

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 92(2) of the Antisocial Behaviour etc. (Scotland) Act 2004 (“the 2004 Act”)**

**Chamber Ref: FTS/HPC/GL/20/2139**

**Parties:**

**Mr Joga Singh, 26 Blenheim Avenue, Glasgow, G33 6DP (“the Applicant”)**

**Glasgow City Council Private Rented Sector, 45 John Street, Glasgow, G1 1JE (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member)**  
**Elizabeth Williams (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) refuses the application and declines to make an order requiring the local authority to enter the Applicant in the register maintained by it under Section 82(1) of the 2004 Act.**

**Background**

1. By application dated 9 October 2020, the Applicant appeals against the decision of the Respondent on 22 September 2020, to remove the Applicant from its Register of Private Landlords (“the Register”), in terms of Section 92 of the 2004 Act and Rule 99 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”). A copy of a letter from the Respondent dated 22 September 2020 was lodged with the application.
2. On 26 October 2020, a copy of the application was served on the Respondent. Both parties were advised that a case management discussion (“CMD”) would take place by telephone conference call on 1 December 2020 at 10am. They were provided with a telephone number and passcode. On 4 November 2020, the Respondent lodged written submissions in response to the application and a copy of the Respondent’s Committee’s statement of reasons for the decision

to remove the Applicant from the Register, dated 3 November 2020.

3. The application called for a CMD on 1 December 2020 at 10am. The Applicant was represented by Mr Doig, solicitor. The Respondent was represented by Ms Bhatti, solicitor. Mr Doig advised the Tribunal that was seeking a continuation of the CMD. He explained that the Applicant had been represented by another firm of solicitors at the Committee hearing. He had sent a mandate to the previous solicitor to request the file, but this had not been received. In the absence of the file, he had been unable to prepare for the CMD and was not able to provide the Tribunal with full details of the appeal. Ms Bhatti confirmed that she had no objection to the request for a continuation. The Tribunal granted the request to continue the CMD to a later date. The Applicant was advised that written submissions which set out the basis of the appeal and a response to the Respondent's submissions should be lodged no later than 7 days before the date of the continued CMD.
4. The parties were notified that a further CMD would take place on 1 February 2021. Prior to the date of the CMD the Respondent submitted documents and a list of authorities. The Applicant's solicitor requested a postponement as he had been unable to take full instructions from his client, due to the pandemic restrictions. The Respondent did not oppose this but asked the Tribunal to issue a direction to the Applicant to require him to provide full details of his grounds of appeal. The Tribunal issued a direction to the Applicant for the provision of written submissions regarding the grounds of appeal.
5. A further CMD was arranged for 10 March 2021 at 10am, to be conducted by telephone conference call. Prior to the CMD the Applicant lodged written submissions in response to the Tribunal's direction.
6. The CMD took place by telephone conference call on 10 March 2021 at 10am. The Applicant participated and was represented by Mr Doig, solicitor. The Respondent was represented by Ms Bhatti, solicitor.

### **Summary of the Applicant's written submissions**

7. The decision of the Committee was unreasonable having regard to the Applicant's submissions. The Applicant has been a landlord since 1999, has always maintained good relationships with approximately 450 tenants since that time without any difficulties or any complaints against him, and has complied with all relevant regulations. His family, including his parents, are financially dependent on the rental income from his properties. The Respondent failed to recognise the impact of their decision on the Applicant's tenants, who face eviction. The Applicant has surrendered control of his rental properties by the appointment of a letting agent. The agent and the Applicant's estranged wife now manage all aspects of the tenancies. The Respondent did not have proper regard for the distancing of the Applicant from the management of his properties. The Applicant's wife is a registered landlord in her own right. The Applicant has no contact with any of the tenants. The Respondents were wrong to infer that any tenants were at risk or likely to be exposed to risk. The

Applicant is also taking steps to divest himself of ownership of the properties, where possible. Those not subject to a mortgage have been transferred to his wife and others are being refinanced. The Respondents were wrong to determine that the Applicant is not a fit and proper person and regard should have been had to the prejudice and upheaval which will be suffered by the Applicant's tenants.

### **Summary of the Respondent's written submissions**

8. The Respondent's Committee decision was reasonable. Reference is made to the written statement of reasons dated 3 November 2020. The Committee was lawfully and reasonably entitled to conclude that the Applicant was not a fit and proper person to act as a private landlord. The correct test to be applied by the Tribunal is as set out by Lord Emslie in the case of Wordie Property Co Limited v Secretary of State for Scotland 1984 SLT 345 at page 347 (the Wordie case). The Committee made no error of the type referred to in that dicta.

