



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

**Case Reference** : **MAN/00CJ/HBS/2022/0003**

**Applicant** : **Newcastle City Council**

**Representative** : **Ms J Bagshaw  
Applicant's Legal Services Team**

**Respondent** : **Mr Gerard Johnson**

**Representative** : **Mr K Hart  
Freemans, Solicitors**

**Type of Application** : **Application for a Banning Order  
Housing and Planning Act 2016 – s 15**

**Tribunal Members** : **Judge J Holbrook  
Regional Surveyor N Walsh**

**Date and venue of  
Hearing** : **17 May 2023  
Video hearing**

**Date of Decision** : **13 June 2023**

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**DECISION**

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## **DECISION**

**The application for a banning order is refused.**

## **REASONS**

### **INTRODUCTION**

#### **The application**

1. Newcastle City Council (a local housing authority) has applied to the Tribunal for a banning order under section 15 of the Housing and Planning Act 2016 (“the 2016 Act”). The respondent to the application is Gerard William Johnson of Brocklehurst House, Collin, Dumfries DG1 4PY.
2. A ‘banning order’ is an order made by the Tribunal, banning a person 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. The application seeks an order banning Mr Johnson from doing any of those things for a period of five years.

#### **The hearing**

4. The final hearing of the application took place (by means of HMCTS’ Video Hearings Service) on 17 May 2023. Newcastle City Council was represented at the hearing by Ms Joanne Bagshaw, a solicitor in its Legal Services team. Mr Johnson was represented by his solicitor, Mr Karol Hart.
5. We heard oral evidence from two witnesses for the council (Jo-Anne Hunt and Gwen Smith), and from Mr Johnson, as well as submissions from both representatives. In addition, we were referred to various documents in the hearing bundles provided by the parties.
6. The Tribunal’s decision was announced at the end of the hearing and the reasons for it were given orally in outline. This document records those reasons in greater detail.

## LAW AND GUIDANCE

### Tribunal's power to make a banning order

7. The effect of the provisions in Chapter 2 of Part 2 of the 2016 Act is that a person may be banned from all (or any) of the activities listed in paragraph 2 above (see section 14 of the Act). Any such ban must last at least 12 months and may include a ban on involvement in certain corporate bodies.
8. Section 16 of the 2016 Act empowers the Tribunal to make such an order on an application by a local housing authority (under section 15). However, before it makes a banning order, the Tribunal must be satisfied that the following conditions are met:
  - The local housing authority must have complied with certain procedural requirements before applying for the order.
  - The respondent must have been convicted of a 'banning order offence'.
  - The respondent must also have been a 'residential landlord' or a 'property agent' at the time the offence was committed.
9. Section 16(4) provides that, in deciding whether to make a banning order against a person, and in deciding what order to make, the Tribunal must consider:
  - (a) the seriousness of the offence of which the person has been convicted,
  - (b) any previous convictions that the person has for a banning order offence,
  - (c) whether the person is or has at any time been included in the database of rogue landlords and property agents (under section 30 of the 2016 Act), and
  - (d) the likely effect of the banning order on the person and anyone else who may be affected by the order.
10. A list of offences which are 'banning order offences' is to be found in the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018. The full list was annexed to the directions issued to the parties by the Tribunal on 25 August 2022. However, for present purposes, it is sufficient to note that the list includes the offence, under section 234(3) of the Housing Act 2004, of failing to comply with management regulations in respect of houses in multiple occupation (provided: (i) the offence was committed after 6 April 2018; and (ii) the sentence imposed was not an absolute or conditional discharge).

## Relevant guidance

11. The Ministry of Housing, Communities and Local Government (as it was then called) published non-statutory guidance in April 2018: *Banning Order Offences under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities*. The stated intention of the guidance is to help local housing authorities understand how to use their powers to ban landlords from renting out property in the private rented sector. Save to the extent that the guidance reflects a statutory requirement, its recommendations are not mandatory. However, it is good practice for a local housing authority to follow them.
12. The guidance notes the Government’s intention to crack down on “a small number of rogue or criminal landlords [who] knowingly rent out unsafe and substandard accommodation” and to disrupt their business model. It recommends that banning orders should be aimed at:

