



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section s41 (1) of the Housing (Scotland) Act 2014.

Chamber Ref: FTS/HPC/GA/21/0009

Parties:

Lets Direct Southside LTD., 605 Cathcart Road, Glasgow, G42 8AD (“the Applicant”)

Scottish Ministers, 2H - NORTH, Victoria Quay, Edinburgh, EH6 6QQ (“the Respondent”)

Tribunal Member:

Lesley Ward (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

- 1. The First-tier Tribunal for Scotland (Housing and Property Chamber) “the tribunal” refused the application for appeal made by Lets Direct Southside LTD dated 31 December 2020 in terms of s41(4) of the Housing (Scotland) Act 2014 and rule 94 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.**
- 2. This was a hearing regarding an application for appeal in terms of rule 94 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, ‘the rules’ and s41(1) of the Housing (Scotland) Act 2014, the Act’ against the refusal of Scottish Ministers to enter the Appellant on the register of Letting Agents. The Appellant was represented by Mr Marcus Whyte solicitor and the Respondent was represented by Mr David Murdoch solicitor.**
- 3. The tribunal had before it the following copy documents:**
 - (1) Application for appeal dated 31 December 2020.**
 - (2) Production 1 for Appellant -Letter from the Housing and Social Justice Directorate to Mr Iqbal dated 10 December 2020.**

- (3) Production 2 for Appellant -Document titled 'Response to LARN October 2020'.
- (4) Consideration of Refusal Notice from Housing and Social Justice Directorate to Mr Iqbal dated 17 September 2020.
- (5) First Inventory of Productions for Appellant.
- (6) Second Inventory of Productions for the Appellant
- (7) Third Inventory of productions for the Appellant.
- (8) Written representations for the Appellant.
- (9) Written representations for the Appellant (Part 2).
- (10) List of authorities for the Appellant.
- (11) First Inventory of Productions for Respondent.
- (12) Second inventory of productions for Respondent.
- (13) Written representations for Respondent.
- (14) Supplementary representations for Respondent.
- (15) List of Authorities for the Respondent.

Preliminary matters

- 4. It was suggested at the CMD on 9 April 2021 that the tribunal chamber may wish to make some inquiries regarding the service of letting agent enforcement order 'LAEO' granted on 20 August 2018 and the subsequent notices sent out regarding the LAEO. From the chamber records the LAEO was sent to Lets Direct South LTD to the email address 'letsdirectsouth@aol.co.uk'. A subsequent letter from the chamber dated 1 October 2018 and addressed to Lets Direct South LTD at 605 Cathcart Road Glasgow G42 8AD was returned on 10 October marked 'Not known at this address return to sender'
- 5. Both parties had lodged detailed written submissions. It was agreed that the hearing would proceed on the basis of both parties clarifying any matters contained in their written submissions and thereafter making oral submissions to the tribunal.

The background

- 6. Mr Mohammed Vaseem Iqbal and Ms Sabrina Ahmad worked together in Lets Direct (South) LTD "the first company" and subsequently in Lets Direct Southside LTD "the second company". The first company was dissolved on 11 September 2018. At that time Mr Iqbal was the owner of the first company and Ms Ahmad was listed as the Director. The first company provided letting agency services but as the portfolio of properties was owned by Mr Iqbal no registration was required.

7. The second company started carrying out letting agent work on 3 September 2018. Mr Iqbal is the sole owner and director of the Appellant. Ms Ahmad is the appellant's office manager, and she is an individual in control and governance of the Appellant's letting agency work. The Respondent wrote to another company operated by Mr Iqbal and Ms Ahmad, Lets Direct (Glasgow) Ltd stating that if they were carrying out letting agency work they required to join the Scottish Letting Agent Register and Comply with the Letting Agent Code of Practice. The second company responded on 26 November 2018 to say that they were a newly founded business carrying out letting agency work and they intend to apply for registration once their training and other requirements have been completed. The application was made on 17 December 2019. The Respondent issued a refusal notice on 10 December 2020. That refusal notice is the subject of this appeal.

