from time to time, or more often, are well-known. The Holyland area is sadly notorious for such difficulties and featured to a significant degree in the materials exhibited to the Council's affidavit evidence.

[6] For its part, LANI accepts that anti-social behaviour is a problem which requires to be addressed. It also does not dispute that the Council is entitled to take appropriate steps to address that issue, and has previously undertaken laudable work in that regard. It is also accepted on the applicant's behalf that there is a role for landlords to play in addressing anti-social behaviour (for reasons of both self-interest and community responsibility). Indeed, the respondent's affidavit evidence confirms that "… the majority of HMO landlords are responsible, want to be good neighbours, and take seriously unacceptable behaviour by their tenants".

[7] The parties further agree that HMOs play an important role in society. This is a position endorsed by the Department for Communities, which in May 2021 reminded the respondent's Licensing Committee that HMOs meet the housing needs of "… people who are single, people of temporary employment, students, people in

lower incomes and migrant workers, people who are a really important part of our housing mix". The Department went on to observe of HMOs that:

> "They are increasingly housing some of the most vulnerable people here. If HMOs did not exist, we would have a major problem of homelessness. A lot of people in HMOs have no other housing option, they are a very important part of our housing provision, and as a council you have an obligation under your local government plans to ensure you have the housing mix in Belfast that meets the housing need identified by the Housing Executive."

[8] That is all accepted by the respondent. The key issue in contention between the parties is simply the value (and legality) of requiring an out-of-hours contact number for landlords or managing agents, in addition to the contact details already held by the Council. The precise use to be made of this number – and what the Council would expect landlords or agents to do when contacted on it – has been the subject of correspondence, evidence and submissions. The Council's position on this is recorded below. The thrust of the applicant's case, however, is that the power of landlords to intervene in emergency situations is limited; that such powers or facilities as they do possess can just as efficaciously be used on the working day *after* an out-of-hours incident has occurred; and that, in circumstances where tenants are behaving in an anti-social way (often fuelled by the excessive consumption of alcohol) and where police and Council officers have been unable to engage them positively, a landlord is unlikely to have much (if any) greater success.

Relevant statutory provisions

[9] The landlords and managing agents represented by the applicant are subject to a number of obligations imposed by virtue of the regulatory licensing scheme in place under the 2016 Act, which represents a comprehensive code in this regard. Fundamentally, section 7 of the Act requires that every HMO must be licensed under the Act (save where a temporary exemption applies). Pursuant to section 7(3)(f), a licence from the Council must specify any conditions which the Council has decided to include in the licence.

[10] The Council's general power to impose licence conditions is conferred by section 14(1) of the 2016 Act, and provision is made in particular for conditions of certain types in section 14(2). Condition 54a is identified by the respondent as having been imposed pursuant to section 14(2)(b). Section 14(1) of the 2016 Act is in the following terms:

> "An HMO licence may include such conditions as the council considers appropriate for regulating any or all of the following—

(a) the management, use and occupation of the HMO;

(b) its condition and contents."

[11] Section 14(2) provides as follows:

"The conditions may, in particular, include—

(a) conditions imposing restrictions or prohibitions on the use or occupation of particular parts of the HMO by persons occupying it;

(b) conditions requiring the taking of reasonable and practicable steps to prevent or reduce anti-social behaviour by persons occupying or visiting the HMO;

(c) conditions requiring facilities and equipment to be made available in the house for the purpose of making it suitable for occupation as an HMO (within the meaning of section 13);

(d) conditions requiring such facilities and equipment to be maintained in repair and proper working order;

(e) conditions requiring, in the case of any works needed in order for any such facilities or equipment to be made available or to be so maintained, that the works are carried out within such period or periods as may be specified in, or determined under, the licence;

(f) conditions requiring the owner of the HMO or the managing agent of it (if any) to attend training courses in relation to any code of practice approved under section 63."

[underlined emphasis added]

[12] Section 14(4) is also relevant. It provides that, "An HMO licence may include a condition imposing a restriction or obligation on… the owner of the HMO or the managing agent of it (if any)…". On the respondent's case, it was a clear policy goal of the Act, given effect principally through section 14, to harness such powers and influence as a landlord may possess with a view to involving them much more centrally in the fight against anti-social behaviour on the part of HMO tenants.

