



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

Case reference : **CAM/26UL/HBA/2021/0002**

HMCTS code (audio, video, paper) : **V: CVPREMOTE**

Applicant : **Welwyn Hatfield Borough Council**

Respondents : **1. Faraz Malik Bucha
2. Captain Solutions Limited**

Type of application : **Application for a banning order -
Section 15(1) of the Housing and
Planning Act 2016**

Tribunal members : **Judge David Wyatt
Mr C Gowman BSc MCIEH MCMi**

Date of decision : **30 November 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents we were referred to are described in paragraphs 4 and 5 below. We have noted the contents.

Decision

The tribunal has decided to make a banning order, which is being sent to the parties at the same time as this decision notice, against each Respondent in the terms and for the two-year period set out in the order.

Reasons

The application and parties

1. On 30 June 2021, the Applicant applied under section 15(1) of the Housing and Planning Act 2016 (the “**2016 Act**”) for a banning order against the Respondents for an indefinite period.
2. By section 14 of the 2016 Act, a banning order is an order made by the tribunal, banning a person (for a period specified in the order, of at least 12 months) from: (a) “*letting*” “*housing*” in England; (b) engaging in “*English letting agency work*”; and/or (c) engaging in “*English property management work*”. By section 15(1), a local housing authority in England may apply for a banning order against a person who has been convicted of a “*banning order offence*”. By section 15(2), if they make such an application against a body corporate, they must also apply for a banning order against any officer who has been convicted of the same offence in respect of the same conduct. By section 18, a banning order may include provision banning the person against whom it is made from being “*involved*” in any body corporate that carries out an activity that the person is banned by the order from carrying out. The expressions shown in italics in this paragraph are defined in sections 18 and 54 to 56.
3. The Applicant is a local housing authority. In effect, they sought an order banning the Respondents from all activities for which a banning order could be made, and banning the Second Respondent from being involved in any body corporate that carries out any such activity. The Second Respondent, Captain Solutions Limited (“**Captain**”), was incorporated on 28 July 2015. The First Respondent, Mr Faraz Malik Bucha (who is also referred to in different documents as Faraz Bucha, Malik Faraz Bucha or Faraz Malik Asghap Bucha), was appointed on the same day as (and remains) the sole director of that company, described as the “*managing director*”. The public register maintained by companies house indicates an active proposal to strike Captain off the register, apparently because documents are overdue.

Procedural history

4. On 30 June 2021, the judge gave case management directions. These explained the basic issues which would need to be addressed, as set out below. They required the Applicant to produce a bundle of the documents they relied upon and the Respondents to produce their bundle of documents in answer, with permission for a reply from the Applicant. With an extension of time, the Applicant produced their hard copy bundle of 380 pages and, on 27 September 2021, a supplemental witness statement. The Respondents did not produce bundles as directed, or otherwise respond to the proceedings. The judge gave an extension of time and warning that relevant matters could be determined against the Respondents, or they could be barred from further participation in the proceedings. The judge noted all

correspondence had been sent to the contact addresses provided originally by the Applicant for the Respondents (in the case of Captain, their registered office from companies house) and, in addition, to the current correspondence address registered with companies house for Mr Bucha as sole director of the company. It appeared the documents in the proceedings would be deemed served on the Respondents, who were not responding. As a precaution, the Applicant was directed to conduct further enquiries. On 13 September 2021, the Applicant confirmed further copies of the relevant documents had been sent to the alternative address from companies house for Mr Bucha, including a copy of the hearing bundle. The Applicant confirmed a credit search had been carried out and the only other current address for Mr Bucha was that provided originally by the Applicant and used in the proceedings. In addition, all correspondence had been sent to Mr Bucha by e-mail, as well as by post, and had not been returned.