The notice of refusal

8. The Respondent were not satisfied that the Appellant was a fit and proper person in terms of s32 of the Act and had refused to register the Appellant in the register of letting agents for three main reasons:
- The LAEO of 20 August 2018 (arising out of a deposit of £1200 paid by a prospective tenant of the first company) issued to the first company was not complied with. As both Mr Iqbal and Ms Ahmad were responsible individuals of the first company (as owner and director respectively) they would be aware of the judgment of the tribunal and the LAEO issued. Failure to comply with a LAEO is a criminal offence.
 - The respondents sent an email to Ms Ahmad on 13 May 2019 asking why the LAEO was not paid given the connection between the first company and the second company. Ms Ahmad responded by stating that they have no link to the first company and the notice does not have any bearing on the second company. The respondents pointed out the inaccuracy of this statement in the consideration of refusal notice sent on 17 September 2020. The respondents were not satisfied that this information was provided as a result of a misunderstanding and the second company may have provided false information.
 - On 18 July 2020 the tribunal found that the second company had taken an illegal premium under the Rent (Scotland) Act 1984 by not returning a deposit to a prospective tenant who ultimately did not enter into a tenancy agreement.

Matters agreed.

9. It was agreed that the LAEO had been issued by the tribunal (albeit it was not agreed that the second company had received the LAEO) and the terms of the written correspondence passing between the parties was agreed. It was also agreed that the second order of the tribunal had been issued by the tribunal regarding a deposit that had not been returned. It was also agreed that once the first company was wound up it was not possible to satisfy the terms of the LAEO.
10. The respondents had lodged a timeline setting out the relevant dates between 27 March 2018 when the deposit of £1200 was paid, until 10 December 2020 when the notice of refusal was issued. The appellant had largely agreed with the timeline.

Submissions on behalf of appellant

11. The appellant's solicitor had lodged two sets of written submissions. It was his position that the first company and second company were completely separate legal entities. He did not represent the first company. Similarly, he was not instructed by Mr Iqbal and Ms Ahmad, he was instructed by the second company.
12. The appellant's main grounds of appeal were that:
 - The Respondents acted unreasonably in deciding that the Appellant, Mr Iqbal and Ms Ahmad were not fit and proper persons.
 - The Respondents did not take into account relevant considerations and failed to take into account relevant considerations when making that decision.
 - The Respondents failed to take into account the Appellant's written representations and explanations.
 - That the Respondents erred in requiring the Appellant, Mr Iqbal and Ms Ahmad to establish that they were fit and proper persons.
 - The Respondents' refusal to register the Appellants was not a proportionate action.
 - The Respondents could have exercised their discretion to register the Appellant and impose monitoring conditions.
 - The Respondents failed to support the Appellant's compliance with the Housing (Scotland) Act 2014.

Submissions on behalf of respondent

13. The Respondent's submissions can be summarised as follows:

- As Mr Iqbal was aware of the application to the tribunal and ultimately the grant of the LAEO, he or Ms Ahmad could have delayed the dissolution of the first company to enable them to satisfy the LAEO.
- They had failed to comply with the LAEO without reasonable excuse.
- The Respondent did assist the Appellant with the registration process.
- The Respondent has no discretion and must refuse registration if it is not satisfied the three requirements of s32 of the Act are met.
- The Respondent fully supported the Appellant in the application process.
- The Respondent was entitled in the light of the whole circumstances to decide that the Appellant and Mr Iqbal and Ms Ahmad are not fit and proper persons to be registered as letting agents.
- The Appellant failed to discharge the 'practical onus' on them to provide exculpatory or mitigating evidence.

Discussion

14. It was not disputed that Mr Iqbal and Ms Ahmad were both involved in the first and second company. Further, it was not disputed that in applying the fit and proper person test, the Respondent was entitled to take into account the actions of the two main individuals involved in the first company, notwithstanding the first company ceased to exist on 11 September 2018.