### **Summary of the Respondent's Committee's statement of reasons**

9. In making its decision the Committee had regard to Sections 85(2), 85(4) and took into consideration Sections 85(6) and 85(8) of the 2004 Act. The Committee had regard to a report from the Private Landlord Registration Unit (PLRU) dated 6 November 2019, a reference from Dr Afzal dated 9 April 2019, a reference from Mr Heron, social care officer dated 9 April 2019, submissions made by a representative of PLRU, and submissions made by the Applicant and his solicitor. The Committee noted the addresses of the Applicant's 14 rental properties.
10. The Committee noted that the Applicant had been convicted of a contravention of Section 39(1) of the Criminal Justice and Licensing (Scotland) Act 2010 on 29 May 2019. The statute describes this offence as stalking. The Applicant was sentenced to 252 hours of unpaid work and a non-harassment order was imposed. The circumstances of the offence were that "on various occasions between 7 and 8 November 2018 the Applicant engaged in a course of conduct which caused the female complainer fear or alarm. He did repeatedly follow her, loiter, look for her, approach her uninvited, engage in conversation of a sexual nature and offer her money in return for permission to take photographs of her in her underwear".
11. The Applicant's solicitor advised the Committee that neither the conviction nor the circumstances of the offence were disputed but that the actions were out of character, a "moment of madness". The conviction had had a major impact on the Applicant's life leading to the end of his marriage and shame on the family. It had been extensively reported in the press which caused distress to the Applicant's family. The reference from Mr Heron confirmed that the Applicant has carried out the unpaid work and complied with the Court order imposed. The solicitor also stated that the Applicant has been a landlord for 21 years and this was his only conviction. He had now appointed a letting agent to manage

the properties. The Applicant would be a “silent partner”. He had changed letting agents as his previous agent was not able to provide the full service he required. The whole management of the properties would now be carried out by the agent.

12. The Committee viewed the conviction and the circumstances of the offence to be serious and concerning. They could not be ignored when it considered the question of continued registration. The nature and circumstances of the offence had a bearing on public safety and was a relevant consideration. The Committee was of the view that the conviction was inconsistent with the responsibilities of private landlords and the tasks associated with operating as a private landlord, such as being a key holder and collecting rent. This was their view, notwithstanding the submission made about the appointment of an agent.
13. The Committee concluded that the Applicant was no longer a fit and proper person to act as a private landlord. The Committee considered the fact that it was the only conviction, the submission about it being a moment of madness and that the Applicant had let out properties for 21 years without problem. The Committee also took account of the submission regarding the appointment of the agent and the effect of this on his role as landlord. The Committee concluded that the offence and conviction constituted relevant considerations in relation to Section 85(4) of the 2004 Act.
14. The Committee also took account of the fact that the conviction had occurred while the Applicant was registered as a private landlord, but that he failed to advise the PLRU of the conviction as soon as “practicable” as required by Section 87(2) of the 2004 Act. The Applicant did not notify the Respondent until March 2020, 10 months after the conviction, which could not be regarded as “as soon as practicable”. This constituted a relevant consideration in terms of Section 85(4) and separately Section 85(2)(c)(i) of the 2004 Act (contraventions of housing law).
15. The Committee concluded that the Applicant’s conduct fell below the reasonable standard of conduct expected of registered private landlords and the Committee was not satisfied that the Applicant remained a fit and proper person to act as a private landlord and remain on the register.

## **The Case Management Discussion**

16. Mr Doig advised the Tribunal that Mr Singh would not be giving evidence, but that Mr Doig would be making a submission on his behalf. He referred the Tribunal to his written submissions and stated that Mr Singh accepts that he committed the offence, that he had fully cooperated in the criminal proceedings, pleading guilty at the first opportunity. He had carried out his sentence. His relationship with his spouse had been destroyed. He has no previous or subsequent convictions. The consequences for him have been severe, most particularly due to the actions of the Respondent. He has effectively been sentenced twice for the offence and the punishment did not fit the crime. Mr Doig went on to say that Mr Singh has been a landlord since 1999 and has

always complied with the law. There have been about 450 tenants over the years and no complaints from any of them. The offence was not related to his activities as a landlord or his tenants. By the time the matter called before the Respondent's committee, Mr Singh had appointed a new letting agent and handed over control of his rental properties. He no longer has contact with his tenants. He has transferred the properties which are not mortgaged to his wife. He has not been able to do this with those which are subject to a mortgage but intends to do so when he can. Mr Doig further advised that Mr Singh is not a risk to his tenants. If the decision stands, 14 tenants may face eviction. His spouse and parents will also suffer financially as all are dependent on the rental income. The decision of the Respondent is oppressive.

