First-tier Tribunal for Scotland (Housing and Property Chamber)

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/18/0714

The Parties:

Mr Ian Taylor, 5 Chanonry Road South, Elgin, Moray, IV30 6NG ("the Applicant")

Moray Council, High Street, Elgin, Moray, IV30 1BX ("the Respondent")

Tribunal Members

Helen Forbes – Legal Member
Melanie Booth – Ordinary Member

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) grants the order sought by the Applicant and orders the Respondent to grant the application by the Applicant for Landlord Registration.

This is an application in terms of section 92 of the Antisocial Behaviour etc. (Scotland) Act 2004 ("the 2004 Act") and Rule 99 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules").

Background

1. On 27th March 2017, the Applicant applied to the Respondent to renew his registration as a landlord under the 2004 Act.

2. By letter to the Applicant dated 10th August 2017, the Respondent stated that, due to the severity of the Applicant's criminal convictions, his application for registration would only be accepted if the following conditions were strictly adhered to:

(i) *You must employ an established professional agent to act on your behalf to manage your properties and you must have an agreement in place with your agent that we deem to be acceptable;*

(ii) *You must not have any dealings with your tenants. All interaction must be handled by your agent.*

3. The Applicant appealed against the decision to the Respondent's Appeals Panel. The Panel met to consider the appeal on 2nd February 2018. By letter dated 14th February 2018, the Applicant was informed that the Panel considered that the decision taken was reasonable and that the condition to use an agent was not disproportionate. The second condition was clarified to read *'that you not have any dealings with your tenants regarding tenancy matters, all tenancy related interactions to be handled by your agent.'*

4. By letter to the Applicant dated 13th March 2018, the Respondent stated that the Applicant had not complied with the conditions set out and was not deemed to be a fit and proper person to hold landlord registration. Accordingly, the application for registration was refused and the entry on the Register of Landlords was to be removed on 21st May 2018.

5. In his application to the Tribunal dated 27th March 2018, the Applicant stated that he wished to appeal against the conditions imposed by the Respondent. The Respondent thereafter lodged written representations, stating that this was not a competent appeal as the Applicant was seeking a remedy outwith the jurisdiction of the Tribunal.

6. A Case Management Discussion took place on 28th June 2018. The Tribunal directed the Applicant to submit a paper apart to his application setting out the basis upon which he was challenging the Respondent's decision.

7. By email to the Housing and Property Chamber dated 10th July 2018, the Applicant provided further information in relation to his appeal, stating that information regarding the outcome of the convictions had not been considered by the Respondent and that he was a fit and proper landlord. He also provided information regarding his dealings with his tenants. He stated that the Respondent's decision would make his tenants homeless, and that he had been a landlord without any issues with the Respondents for 35 years.

8. A Case Management Discussion took place on 30th August 2018. A hearing was set down for 12th November 2018. At the hearing, the Applicant made a motion to adjourn as he had not received the Respondent's productions. He accepted he had received an email from the Respondent on 25th June 2018 to which the documents were attached, but he had not seen the documents. The Tribunal granted the motion for adjournment. The Tribunal made a Direction to the Applicant to lodge a note setting out a proper basis for appealing the decision of the Respondent. The Applicant did not comply with the Direction.

9. On 26th February 2019, the Tribunal made a further Direction to the Applicant allowing a period of 7 days from receipt of the Direction to lodge a note setting out a proper basis for appealing the decision of the Respondent, stating that failure to comply could lead to the dismissal of the proceedings in terms of Rule 27. The Direction was issued on 27th February 2019.

10. On 6th March 2019, the Applicant's legal representative lodged a note of appeal. Answers dated 20th March 2019 were lodged on behalf of the Respondent.

11. A Direction was issued by the Tribunal dated 9th April 2019 informing parties that the forthcoming hearing on 23rd April 2019 would be restricted to determining the reasonableness of the Respondent's decision. Parties were directed to lodge all documents and authorities to be relied upon by 17th April 2019.

12. A supplementary note was lodged by the Applicant's representative on 17th March 2019. Authorities were lodged by both parties on that date.

The Hearing

13. A hearing took place at the Spectrum Centre, 1 Margaret Street, Inverness, on 23rd April 2019. The Applicant was present and represented by Mr Tim Haddow, Advocate. The Respondent was represented by Mr Neil McGlinchey, Solicitor.

