

HMOs

Challenging an HMO licensing decision

Following a case where a local authority prosecuted two landlords, the NLA is calling for the Residential Property Tribunal Service to have jurisdiction so that a landlord can appeal local housing authority decisions.

NLA member Linda Clarke and her business partner Reg Garcha have spent two stressful years defending their reputations after Newport City Council took them to court to force them to license one of their properties. Linda and Reg were convinced they had a case for not having to do so, but the Council refused to listen. Following the court hearing which found in their favour, they have now submitted a complaint about their ordeal to the Ombudsman for Wales and the Information Commissioner's Office.

"These landlords showed enormous strength of character by standing up to a local authority which refused to listen to their case and appeared too ready to drag them through the criminal courts," NLA Executive Chairman David Salusbury told *UK Landlord*. "There must be a way for the RPTS to be able to deal with this type of case so that responsible landlords can legitimately argue their case, rather than having to either accept what they believe to be wrong or be subjected to criminal prosecution."

Key points from Linda and Reg's case

Linda and Reg own a property in Newport, Wales in an area where there is an additional HMO licensing scheme to tackle problems from smaller properties. The property had been converted into five self-contained flats and had been registered under the local HMO scheme. However when the Housing Act 2004 was introduced, it changed the definition of an HMO to exclude properties that met the 1991

Building Regulation standards. Linda and Reg believed their property now fell outside the new definition and that they did not need to apply for licensing.

When Newport City Council disagreed, Reg and Linda provided a report from an independent Building Control inspector that supported their view. Latest guidance from the Department of Communities & Local Government says such evidence should be regarded as conclusive, unless the Local Housing Authority has strong evidence to the contrary. In spite of the independent report, the Council sent its own staff to take photos of the interior of each individual flat without giving the landlords or their tenants any advance notice. The Council then commenced criminal legal proceedings.

Keeping strong

Reg and Linda tried hard to communicate with the Council by contacting officers and staff at all levels and at all stages in this case. They checked with other local authorities in Wales who confirmed their understanding of the HMO rules was similar to Reg and Linda's. They contacted the NLA's Advice Line who passed the matter on to Dave Offord, NLA Operations Manager who has a good deal of experience in dealing with local housing authorities. Dave also contacted the relevant Council head of service to persuade the Council that their interpretation of the licensing rules was not correct. Nevertheless, the Council proceeded with its criminal prosecution.

When the case eventually came to Court, after an initial hearing, the Council accepted they were wrong and presented no evidence.

The Court agreed that Reg and Linda's costs would be met from central funds.

"This was an extremely anxious and stressful time for both Linda and Reg," Dave told *UK Landlord* magazine. "By defending their position, they risked getting a criminal record. This could have meant their mortgages would be revoked, that they would no longer be considered fit and proper persons to run licensed HMOs, as well as a substantial fine, and possibly losing much in back rent if a rent repayment order were made."



Linda Clarke



Reg Garcha