- 17.** In response to questions from the Tribunal, Mr Doig confirmed that he accepted that the powers of the Tribunal when determining the application are restricted to the test identified by Lord President Emslie in the Wordie case and referred to by Sheriff Deutch in the unreported case of TH v Glasgow City Council. He said that he was inviting the Tribunal to conclude that the Committee "failed to take account of relevant and material considerations" and furthermore that they made a decision which "no reasonable local authority could have reached". He said that the Committee failed to take account of relevant considerations and failed to give sufficient weight to those which were considered. He conceded that some of the matters raised during the appeal, such as the financial impact on the Applicant and his family, are not specifically referred to in the written statement of reasons. He is unable to say whether they were mentioned by the solicitor who attended as he has not been able to recover the file.
- 18.** With regard to the Committee's second reason for its decision, that the Applicant had failed to notify the Respondent of his conviction as required by Section 87 of the 2004 Act, Mr Doig said that he understood that the information had been provided by Mr Singh when he applied for renewal of his registration. Although he accepted that ignorance of the law is no excuse, Mr Singh did not appreciate that he should have notified the Respondent at an earlier stage.
- 19.** Mr Singh advised the Tribunal that the day-to-day management of his properties is now carried out by his letting agent. He has no intention of changing that arrangement given the present circumstances. He stated that the Respondent could monitor the position to ensure that he maintained that arrangement. He does not think they fully appreciated the extent to which he had transferred management of the properties. With regard to the 14 properties, he advised that one is sold, one is under offer, two have been transferred to his wife and one is in the process of being transferred. He further advised that he has always had a good relationship with the HMO unit. Mr Doig advised the Tribunal that he appreciated that the transactions in relation to the properties could not be taken into account as they have occurred since the Committee decision.
- 20.** Ms Bhatti referred the Tribunal to her written submissions. She stated that the decision of the Committee was reasonable in the circumstances. There was a considerable amount of material before the Committee, including references provided by the Applicant. The material was weighed up by the Committee. The

legal test is as outlined in the submissions and identified in the Wordie case. This was endorsed by Sheriff Deutch in the unreported Sheriff Court case. Ms Bhatti referred the Tribunal to section 89(1) of the 2004 Act which states that a local authority must remove a landlord from the register if he is not a fit and proper person to be a registered private landlord. There is no provision in the statute for a monitored or conditional registration. She referred to the statement of reasons which indicate that the Applicant was present and legally represented and the Committee hearing. His submissions and the information he provided were taken into account. She explained to the Tribunal that she had not anticipated that Mr Doig would challenge the Committee's decision based on the weighing up of the relevant considerations, as this was not specified in his written submission. She explained that there is legal authority in connection with licensing appeals under the Civic Government (Scotland) Act 1982, which establish that it is for the Committee to determine what weight is to be attached to the relevant factors and that is wholly within their discretion. A high threshold must be reached for an Appellant to challenge the exercise of this discretion and that has not been reached in this case.

21. Ms Bhatti advised the Tribunal that the appointment of a letting agent did not negate the role of the local authority in determining whether the landlord was a fit and proper person. This had to be assessed, whether or not a letting agent had been appointed. The financial consequences for the Applicant could not be taken into account by the Tribunal. This hearing is not a re-hearing of the case. In any event, the financial implications could not be more important than public safety. She invited that Tribunal to conclude that the decision of the Committee was reasonable.

## **Reasons for decision**

22. The relevant provisions of the 2004 Act are as follows: -

### **89 Removal from register**

- (1) Where –  
(a) A person is registered by a local authority; and  
(b) Subsection (2) or (3) applies,

The authority shall remove the person from its register.

- (2) This subsection applies where –  
(a) The person was registered by virtue of section 84(3); and  
(b) Paragraph (c) of that section no longer applies.

### **92 Appeal against refusal to register or removal from register**

- (1) Subsection (2) applies where –  
(b ) under section 88(8) or 89(1) an authority removes a person from the register.
- (2) The First-tier Tribunal may, on the application of the person, make an order –

- (a) Requiring the authority to enter the person in the register,
- 84 Registration**

- (3) This subsection applies where –
- (c) the relevant person is a fit and proper person to act as landlord under –
- (i) A lease; or
  - (ii) An occupancy arrangement,
- By virtue of which an unconnected person may use a house as a dwelling

**85 Section 84: considerations**

- (1) In deciding for the purposes of Section 84(3) or (4) whether the relevant person or, as the case may be, the person is a fit and proper person, the local authority shall have regard (among other things) to any material falling within subsections (2) to (4).
- (2) Material falls within this subsection if it shows that the relevant person or, as the case may be, the person has –
- (c) contravened any provision of –
- (i) The law relating to housing.
- (4) Material falls within this subsection if it appears to the authority that the material is relevant to the question of whether the relevant person or, as the case may be, the person is a fit and proper person.