[13] Under section 23(1)(e) and (f), the Council may revoke an HMO licence in the event of serious, or repeated, breach of a licence condition. Breach of an HMO licence condition imposing an obligation on an owner is (in the absence of reasonable excuse) an offence, contrary to section 31(2) of the 2016 Act. Pursuant to section 38, conviction may be accompanied by revocation of the HMO licence and/or disqualification from holding a HMO licence.

[14] Moreover, section 8(2)(b) of the 2016 Act provides that a council may grant a licence for an HMO only if it is satisfied that the owner of the living accommodation, and any managing agent of it, are "fit and proper persons". Under section 23(1)(a) the Council may revoke a licence if satisfied that the owner or managing agent is not a fit a proper person. Section 10(3) of the 2016 Act prescribes matters which are relevant to the Council's assessment of whether an owner or managing agent is a fit and proper person for the purposes of the Act. In particular, section 10(6) provides that:

> "The council must have regard to—
>
> (a) any anti-social behaviour engaged in by P, and
>
> (b) P's conduct as regards any anti-social behaviour—
>
> (i) engaged in by the occupants of any relevant living accommodation whilst in the accommodation, or
>
> (ii) adversely affecting the occupants of any such accommodation."

The statutory guidance

[15] Statutory guidance in this area has also been published by the Department for Communities in its 'Guide to the Licensing of Houses in Multiple Occupation in Northern Ireland: Guidance for Local Government' ('the DfC Guide'). This is guidance which the Council must take into account, pursuant to section 85(2) of the 2016 Act. Inter alia, it states (at paragraph 5.16.3) that the Council should take particular care in the imposition of licence conditions:

> "Councils have a power to impose such licence conditions as they think fit which may, for example, require certain standards to be maintained through the period of the licence (Part 4 of the 2016 Act). As any failure to adhere to licensing conditions is an offence, and can result in the Council revoking the licence, these are an important tool in ensuring that HMO owners adhere to reasonable

> standards. However, given the gravity of the consequences for HMO owners of failing to comply, careful consideration should be given to any proposed condition before including it in a licence. Any condition included must be clearly drafted, so that it is clear as to what is expected of the licence-holder from the outset."

[16] The guidance further states, at paragraph 5.17.3, that:

> "Councils must be mindful of the fact that failure to comply with a licence condition is a criminal offence, and can also result in the licence being revoked. They should therefore consider whether it would be reasonable and proportionate to impose a particular policy as a licence condition, or whether alternative means of securing the same result exist which would not result in criminalising a failure to comply."

The Standard Licence Conditions

[17] As is apparent from the discussion above, the respondent has developed a set of Standard Licence Conditions, which are incorporated into all HMO licences by way of general application. The conditions cover matters such as permitted occupancy; safety certification; security arrangements; heating and energy performance; physical standards; management arrangements; and rubbish and environmental considerations.

[18] Section 9 of the Standard Licence Conditions, with which these proceedings are concerned, addresses anti-social behaviour. It includes a number of relevant conditions identified as imposed under section 14(2)(b) of the 2016 Act. By way of example:

(i) By virtue of Condition 54, HMO licence holders are required to "have in place a policy/plan (approved in writing by the council) to deal with any anti-social behaviour linked to licensed premises, either directly or indirectly which is caused by or affects their tenants". (The LANI 'Anti-Social Behaviour Plan for HMO Accommodation', with a copy of which the court has been provided, was such a plan produced by LANI for its members and has been approved by the Council.)

(ii) Condition 55 obliges the HMO licence holder to comply at all times with that policy or plan.

(iii) Condition 60 requires that HMO licence holders and managing agents adhere to the principles contained in the Council's document 'Tackling Anti-Social

Behaviour in HMO properties: A Guide for Owners and Managing Agents' ("the Council ASB Guide").

[19] The applicant observes that nothing in the terms of the Council ASB Guide suggests that it was envisaged that landlords would – contemporaneously – involve themselves in addressing out of hours incidents of alleged anti-social behaviour. That may be so; but it is obviously not determinative of the legality of a decision by the respondent to change approach in this regard.

The applicant's challenge

[20] The applicant's primary challenge is that the provision of an out-of-hours number, taken together with the ancillary obligations which provision of this number entails, does not constitute a reasonable and practicable step to prevent or reduce anti-social behaviour by persons occupying or visiting the HMO, and that therefore the decision of the respondent to impose the condition is *ultra vires* section 14(2)(b) of the 2016 Act. In short, the applicant contends that the Council's position is that the "steps" required of a landlord do not end with the provision of the contact number but extend to the response made when that contact number is used.

