



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

Case reference : **CHI/00HP/HBA/2019/0002**

HMCTS code : **A:BTMMCOURT**

Applicant : **Bournemouth, Christchurch and Poole
Council**

Representative : **Andy McDiarmid of Legal Services**

Respondent : **Mahmut Gilgil**

Type of application : **Application for a banning order –
section 15(1) of the Housing and
Planning Act 2016**

Tribunal Member : **Judge Tildesley OBE**

Date of Hearing : **29 April 2020
Hearing by Telephone Conference**

Date of Decision : **5 May 2020**

DECISION

PREFACE

Pursuant to Rule 33(2A) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and to enable this case to be heard remotely during the Covid-19 pandemic in accordance with the Pilot Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal the Tribunal has directed that the hearing be held in private. The Tribunal has directed that the proceedings are to be conducted wholly as audio proceedings; it is not reasonably practicable for such a hearing, or such part, to be accessed in a court or tribunal venue by persons who are not parties entitled to participate in the hearing; a media representative is not able to access the proceedings remotely while they are taking place; and such a direction is necessary to secure the proper administration of justice.

Under Rule 33A the Tribunal has directed that the hearing be recorded using BT Meet Me. Any person may apply to the Regional Manager, First-tier Tribunal Property Chamber for the Southern Region for an audio copy of the recording to be supplied to them electronically. A copy of the recording will be made available for the sole purpose of the fair and accurate reporting of the judicial proceedings of the First-tier Tribunal. The re-use, capture, re-editing or redistribution of the recording of the hearing in any form is not permitted. Any such use could attract liability for breach of copyright or defamation and, in some circumstances, could constitute a contempt of court.

SUMMARY OF THE DECISION

The Tribunal makes a Banning Order for Five years.

BACKGROUND

1. On 28 October 2019 the Applicant applied for banning order against the Respondent who has been convicted of a 'banning order offence' under section 15(1) of the Housing and Planning Act 2016 (2016 Act).
2. A 'banning order' is an order made by the Tribunal, banning a person (for a period of at least 12 months) 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. On 13 November 2019 the Tribunal sent a copy of the Application together with directions to the Respondent at the address given by the Applicant.
 4. On 2 December 2019 and 3 January 2020 the Tribunal granted the Applicant extensions of time to 13 March 2020 to serve its statement of case on the Tribunal and the Respondent. The Tribunal received its copy by the said date. The Applicant has confirmed that it served a copy of the case on the Respondent.
 5. The Respondent was originally required to send its statement of case by post on the Respondent and the Tribunal by 15 April 2020.
 6. On the 19 March 2020 the Tribunal varied the directions in view of the Coronavirus public health emergency by requiring the Respondent to send an electronic copy of its case to the Tribunal by 15 April 2020 as well as providing a copy to the Respondent. The Tribunal also directed that the hearing would be by means of a Telephone conference call on 29 April 2020. The directions contained details of the phone numbers to contact.
 7. On 17 April 2020 Mr McDiarmid, the Applicant's representative, contacted the Tribunal expressing concern that the Applicant had not received any representations from the Respondent. Mr McDiarmid also pointed out that it had come to his attention that the Council were involved in some unrelated matter with the Respondent where the Council had arranged a Turkish interpreter for the Respondent. Mr McDiarmid, however, added that Mr Harris, the Housing Officer, had met the Respondent on several occasions and was of the view that the Respondent had no difficulties with either verbal or written English, which Mr Harris confirmed in a witness statement. Mr McDiarmid provided the Tribunal with a mobile number for the Respondent.
 8. Mr May, the Tribunal's delivery manager, spoke to the Respondent on 23 April 2020 and gave him details of the hearing including the phone numbers. Mr May followed this up with two text messages on 23 April 2020 and 29 April 2020. Mr May was of the view that the Respondent understood and spoke English.
 9. On 27 April 2020 Mr McDiarmid made contact with the interpreter for the Respondent in the unrelated matter. Mr McDiarmid asked the interpreter to explain the contents of an attached letter about the Banning Order application to the Respondent. Mr McDiarmid also provided in a later email to the interpreter dial-in instructions for the hearing of the banning order. On 28 April 2020 the interpreter sent Mr McDiarmid two emails confirming that the Respondent was aware of the telephone hearing, instructions for joining the hearing had been given and communicated to the Respondent, and that the Respondent intended to participate in the hearing.

