

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/GL/18/3053

Parties:

Mr Marco Equi, 44 Lindores Drive, East Kilbride, G74 1HH ("the Applicant")

South Lanarkshire Council, Property Services (Landlord Registration Team), 5th Floor Council Headquarters, Alameda Street, Hamilton, ML3 0AE ("the Respondent")

Tribunal Members:

Lesley Ward (Legal Member) and Melanie Booth (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") refused the application made by Mr Marco Equi dated 25 October 2018 in terms of s 92 of the Antisocial Behaviour etc (Scotland) Act 2004 and rule 99 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

This is an application in terms of rule 99 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, 'the rules', and s92 of the Antisocial Behaviour etc (Scotland) Act 2004, 'the Act' made by Mr Marco Equi 'the applicant' dated 25 October 2018 and received by the Tribunal on 12 November 2018. The application was made by the applicant on the basis that he had been removed from the register of landlords by South Lanarkshire Council, 'the respondents'.

The tribunal had before it the following copy documents:

1. Application dated 25 October 2018 and received on 12 November 2018. The following items were included with the application:

- i. Undated letter to applicant from respondents.
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- ii. Letter to applicant from respondents dated 18 April 2018.
 - iii. Letter to applicant from respondents dated 23 August 2018.
 - iv. Disclosure Scotland basic disclosure for applicant dated 20 July 2017.
 - v. Undated letter from former tenant of the applicant.
2. Email to the Tribunal from applicant dated 17 November 2018.
 3. Letter to applicant from respondent dated 7 September 2018.
 4. Email to the Tribunal from applicant dated 18 November 2018
 5. Email to the Tribunal from applicant dated 21 December 2018
 6. Email to the Tribunal from Mr Mays on behalf of the respondents dated 20 December 2018.
 7. Email to the Tribunal from Mr Mays on behalf of the respondents dated 11 January 2019.
 8. Email to the Tribunal from applicant dated 9 January 2019.
 9. Letter to the Tribunal from the respondents dated 31 January 2019 enclosing the following copy documents:
 - i. Application for landlord registration.
 - ii. Undated request to Police Scotland from respondents.
 - iii. Extract conviction for applicant from Hamilton Sheriff Court dated 4 July 2016.
 - iv. Letter to respondents from Police Scotland dated 15 December 2017.
 - v. Letter to applicant from respondents dated 9 April 2018.
 - vi. Landlord registration summary.
 - vii. Letter to applicant from respondents dated 18 April 2018.
 - viii. Letter to applicant from respondents dated 20 August 2018.
 - ix. Landlord registration case review monitoring log dated 5 June 2018.
 - x. Stage 3 referral to head of service and signed on 4 October 2018.
 - xi. Undated letter to applicant from respondent.
 - xii. Proof of service of xi dated 5 October 2018.
 - xiii. Decision of Sheriff Deutsch dated 21 September 2017.
 10. Letter to the Tribunal from applicant dated 4 February 2019 with the following copy documents:
 - i. Excerpt from the Landlord Registration Guidance for Local Authorities.
 - ii. Case of Ritchie-v- Aberdeen City Council dated 17 March 2011.
 - iii. Letter from Sanctuary Group dated 4 January 2019.
 11. Directions of the Tribunal dated 31 December 2018.

The applicant attended the tribunal. Mr Mays attended on behalf of the respondent.

Preliminary matters

1. The original case management discussion 'CMD' set down for 10 January 2019 was adjourned (at the respondents' request) to today's date. The tribunal convenor issued directions on 31 December 2018 fixing a fresh CMD and asking for certain documents to be lodged by the respondents. It appears to the tribunal sitting today that the case has been put down for a hearing

rather than a CMD. The tribunal suggested that the fairest way to proceed would perhaps for the case to proceed today as a CMD and a hearing could be assigned if required. The tribunal also made it clear that any decision that could be made at a hearing could be made at a CMD. Both parties agreed that the hearing today should proceed as a CMD.

2. The tribunal noted the terms of the directions and the documents lodged on 11 January 2019 by the respondents and the tribunal was satisfied that the directions had been complied with.
3. The tribunal noted that the applicant lodged documents on 4 February 2019 which were out with the 7 day period for lodging written representations contained in rule 22. The tribunal allowed the documents to be received although late, Mr Mays having no objection.
4. The tribunal noted that rule 99(a) (iv) requires that the application must state the decision of the local authority and the date the person was notified of the decision. The tribunal in its directions of 31 December 2018 asked for clarification in relation to item 1(i) above. Mr Mays confirmed that as per his documents lodged in item 9(xi) and 9(xii) above, the undated letter was sent to the applicant on 5 October 2018. That letter although undated, referred to a decision of 4 October 2018. Mr Mays position was that the undated letter received by the applicant on 5 October 2018 was the 'decision' referred to in rule 99((a)(iv). The tribunal noted that the detailed decision of 4 October 2018 was not sent to the applicant until he received the bundle lodged by the respondents on 31 January 2019. The tribunal accepted that the applicant was made aware of the decision on 5 October 2018 when he received the undated letter.
5. The tribunal noted that both parties had lodged case law which stated that the procedure to be adopted in cases involving the 'fit and proper person test' should be on the narrow basis of the reasonableness of the council decision rather than an evidential hearing in which the decision is reviewed on the merits. It was agreed as a preliminary matter that the tribunal would proceed on the basis of the dicta of Lord Emslie in the Wordie case, and more recently the decision of Sheriff Deutche referred to in 9(xiii) above.