Preliminary Issues

14. Mr McGlinchey indicated that he was accompanied by Mr Ivor McIvor, the Respondent's Home Improvement Services Manager, as a witness. The Tribunal indicated that the hearing was to proceed by way of submission only. Mr McIvor remained in the building, but did not appear at the hearing,

15. The Legal Member indicated to parties that Mr McIvor was known to the Ordinary Member on a professional basis, as both are employed in housing. They meet sporadically at housing related events, such as national meetings, but have no other contact outwith their employment. Mr Haddow was offered the opportunity to adjourn to discuss with the Applicant whether this was considered a conflict of interest. The Applicant indicated that he did not consider this to be a problem and was content to continue with the hearing.

16. Mr McGlinchey indicated that he had only received the Applicant's supplementary note on 17th April 2019. He submitted that the note introduced a new issue relating to whether or not all the Applicant's convictions should have been taken into account, and the weight to be given to the convictions. This was in breach of Rule 14. He had not had sufficient time to consider or answer the new issue. Furthermore, he submitted that the new issue was time-barred as it had not been lodged within 21 days of the decision being appealed and this was not acceptable in terms of the legislation. It was his submission that the supplementary note should not be admitted.

17. In response, Mr Haddow submitted that the supplementary note did not introduce a new matter. The matter referred to went to the weight to be given to matters relating to proportionality, which featured in the original note of appeal lodged in March. With regard to the matter of time-bar, it was his submission that the past difficulties with the pleadings had been remedied during previous Tribunal proceedings. Mr Haddow submitted that matters such as late issues and time-bar are to do with prejudice and to suggest that the Respondent was prejudiced by the argument in the supplementary note suggested that the Respondent had not taken account of these matters in reaching their decision, thus making the process flawed.

18. The Tribunal adjourned to consider this matter. The decision of the Tribunal was that the matter was not time-barred, as any difficulties with the application had been rectified at an earlier stage. Neither did the Tribunal consider that it raised a new issue. The Tribunal accepted the submission on behalf of the Applicant that this matter went to the weight to be given to matters relating to proportionality. The Tribunal was not persuaded that there was any prejudice to the Respondent as the Respondent had notice of the argument and it was one that ought to have been considered at the time of making the original decision.

Submissions on behalf of the Applicant

19. In a helpful and thorough submission, Mr Haddow set out in advance the framework of his submission, referring to both the note of appeal and the supplementary note. He took the Tribunal through the substantive arguments to be made, indicating that parties were agreed on the human rights point and that proportionality had to be considered. It was his submission that, although the Tribunal had stated it would only consider the reasonableness of the decision, the case of *Huang -v- Secretary of State for the Home Department [2007] UKHL 11* was authority for the proposition that the right of appeal in a case involving the Convention was broader than that, and that the Tribunal would have to come to its own decision. He referred to the case of *Wordie Property Co. Ltd. -v- Secretary of State for Scotland 1984 SLT 345* lodged by the Respondent. Mr Haddow provided the Tribunal with a copy of the case from Scots Law Times together with a copy of section 233 of the Town and Country Planning (Scotland) Act 1972. He invited the Tribunal to say that *Wordie* refers to a specific statutory test contained in the 1972 Act, which is specifically referred to at the top of the second column on page 356. There is a difference between the specific test in the 1972 Act and the test in section 92 of the 2004 Act. Mr Haddow said that, if the Tribunal decides that the Respondent erred in its decision, the Tribunal must grant an order to register the Applicant as a landlord. There is no mechanism for remitting the case back to the Respondent. In that event, it would be open to the Respondent to revisit the case as the landlord must be a fit and proper person throughout their time as a landlord.

20. Mr Haddow referred the Tribunal to items 10, 11 and 12 on page 2 of the letter to the Applicant from the Respondent's Graeme Davidson of 14th February 2018 (Production 6 for the Respondent). These items referred to statements from tenants in support of the Applicant. Mr Haddow referred to

the Written Further Representations for Respondent written by Ms Hilary Locker, where she states at paragraph 4 'the Applicant claims he has had no complaints from his tenants; that in itself is irrelevant as he has not put forward statements from his tenants to support this claim.' This was incorrect as the Applicant had put forward such statements.