[21] As to that, the applicant further contends, as summarised at paragraph [8] above, that the options open to landlords in an out-of-hours situation are very limited. Any legal option open to them through their tenancy agreement could not realistically be exercised in the middle of the night. The Council's procedures are such that the landlord will be informed of significant incidents in any event; and this can readily occur the next (working) day.

[22] The applicant has also drawn attention to the objection of landlords to effectively having to be 'on call 24/7'. Many of the applicant's members have children and families; or work full-time in jobs unrelated to their property letting. On the other hand, this is the full-time business and occupation of others, who have many tenanted properties and who may, therefore, be overwhelmed by having to respond to out-of-hours contacts at problem times.

[23] Additionally, the applicant complains that the respondent has failed to provide adequate, proper and intelligible reasons for its decision to impose the condition (and, in particular, for any conclusion that the condition constitutes a reasonable and practicable step to prevent or reduce anti-social behaviour by persons occupying or visiting the HMO). This is relied upon as a free-standing ground of review but also in support of the applicant's primary case that the new condition cannot properly be seen to be authorised by section 14 of the 2016 Act.

The Council's response

[24] The Council relies on the explanation for the impugned condition contained in the affidavit evidence of its deponent, Mr Bloomfield, a senior officer of the

Council who holds the position of Northern Ireland Manager for Houses in Multiple Occupation. In his skeleton argument and submissions, Mr Anthony highlighted the following points contained within that evidence as being of significance:

(a) The Council intends to ensure that it and landlords can work together to address anti-social behaviour in a way that is efficient, effective and proportionate. It is not intended to place any undue burden on landlords: they will be contacted at their number in only exceptional circumstances.

(b) In particular, the condition is intended to address the problem of noise pollution. Whilst the Council tries to address such anti-social behaviour through dialogue with the residents of an HMO – and often does so successfully – there are instances in which officers cannot achieve a resolution of the matter and in which the Council considers that landlords should be made aware of an ongoing issue of noise pollution. The impugned condition seeks to ensure that information about noise pollution can be given to landlords contemporaneously, rather than after the event.

(c) In reaching the decision to include this condition as a standard licence condition, the Council considered, inter alia, the competing interests of property owners and the wider community. It also considered factors on the ground, including its belief that tenants would be more likely to comply with requests about behaviour if they were aware that their landlord could be contacted and that there could be implications for their tenancy.

(d) The out-of-hours numbers will be used only exceptionally and as a "last resort", that is to say, where the Council's enforcement powers have proven ineffective. A landlord or managing agent will not generally be expected to attend the property, and nor will they be expected to manage anti-social behaviour which is not occurring directly on, or in connection with, their premises. The purpose of having the contact number is to ensure that landlords can be apprised of anti-social behaviour contemporaneously so that they might take whatever steps they deem appropriate to deal with the problem.

(e) The Council's officers have also been informed that, where they deem it necessary to contact a landlord, they should make it clear that the Council is *not* requesting the landlord to attend the property at that time, but that they should ask the landlord to attempt to contact the tenants by mobile telephone to advise them of the need to co-operate fully with the Council's officers.

Consideration

What does the impugned condition require?

[25] Any proper consideration of the issues raised in these proceedings must be grounded, as a first step, in a clear understanding of what the impugned condition does and does not require. The text of the new condition is set out at paragraph [4] above. In my view, it is clear that, as a minimum, the condition requires the provision by the licensee of a contact number. That step – the simple provision of a contact number – ought to cause little or no difficulty. What the condition plainly does *not* do is require the landlord or managing agent to physically attend at the property or take any particular step if and when they are contacted on the number should the need arise. I do not consider that, as matter of law, this condition is capable of requiring "the licence holder and/or managing agent to provide reasonable assistance to the officers, in an effort to address anti-social behaviour taking place at the property subject of their HMO licence". This was a formulation used by the Council in correspondence as to what it would *expect* if there was a need to contact the licence holder or agent on the out of hours contact number. Whether or not that is the expectation, such a requirement would have to be plainly stated and is not contained either expressly, or in my view by necessary implication, in the impugned condition. As appears further below, the Council has rowed back from this formulation to some degree in its evidence before the court.

