



High stakes POCA

The decision of Harrow Crown Court in 'Brent Council v Sanjay Shah & Others' constitutes a breakthrough for local authorities looking to use the Proceeds of Crime Act 2002 (POCA) in prosecutions for unlawful HMO use.



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In the Shah case, Brent Council sought to distinguish different offences under the Housing Act 2004, relating to the unlawful running of an HMO with the

failure to obtain a licence – namely, breaches of conditions attached to a Selective License under s.95(2) of the 2004 Act, and failure to comply with regulations passed for the proper management of HMOs under s.234(3) of the 2004 Act.

The defendants had sought to rely on the well-known Court of Appeal decision to argue there was no 'causal link' between the criminal conduct and the benefit received.

Brent Council's argument was that, on the facts of the case, a strong causal link did actually exist between the criminal conduct and the various financial benefits then received.

The Crown Court found,

as a matter of principle, in the council's favour.

In previous cases, the defendant enjoyed the benefit of rent, the ultimate source of which was a lease. The lease was lawfully granted, and nothing in the 2004 Act had prohibited it being granted or its continuance.

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crams 40 people into
Wembley townhouse

Rather, the 2004 Act expressly provided that the lease was valid and enforceable, and the tenancy could scarcely be unlawful in those circumstances.

Brent Council's case was that, in relation to the rent received from the property, in terms of both factual and legal causation, the benefit resulted from criminal conduct – rather than from lawful contracts.

At a final confiscation hearing in November 2018, the first and second defendants were ordered to repay £116k – all the rent received in a 70-month period between April 2013 and July 2016, plus costs.

The third defendant was ordered to repay £5,000, plus costs. The fourth defendant was ordered to pay costs, but in the event, no confiscation order was made under POCA.

It was found he had not himself 'obtained' benefit from rent, which had been paid to either agents for the first and second defendants, or to the third defendant acting as the 'manager' of the property.

With the case now resolved, local authorities are now more clear on how to go about using POCA in future prosecutions for unlawful HMO use. ■