Mr Haddow referred to the second last paragraph on page 2 where it was stated that there had been no mention of the Applicant's convictions when he had previously applied for landlord registration. The letter stated that the Home Improvement Services Manager had no access to information relating to previous applications and this was probably due to staffing issues that meant investigations had not been fully carried out previously. At the top of page 3 of the letter, there was reference to a letter in relation to an HMO application, where the previous convictions had been taken into account. The letter stated that this matter was dealt with separately to Landlord Registration and the information would not have been available to the Home Improvement Services Manager. It was Mr Haddow's submission to the Tribunal that this spoke to a lack of thoroughness in the decision making by the Respondent. He submitted that there had been a cursory examination and no attempt had been made by the Respondent to make independent enquiries.

Legal Framework

21. Mr Haddow said that the legal framework set out in the note of appeal at paragraphs 10 to12 had been agreed between parties' representatives.

Conditions

22. Mr Haddow submitted that a local authority does not have the power to impose conditions when making a decision that a landlord is not a fit and proper person. In imposing conditions in this case, the Respondent relied upon the Registration of Private Landlords: Guidance for local authorities (April 2009) (Respondent's production number 4) ("the 2009 Guidance") which is statutory guidance provided by the Scottish Government. Mr Haddow submitted that 1) statutory guidance is not law; and 2) the 2009 guidance was out of date by the time the appeal panel made their decision of 14th February 2018. The statutory guidance was revised and reissued; the new version is dated August 2017 (Applicant's production number 5) ("the 2017 Guidance"). Although the 2009 Guidance mentioned the appointment of a suitable agent as a way of avoiding non-registration, this was not mentioned in the 2017 Guidance.

23. In reference to his second point, Mr Haddow pointed out that the 2017 Guidance introduces 1) a duty upon the local authority to give applicants advice and assistance (page 21/56); and 2) action plans as an intervention to help landlords to improve their practice so they can meet the requirements for registration.

24. In essence, Mr Haddow said, the Respondents had invented a scheme whereby they might assist the Applicant to become registered. Other statutes provide for the imposition of conditions in similar cases, but this statute does

not. Mr Haddow invited the Tribunal to find that the Respondent's decision to make registration subject to conditions was unlawful and *ultra vires*.

Fit and Proper Person Test

25. Mr Haddow pointed out that, in terms of section 84(4) of the 2004 Act, although a registered letting agent may be appointed, section 84(4)(c) refers back to section 84(3)(c), so, even where a letting agent is appointed, the landlord still requires to be a fit and proper person to act as a landlord. It is the same test. There is no allowance for relaxing the test of whether the landlord is a fit and proper person if an agent is used. By making its decision in this case, the Respondent has relaxed the test. Mr Haddow submitted that the Tribunal should find this decision unlawful as it relies on a reading of the legislation that treats the two statutory tests as being different.

Purpose of Legislation

26. Mr Haddow said the purpose of the legislation was a matter of statutory interpretation and invited the Tribunal to refer to the 2017 statutory guidance, in particular, the Ministerial Foreword and the Strategic Overview at page 6. The latter mentions three strategic aims, namely 1) improving the quality of property management, condition and service; 2) delivering for tenants and landlords; and 3) enabling growth, investment and helping increase the overall housing supply. Mr Haddow said that removing the Applicant from the register would remove properties from the rented sector, and the local authority must bear that in mind when making a decision. At page 9, under the heading of 'Landlord Criminality', certain illegal landlord practices are listed as being pertinent to the fit and proper person test. These are serious criminal matters, including trafficking, cannabis farms and money laundering. While Mr Haddow accepted that the risk of violence could be a reason for refusing to deem a landlord fit and proper, there is a distinction between serious and ongoing involvement in criminal activity, and past convictions, pointing out that a third of adult males have a criminal record. Removal from the register is a serious step. It imposes criminality if a person continues to let, with significant fines. If non-registration has an effect upon the landlord's business or livelihood, this is part of the proportionality test. Tenants may be affected by eviction and may have to find a new home. Mr Haddow accepted if there was a real risk, it was in the tenants' interests to be protected. In this case, four properties would be removed from the rental market with a significant impact on the landlord, the tenants and the local community.