[26] There remains a grey area, however, in relation to whether or not the contact number needs to be 'manned' at all times and whether it is required to be answered when used by Council officers during (what they consider to be) an emergency situation. The condition is not as clearly worded as it might be in this regard (contrary to the enjoinder in the DfC Guide, at paragraph 5.16.3, that any condition included "must be clearly drafted, so that it is clear as to what is expected of the licence-holder from the outset"). No ground was pleaded that the condition was void for uncertainty; nor do I consider that the wording is so unclear that such a challenge would have been likely to succeed and render the condition as a whole void.

[27] The plain implication of the words used ("an emergency out-of-hours contact number to *allow* the landlord or managing agent to be contacted") is that someone will, at least in principle, be available to answer a call to the emergency number when such a call is made out of hours in order that they may be apprised of the situation which has arisen. Whether the wording is sufficiently clear for a criminal court to conclude that an offence under section 31(2) of the 2016 Act had been committed because of a failure to answer an emergency call is not for me to decide. Much may depend on the facts of any given situation, taking into account also the defence of reasonable excuse in section 31(2)(c) of the 2016 Act. For instance, a case where a false number was provided would lie at one end of the spectrum; as might a case where there was evidence that the landlord or managing agent routinely ignored the telephone the number of which had been provided as the emergency

number. A case where the landlord or agent took appropriate steps to ensure a call could be answered out of hours but where, for some good reason (perhaps dealing with another emergency) they were unable to answer immediately when contacted, would lie at the other end of the spectrum.

[28] For present purposes, I proceed on the basis – which I consider to be the Council's intention – that the condition is designed to require the provision of a number which will generally be answered if a call is made during out of hours periods, barring some exceptional circumstance which renders this impractical, to allow a discussion to be had about what (if anything) a landlord is able and willing to do to help with the ongoing situation. Accordingly, the condition is designed to impose some form of burden on the landlord or agent by way of keeping the relevant phone to hand or monitoring it. If the Council wishes to impose some further obligation relating to the substance of any action which might thereafter be required, that should be addressed expressly in a separate condition.

***The condition's purpose and its* vires**

[29] The applicant is particularly critical of the absence of any real practical utility in the Council having an out-of-hours contact number for a landlord or their agent. Whilst it recognises both the appropriateness and necessity of landlords' involvement in addressing anti-social behaviour, it submits that, in reality, their ability to address anti-social behaviour on their properties derives from, and is limited by, tenancy agreements. The Council accepts that landlords and managing agents do not possess any additional legal powers outside of these agreements. Indeed, generally, a tenancy agreement will restrict the ability of landlords to even enter their own properties.

[30] In contrast, the Council and the police possess public law powers, including enforcement powers in the case of the former and extensive powers to prevent and bring to an end criminal actions in the case of the latter (including, in certain circumstances, powers of entry). 'What therefore can contact with the landlord add?' the applicant asks. Put another way, what are the "reasonable and practicable steps to prevent or reduce anti-social behaviour by persons occupying or visiting the HMO" which landlords will be expected to take in out of hours situations?

[31] The respondent's case on this has not been entirely clear. It has emphasised that it does not wish to place an undue burden on landlords. It has further indicated in correspondence and in its evidence in these proceedings that the out-of-hours contact number will only be used "as a last resort", where those causing an unacceptable disturbance have failed to comply with a reasonable request from an officer of the Council or PSNI. The Council's deponent has said that the landlord or managing agent will not generally be expected to attend the property. As I have already made clear, even if this was *expected*, it is obviously not required under the impugned condition.

[32] Ultimately, the purpose of the new condition is set out by Mr Bloomfield in his affidavit evidence in the following terms:

> "The purpose of having the contact number is to ensure that landlords can be apprised of anti-social behaviour contemporaneously so that they might take whatever steps they deem appropriate to deal with the problem."

[33] The applicant submits that this approach fails to reflect the respective powers available to the Council, PSNI and landlords; and that, in circumstances where the Council and PSNI will have already unsuccessfully tried to engage with the occupants, the condition can only be justified if action sought from a landlord cannot be taken as effectively the following day.

[34] I have not been impressed by the lack of clarity in the Council's successive explanations of what precisely is or will be required as a result of the condition. It is difficult to avoid the impression that the Council might have felt it helpful to give the impression that the condition does, or may, require more than it does on its face – as a means of encouraging landlords or agents to cooperate as and when they happen to be contacted.