“Rogue landlords who flout their legal obligations and rent out accommodation which is substandard. We expect banning orders to be used for the most serious offenders.”
13. The guidance also states that local housing authorities are expected to develop and document their own policy on when to pursue a banning order and should decide which option to pursue on a case-by-case basis in line with that policy. It repeats the expectation that a local housing authority will pursue a banning order for the most serious offenders. In deciding whether to do so, the guidance recommends that the authority should have regard to the factors listed in section 16(4) of the 2016 Act (see paragraph 9 above). It also recommends that the following considerations are relevant to an assessment of the likely effect of a banning order: the harm caused to the tenant by the offence; punishment of the offender; and the deterrent effect upon the offender and others.
14. Newcastle City Council has adopted its own *Private Sector Housing Enforcement Policy (July 2020)* and this includes the council’s banning order policy. In large part, this is merely a repetition of aspects of the Government’s non-statutory guidance, and it re-iterates the expectation that banning order applications will be targeted at the most serious offenders. The policy also sets out the internal processes which the council’s officers must follow before making an application to the Tribunal.

## BACKGROUND FACTS

15. Mr Johnson has been a professional landlord since the early 1990s. Having built up his property portfolio incrementally, he now owns 12 properties in the Newcastle area, which he lets to students. Eleven of these properties are presently tenanted. The twelfth is currently vacant (having been made the subject of a prohibition order in 2021).

16. Mr Johnson derives about 90% of his annual income from his rental properties, all of which are heavily mortgaged (as is Mr Johnson's own home in Dumfries).
17. Mr Johnson's portfolio includes properties at 10 Eslington Terrace and 10 Granville Road in Jesmond. They are both large pre-1919 terraced properties, divided into flats, and operated as houses in multiple occupation (HMOs). In March 2020, these properties were inspected by Jo-Anne Hunt (an Environmental Health Officer employed by the council) as there were concerns about poor management.
18. Ms Hunt noted the following concerns in relation to three of the four flats at Eslington Terrace:
  - There were several slipped slates on the roof;
  - There were no heat detectors in the flat kitchens;
  - There were no smoke detectors in the flat lounges;
  - There was no smoke detector to the basement floor which contained living accommodation;
  - There were no fire doors to the kitchens;
  - The manager's contact details were not on display and the tenants had not been provided with information on action to be taken in case of fire;
  - There was no emergency lighting in the flat corridors leading to the bedrooms;
  - Some light fittings were either missing or not working;
  - There were no separate fire alarm detectors/sounders interlinked to the detection system in the common parts of the building; and
  - Some doors did not fit properly and/or had damaged closers.
19. She noted the following concerns in relation to one of the three flats at Granville Road:
  - There were no separate fire alarm detector/sounder interlinked to the detection system in the common parts of the building;
  - The manager's contact details were not on display and the tenants had not been provided with information on action to be taken in case of fire;
  - The window frames and external woodwork were in poor condition and there was some damaged glazing;
  - The meter cupboard in the communal hallway posed a fire risk and there was no fire door to the understairs cupboard;
  - There was no heat detector in the flat kitchen and no fire door;
  - There was no smoke detector in the lounge;
  - There was an accumulation of rubbish on the external fire escape;
  - There were several holes to the plaster on the means of escape;
  - The tenants reported that the boiler was losing pressure and making a high-pitched noise; and

- The decoration to the front attic bedroom was in poor condition following a leak.
20. Newcastle City Council did not take formal enforcement action in respect of any of these matters under the Housing Act 2004. However, in March 2020, Mrs Hunt sent Mr Johnson a schedule of the works required to address them. Because of the national lockdown caused by the COVID-19 pandemic, the properties were not re-inspected until October that year. Nevertheless, when they were eventually re-inspected, several concerns remained, and Mr Johnson was interviewed under caution about possible breaches of the HMO Management Regulations.
21. The council subsequently prosecuted Mr Johnson under section 234(3) of the Housing Act 2004 for 15 counts of the offence of failing to comply with the HMO Management Regulations, as follows:
- 3 x breach of regulation 3 (failing to display manager’s contact details in a prominent place within the properties);
  - 5 x breach of regulation 4(4) (failing to provide intumescent strips and failing to provide emergency lighting to escape routes);
  - 1 x breach of regulation 4(5) (failing to deal with slipped slates on roof);
  - 1 x breach of regulation 7(1) (failing to ensure that all parts of HMO were maintained in good and clean decorative repair);
  - 2 x breaches of regulation 7(2) (failing to keep windows within the common parts in good repair);
  - 1 x breach of regulation 7(4) (failing to keep the garden belonging to one of the HMOs in a safe and tidy condition); and
  - 2 x breach of regulation 8(2) (failing to keep windows within the living accommodation in good repair).
22. On 25 November 2021, Mr Johnson pleaded guilty to all charges at Newcastle Magistrates’ Court and, on 16 December, he was sentenced for the offences by a District Judge. A fine of £500 was imposed in respect of each of four of the breaches of regulation 4(4) relating to fire safety. No separate penalty was imposed in respect of the remaining offences, but Mr Johnson was additionally ordered to pay costs of £1,300.
23. By the time of the council’s re-inspections in October 2020, all of Mr Johnson’s rental properties were subject to either mandatory HMO licensing requirements, or to designated selective and additional licensing schemes, under the Housing Act 2004. Mr Johnson had previously held mandatory HMO licences for various properties, but the council had since informed him that his licences would not be renewed