5. The tribunal had indicated in the directions that it considered an inspection was not necessary. None of the parties requested an inspection. On the morning of the hearing, the tribunal received from Miss Tina Conlan, Counsel for the Applicant, an original and revised skeleton argument, a revised draft banning order (proposing a five-year ban) and an electronic bundle of first-instance tribunal decisions. At the hearing on 27 October 2021, the Applicant was represented by Miss Conlan. Petrit Berisha (a private sector housing team leader for the Applicant) gave evidence, with other officers from the Applicant's legal team in attendance. The Respondents did not attend and were not represented. We were satisfied the Respondents had been notified (or reasonable steps had been taken to notify them) of the hearing and considered it was in the interests of justice to proceed with the hearing.

Issues

6. As explained in the case management directions, the basic issues for the tribunal to consider in relation to each Respondent include:
 - a. whether the Applicant had given notice of intended proceedings in compliance with section 15 of the 2016 Act, and whether it had otherwise complied with the requirements of that section;
 - b. whether the Respondent has been convicted of a banning order offence and: (a) at the time the offence was committed, the Respondent was a "*residential landlord*" or a "*property agent*"; or (b) the application was being made against an officer of a body corporate; and
 - c. whether to make a banning order (and, if so, what order to make) having regard to: (i) the seriousness of the offence of which the Respondent has been convicted; (ii) any previous convictions the Respondent has for a banning order offence; (iii) whether the Respondent is or has at any time been included in the database of rogue landlords and property agents; and (iv) the likely effect of the

banning order on the Respondent and anyone else who may be affected by the order.

Compliance with section 15 of the 2016 Act

7. Before applying for a banning order against a person who has been convicted of a banning order offence, the local housing authority must follow the procedure in section 15. On 30 April 2021, within the six-month time limit under section 15(6) and with a covering letter addressed to Mr Bucha and “*Captain Solutions LTD*”, the Applicant gave notice addressed to: “*Mr Faraz Bucha of Captain Solutions LTD*” by e-mail and by post informing them the authority was proposing to apply for a banning order: “*...against you ... and your companies...for an indefinite period of time...*” because they had been convicted of the offences described below. It invited representations by 28 May 2021, as required by section 15(3). The Applicant did not receive any representations. The tribunal received this application for a banning order on 30 May 2021, after the notice period had expired.
8. In the circumstances of this case, we accept the submissions made by Miss Conlan that this single notice complied with section 15 in relation to each Respondent. Mr Bucha was the sole director of Captain. There is no suggestion anyone else acted or could act for it. The covering letter was addressed to them both and they had each been convicted of banning order offences (as explained below). It was clear from the notice that the Applicant was proposing to apply for a banning order against Mr Bucha and Captain. By the time the application for a banning order was made, Captain was the only company of which Mr Bucha was a director which had not been dissolved.
9. We are also satisfied that the notice was not invalidated by the proposed duration of the ban or the basic reasons given in the notice. The notice proposed (in effect) a lifetime ban unless the order was revoked sooner (provision for which is in section 20 of the 2016 Act). The five-year period now proposed by the Applicant is shorter, since again it could in future be revoked on an application under section 20. It might have been proposed at the representations stage, if any representations had been made by the Respondents, and the period of any ban is ultimately for the tribunal to decide. In relation to the basic reasons given in the notice, as Miss Conlan pointed out, section 15(3) only requires the notice to explain “*why*” the authority is proposing to apply for a banning order, not to give full reasons. The relevant offences, relating directly to failures to provide adequate letting accommodation, speak for themselves. The notice did not explain the other reasons described by the Applicant in these proceedings (summarised below), but those matters have less weight (because only limited evidence has been provided about them) and are not new allegations. We are satisfied the Respondents would already have known about them, from meetings and subsequent enforcement action since 2019 (summarised below). Further, the Respondents had good advance notice of all the evidence relied upon in these proceedings, but

did not respond to any of the matters relied upon by the Applicant. On the evidence produced, they have not suffered any prejudice as a result of the lack of further explanation in the notice of intention.

10. Accordingly, in our view, the notice of intended proceedings complied with section 15 of the 2016 Act and the Applicant has otherwise complied with the procedural requirements of that section.