[35] However, ultimately, I am not persuaded by the applicant's case that the condition serves no purpose or is *ultra vires* the governing statutory scheme. That is because, in my view, the applicant's submissions have focused too narrowly on the *legal powers* available to a landlord. There is likely much force in the applicant's submission that, as far as those legal powers are concerned, contact with a landlord or their agent in the middle of the night will be pointless. But the Council is not expecting a landlord to terminate the lease, serve a notice to quit or commence legal action at that point. Rather, the Council is seeking to leverage whatever influence the landlord (or their agent) may have with the tenants. That influence may arise in a number of ways and is not limited to fear of the landlord exercising their legal powers under the tenancy agreement.

[36] In particular, a landlord (or agent who manages the property) may have an ongoing and/or personal relationship with the tenants (and/or, in the case of student tenants, their parents) which might make the tenants more amenable to persuasion to moderate their behaviour at the landlord or agent's behest. There may be less of an element of bravado involved in dealing with the landlord than there may be dealing with police or council officers, for a variety of reasons. On an entirely practical note, the landlord or agent may have a telephone number for one or several of the tenants in the HMO which might allow direct contact with them in circumstances where they were not opening the door of the property or responding to officers in attendance. (It is right that by definition there will be three or more tenants in an HMO and the landlord may not know precisely whom to telephone, or whom to telephone first; but that does not negate the potential utility of this means of contact.) The mere fact that the landlord has been, or is about to be, informed out

of hours of the relevant behaviour may also be a factor which may bring some sense or deliberation to bear.

[37] In short, there are a range of ways in which the involvement of a landlord or agent *might* assist, or in which they might be able to intervene or intercede, which might have more of a prospect of success than intervention by police or council officers or which might represent a speedier or more proportionate way of addressing the situation. Whether or not this is so will depend on the circumstances and, as Mr Bloomfield has averred, the appropriate steps to deal with the problem will have to be considered by the landlord or agent themselves. The applicant's point about the condition lacking all utility would really only have force if, in every instance, when a landlord or agent was contacted and asked if "they might take whatever steps they deem appropriate to deal with the problem" they refused to do anything. I cannot accept such a pessimistic view of their willingness to assist.

[38] It follows from the above that I do not accept the applicant's submission – or, at least, cannot do so in the sweeping terms in which it is made – that, in cases of intoxicated non-compliance with Council and/or PSNI officers, "it cannot reasonably be said that contemporaneous reporting to a landlord is likely to advance matters such as to justify recourse to 'out of hours' contact". In some cases, the intervention of the landlord may be effective when engagement with Council or police officers has not been. Certainly, it was not irrational in my judgment for the Council to take that view.

[39] I also consider that the applicant's challenge based on the *vires* of the condition has placed an undue focus on the terms of section 14(2)(b) of the 2016 Act. In fairness, this is no doubt because the Council itself has identified that provision as relevant to the introduction of the impugned condition. However, the power to impose conditions is to be found in section 14(1), which allows the inclusion of "such conditions as the council considers appropriate for regulating… the management, use and occupation of the HMO". This is a broad power which plainly allows the Council some discretionary scope (evident from the use of the phrase "such conditions as *the council considers appropriate*"). The list contained in section 14(2) is illustrative and non-exhaustive (signified by the use of the phrase "the conditions may, in particular, *include*…").

[40] Since I consider that the Council could reasonably take the view (or consider it appropriate) that a landlord or managing agent should be contactable out of hours as a last resort in order to seek to bring some additional influence to bear on the tenants – and that this is an element of regulating the management and/or use of the premises – it follows that I consider that the impugned condition is within the powers conferred by section 14(1) of the 2016 Act.

[41] The applicant complains that the impugned condition conflates the role of the landlord or managing agent on the one hand with that of police or council officers on the other; and asserts that the DfC Guide "reflects the reality that a landlord's

responsibility for anti-social behaviour is properly restricted to the development of appropriate tenancy agreements and the institution of private legal proceedings in the event that tenants' anti-social behaviour is a persistent problem". This assertion is made on the basis of paragraph 5.16.4 of the Guide, which states:

> "Councils should encourage HMO landlords to agree tenancy agreements with their tenants as good practice which should outline acceptable tenant behaviour and detail tenant activities or practices a landlord would not consider tolerable. Tenants should be made aware of their responsibilities and any possible consequences should they breach the conditions. If anti-social behaviour persists or is severe landlords should consider taking possession proceedings.'