Approach to Risk

27. This is about balancing the evidence of what has happened against the risk of what might happen. Although the Applicant has convictions, and there may be a risk of similar future actings, there was uncontested evidence before the Respondent that the Applicant had been a landlord for 30 years without problems. There was evidence from actual tenants. There was no evidence to dispute the claim of 30 years good behaviour as a landlord. Mr Haddow disputed the claim made on behalf of the Respondent at paragraph 17 of the Respondent's Answers that the length of time a person has previously been a landlord is not a relevant consideration, submitting that this cannot be correct

if the period is without incident and there is no evidence of negative behaviour as a landlord. He submitted that a reasonable and rational local authority would have given significant weight to the evidence before it of the Applicant's good behaviour and little weight to what could only ever be a notional risk of reoffending based on past convictions.

Weight to be placed on convictions

28. Mr Haddow said that the Respondent has suggested that the Applicant has trivialised his convictions; however, it is on record that he said he was ashamed and embarrassed by them. Referring to the letter from Police Scotland dated 27th July 2017 (Respondent's production number 2), Mr Haddow made the following points:

    Conviction 1 – 31/01/2017 – Criminal Justice and Licensing (Scotland) Act 2010, section 38(1). This was the most recent conviction. It was disposed of with a relatively small fine of £160. It was accepted that this was a relevant conviction, but it should be noted that the court had treated it as a minor conviction.

    Conviction 2 – 15/08/2013 – Assault to Injury. The Sheriff in this case found it worthy of no more than admonishment.

29. Mr Haddow submitted that the remaining two convictions from 2004 (Attempted Theft – £500 fine) and 1999 (3 charges under sections 2 and 5 of the Firearms Act 1968 – fines of £250; £1000 and forfeiture of firearm and ammunition; and £250 respectively) were dated and had both been dealt with by relatively small fines. Neither of these convictions had anything to do with landlord activities.

    The law has changed in relation to the disclosure of convictions, and this is pertinent to landlord registration. Protected convictions were introduced by the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2015 (SSI 2015/329) (Applicant's production number 3) and the law has changed further with the introduction of the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2016 (SSI 2016/91) (Applicant's production number 4). A protected conviction does not have to be declared.

    The 2017 conviction would not be spent until 2022. The 2013 conviction was spent and protected in August 2018. Mr Haddow pointed out that he had erred in his supplementary note by stating that the 2013 conviction should be disregarded. Although it was spent and protected by August 2018, it was correct that it be 'on the radar'. The 2004 conviction was spent in 2009 and would be protected in June 2019. Charges 1 and 2 of the 1999 conviction were spent in 2004 and protected in 2014, so they should not have been considered by the Respondent. Charge 3 of the 1999 conviction can never become protected, therefore, it was correct to take that into account.

    The fact that some of the offences were so close to protection plays into the weight to be attributed at the time of making the decision and throughout the process. It was submitted that the Respondent had gone beyond being

rational and reasonable in the allocation of weight in respect of the convictions.

Proportionality

30. Mr Haddow said the Tribunal had to consider whether the local authority had, in making its decision, done no more than was necessary. If its aim could have been achieved by a less onerous route, then the action taken was not necessary or proportionate. He submitted that the proportionate way to deal with the notional risk posed by the Applicant would have been to find out if he was a risk, and this could have included making enquiries of the tenants. That would have been less onerous than the chosen route. If the Respondent was concerned about the removal of a door by the Applicant, as mentioned in the letter of 14th February 2018, advice and assistance and training were the routes to address such matters, as supported by the purpose of the legislation. The local authority must strike a fair balance between the interests of the landlord, the tenants and the community. Mr Haddow submitted that the decision taken was not proportionate.

31. In the letter of 14th February 2018, the Respondent stated that the Applicant had failed to give information regarding the cost of employing an agent. It was submitted by Mr Haddow that this was not good enough. It was open to the Respondent to procure such evidence.

32. The condition regarding the Applicant's contact with his tenants had no statutory back-up, and the wording of the condition was changed by the Respondent so that it finally read that the Applicant should not have any dealings with his tenants regarding tenancy matters. It was not clear how this was to be enforced, and it would be impossible for the Respondent to know the content of any discussion between the Applicant and his tenants. The Applicant employs some of his tenants and they live in a small place. This condition was similar to one that might be imposed by a sheriff in a harassment case and it was disproportionate.

33. The Respondent was not entitled to fudge the decision by saying they would let the Applicant be registered if he did certain things. They were avoiding making a decision and trying to give the Applicant a way out. If that was what the legislation had intended, the legislation would so provide.