Banning order offences and status of the Respondents

11. By section 16(1) of the 2016 Act the tribunal may, on an application complying with section 15, make a banning order against a person who: (a) has been convicted of a banning order offence; and (b) was a “*residential landlord*” or “*property agent*” at the time the offence was committed. By section 16(3), where an application for a banning order is made against an officer of a body corporate, the tribunal may make a banning order against that officer even if the condition in section 16(1)(b) is not met.
12. We are satisfied that on 31 March 2021 each of the Respondents was convicted in the St Albans Magistrates Court of many offences (summarised below) under section 234(3) of the Housing Act 2004 (the “**2004 Act**”) committed on various dates, and fined for those offences. By regulation 3 of and the schedule to the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 (the “**Banning Order Regulations**”), such offences are banning order offences unless the sentence imposed on the offender is an absolute or conditional discharge. In the circumstances, we are satisfied that each of the Respondents has been convicted of banning order offences.
13. It was not contended that either Respondent was a residential landlord at the time the banning order offences were committed. By section 56 of the 2016 Act, a “*property agent*” means a:
 - a. “*letting agent*” (as defined in section 54; in summary, subject to exceptions, a person who does anything in the course of a business in response to instructions from a prospective landlord or a prospective tenant); or
 - b. “*property manager*” (as defined in section 55; in summary, subject to exceptions, a person who does anything in the course of a business in response to instructions from a client where they wish the person to arrange services, repairs, maintenance, improvements or insurance in respect of, or to deal with any other aspect of the management of, premises on the client’s behalf).
14. On the evidence produced, we are satisfied Captain was a letting agent and/or property manager (as defined), and so a property agent, at the times the relevant offences were committed (set out below). The banning order offences related to two properties in Hatfield, 18 The Runway and 67 Aviation Avenue, described below. In relation to 18 The Runway, an HMO licence had been granted on 26 October 2017 for the

owner (Mr Lodhia), naming “*Captain Solutions*” as the “*responsible manager*” of the premises. Captain collected rent from the tenants and paid a fixed monthly rent of £1,850 to Mr Lodhia under two management agreements (one from 2018 and another from 2019), which gave Captain permission to let the property under assured shorthold tenancy agreements and required it to maintain the property and renew certification at the cost of Mr Lodhia. In relation to 67 Aviation Avenue, the owner (Mr Wu) had entered into a management agreement with Hatfield Lettings Limited, who (as “*Letting Agent*”) entered into their own management agreement with Captain. This provided for Captain to, from 1 September 2019, operate and manage the business of letting and performing the duties and responsibilities of landlord for 12 months at a fixed monthly fee of £2,000. Captain was responsible for collecting rent and keeping the property and contents in good repair, clean and tidy.

15. Mr Bucha may well also have been acting as a letting agent and/or property manager (as defined) in his own right. When he was in correspondence with the Applicant, he did not suggest that he did so merely in the course of his employment under a contract of employment (one of the exceptions to the definitions in sections 54 and 55). In any event, he was at the relevant times and remains an officer of Captain, the relevant body corporate. Accordingly, we are satisfied that the tribunal may make a banning order against each of the Respondents.

Whether to make a banning order (and, if so, what order to make)

16. By section 16(4), in deciding whether to make a banning order against a person, and in deciding what order to make, we must consider: (a) the seriousness of the offence of which the person has been convicted; (b) any previous convictions the person has for a banning order offence; (c) whether the person is or has at any time been included in the database of rogue landlords and property agents; and (d) the likely effect of the banning order on the person and anyone else who may be affected by the order. We examine each of these in turn below, keeping the following points in mind.
17. The effect of a banning order is severe, preventing a person from lawfully letting housing or engaging in letting agency or property management work in England, or being involved in any body corporate that carries out any such work. All those expressions are defined widely under the 2016 Act. Breach of a banning order is a criminal offence for which an offender is liable to imprisonment, or fines, or both, or may result in a financial penalty. By section 29 of the 2016 Act, a local housing authority must also enter in the rogue landlord database the name of any person against whom a banning order is made, if they have not already entered them on the database in respect of the relevant banning order offence(s).