10. Although there was persuasive evidence that the Respondent understood spoken and written English, the Tribunal was mindful of the advice in Chapter 8 of the Equal Treatment Bench Book at [84]:

“When giving evidence, people for whom English is not a first language may not always fully understand what they are being asked. It is one thing to know the basics of a language and to be able to communicate when shopping or working. It is quite another matter having to appear in court, understand questions, and give evidence. It should also be remembered that many ethnic minorities prefer to speak their mother tongue at home. Judges should therefore be alert to different language needs, and should not assume, simply because a witness has lived in the UK for many years, that he or she does not require an interpreter”.

11. Given the advice the Tribunal arranged for an interpreter in Turkish to attend the hearing which she duly did.
12. The Respondent did not attend the hearing, and supplied no explanation for his non-attendance.
13. The Tribunal decided to proceed in the absence of the Respondent in accordance with rule 34 of the Tribunal Procedures Rules 2013.
14. The Tribunal was satisfied that the Respondent had been notified of proceedings. The Tribunal had regard to the facts that details of and documents relating to the proceedings had been sent to his last known address. Mr May, the Tribunal Delivery Manager, had spoken to him on the phone and sent text messages by way of reminder, and the Respondent’s interpreter in the unrelated matter had communicated to him about the proceedings receiving confirmation from the Respondent that he would participate in the proceedings.
15. The Tribunal decided that it was in the interests of justice to proceed with the hearing. The case involved serious allegations against the Respondent which potentially posed a high risk of harm to tenants occupying properties let by the Respondent. The Applicant’s evidence indicated that the Respondent held a total disregard of the Council’s lawful authority to enforce housing standards. The Tribunal considered there was compelling evidence that the Respondent had deliberately chosen not to participate in the proceedings.

Consideration

16. Under section 16 of the 2016 Act a Tribunal may make a banning order against a person who has been convicted of a banning order offence preventing him from letting housing in England, engaging in English letting agency work; engaging in English property management work; or a combination of these.
17. Banning orders were introduced into legislation as part of a package of measures directed at rogue landlords who do not meet their legal

obligations, sometimes exploiting their tenants by renting out substandard, overcrowded or dangerous accommodation.

18. Lord Bourne of Aberystwyth explained in the House of Lords Debate on Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017 (2017 Banning Order Regulations) that

“These landlords often do not respond to legitimate complaints made by tenants. Some would even prefer to be prosecuted rather than maintain their properties to a decent standard”.

“The purpose of banning orders is to target the most prolific offenders who have been convicted of serious housing, immigration and other criminal offences connected to their role as landlords. The Orders will prevent rogue landlords and property agents earning income from renting out properties or engaging in letting agency or property management work, forcing them either to raise their standards or to leave the sector entirely”¹.

19. Before the Tribunal can consider making a banning order under section 16 of the 2016 Act it must be satisfied of various matters.

Whether the Respondent has been convicted of a banning order offence?

20. The Applicant produced a Memorandum of Entry of the Register of Dorset Magistrates’ Court which showed that on 9 May 2019 at Poole Magistrates’ Court the Respondent was convicted of twelve offences of failing to comply with Regulation 3, 4, 5 (3 offences), 6, 7 (4 offences) and 8 (2 Offences) of the Management of Houses in Multiple Occupation (England) Regulations 2006 and section 234(3) of the Housing Act 2004 on various dates between 12 March 2018 and 1 May 2018. The Respondent was fined £250 for each offence, and ordered to pay costs of £3,425 and £30 surcharge to fund victim services.
21. The Tribunal observes that the Offence of section 234(3) of the Housing Act 2004 is named as a Banning Order offences in Schedule 1 of The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017. The Offences were continuing offences and, therefore, committed after 6 April 2018.
22. The Tribunal is satisfied that the Respondent has been convicted of Banning Order Offences.

¹ See Hansard 22 January 2018 Volume 788 HL Debate on Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017

Whether the Applicant has given the Respondent a notice of intended proceedings in compliance with section 15 of the 2016 Act, and whether it has otherwise complied with the procedural requirements of that section?