23. Both parties advised the Tribunal that they accepted that the powers of the Tribunal when dealing with the application are restricted to the matters identified by Lord President Emslie in the Wordie case, at page 347, and endorsed by Sheriff Deutch in the unreported case of TH v Glasgow City Council. This was an appeal by way of summary application to the Sheriff Court in terms of section 92 of the 2004 Act, before jurisdiction for such appeals was transferred to the First-tier Tribunal. Sheriff Deutch comments that Section 92 gives no guidance as to the approach to be adopted by the Court (or Tribunal). However, he concludes that, “(9) The Pursuer concedes that the respondent’s decision can only be interfered with on the narrow grounds. That concession I think is correctly made having regard to section 84 of the 2004 Act, which implicitly recognises that the material falling within the consideration exercise is likely to be local in character – note the terms of 85(4) and (8). Section 85(1) makes it plain that the local authority is not limited only to the material specified – it has to be taken into account “among other things”. Also, note the examples given at (8) are without prejudice to (4). It would be surprising, standing the wide margin of appreciation afforded to the local authority, if the legislature had intended that the appeal should be a review upon the merits. (10) I consider that the powers of the Sheriff conducting a section 92 appeal are narrow in scope, limited to the matters identified by Lord President Emslie in Wordie at page 347: material error in law going to the root of the question for determination; the respondents having taken into account irrelevant considerations or having failed to take account of relevant or material considerations; the respondents having no proper basis in fact to support their

decision; or their decision being one which no reasonable local authority could have reached”.

24. The Applicant only relies on the second and fourth aspects of the Wordie test. For the sake of completeness, the Tribunal also considered the other two grounds. The Tribunal is satisfied that there was no material error in law by the Committee which goes to the root of the question for determination. Section 85 specifies matters which the Committee must have regard to. However, the Committee can take other factors into account, as the provisions of 85(2) to (4) do not provide an exhaustive list, and the Committee is entitled to consider “other things”. In any event, the Committee based its decision on Section 85(4), which allows them to take into account any material which they deem to be relevant. The material in question was the information about the conviction and the circumstances of the offence, the length of time that the Applicant had been a landlord (with no issues), the fact that he only had one conviction, his references, and his appointment of a letting agent to manage the properties. Separately, the Committee also relied on Section 85(2)(c)(i) which is material which shows that the person has contravened the law relating to housing. In this case, the contravention was the breach of section 87 of the 2004 Act which requires a registered landlord to disclose a conviction as soon as is practicable. The Tribunal is satisfied that the Committee’s did not make any material error in law when it made its decision based on these provisions. The Tribunal is also satisfied that the Committee had a proper basis in fact to make the decision. The circumstances of the offence, the conviction, and the late notification to the Respondent of the conviction were not disputed by the Applicant.
25. The Applicant raises matters in both written and oral submissions which do not appear to have been put to the Committee at the hearing on 20 September 2020. The first is the adverse effect the Applicant’s removal from the Register will have on his tenants, as they face possible eviction. The second is the financial impact on the Applicant and his family, who are reliant on the rental income. Thirdly, the Applicant advised that he has reduced his portfolio from 14 to 9 properties and hopes to transfer further properties when he is able to do so. Mr Doig conceded that the third matter could not properly be considered by the Tribunal because this information was not provided to the Committee and the transfers have only occurred since the decision was issued. With regard to the first two matters, Mr Doig advised the Tribunal that he was not in attendance at the Committee hearing and has not been able to recover the file. He cannot therefore say whether these matters were raised or not. The Tribunal is not persuaded by this argument. Mr Singh was present at the hearing and presumably knows what was said. At no point prior to or during the CMD were the contents of the statement of reasons disputed. At the outset, Mr Doig stated that no evidence would be led. The Tribunal is therefore satisfied that the Applicant has not established (or even claimed) that these matters were raised. If they were not raised, the Committee could not have considered them. Furthermore, the Tribunal is not satisfied that they are relevant considerations. The impact of the decision on tenants and the financial implications for the Applicant’s family may be significant, but are likely to occur whenever registration is refused or revoked. Furthermore, the Committee decision which is the subject of the appeal is whether (or not) the Applicant is a fit and proper



person to be a registered private landlord. The potential impact of the Committee's decision (on tenants or the Applicant) is not relevant or material to that assessment. The Tribunal concludes that the Applicant has not established a failure to take into account relevant or material considerations with regard to these three factors.