15. It appeared that the argument being advanced by the Appellant was that Mr Iqbal and Ms Ahmad could not reasonably have been expected to know about the LAEO before the first company was dissolved. After that, it was not within their gift or the gift of the second company to satisfy the terms of the LAEO.

16. The tribunal sought to properly understand the sequence of events surrounding the issuing of the LAEO: how it was communicated to the first company; how and when that communication was received, bearing in mind the LAEO was made on 20 August 2018 and the first company was dissolved on 11 September 2018.

17. The first company was represented at the hearing on 20 August 2018 by Mr John Iqbal. Mr Whyte confirmed in his written submissions that that Mr Mohammed Vassem Iqbal sometimes uses that name. Mr Whyte was unable to confirm whether the tribunal issued its decision to the parties on the day of the hearing. He was also unable to confirm if the first company received the tribunal's email of 22 August 2018 as the first company's email account was shut down in August/ September 2018. He was also unable to confirm if any written communications from the tribunal chamber had been received before the first company was dissolved. He was unaware if Mr Iqbal made any

inquiries with the chamber after 20 August 2018 to ascertain the outcome of the proceedings. It was Mr White's submission that Mr Iqbal and Ms Ahmad were aware of the claim but not the order. The LAEO was issued at a time where the first company was being dissolved and the accountant advised it was too late to pay any tribunal order.

18. The tribunal sought to explore the address of the first and second company. The first company operated out of 605 Cathcart Road at the time the first application for £1200 was made to the chamber in May 2018. On 21 June 2018 the first company applied to change its registered address to 704 Cathcart Road. According to Mr Whyte this was to enable refurbishment works at 605 Cathcart Road to take place. Thereafter the second company operated their business from 605 Cathcart Road. Mr Whyte was unable to confirm whether the first company continued to receive mail at 605 Cathcart Road or whether they advised the tribunal chamber of a change of address.
19. According to Mr Murdoch, Mr Iqbal or Ms Ahmad could have delayed the winding up of the first company to enable them to satisfy the terms of the LAEO. They were in control of the process and could have taken steps to slow down or delay the process to enable compliance with the LAEO before it was dissolved. Further, Mr Iqbal's representations of 27 October 2020 show that he was aware of the LAEO before the first company was dissolved. Mr Iqbal states:

We argued before the tribunal that the Applicant has wasted a great deal of our time and that we should be entitled to keep the funds as recompense for our wasted time and trouble. The Tribunal accepted that the money paid over would have been used to rent and deposit. However, the Tribunal also decided that on a strict liability basis, because the rental did not go ahead then the money paid over could not or at least could no longer be considered an advance rental of deposit and given the strict terms of s82 of the 1984 Act could therefore only constitute a premium. The Tribunal sympathised with our position that the Applicant had wasted a great deal of our time and, to a degree, sympathised with our position and our situation. However they had no choice. Given that it appeared to the Tribunal that LD South had not intended to breach Section 82 of the Act (that is we had not intended to charge a premium) and that we had in fact always intended to use the money towards rent and deposit, the Tribunal correctly admonished LD South and obliged it only to pay the £1200 back. LD South was not otherwise penalised. The tribunal took a little while to reach its decision, recognising that this was a very unusual situation and that we had been significantly inconvenienced. We have learned a lot more given the discussion involved in this case with the Tribunal as the wide ambit of what might constitute a premium.

20. The tribunal considered the information available to the respondents on this point. Both Ms Ahmad and Mr Iqbal had the opportunity to present their side

of the position and give a reasonable excuse. What they did was to arguably compound the error by failing to accept a connection between the 2 companies or any responsibility for the LAEO. In his written submissions referred to at paragraph 19 above, Mr Iqbal makes clear reference to the tribunal's deliberations and information that must have come to him on the day when the decision was issued as the tribunal written decision does not make reference to those matters. Mr Iqbal does not state that he was aware of the claim but not the order. Mr Iqbal does not make any reference in his written submissions to being late to find out about the LAEO.