because the management arrangements for the properties were unsatisfactory. Mr Johnson had therefore arranged for all of his properties to be managed by professional managing agents, Daley Lettings, and we understand that Daley Lettings is now the licence holder for each of Mr Johnson's rental properties.

24. The council's concerns about Mr Johnson's performance as a landlord were not based solely on the issues which had led to his conviction for the offences concerning the properties at Eslington Terrace and Granville Road: there had been other concerns about his properties in recent years. In particular:
  - In January 2021, a prohibition order had been made under the Housing Act 2004 in relation to 34 Heaton Grove. That order (which is still in force) prohibited the use of the property for residential purposes as a consequence of various defects including dampness and disrepair, and the absence of adequate heating or hot water systems.
  - In March 2021, a notice had been served in relation to 10B Granville Road under section 80 of the Environmental Protection Act 1990. The notice (which required remedial action to be taken following water penetration into a bedroom) was complied with.
  - In April 2021, a notice had been served in relation to 10 Eslington Terrace under section 4 of the Prevention of Damage by Pests Act 1949 following a build-up of rubbish in the front and rear gardens. This notice was partially complied with.
25. On 14 June 2022, the council made an entry in respect of Mr Johnson in the national database of rogue landlords and property agents established and operated by the Secretary of State under section 28 of the 2016 Act. The offences on which that entry is based are the same offences which form the basis of the present application for a banning order.
26. On 25 July 2022, the council applied to the Tribunal for a banning order.

## **DISCUSSION AND CONCLUSIONS**

27. There is no dispute that Mr Johnson has been convicted of banning order offences, or that he was a residential landlord at the time those offences were committed. Moreover, following a preliminary hearing in this case on 17 January 2023, the Tribunal has already determined that Newcastle City Council complied with section 15 of the 2016 Act before applying for a banning order. So, it is clear that the Tribunal has the power to make a banning order in this case. The question for determination is whether it *should* do so in the particular circumstances of this case.
28. We must therefore decide whether to exercise the Tribunal's discretion to make a banning order, and we must do so having regard to the factors

mentioned in section 16(4) of the 2016 Act. In addition, we should have regard to the Government’s non-statutory guidance on banning orders (see paragraphs 11 – 13 above) and to Newcastle City Council’s own Housing Enforcement Policy (paragraph 14). The views of the local housing authority in this particular case are, of course, relevant too and merit respect, but the Tribunal must make its own decision based on all the available evidence.

29. Newcastle City Council argued that a banning order should be made against Mr Johnson because the nature of the offences committed by him is particularly serious – indeed, more serious than the fine imposed by the District Judge might otherwise suggest – and because the offences do not concern a one-off isolated incident, but are part of a pattern of behaviour over a number of years. Whilst recognising that the management of Mr Johnson’s portfolio is currently entrusted to professional managing agents, the council was nevertheless concerned that this arrangement might not necessarily be an enduring one.
30. Mr Johnson opposes the council’s application for a banning order. He argues that the offences in question are not of the most serious nature, and that a banning order would have a disastrous effect on him personally, potentially leading to bankruptcy and to the loss of his home.
31. We find that the banning order offences in question were of a serious nature: as the council’s witnesses pointed out, several of them concerned breaches of regulations concerning fire-safety. Such breaches are necessarily serious, particularly where (as here) they concern student-occupied HMOs, which generally pose an increased fire safety risk. Nevertheless, based on our own knowledge and experience, we also find that these offences were not of the *most* serious kind (when viewed on the spectrum of possible breaches of the HMO Management Regulations). We note that the sanctions imposed on Mr Johnson for the offences by the Magistrates’ Court would seem to indicate that the sentencing judge took a similar view, as the level of fines imposed is not especially high for offences of this kind (based again on our own knowledge and experience of housing enforcement practice).<sup>1</sup>
32. Newcastle City Council’s case for a banning order was principally based on two assertions: first, that the relevant banning order offences were of a particularly serious nature; and, second, that they formed part of a