23. On 31 July 2019 the Applicant issued the Respondent with Notice of Intended Proceedings to Apply for a Banning Order for a period of 10 years. The Respondent was given the opportunity to make representations by 5 September 2019. The Respondent made no representations. The Application for the Banning Order was made on 28 October 2019.
24. The Tribunal finds that (1) the Notice of Intended Proceedings was issued within 6 months of the Respondent's conviction for banning order offences; (2) the Notice of Intended Proceedings stated that the Applicant was applying for a Banning Order for a period of 10 years because he had been convicted of offences of failing to comply with Management of Houses in Multiple Occupation (England) Regulations 2006 and section 234(3) of the Housing Act 2004; (3) the Respondent was invited to make representations within period not less than 28 days; (4) the Respondent made no representations (5) the Application to the Tribunal was made after the closing date for receipt of representations.
25. The Tribunal is satisfied that the Applicant has given the Respondent a Notice of Intended Proceeding and has complied with the procedural requirements of section 15 of the 2016 Act.

Whether, at the time the offence was committed, the Respondent was a 'residential landlord' or a 'property agent'?

26. The Applicant stated that the Respondent was letting rooms for rent at the first floor flat at 51 Blandford Road Poole which is where the various banning order offences had been committed. The hearing bundle included a report of the inspection of the property on 8 August 2018 which recorded that one of the residents was paying £200 per month for the letting of a room [258].
27. The Tribunal is satisfied that at the time the offences were committed the Respondent was a residential landlord.

Whether a Banning Order should be made?

28. Having regard to the above findings the Tribunal is satisfied that it can make a banning order. The next question is whether the Tribunal should exercise its discretion to do so.
29. Under section 16(4) of the 2016 Act the Tribunal must consider the following factors in deciding whether to make a banning order.

- (a) the seriousness of the offence of which the Respondent has been convicted;
 - (b) any previous convictions that the Respondent has for a banning order offence;
 - (c) whether the Respondent is or has at any time been included in the database of rogue landlords and property agents (pursuant to section 30 of the 2016 Act); and
 - (d) the likely effect of the banning order on the Respondent and anyone else who may be affected by the order.
30. The Applicant submitted that the offences committed by the Respondent had an immediate impact on the health and safety of the occupants of the property. The Applicant pointed out that the requirements imposed by the Regulations were not onerous and did not require significant sums of money to put matters right. The Applicant asserted that the Respondent had repeatedly ignored his obligations and had spurned opportunities given to him by the Applicant to remedy the defects. In the Applicant's view the Respondent had shown a blatant disregard of the wellbeing of the occupants which put them at serious risk of harm.
31. The Applicant considered that 12 convictions under the Regulations on their own amounted to an indictment of the seriousness of the Respondent's offending.
32. The Applicant also relied on the evidence of Mrs Donna Bryant and Mr Philip Harris, Housing Enforcement Officers, in respect of the inspections carried out on the property and the various orders made against the Respondent.
33. The property at 51 Blandford Road Poole comprises commercial premises on the ground floor and a two bedroom flat on the first floor accessed from the rear. The property first came to the Applicant's attention on or about 7 September 2017 when it received complaints about overcrowding and that the property was being used as a house in multiple occupation. On 29 January 2018 Mr Harris carried out an inspection of the property which identified a very serious problem in the kitchen involving the electrical system which would result in a serious fire if not resolved quickly and exacerbated by the lack of an adequate fire detection system. An improvement notice was served on the Respondent on 31 January 2020 which was not appealed against.
34. On 16 February 2018 the Applicant received a further complaint about the number of occupants at the property. On 10 April 2018 Mrs Bryant carried out an inspection of the property and discovered that there were four rooms and a cupboard being used for living accommodation for at least 11 people. According to the Applicant, the accommodation was suitable for three people. On 1 May 2018 Ms Bryant carried out a further inspection with Steve Mant, the Fire Safety Officer from Dorset and Wiltshire Fire

and Rescue Service. They discovered two people living in the cupboard. Mrs Bryant recorded that the Respondent was argumentative and said that the occupants had a choice not to live at the property. On 21 May 2018 the Applicant issued a Prohibition Order preventing the cupboard from being used as a bedroom. On 5 June 2018 the Applicant issued the Respondent with an Overcrowding Notice under section 139 Housing Act restricting the number of occupants to three persons. On 8 August 2018 Mrs Bryant inspected the property again and found at least nine people living with a male person occupying the cupboard. Mrs Bryant cautioned the Respondent for potential offences of failure to comply with a prohibition order and the overcrowding notice. The Respondent did not appeal the order and the notice. During the course of her inspections she also ascertained that various works remained outstanding in respect of the Improvement Notice and of a Contravention of the Management of Houses in Multiple Occupation (England) Regulations 2006 Notice dated 1 February 2018.