21. Regarding the second point identified in paragraph 7 above, it was Mr Whyte's submission that the request made by the respondent for further information was vague and meant that Ms Ahmad failed to understand what was being asked of her. The respondent's email of 13 May 2020 was headed Letting Agent Enforcement Order. It stated:

We have noted that there was a letting agent enforcement order (LAEO) issued by the First-tier Tribunal for Scotland (the Tribunal) against Lets Direct (South) Limited which has not been complied with. This LAEO was issued on 20 August 2018 and required Lets Direct (South) Limited to pay £1200 compensation due to a failure to comply with paragraph 48 of the Letting Agent Code of Practice and being guilty of an offence under Section 82 of the 1884 Act.

22. The email went on to give a link to the LAEO on the tribunal's website and then stated:

Given the connection between Lets Direct (South) Ltd and Lets Direct Southside Ltd please provide an explanation as to why this LAEO has not been complied with..

23. Ms Ahmad's response of 19 May 2020 states:

Our company is called "Lets Direct Southside Ltd" rather than Lets Direct South Ltd. We believe Lets Direct South Ltd ceased trading a few years ago. We have no link to this company; therefore the notice does not have any bearing on Lets Direct Southside Ltd.

24. Mr Murdoch submitted that if Ms Ahmad was in any doubt about the meaning of the email of 13 May 2020 she could have asked for clarification or for further information. Instead, what she provided was a flat denial of any knowledge of the first company despite being a director and despite the fact she applied for the dissolution. An explanation was asked for and this was a lost opportunity by Ms Ahmad to provide an explanation in connection with the LAEO. This then cast doubt on the integrity of the appellant and the veracity of the application for registration.

25. In his written submissions to the respondent dated 27 October 2020 Mr Iqbal states:

She thought you were mistaken with regards to the name of the Applicant. In that regard she did not understand why we were being asked about a dissolved company and thought you must be confused between 'South' and "Southside". Sabrina should have checked the exact date of dissolution before responding to the terms 'We believe' in the context of "We believe Lets Direct South Limited ceased trading a few years ago. ...Sabrina went on to state "We have no link to this company" simply meaning there is now no link because the company was dissolved, does not exist and no longer trades- there is now no link.

26. Regarding the second deposit of £575, the Appellant's position was the deposit was not returned to the prospective tenant due to a staff training issue and as soon as the matter was discovered the money was repaid. Looking at the agreed timeline this money was paid on 22 August 2019. Tribunal proceedings were raised on 19 December 2019 and a hearing took place on 16 July 2020. The appellant was not represented at the tribunal hearing and the deposit was returned on 19 October 2020. In his written representations to the Respondent dated 27 October 2020, Mr Iqbal stated that he did not receive intimation of the tribunal hearing and if he had done so he would have repaid the Applicant immediately. He stated that as soon as he was aware of the order, he made payment. He stated that the matter arose due to a staff training issue and that he had an email trail relating to same. An examination of the emails sent lodged by the appellant (third inventory of productions for the appellants) shows that one member of staff, John Mann on 31 August 2019 advised the prospective tenant that the deposit was refundable. According to the emails lodged two members of the appellant's staff stated to the prospective tenant that the deposit of £575 was non refundable: Kariss Gallagher on 22 August 2019 and Leah Smith on 9 and 11 September 2019. Leah Smith's email of 9 September 2019 states:

Can you advise who advise that the deposit would be returned to you? As per our original email, if you decide you no longer wish to take up the tenancy your deposit is non-refundable.

27. The prospective tenant was unable to recover her money and she made an application for payment in terms of rule 111 of the rules. The tribunal stated in its decision of 16 July 2020:

The respondents have no right in law to retain the deposit paid by the applicant. In the respondent's own words, the sums are refundable. It is arguable that the words employed by the respondents in their emails of 9 and 11 September 2019 constitute an offence under parts 7 and 8 of the Rent (Scotland) Act 1984.