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<sup>1</sup> Since this case was heard, the Upper Tribunal (Lands Chamber) has given its decision in *Knapp v Bristol City Council* [2023] UKUT 118 (LC). One of the issues in that case was the weight which should be given to the criminal sanction when considering the seriousness of an offence in the context of a banning order application. The Upper Tribunal held that the FTT “would certainly be entitled to disregard or give limited weight to the level of fines imposed if it considered that they were an inadequate or incomplete reflection of the seriousness of the offence, or if it simply disagreed with the magistrates’ assessment. But the FTT would also be entitled to give considerable weight to that assessment, as it did in this case. There is nothing in the Act which directs the FTT to adopt one approach or the other when it “considers” the seriousness of the offence and provided it has done so when determining whether to make a banning order it will have carried out the exercise Parliament intended.”.



pattern of unsatisfactory performance by Mr Johnson as a landlord over a number of years. However, this second assertion was not adequately supported by evidence in the proceedings before the Tribunal: whilst summary descriptions were provided relating to fire-safety concerns dating back to 2015 in relation to some of Mr Johnson's properties, there was inadequate documentary evidence from which to gain a proper understanding of how serious these concerns actually were. We accept that the council has clearly had wider dealings with Mr Johnson over the years, leading it to conclude that he is no longer a fit and proper person to be a licence holder in respect of his rental properties. However, Ms Smith said in her witness statement that "Unfortunately due to the council's data retention policy I am unable to provide further information in this regard". The council cannot therefore expect the Tribunal to attach significant weight to its assertions about Mr Johnson's past performance as a residential landlord.

33. The council *did* provide more specific evidence concerning the formal enforcement action referred to at paragraph 24 above, and such evidence certainly adds some weight to the council's case. However, it was insufficient to persuade us that a banning order is justified in this case: the three enforcement notices were all served within the same short period of time and the council accepts that Mr Johnson either complied or partially complied with the notices given under the 1949 and 1990 Acts. As far as the prohibition order is concerned, Mr Johnson responded by taking the property in question out of occupation.
34. As far as the banning order offences themselves are concerned, these do not in our view indicate a particular pattern of behaviour leading to regulatory breaches (even though there are 15 separate offences) because the offences are similar in nature; they were committed at the same time; and relate to two HMOs. Mr Johnson has no previous convictions for banning order offences and, whilst he has now been included in the database of rogue landlords and property agents, his inclusion in the database results from exactly the same convictions which now form the basis of this application for a banning order. As such, this is not a factor which adds significant weight to the case for making such an order.
35. It is nevertheless clear that there have been some significant shortcomings in Mr Johnson's performance as a residential landlord, and that his knowledge and understanding of the applicable regulations leaves something to be desired. Mr Johnson's decision to put the management of his portfolio into the hands of professional managing agents is therefore to be welcomed. But this does not necessarily mean that Mr Johnson should be made the subject of a banning order: the making of such an order is a draconian step which should be taken only in the case of the most serious offenders. On the basis of the evidence presented to us, we are not persuaded that Mr Johnson falls into that category.
36. Whilst part of the reason for making a banning order may be to punish the offender and to deter other rogue landlords, punishment is primarily

the function of the criminal justice system, whereas the primary purpose of banning orders is to crack down on rogue landlords and to disrupt their business models. A banning order should not be made where its likely effect on the offender would be disproportionate to the seriousness of the offending, or where it is unnecessary to prevent a recurrence of the offending behaviour. In this case, Mr Johnson gave evidence that the likely effect of a banning order would be a forced sale of his property portfolio, which would have significant adverse financial implications for him. Newcastle City Council did not challenge this assertion by producing alternative evidence, and we accept that Mr Johnson has genuine concerns that a banning order may lead to his bankruptcy and to the loss of his home in Dumfries.

37. Given the potentially catastrophic effect on Mr Johnson which making a banning order might therefore have, it could only be justified if the case for making such an order was particularly strong. We do not think it is: Mr Johnson is not one of the most serious offenders, and the fact that he has now placed his portfolio in the hands of professional managing agents offers some assurance that his previous management failings will not be repeated. We note in this regard that all of Mr Johnson's rental properties in Newcastle are currently subject to licensing requirements under the Housing Act 2004. This means that Mr Johnson is unable to resume direct management of any of those properties without first convincing the council that he is a fit and proper person to be the licence holder.

## **OUTCOME**

38. Our findings and conclusions in this case lead us to refuse Newcastle City Council's application for a banning order against Mr Johnson.

Signed: J W Holbrook  
Judge of the First-tier Tribunal  
Date: 13 June 2023