18. The government department responsible for housing regulation, now the Department for Levelling Up, Housing and Communities, published guidance in respect of banning orders under its previous name (MHCLG) in April 2018: “*Banning Order Offences under the Housing and Planning Act 2016*” (the “**Guidance**”). It is good practice for a local housing authority to follow the Guidance and we may also take it into account when coming to our decision. It gives guidance on the mandatory considerations and we refer to the relevant parts below. It also states [at 1.7] that banning orders are aimed at: “*Rogue landlords who flout their legal obligations and rent out accommodation which is substandard. We expect banning orders to be used for the most serious offenders*”.

19. The Applicant has no specific policy in relation to banning orders. They referred to their general “*Corporate Enforcement Policy*” dated 9 July 2018, which covers a wide range of activities from housing matters to licensing of taxi drivers. This expects enforcement action to be based on risk and uses a pyramid to illustrate the relative severity of enforcement options (starting with “persuasion”, then “warning letter”, “civil penalty”, “enforcement notice”, “licence suspension” and “licence revocation”). It notes the sanctions at the top of the pyramid are those which potentially affect someone’s liberty or ability to earn a living, so need to be considered with particular care. Mr Berisha produced evidence of his delegated authority to apply for banning orders and a copy of his decision, under the enforcement policy, to do so in this case. He decided that it was proportionate and necessary to apply for banning order.

Seriousness of the relevant offences

20. As noted above, the first consideration in deciding whether to make a banning order against a person, and in deciding what order to make, is the seriousness of the banning order offence of which the person has been convicted. The Guidance suggests a focus on the sentence imposed by the court for those offences, saying [at 3.3]: “*The more severe the sentence imposed by the Court, the more appropriate it will be for a banning order to be made. For example, did the offender receive a maximum or minimum sentence...*”.

21. The Applicant provided a certificate from the Magistrates Court that, on 31 March 2021, Captain was convicted of 25 offences under section 234(3) of the 2004 Act. Such offences are failures by a manager (as defined in the 2004 Act) to comply with the Management of Houses in Multiple Occupation (England) Regulations 2006 (the “**Management Regulations**”). Captain was also convicted of two offences under section 236 of failing to provide information when required to do so, but we do not take those convictions into account at this stage because they were not banning order offences. The Applicant said Mr Bucha was convicted of identical offences, as an officer of Captain, but provided only a certificate evidencing that Mr Bucha had been

convicted of 19 of those offences under section 234(3), which related to 18 The Runway, and the same two offences under section 236. Neither Respondent had attended the hearing in the Magistrates Court; the offences were proven in their absence. For each of these offences the Court imposed a fine of £1,500, plus a single victim surcharge and costs. At first glance, looking at each offence in isolation, that seems rather low. By section 234(5), a person who commits an offence under section 234(3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale. The previous limit for such fines, removed in 2015, was £5,000. Since then, and at the time of conviction, the Court could have imposed unlimited fines for each offence under section 234(3).

22. Both properties were three-storey licensed HMOs with five bedrooms and shared facilities: 18 The Runway, Hatfield AL10 9GL and 67 Aviation Avenue, Hatfield AL10 9UB. The Applicant has demonstrated that each of Captain and Mr Bucha were convicted of at least 18 offences under section 234(3) in relation to 18 The Runway of failures, on various dates between 24 June and 18 October 2019, to comply with Management Regulations 4, 6, 7 and 8, relating to:
 - a. inadequate fire safety, including a kitchen door without handles which was fixed open so people would not be trapped, other defective fire doors, defective emergency lighting, no heat detector in the kitchen and an obstructed fire escape route (a number of separate offences, on 24/25 June and 9 July 2019);
 - b. faulty fire alarms (with offences on 15 and 18 October 2019);
 - c. an unsafe electrical consumer unit (with offences on 24 June and 9 July 2019); and
 - d. extensive disrepair and rubbish, inside and outside the property (with offences on 24/25 June and 9 July 2019).
23. The offences under s.234(3) of which Captain (at least) was convicted in relation to 67 Aviation Avenue include failure on 26 February 2020 to comply with Management Regulations 4, 6 and 7, relating to:
 - a. inadequate fire safety (defective doors, defective emergency lighting and obstructed fire escape routes);
 - b. faulty fire alarms;
 - c. interruptions to the gas and power supply because the suppliers had installed pre-payment meters, apparently after the manager failed to pay sums due under credit meters, making the requisite interlinked mains-powered fire alarm system unreliable and leaving occupiers without heating and hot water in winter; and
 - d. disrepair.