28. It was the Appellant's position that the Respondent's did not have to refuse to register the Appellant even if the fit and proper test was satisfied. He argued it was open to the Respondent to follow the procedure laid down in the "Scottish Government Regulation of Letting Agents Monitoring and Compliance Enforcement Framework", 'the framework'. The Respondent could subject the Appellant to category 3 enhanced monitoring.

Decision

29. The tribunal carefully considered the information before the Respondent to enable it to make the decision to refuse to register the Appellant.

30. The duties of the Respondent in determining an application for registration to the Register of letting agents are set out in s32(2) of the Act which provides:

(2) The Scottish Ministers must enter the applicant in the register or renew an existing entry if they are satisfied that—

- (a) The applicant is a fit and proper person to carry out letting agency work,
- (b) Any other person who is required to be identified in an application by virtue of section 30 is a fit and proper person in relation to letting agency work, and
- (c) The applicant meets such training requirements as the Scottish Ministers may by regulations prescribe.

31. It was not in dispute that to be entered into the Register a letting agent must apply under s30 of the Act and include details of the most senior person in the management of the organisation and those directly concerned with the control or governance of the applicant's letting agency work.

32. The factors to be considered under the fit and proper person test are listed in s34 of the Act which provides:

34Fit and proper person considerations

(1) In deciding under this Part if a person is a fit and proper person, the Scottish Ministers must have regard to all of the circumstances of the case, including any material falling within subsections (2) and (4).

(2) Material falls within this subsection if it shows that the person has—

(a) Been convicted of an offence—

(i) Involving fraud or other dishonesty,

(ii) Involving violence,

(iii) Involving drugs,

(iv) Involving firearms,

(v) Which is a sexual offence within the meaning of section 210A (10) of the Criminal Procedure (Scotland) Act [1995 \(c.46\)](#),

(b) Practised unlawful discrimination on the grounds of any of the protected characteristics in Part 2 of the Equality Act [2010 \(c.15\)](#),

(c) Contravened any provision of—

(i) The law relating to housing,

(ii) Landlord and tenant law,

(iii) The law relating to debt.

(3) Material which shows that a person has a conviction which is a spent conviction for the purposes of the Rehabilitation of Offenders Act [1974 \(c.53\)](#) does not fall within subsection (2).

(4) Material falls within this subsection if it shows the extent to which any person mentioned in subsection (1) has—

(a) Complied with any Letting Agent Code of Practice made under section 46,

(b) Complied with any Letting Code issued under section 92A of the 2004 Act,

(c) Failed to comply with a duty applying to that person in accordance with section 36 to use a letting agent registration number,

(d) contravened any provision of any letting agent enforcement order issued under section 48,

(e) Failed to pay any costs for which the person is liable under this Part arising from an application to the First-tier Tribunal under section 48,

(f) Failed to provide information in accordance with section 52 or 53(2)(d)(i),

(g) Obstructed a person acting in the proper exercise of the persons' functions under sections 53 to 55,

(h) Failed to comply with a requirement made by a person who is so acting.

(5) The Scottish Ministers may by order modify this section by adding to, removing or varying any material in subsections (2) and (4).

33. The tribunal was not persuaded that it was open to the Respondent to decide to register the Applicant and impose any monitoring conditions set out in the framework. The terms of s32 are clear. If the fit and proper test is not met, registration shall not take place.

34. The tribunal carefully considered the information before the Respondents in the form of the application for registration, the request for further information and the response to that request by both Mr Iqbal and Mr Ahmad. The tribunal consider that the Respondent's decision that the Appellant failed to comply with the LAEO and failed to give a reasonable excuse for their failure was a reasonable decision to make in all of the circumstances. The Appellant did not take any steps to comply with the LAEO before the first company was dissolved despite being aware of the LAEO. The Appellant did not try and stop the dissolution process to enable the LAEO to be complied with. When the Appellant was given an opportunity to explain why the LAEO had not been complied with both Ms Ahmad and Mr Iqbal compound the problem by causing confusion, minimising the problem, and ultimately failing to take responsibility for the LAEO.