35. On 26 February 2019 Mr Harris carried out an inspection of the property and found that it was occupied by 10 persons and that the property was both unsafe and unsuitable for the number of occupants. Mr Harris also ascertained that the various works required under the Management of Houses in Multiple Occupation (England) Regulations 2006 Notice had not been carried out. Mr Harris made a final visit on 7 October 2019 and discovered that the various works under the 2006 Notice remained outstanding despite the Respondents' conviction for these offences on 9 May 2019. The Respondent said that three of his staff occupied the first floor flat which meant that it was still a house in multiple occupation.
36. The Tribunal accepts the Applicant's evidence.
37. The Tribunal notes that the Respondent was prosecuted for the offences of failing to comply with an improvement notice, a prohibition order and the contravention of an overcrowding notice for which the Applicant offered no evidence on the 9 May 2019 and the charges were dismissed. The Tribunal, however, considers that it is entitled to take into account the circumstances leading to the making of the Order and Notices and also the facts disclosed in the evidence on the inspections because the Order and Notices were not appealed and the Respondent has chosen not to participate in these proceedings and challenge the facts of the inspections.
38. The Tribunal finds from the wider circumstances that (1)The Respondent showed a blatant disregard for the health and safety, and wellbeing of the persons occupying the flat. (2)The Respondent abdicated his responsibilities as a landlord and his attitude was summed up by his comment "it was the occupiers' choices to live there". (3)The Respondent demonstrated his unwillingness to comply with the Orders of the Applicant in discharge of their statutory responsibilities for housing (4) The Respondent's flouting of the law. He continued to commit the offences of failing to comply with the Management Regulations despite his conviction on 9 May 2019.

39. The Tribunal is satisfied that it is entitled to regard the Respondent's conduct as viewed in the wider circumstances as an aggravating feature of the banning order offences.
40. The Tribunal considers that a total fine of £2,400 together with costs of £3,425 and £30 surcharge is a significant penalty. Also the number of offences, 12, is an aggravating feature..
41. The Tribunal concludes having regard to the aggravating features and the totality of the penalty that the offences were serious.
42. The Applicant was not aware of any previous Banning Order offences committed by the Respondent. The Applicant confirmed that the Respondent's name had not been included in the Database of Rogue Landlords.
43. The Respondent did not participate in the proceedings. The Tribunal has no information on the likely effect of a banning order on the Respondent and of any tenants that may be living in properties let by him. The Tribunal, however, observes that a banning order does not invalidate any tenancy agreement held by occupiers of a property let by the Respondent.
44. The Tribunal concludes on the facts found that the Respondent was a rogue landlord who had failed to meet his legal obligations and who had exploited tenants by renting out substandard and dangerous accommodation.
45. The Tribunal, therefore, grants the application for a banning order.

What should be the terms of the Order?

46. The Applicant requested an Order for ten years on the basis of his blatant disregard for the safety of his tenants and of his continuous flouting of the law. The Applicant contended that a term of ten years would send a clear message that such conduct was not tolerated and would act as deterrent to others.
47. The Applicant confirmed that it was not aware of any other properties let by the Respondent.
48. The Tribunal on balance considers a period of ten years too long. The Tribunal decides that a period of five years is appropriate for the seriousness of the offending and the particular circumstances of the case. The Tribunal considers a period of five years constitutes a significant deterrent to the Respondent and to others who might stray into the path of being a rogue landlord.
49. The Tribunal is satisfied that the Order should prevent the Respondent from letting houses and in engaging in letting agency and property management work. Finally the Tribunal holds that as an anti-avoidance measure the Respondent should be banned from acting as an officer of any

company that lets housing or is engaged in property management or letting agency work in England and from any involvement in the management of such a company.

50. Although the banning order takes effect from 3 June 2020 it does not affect the rights of the tenants to an extended period of notice of 6 months as a result of the Coronavirus public health emergency.
51. The Tribunal records that the Applicant makes no application for costs and reimbursement of Tribunal fees.
52. The Tribunal orders the Applicant to serve the decision and the Order on the Respondent which can include leaving it at his last known address, and confirm to the Tribunal the date and place service has been effected. The Applicant indicated at the hearing that if an Order was made it would arrange service of it.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case by email at rpsouthern@justice.gov.uk
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.