Huang -v- Secretary of State for the Home Department [2007] UKHL 11

34. Referring to the submission made in the Applicant's note of appeal at paragraph 12, concerning Article 1 of Protocol 1 of the European Convention of Human Rights, Mr Haddow referred the Tribunal to paragraphs 11 and 19 of *Huang*. Paragraph 11 spoke to the role of the Tribunal in an appeal concerning a Convention ground, namely that the appellate authority must decide for itself whether the impugned decision is lawful and, if not, reverse it. Paragraph 19 of *Huang* was relevant to the whole test to be used. It sets out the questions to be asked in deciding whether a measure is proportionate and that the judgement on proportionality must always involve striking a fair balance between the rights of individuals and the community.

Submissions on behalf of the Respondent

35. Mr McGlinchey asked that the previous written submissions and answers on behalf of the Respondent, which incorporated the chronology and facts of the case, be referred to for their terms for the sake of brevity.

36. The Respondents refused to register the Applicant on the basis that he was not a fit and proper person to hold landlord registration unless he met the conditions imposed, which he had failed to do.

37. The Applicant was contending that the Respondent had acted unreasonably. The test of unreasonableness placed a heavy burden on the Applicant to show that no authority would have so acted. Mr McGlinchey referred the Tribunal to the case of *Wordie*. At page 5, the general test was set out – the decision must be so unreasonable that no reasonable local authority could have reached the same decision. It was not beyond the bounds of reasonableness for the Respondent to have taken the view it did. The Applicant chose not to accept the conditions.

38. The information taken into account by the Respondent was relevant when considering protection of the public. The Applicant had two past convictions involving violence. One of those offences took place within the Applicant's working environment and one was against a female. Mr McGlinchey submitted that the Applicant had not modified his behaviour and that all the offences were wholly relevant. The Respondent was obliged to refuse to register the Applicant in accordance with the legislation and statutory guidance.

39. With reference to the point made that there had been no complaints about the Applicant during his 30 years as a landlord, Mr McGlinchey said that landlord registration had not been in place throughout the 30 years. There may have been issues that were not reported to the Respondent.

40. Mr McGlinchey acknowledged that new guidance had been put in place in or around August 2017; however, it could be several weeks before that guidance was issued. It was unclear whether the new guidance had been referred to at the internal appeal.

41. In justifying the conditions imposed, Mr McGlinchey said the Respondent had considered that the conditions would ensure that no one was deprived of their employment or their homes. The conditions would 'keep everyone happy' and achieve the aim of the legislation. There would be a barrier between the Applicant and his tenants. This was proportionate in view of the 2009 guidance. It would not have been proportionate to have refused outright to register the Applicant without such conditions. The Respondent had a duty to consider any conditions. This was established practice in common law. The Respondent had to take the guidance into consideration; every local authority does this.

42. Responding to Mr Haddow's point on thoroughness, Mr McGlinchey said the Respondent was aware of other issues concerning the Applicant but these were in relation to a different department and they were considered to be confidential.

43. Mr McGlinchey said the two most recent convictions were, rightly, given significant weight. He accepted that two of the charges within the firearms conviction were spent. He submitted that, even if this information had been taken into account, it would not have made a material difference to the outcome.

44. In summary, the Respondent's decision achieved the aim of creating a barrier that would allow the Applicant to continue to receive income. It would not be expensive to use a letting agent. The decision was thought through carefully by the Respondent in line with the available guidance.

Response on behalf of the Applicant

45. Mr Haddow clarified that the basis of the appeal was against the final letter issued by the Respondent on 13th March 2018, and not the initial decision.

46. Mr Haddow pointed out that Mr McGlinchey had raised two new matters of evidence – 1) that the Respondent had been aware of past issues with the Applicant; and 2) evidence in relation to the cost of using a letting agent. He asked the Tribunal to disregard this evidence.

47. Mr Haddow noted that Mr McGlinchey had accepted that outright refusal, without considering conditions, would have been disproportionate. It was clear the Respondent was looking to find a way round the legislation. There could have been other ways to protect the public.

Decision

48. The Tribunal came to its decision by considering all the information before it, including documentation, written submissions and oral submissions.

49. The Tribunal took the view that the first point to be considered was whether the decision of the Respondent was *ultra vires* or beyond their legal power.