Having resolved the preliminary matters, the tribunal proceeded with the CMD. As a party litigant the tribunal gave the applicant the opportunity of giving his submissions first or second. He opted to allow the respondents' representative Mr Mays to speak first.

Mr Mays sought to lodge a document which had been left out of his bundle of 31 January 2019 in error. It was a document dated 7 August 2013 from Police Scotland to the respondents which gave details of a "pending case" relating to the applicant. The tribunal considered this document to be relevant and, the applicant having no objection, allowed it to be received. The document narrated that the applicant had a pending case relating to a search of his home on 28 December 2012 and he had been charged with offences under the Misuse of Drugs Act.

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A short way in to Mr Mays' submissions the tribunal noted that whilst the application appeared to be based on the applicant appealing against the removal of his name from the register of landlords, it became apparent that Mr Mays submission was that the applicant had never been registered at all. This seemed very unlikely given that the applicant made his application in 2013. It also seemed unlikely given that the applicant was sent a letter from the respondents referred to at item 9(vii) above which reads:

We are currently updating all of our landlord registration files.

We note you are currently living at your rental property you have state on your landlord registration application (44 Lindores Drive).

If you are not renting out your rental property, and have no intention to in the near future, I can remove your registration from the register and only require an email to confirm this information is correct and to process the removal.

Mr Equi also produced on his phone a copy of a generic email he had received from the respondents in January 2018 inviting him to take part in a course for landlords on 31 January 2018.

This was a material point which the tribunal required clarification on. The tribunal required to establish before proceeding whether Mr Equi's application dated July 2013 had been refused or whether it had been approved and then subsequently his name had been removed from the register of landlords.

The tribunal adjourned to enable Mr Mays to make inquiries. When the tribunal reconvened, Mr Mays advised that the application made by the applicant to be placed on the register of landlords dated 24 June 2013 and received on 16 July 2013 had never been granted and had been pending from its date of receipt until the refusal on 4 October 2018, some 5 years later.

This was disputed by the applicant. He did however concede that he has made his payment in 2013 and thought this was for 3 years. He did not however make any other payments and he also stated that in 2016 he assumed his registration had lapsed. When he got the letter dated 18 April 2018 and referred to at above, he decided that he was still registered and wanted to retain his registration.

The tribunal proceeded on the basis that the registration had never been made although the tribunal understood why the applicant had (wrongly) concluded that his registration had been granted and thereafter withdrawn.

Respondents' submissions

Mr Mays made reference to the respondents' duties in terms of s 85 of the Act and the matters to which the local authority are required to have regard to in making a decision as to whether the fit and proper person test is satisfied. He stated that drugs

offences are clearly matters that the local authority must have regard to in terms of s85(2)(a)(iii) of the Act.

Mr Mays went on to give a detailed account of the steps the respondents took in connection with the application for landlord registration.

Clearly the applicant disclosed his 1999 conviction in the application. According to Mr Mays, this then prompted the respondents to make further inquiries. The first thing that happened was the respondents' made the request noted in document 9(ii) above. That request generated the response from Police Scotland dated 7 August 2013 which Mr Mays lodged today. The application for landlord registration then became a 'pending case' and culminated in the letter from Police Scotland dated 15 December 2017 and referred to at 9(iv) above. The tribunal sought to understand how the application could remain pending for 4 years given that the applicant had a conviction in 2014 and a further conviction in 2016.

Mr Mays submission was that the respondents will track cases in the criminal courts if they have a "pending case". In July 2016 they obtained an extract conviction from Hamilton Sheriff Court and this was incomplete. It did not contain detail of the applicant's custodial sentence and, in terms of the guidance relating to the Act the local authority cannot conclude that every applicant with a conviction for drug related offences is unfit to be a landlord. Thereafter they became aware at the end of 2016 that the applicant had a further pending case and rather than make a final decision, the respondents' decided to track that case.

His submission was that the respondents proceeded with caution for three reasons:

1. The police were considering whether not to make objections to the application.
2. The pending case may not have led to a conviction.
3. The property was not currently being rented out by the applicant.

He also stated that the respondents' had a significant backlog in the applications for landlord registration.

The applicant was subsequently convicted in April 2017 and on 15 December 2017 the police sent in their objections to the registration to the respondents.

Mr Mays then went on to describe with reference to the documents lodged, the process followed by the respondents and the attempts made to seek the views of the applicants before a decision was made. He also clarified that the last paragraph of the document dated 4 October 2018 and signed by Mr McCafferty refers to a 'final decision' by the Head of Property Services. He stated that Mr McCafferty's signature of that document and his marking an 'x' in the box "Reject/revoke from the register" was the final decision.