24. To assess the severity of the sentences, we need to bear in mind that the Applicant brought many charges for individual items which could have been charged as one. Further, there was an element of repetition in some, when the same offences were observed on dates a matter of weeks apart - although the Respondents had been notified of what needed to be done and given the opportunity to take remedial action. Stepping back, it is obvious the Magistrates Court (perhaps naturally, given the principle of totality in criminal sentencing) took a global view of the appropriate fine for the overall offending and simply divided this by the number of charged and proven offences. The Court did not differentiate between the offences, which varied considerably; the fine was £1,500 whether the offence was failing to display a notice with the manager's contact details or the much more serious offences outlined above. This resulted in total fines for banning order offences of £37,500 imposed on Captain and at least £28,500 imposed on Mr Bucha. These are several times the gross income likely to have been generated by the Respondents from the rent (said to be £500/£600 per room) remaining after the fixed rents they paid to their clients. Looking at the specific conduct to which the many charges related, we accept Miss Conlan's submission that the total relevant fines, reflecting the overall criminality, were relatively severe.
25. We are careful not to go behind the sentences imposed, but the seriousness of the relevant offences is confirmed by the photographic evidence which had been produced to the Magistrates Court (and included in the hearing bundle for these proceedings). These offences and the sentences reflect a serious failure over a significant period of time to ensure the protection and basic maintenance required under the Management Regulations for houses in multiple occupation. We have no proper note of the hearing in the Magistrates Court, but we accept the Applicant's evidence that the Court had in its sentencing remarks expressed concern about fire safety issues having been "wilfully ignored" over a considerable period of time, despite advice from the Applicant (considered below), and said lives had been put at risk.

Previous convictions/database of rogue landlords and property agents

26. As noted above, the next mandatory considerations when deciding whether to make a banning order against a person, and if so what order to make, are any previous convictions the person has for a banning order offence and whether the person is or has at any time been included in the database of rogue landlords and property agents. The Guidance says [at 3.3]: "...A longer ban may be more appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities... For example, in the case of property agents, they are required to be a member of a redress scheme and any evidence of non-compliance could also be taken into account...".