[42] I do not consider this passage to indicate that a landlord's responsibility – or, more appropriately, an HMO licence holder's responsibility in this area – is limited to taking possession proceedings alone. That should be considered if the anti-social behaviour persists or is severe. The Guide does not say that landlords are limited only to such action. Nor does the applicant's reliance on Lord Brown's statement in *Mitchell and another v Glasgow City Council* [2009] UKHL 11 (at paragraph [81]) that "… a consistent line of authority holds that landlords are not responsible for the antisocial behaviour of their tenants" avail it in this context. That was a private law action for damages where the pursuers (the claimants) sought damages from the Council in respect of a vicious assault by tenants which caused the death of their husband and father. The case concerned public authority liability in negligence and under article 2 ECHR. The Council was not liable for the actions of its tenants in that context.

[43] In contrast, this case is about the responsibility of licence-holders under the regulatory regime established by the 2016 Act. The *Mitchell* case does not, in my judgment, speak to the question of whether, in the context of HMO licensing, a landlord may have a wider responsibility, which can be reflected in an appropriate licence condition, to seek to prevent or reduce anti-social behaviour on the part of tenants in their property. Mr Bloomfield explained in his evidence his understanding that section 14 of the 2016 Act was intended to give the Council and the other councils in Northern Ireland flexibility in dealing with the problem of anti-social behaviour. He has quoted from an exchange about the clause which became section 14 during proceedings of the Committee for Social Development in the Northern Ireland Assembly on 1 October 2015, when Gordon Lyons MLA raised a query about enforcing section 14 conditions. Mr Martin, replying on behalf of the (then) Department for Social Development, said:

> "It [section 14] is about trying to make it clear that the landlord has an obligation to try to control what happens in his or her property. That is what we are trying to get at;

> that is the aim … we are very focused on trying to make sure, as far as we can, that the landlord is aware that they have responsibilities to manage what goes on in their property".

[44] I do not consider that this exchange is a necessary, or appropriate, aid to the construction of the Act. However, I consider it clear from the terms of section 14 itself (a) that the Council has a broad discretion as to what conditions it imposes (subject to *Wednesbury* unreasonableness); (b) that such conditions can regulate the management of the HMO and, in principle, require actions on the part of the landlord and/or their agent; and (c) that this can include landlords or agents being required to take positive steps to prevent or reduce anti-social behaviour.

[45] For the reasons given above, requiring a landlord or agent to be available to engage in an emergency situation to discuss what assistance, if any, they are willing and able to give does not appear to me to be *ultra vires* the Council's powers under section 14.

[46] A variety of other grounds which were initially relied upon by the applicant in this case (including breach of Convention rights and a data protection argument) were jettisoned in light of the Court's provisionally expressed concerns about the standing of the applicant organisation to raise these or the availability of an alternative remedy. It may be that such grounds, engaging a more intense standard of review, have a greater prospect of success than the current challenge. If it is not already clear from what I have said above, I do not consider that the reference in the DfC Guide to councils considering whether a proposed condition is proportionate imports a more intense standard of review into this challenge as a matter of law. I accept Mr Anthony's submission that, other than a question of *vires*, the governing legal standard in this application is the *Wednesbury* test.

The reasons challenge

[47] I can deal with the applicant's reasons challenge much more briefly. The applicant contends that justification for the Council's decision should have been provided *either* in response to a LANI letter (which requested as follows: "Please explain the reason behind the Council's decision to ask for a 24/7 telephone number and why any contact with the landlord cannot be made during business hours") and/or in the course of the respondent's replying affidavit in these proceedings. It contends that no rational justification for the new condition is to be found in either.

[48] I am not persuaded that there is a duty to give reasons for the incorporation into a set of standard licence conditions under the 2016 Act of a new such condition. Even assuming that there is such a duty however, or that the Council (having proffered reasons) has assumed a legal responsibility to provide adequate and intelligible reasons, I consider that any duty to provide reasons has been discharged by the evidence which has been filed on behalf of the Council in this case. As is

apparent from the discussion above, the Council's professed expectations as to what might be required of landlords has not always been entirely consistent. As a result of the evidence filed in this case however, I do not consider that the applicant can any longer be under a misapprehension as to the Council's reasoning or, certainly, any misapprehension which amounts to material unfairness.

Conclusion

[49] For the reasons given above, I will dismiss the applicant's application for judicial review. I will hear the parties on the issue of costs.