50. The 2004 Act provides at section 84 that, where a person makes an application under section 83 for entry to the landlord register, the local authority, having considered the application, must be satisfied that the relevant person is a fit and proper person to act as a landlord; and, if the application specifies the name and address of a person that is not a registered letting agent to act for the landlord, that person must also be a fit and proper person to act for the landlord. If so satisfied, the local authority shall enter the relevant person on the appropriate register of landlords. Where a person is nominated to act for the landlord, both the landlord and that person must 'pass' the fit and proper person test. This means that, if the

relevant person is not considered a fit and proper person to act as a landlord, the appointment of another person to act on the landlord's behalf as an agent, even if that person is considered a fit and proper person to act for the landlord, cannot overcome the test in the legislation, and the application for registration will fail. The 2004 Act does not provide that the local authority can impose conditions upon a relevant person before determining the application.

51. It was argued by the Respondent that the local authority had a duty to consider any conditions, and that this was established practice in common law. Furthermore, the Respondent had to take the guidance into consideration, as every local authority does this.

52. Section 99A of the 2004 Act provides that the local authority must have regard to any guidance issued by the Scottish Ministers about the discharge of its functions under the specific part of the Act and matters arising in connection with the discharge of those functions.

53. The 2009 Guidance states at page 30 that section 84(4) of the 2004 Act is clear that both the applicant landlord and the agent must be classed as fit and proper in order for the landlord to be registered. It goes on to state that the authority can give the landlord the opportunity to take steps to avoid the application being refused and that the appointment of a suitable agent is one such way of avoiding non-registration, but that does not make the landlord now automatically fit and proper and registrable.

54. The 2017 Guidance makes no mention of using a condition such as the appointment of an agent to avoid non-registration, stating at page 14 that, if a local authority is not satisfied that an applicant is a fit and proper person, and the person cannot take appropriate action to change that assessment then the application should be refused. The 'appropriate action' referred to is not defined

55. It would seem that the Respondents did not comply with the legislation by applying the fit and proper person test to the Applicant, having received his application. At no time before the letter of 13th March 2018, does the Respondent state that the Applicant is not a fit and proper person to act as a landlord. It is stated in the letters of 10th August 2017 and 14th February 2018 that the Respondent will only accept the application for registration if certain conditions are strictly adhered to. It is only in the letter of 13th March 2018, it is stated '*As you have not complied with the conditions set out, you are not deemed to be a fit and proper person to hold landlord registration under sections 84 and 85 of the Antisocial Behaviour etc. (Scotland) Act 2004, and so your application for registration is refused. As a result of this decision your entry on the Register of Landlords will be removed on 21 May 2018.*'

56. In all the circumstances, the Tribunal was not persuaded that the Respondent was entitled in law to impose conditions upon the Applicant before deeming him a fit and proper person to act as a landlord. While the Respondent has a statutory duty to have regard to guidance issued by Scottish Ministers, such guidance cannot amend the legislation, and does not have the same status as

the legislation. It is not at all clear that the 2009 Guidance actually supports the Respondent's position, and, in any event, by the time the decision was made on 13th March 2018, that guidance had been superseded by the 2017 Guidance, which makes no mention of the use of conditions.

57. The Tribunal accepted the submission put forward on behalf of the Applicant that he is either a fit and proper person to act as a landlord or not, and that it was unlawful and irrational of the Respondent to proceed on the basis that nomination of an agent could alter this.

58. Accordingly, the Tribunal deems the decision of 13th March 2018 to be *ultra vires* on the basis that it was unlawful of the Respondent to refuse the application for registration on the basis of the Applicant's failure to comply with conditions that could not be lawfully imposed.

59. Having made the decision that the Respondent's decision was *ultra vires*, the Tribunal took the view that it did not have to consider the further arguments made in this case as to reasonableness and proportionality.

60. The decision of the Tribunal is to grant the order sought by the Applicant and order the Respondent to grant the application by the Applicant for Landlord Registration. The decision of the Tribunal is a unanimous decision.

Right of Appeal

61. **In terms of section 92(5) of the Antisocial Behaviour etc. (Scotland) Act 2004, a party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland. An appeal shall be made within the period of 21 days of the date on which the decision appealed against was made.**

    Where such an appeal is made, the effect of the decision and the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decisions and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

H Forbes

Legal Member/Chair

Date: 21st May 2019