27. The Respondents had no previous convictions. Nor had they been entered on the database of rogue landlords and property agents. By section 30 of the 2016 Act, the Applicant could have entered them on the database when they had been convicted of the relevant banning order offences, but (perhaps surprisingly) had not done so. Mr Berisha said the Applicant had been concentrating on applying for a banning order as soon as possible, knowing this had to be done urgently, with a view to adding the Respondents to the rogue landlord database after these proceedings had been concluded. We are satisfied that (as outlined above) the banning order offences for which each Respondent was convicted involved breaches of the Management Regulations on several different dates over several months in relation to 18 The Runway and, at least in relation to Captain, involved the second property, 67 Aviation Avenue, several months later. The Applicant simply prosecuted all these offences together.
28. The Applicant had previously attempted to resolve matters without the need for formal enforcement action and ensure the Respondents were aware of their legal responsibilities. When Mr Berisha joined the Applicant three years ago, his predecessor had expressed concerns about Mr Bucha; the Applicant had begun to receive complaints about a lack of tenancy agreements and tenants being moved from one property to another. The Applicant contacted Mr Bucha, writing to him and offering advice. On 7 February 2019, housing and trading standards officers from the Applicant met Mr Bucha to give guidance and informal warnings. Their note of the meeting states Mr Bucha was advised he needed to become a member of an appropriate redress scheme, because he advertised properties for rent, and needed to comply with the Management Regulations, carrying out inspections of properties where he was collecting rents and arranging necessary works. He had questioned his responsibility for management of properties and had (correctly) been warned that, in essence, if he was collecting rents from occupying tenants he would be a manager for the purposes of the Management Regulations. At the end of that meeting, Mr Bucha signed a receipt confirming he had been given guidance leaflets and a copy of the Management Regulations.
29. More than four months later, the Applicant carried out their first inspection (of 18 The Runway) on 24 June 2019. They advised on the remedial action required, but substantive work was not carried out within a reasonable time, hence the convictions for similar offences in July and October 2019 and, in relation to 67 Aviation Avenue, in February 2020. Mr Bucha had attended an interview under caution in October 2019 and had been provided in advance with questions he would be asked. At the interview, apparently on advice, he gave no comment to all substantive questions. The Respondents had requested and been given extensions of time to provide information demanded under section 235 of the 2004 Act, but failed to provide such information. As noted above, each Respondent was convicted of two offences under section 236, of failure to provide information required under s.235, at the same time as the banning order offences.

30. Mr Berisha also referred to financial penalties which had been imposed for failure to join one of the requisite property agent redress schemes, the example mentioned above from the Guidance. The record of his enforcement decision refers to a final penalty notice dated 6 November 2019 (which we understand imposed a penalty on Captain) and another final penalty notice dated 18 June 2020 (which we understand imposed a penalty on another company, Off Campus Housing Ltd, since dissolved, of which Mr Bucha was sole director), amongst other matters. The Applicant had also attempted to prosecute Mr Bucha and Captain for allegedly misleading commercial practices (informing tenants that rent was inclusive of utilities, but not paying them, and failing to give tenancy agreements) at the same time as the banning order offences, but had withdrawn those charges because, they said, the requisite delegated authority for them had not been obtained.
31. On the evidence produced, we are satisfied the Respondents have a history of failing to comply with their obligations and knew, or ought to have known, they were in breach of their legal responsibilities in relation to relevant housing matters over a significant period of time.

Likely effect of a banning order on the Respondent(s) and anyone else who may be affected by the order.

32. As noted above, in deciding whether to make a banning order against a person, and if so what order to make, the last mandatory consideration is the likely effect of the banning order on the person and anyone else who may be affected by the order. The Guidance [at 3.3] refers to:
- a. the harm caused to the tenant (saying this is a “*very important factor*”, and referring to harm or the potential for harm);
 - b. punishment of the offender (observing that a banning order is a severe sanction; the length of a ban should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, set at a high enough level to remove the worst offenders from the sector, ensure it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities);
 - c. deter the offender from repeating the offence (making any ban long enough to be likely to do so); and
 - d. deter others from committing similar offences (it being important people realise the local housing authority is proactive in applying for banning orders where needed and the length of the banning order will be enough to both punish the offender and deter repeat offending).
33. Most of the banning order offences in this case related directly to the health and safety of tenants. The relevant fire safety risks in a three-storey house (or houses) in multiple occupation clearly exposed tenants to potential harm, as summarised above. The tenants will have been

living in unpleasant conditions for a significant period of time. Further, at least in relation to Captain, the lack of heating and hot water at 67 Aviation Avenue in February 2020 would have made conditions harsh for the tenants. An (unnamed) tenant of that property had described struggling without hot water or cooking facilities as a result of the supply interruptions and said that on one occasion there was no power even to light the Property for 48 hours.

