



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

Case reference : **CHI/00HB/HBA/2021/0003**

Applicant : **Bristol City Council Council**

Representative : **Kate Burnham-Davies, Solicitor**

Respondent : **Mr Ahmed Adam Habane**

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

Tribunal : **Judge D Whitney
Miss C Barton MRICS
Ms T Wong**

Date of Hearing : **16th December 2021
Hearing by Video**

Date of Decision : **4th January 2022**

DECISION

SUMMARY OF THE DECISION

The Tribunal makes a Banning Order for Five years and orders the Respondent to reimburse the Council with the Tribunal fees of £300 by 31 January 2022.

BACKGROUND

1. On 18 October 2021 Bristol City Council (“The Council”) applied for banning order against the Respondent who had 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 10th November 2021 the Tribunal issued directions including that the matter would be heard on 3rd December 2021. The Respondent did not provide a statement of case in compliance with the directions. The hearing date was changed to the 16th December 2021.
4. On 16th December 2021 Ms Burnham-Davies, Solicitor, appeared for the Council. Mr J Mallinson, Private Housing Team Manager, and Mr A Riddell, Environmental Health Officer were in attendance. The Respondent did not attend.
5. The Tribunal is satisfied that the Respondent was duly notified of the hearing and was aware of the hearing date. The Tribunal notes that the addresses supplied by the Council and used by the Tribunal to give notice are addresses (postal and email) from which the Respondent has previously replied to correspondence sent by the Council.
6. The Council supplied a bundle of documents for the hearing. References to pages in the bundle are in [].

Consideration

7. 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.

8. 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.
9. 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.

10. The Council stated that the Respondent had been convicted of various offences under the Housing Act 2004 (2004 Act) on 9th March 2021. The Council submitted that the Respondent’s offending was extremely serious which placed the occupiers of property he managed at a high risk of harm. The Council said it had spent a disproportionate amount of time with the Respondent in an effort to change his ways. The Council contended that the Respondent had continued to ignore the legal requirements placed on him as a landlord despite being prosecuted. The Council relied on a history of prosecutions dating back to 2013. The Council considered that the only option open to them was to apply for a banning order with the intention of stopping the Respondent from re-offending by prohibiting him from being involved in residential letting.
11. The Council relied upon the statement of Mr Riddell [7-13] which he confirmed was true. Memorandum of all convictions relied upon was at [47-72]. The Respondent had not submitted a statement of case in connection with these proceedings and had given no indication to the Tribunal as to whether he objected to the making of a banning order.
12. The last communication the Council had with the Respondent was an email dated 1st July 2021 from Mr Habane. The email was received in reply to a notice pursuant to Section 19 of the Housing and Planning Act 2019 [357-358]. The email referred to Mr Habane being unwell and overseas. No further communications has been received. It is noted by

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

the Tribunal that the email came from the address supplied to the Tribunal.

13. 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?

14. The Council produced a Memorandum of Entry of the Register of Bristol Magistrates' Court which showed that on 9th March 2021 at Bristol Magistrates' Court the Respondent was convicted of an offences of failing to comply with Regulation 4, 5(1), 5(4), 8, and 9(2) of the Licensing and Management of Houses in Multiple Occupation (Additional Provisions)(England)Regulations 2007 contrary to Section 234 of the Housing Act 2004. The Respondent was fined a total of £54,000 for these offences, victim surcharge of £181 and costs of £1257.93 [59-62]. On the same occasion he was convicted personally of other offences and as a director of Ashley Marketing Services Limited was found guilty of various offences and fined a total of £52,000.
15. The Tribunal observes that the Offences under section 234 of the Housing Act 2004 are named as a Banning Order offences in Schedule 1 of The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017.
16. The Tribunal is satisfied that the Respondent has been convicted of Banning Order Offences.

Whether the Council 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?

17. On 31st August 2021 the Council 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 1st October 2021 [39-41].
18. The Respondent did not reply to the same. The notice was sent to the Respondent at 101 Carolina House Dove Street Kingsdown Bristol BS2 8LP. Relying upon the evidence given by Mr Riddell we are satisfied that this is an address at which notice would have come to the attention of the Respondent.
19. The Council made Application for the Banning Order to the Tribunal on the 18 October 2021 [23].

20. 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 the Houses in Multiple Occupation (England) Regulations 2006 in his personal capacity and as a director of Ashley Marketing Services Limited [40]. (3) the Respondent was invited to make representations within a period of not less than 28 days; (4) the Respondent failed to make representations (5) the Application to the Tribunal was made after the closing date for receipt of representations.
21. The Tribunal is satisfied that the Council 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'?