26. According to the statement of reasons, the material taken into account by the Committee when reaching its decision comprised – the conviction and the circumstances of the offence, the references lodged by the Applicant and in particular the reference from Mr Heron which confirmed that he had carried out his unpaid work and complied with the order, the fact that this was his only conviction, his track record as a landlord over 21 years, the information provided about his appointment of a letting agent and his failure to notify the Respondent about his conviction until ten months after it had occurred. The statement of reasons clearly states that all these matters were considered. One other matter was raised by the Applicant both at the Committee hearing and at the CMD, and that was the impact on his family and the breakdown of his marriage. However, it appears that these resulted from the conviction itself and the associated press coverage, rather than the decision of the Respondent regarding his landlord registration. Furthermore, these matters are not relevant or material to the issue of whether (or not) the Applicant is a fit and proper person to be a registered private landlord. The Tribunal is satisfied that the Committee took into account the material specified in the statement of reasons. The Applicant makes no claim that any other information was provided to the Committee. The Applicant has therefore failed to establish that the Committee failed to take into account relevant or material considerations when making its decision.
27. The second ground of the appeal is the decision of the Local Authority is one which no reasonable local authority could have reached. Mr Doig told the Tribunal that the Applicant had been sentenced twice for the same offence and that “the punishment did not fit the crime”. The Tribunal is not persuaded by this claim. Section 89 of the 2004 Act requires a local authority to revoke a private landlord's registration if it considers that he or she is no longer a fit and proper person to be registered. There is no discretion. It is suggested that the Committee failed to give proper weight to factors in the Applicant's favour and gave undue weight to the conviction and the circumstances of the offence. In particular, it is argued that the Committee did not take proper account of the appointment of an agent and the steps taken by the Applicant to distance himself from the day-to-day management of the properties. Mr Doig did not refer the Tribunal to any authorities on the issue. Ms Bhatti advised the Tribunal that she had not anticipated this argument or would have been able to refer the Tribunal to authorities in relation to analogous provisions under the Civic Government (Scotland) Act 1982.
28. The Tribunal notes that there have been a number of cases in relation to the analogous provisions of the Civic Government (Scotland) Act 1982, which make provision for a “fit and proper person” test in connection with the grant and removal of licenses by local authorities. For example, in the case of *Hughes v Hamilton District Council* 1991 SC 250, the local authority appealed to the Court

of Session against a decision of the Sheriff to uphold the Appellants appeal against the refusal of a street trader license. The Extra Division of the Inner House found in favour of the Local Authority and held that the weight to be attached to the Applicant's convictions was a matter for the licensing authority. Lord McCluskey delivered the opinion of the Court and states, "Upon the basis that the previous convictions disclosed to the committee had a bearing upon the fitness of the applicant to hold a license of the kind for which he was applying, the question as to what weight fell to be attached to the recorded convictions was plainly a matter upon which the Committee was obliged to form an opinion. Once there is relevant material before a licensing authority, the question as to the weight to be attached to that material and the significance of any other balancing factors must be for the authority to assess."

29. Based on Ms Bhatti's submission, and the caselaw which relates to the analogous provisions of the 1982 Act, the Tribunal is satisfied that it was for the Committee to determine what weight to attach the material before it at the hearing. The Tribunal cannot interfere with that exercise or substitute its own view. The Tribunal notes that the Committee did take account of the appointment of the agent. However, as Ms Bhatti points out, the test is whether the Applicant is a fit and proper person to be a registered landlord, not whether he has made arrangements which should allow him to remain on the register. The onus is on the Applicant to establish that, in weighing up the relevant material, the Committee reached a decision which no reasonable local authority would have reached. The Applicant has failed to do this. The Tribunal is satisfied that the decision made by the Committee, namely that the Applicant was no longer a fit and proper person to be a registered private landlord, was not a decision which no reasonable local authority would have reached, having regard to the information and material available at the Committee hearing.

## **Decision**

30. The Tribunal determines that the application should be refused and that it should not make an order requiring the Respondent to enter the Applicant on the Register.

31. The decision is unanimous.

## **Right of Appeal**

**In terms of Section 92(5) of the 2004 Act, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland. The appeal must be made within the period of 21 days beginning with the day on which the decision appealed against was made.**

**Section 92(6) of the 2004 Act provides that the decision of the Upper Tribunal on an appeal is final.**

**Josephine Bonnar  
Legal Member/Chair**

**10 March 2021**