35. Regarding the second deposit of £575 the tribunal was satisfied that it was reasonable for the Respondent to take this into account in deciding of the fit and proper test was met. The tribunal considered that the Respondent was entitled on the available information to it, to conclude that this was a similar situation to the first deposit which formed the basis for the LAEO. The Appellant's response was to blame this on an isolated member of staff. However, it appears to the tribunal that two members of staff were involved. The Appellant states it only became aware of the deposit after an application was made to the tribunal. This in itself shows a lack of control and management at the heart of the Appellant's organisation.

36. The case of City of Glasgow Council v Bimende [2016 SLT 1063] lodged by the Respondent states:

There are no provisions, either in statute or case law, limiting or defining the bases upon which a licensing authority may conclude that an applicant is not a fit and proper person to hold a licence. Such decisions are, of course, subject to the usual controls on administrative action: taking account of relevant considerations and avoid irrelevant considerations; perversity; Wednesbury unreasonableness and the like. Beyond those controls, the authority enjoys a wide measure of discretion. It is not a necessary prerequisite that an application should have been convicted of a criminal offence (Coyle v Glasgow City Council). A licencing authority has a broad discretion when exercising their judgment. They are entitled to place weight on the nature and cumulative impression of a series of circumstances (McKay v Banff and Buchan Western Division Licensing Board at p.24G-H; Hughes v Hamilton District Council), They are also entitled to expect the application to provide information, explanations or evidence in exculpation or mitigation of any alleged conduct or event which might suggest that he is not a fit and proper person. In this respect, there is a practical onus resting on the applicant.

37. The tribunal was not persuaded by the argument that the Respondent put the burden of proof on the Appellant to show that they the fit and proper person test was met. Rather, as set out in Bimende above, it provided a practical onus, effectively an opportunity to explain any alleged conduct. It appears to the tribunal that the Appellant lost any opportunity they had to provide an explanation for the failure to comply with the LAEO. Rather than providing mitigating information the Appellant compounded the problem and gave the Respondent additional reason to be concerned that the second company and Ms Ahamad and Mr Iqbal were not fit and proper persons to be registered as letting agents.
38. With regard to the Respondent not taking into account all of the positive things the Appellant may have in its favour and instead placing undue weight on the 2 deposits and so on, the tribunal considered that what weight to place on the matters at issue was a matter for the Respondent. It did however appear to the tribunal that, given their years of experience and the size of the undertaking, the Respondent may be entitled to expect that the Appellant to have some sort of accounting system in place so that deposits not tied to a tenancy agreement are regularly flagged up and do not lie in the bank account of either the first or second company for over a year undetected and unprotected.
39. The tribunal was not persuaded that the Respondent failed to support the Appellant in the registration process. In terms of the timeline the Respondent contacted the Appellant in November 2018 to draw their attention to the requirement to register if they are carrying out letting agency work. The Appellant did not lodge their application until December 2019. The application process itself took a further year. The Respondent did not take the failure to register within one month of commencement of letting agent work into account in refusing registration. It appeared to the Tribunal that the

Respondent did provide assistance and further assistance or clarification would have been provided if the Appellant had asked for it.

40. The matters contained in the notice of refusal are serious. Failure to comply with a LAEO and taking an illegal premium are serious breaches of the letting agent code and material that falls within s34 (4) of the Act. Further, the Appellant did not provide any information in mitigation when they had the opportunity to do so and instead, they created further concerns. The Respondent was entitled to treat these as serious matters. The Respondent was entitled to conclude that as a result of these matters the Appellant and Mr Iqbal and Ms Ahmad were not fit and proper persons to operate as a letting agent.

41. For all of the foregoing reason the tribunal refused the appeal.

10 June 2021

Lesley A Ward Legal Member

Date

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