22. Having considered the statement of case [7-13] and the witness statement of Mr Riddell used in the Magistrates Court prosecutions [75-106] the Tribunal is satisfied that at the time the offences were committed the Respondent was a residential landlord and property agent for 24 Lower Ashley Road.

Whether a Banning Order should be made?

23. 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.
24. 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 offences 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.

25. The Tribunal had regard to the following factors in determining the seriousness of the offences for which the Respondent was convicted on 9th March 2021:
 - a. The Respondent appeared to be letting property to tenants who themselves fell within vulnerable groups. It appears from the evidence produced by the Council that he was engaged in the business of letting and managing various properties known to the Council, not simply the property being the subject of the offences. He has chosen not to engage with the Council.
 - b. The Magistrates imposed a substantial fine for each offence.
 - c. The Applicant had previous convictions for housing offences dating back to 2013 relating to 24 Lower Ashley Road and other properties.
26. The above findings demonstrated that the Respondent showed a blatant disregard of the law which exposed the occupants to significant risks to their health and safety. This was apparent from the photographs within the bundle [547-575]. The Tribunal is, therefore, satisfied that the offences committed by the Respondent were at the high end of seriousness.
27. The Tribunal found that the Respondent had multiple previous convictions for the offences of managing a house without an HMO Licence, failing to comply with Regulations under the Licensing and Management of Houses in Multiple Occupation (Additional Provisions)(England)Regulations 2007 contrary to Section 234 of the Housing Act 2004, failing to comply with a notice served under Section 16 Local Government (Miscellaneous Provisions) Act 1976.
28. The Tribunal considers the circumstances of these convictions to be relevant to its determination. The convictions show that the Council has engaged in a history of enforcement action. The Respondent knew of his obligations and despite previous convictions has failed to modify his behaviour to ensure that he is not continuing to offend.
29. The Council confirmed that the Respondent's name had not been included in the Database of Rogue Landlords. The Council, however, indicated that it would place the Respondent's name on the Database if a banning order was made.
30. The Respondent did not participate in the proceedings. The Tribunal acknowledges that if a banning order is made it would deprive the Respondent of income derived from renting out the Property. The Tribunal, however, considers that this is an inevitable outcome of a banning order which is designed to prevent landlords from profiteering from the letting of sub-standard accommodation. The Tribunal understands from the Council that the owner of the Property has indicated that they have not received rental due under the commercial lease said to be held by the Respondent. Whilst the Tribunal notes the

Respondent has indicated in his earlier email that he was overseas receiving treatment for a medical condition no information has been received. Taking account of all matters we are satisfied that any reduction of the Respondents income as a result of a banning order being made is an inevitable consequence of his criminal behaviour in failing to comply with the statutory requirements.

31. The Tribunal concludes the seriousness of the offences committed by the Respondent, and his previous convictions justify the making of a banning order.
32. The Tribunal, therefore, grants the Application for a Banning Order.

What should be the terms of the Order?

33. The Council requested an order for ten years. The Tribunal considers that such a period of ten years is longer than is reasonably required. The Tribunal determines that a period of 5 years is sufficient to reflect the risks posed by the Respondent as a residential landlord.
34. The Tribunal determines that this is the correct period of time having taken account of all the evidence. In this Tribunal's determination any order made should be for a period which reflects the harm identified by the Respondent's behaviour but for no longer period than reasonably reflects the same. The harm is significant, however five years provides sufficient period for the Respondent to rehabilitate and educate himself as to the statutory requirements. In this Tribunal's determination a period of exclusion from the letting and management of residential property for 5 years properly reflects the offences and harm identified.
35. 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.
36. The Tribunal decides that the banning order takes effect from 4th January 2022 and remains in force 3rd January 2027.
37. The Council requested an order for the Respondent to reimburse it with the Tribunal's fees for the application and hearing. As the Council was successful with its application for a banning order the Tribunal orders the Respondent to reimburse the Council with fees of £300 by 31 January 2022.

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.
5. A person who did not attend the hearing may apply in writing to the Tribunal at rpsouthern@justice.gov.uk for the decision to be set aside within 28 days from the date of the decision . If such an application is made the person must state the reasons why s/he did not attend and why it is in the interests of justice to set aside the decision. It will be a matter for the Tribunal whether the decision is set aside.