Mr Mays submitted that the document dated 4 October 2018 was a fully reasoned decision which fully set out the respondents' decision, the reasons for it and the matters taken into account. He also made submissions on legal authorities in the event that the tribunal decided that the document of 4 October 2018 did not

constitute "reasons" for the decision. Mr Mays position was that reasons for the decision are not required by statute and that in terms of the case law, silence with regard to reasons does not constitute invalidity. (Lawrie-v- Commissioner for Local Authority Accounts in Scotland 1994 SLT 1185.)

Mr Mays went on to make submissions in relation to the statutory guidance and that parliament intended the local authority to have discretion in relation to the matters taken in to account in reaching their decision. He made reference to page 9 of the guidance in which landlord criminality is taken in to account.

His submission was that the test is a fit and proper **person** and not a fit and proper **landlord**. He did not accept the case made out by the applicant in his written submissions in terms of his convention rights on the basis that the convention rights are qualified rights and the wider public interest is an important consideration where drug related crime is concerned. Mr Equi has convictions for being concerned in the supply of drugs and profiting from it. The respondents took action on the pending cases were concluded and the police reached their decision that the applicant cannot be considered a fit and proper person. He did not accept that the applicant had suffered any prejudice by the council taking so long to reach a decision as he had been able to rent out his property to two different tenants.

Further, the decision of 4 October 2018 mentions all material matters taken into account in reaching the decision.

Applicant's submissions

The applicant's position was that he was initially registered as a landlord. He rented out his property until he was imprisoned. He candidly accepted in his submission that in 2016 he assumed his registration had lapsed as he knew he had to reapply every three years. When he got the letters on 9 and 18 April 2018 he assumed that he was still on the register and stated that he wanted to remain in it.

The applicant largely relied on his written submissions and the case law he had lodged. He referred to a second case but did not produce a copy (Cushley-v- City of Dundee Council 1994 SLT 111). The applicant's main submission was that, as occurred in the Ritchie case he lodged, the council failed to take into account mitigating factors and simply took the decision because of the drug convictions.

The tribunal went over the steps the respondents' took to reach their decision in some detail with the applicant. The applicant's position was that he made oral representations to the respondents on two occasions, in response to the letters of 9 April 2018 and 20 August 2018. He also contacted them after received the letter dated 18 April 2018 stating that he wanted to remain on the register.

His submission was that he did not make written representations. He also stated that the council had acted irrationally because he is able to work for a housing

association and be a trustee approved by the charity regulator and manage property in that capacity.

The tribunal went through the decision of 4 October 2018 line by line with the applicant. He accepted that the document clearly reflected the oral representations he had made to the respondents on the two occasions that he has called them. He stated that there were no matters he had raised that were not noted therein.

The applicant made reference to the letter he produced from his tenant and the letter from his employer. He accepted that neither letter was produced by him before the respondent's decision was made.

The applicant took issue with the dates of his convictions which are referred to in the letter from Police Scotland dated 15 December 2017. His position is that the disclosure Scotland document referred to at 1(iv) above is accurate.

Reasons

There was no factual dispute by either the applicant or the respondents' representative regarding the above noted documents, other than in two areas:

1. The applicant's position that the date of his second conviction is wrong in some of the paperwork. It appeared to the tribunal that the applicant is correct and that some of the dates appear to be wrong. What is clear and what was accepted by the applicant is that he has three convictions for drug related offences and the middle conviction was for possession with intent to supply and he received a 16 months custodial sentence
2. The applicant's position that he was initially on the register until the decision was taken to remove him.

The tribunal were initially of the view that the applicant appeared to have been on the register but once matters were looked at closely it emerged that the applicant's application had never been decided one way or the other despite 5 years elapsing and despite the applicant's second conviction for drug related offences at the property.

The tribunal considered the applicant's position carefully, namely, that the respondents' simply decided to remove him from the register because of the drug related offences when they failed to balance the positive factors in his favour

The tribunal considered the document signed by Mr McCafferty on 4 October 2018. In our view that document sets out in some detail the matters taken into account, both from the Police and from the applicant himself. The applicant did not make any submissions regarding any matters the respondents failed to take account of. Neither

did he advance any argument in connection with matters that they took into account which they should not have. He stated that they were not entitled to take the drug offences into account without balancing other matters. It does not appear to us that this is what happened. In our view the respondent has taken relevant matters into account and has not left any relevant matters that it was aware of out of account. It appears to us that the respondents took a great deal of time to reach the decision that they did. That elapse of time was to the applicant's advantage as he was able to rent his property out and he was not called upon to pay any registration renewal fees. The offences were serious and the respondent took action once the Police expressed a view. The applicant was fully involved in the process and was given at least two opportunities to express a view. We consider that the decision made was a reasonable one in all of the circumstances. We do not consider that any devolution issue arises. The decision is unanimous.

The parties were given the tribunal decision verbally and the applicant was advised of the 21 day appeal period.

Right of Appeal

An appeal against this decision to the Upper Tribunal shall be made within the period of 21 days beginning with the day on which the decision appealed against was made. The decision of the Upper Tribunal shall be final.

L.Ward

7 February 2019

Lesley A Ward Legal Member

Date