34. We accept the evidence of Mr Berisha that Mr Bucha generally operated by canvassing international students from the local university. On the balance of probabilities, we are satisfied that at least in some cases Mr Bucha persuaded these students to make rent payments in advance, because they were not in a position to offer guarantors, understanding that their rent payments would be inclusive of utilities. They then found themselves moved between available rooms in sub-standard properties and (after the utility providers installed pre-payment meters because the Respondents did not arrange payment of supplies under credit meters) with interrupted power and gas supplies unless they could afford to pay for utilities themselves and attempt to deduct their payments from future rent. However, the Applicant's evidence of such matters and the experiences of individual tenants was extremely limited. Apart from one specific (unnamed) example we have little more than vague and anecdotal evidence from Mr Berisha which does not enable us to assess the scope of the harm and potential harm as we might have wished.
35. Because the Respondents have not responded to these proceedings, we have no real information about their financial circumstances or current activities, or what other sources of income or ways of making a living they might have. Captain may soon be struck off the register of companies, as noted above. Mr Berisha said Mr Bucha previously had an interest in a property (the contact address originally provided for him when the application for a banning order was made), but it appeared he had since disposed of this.
36. Mr Berisha told us the Applicant can normally work with landlords and property agents to resolve problems voluntarily. He had been unable to make any progress with Mr Bucha because he would not engage with the Applicant. The case leading to the convictions on 31 March 2021 was the only prosecution Mr Berisha has been involved with, although in other cases the Applicant had imposed financial penalties under the 2004 Act (which had been appealed). He said the Applicant has a good accreditation scheme and the university encourages students to use accredited landlords/agents. The Applicant had worked with the university to limit the opportunities for Mr Bucha to advertise through or at the university, but Mr Bucha knew the layout and workings of the university well because he had attended it himself as a student and could still attend the campus to hand out leaflets and the like. Mr Berisha said it appeared Mr Bucha was now seeking other tenants for another property in Hatfield, but this was being investigated and details were not yet available. On the very limited information

provided, it may well be that Mr Bucha is endeavouring to work more obliquely, in conjunction with other property agents, possibly seeking to avoid collecting rent himself.

Conclusion

37. On the case and evidence provided, we have decided to make a banning order against each Respondent for a period of two years, for all activities for which a banning order can be made (as set out above). We have also decided to ban Mr Bucha from during the same period being involved in any body corporate that carries out any such activity. Our findings in relation to the seriousness of the banning order offences and the conduct of the Respondents, who knew or should have known they were in breach of their legal responsibilities, are set out above. The harm caused, and potential for harm, were significant, but the Applicant has provided insufficient evidence to justify a longer ban. We consider two years to be a proportionate period, reflecting the harm and potential harm evidenced, the severity of the offences and the fact these related to a significant period of time with other relevant non-compliance, as noted above. It does seem the Respondents' reaction to advice and enforcement action from the Applicant has been to go to ground and attempt to continue in the same manner with a lower profile. Banning the Respondents from earning a living from letting housing or carrying out letting agency or property management work in England for two years will have a real economic impact. Two years is long enough to be likely to force them into an alternative line of work and deter them from repeating the offences if they return to the banned activities after the ban has ended. For the same reasons, a banning order for two years will also deter others from committing similar offences, highlighting the potential consequences of failing to comply with the Management Regulations and the other legal responsibilities of landlords and property agents. Helpfully, the Applicant applied for the banning order very promptly after the Respondents were convicted of the relevant banning order offences.
38. We considered limiting the geographical area covered by the banning order, since it appears the Respondents' activities (or at least the relevant properties) have all been confined to the Hatfield area and largely in respect of students attending the local university. However, we are satisfied there is an unacceptable risk that Mr Bucha would if faced with a limited order move and operate in other areas outside it, particularly now it is said he has disposed of his own property interest(s) in Hatfield. Accordingly, the banning order will apply to England, in the usual way. The Respondents are no longer involved with 18 The Runway or 67 Aviation Avenue and we have no other information to suggest we should make any transitional provisions. Accordingly, the order will take effect from the date specified in it and without exceptions.

Observations

39. We suggest the Applicant may wish to review its enforcement policy and delegation arrangements in relation to applications for banning orders. The Guidance [at 3.1] expects local housing authorities to develop and document their own policy on when to pursue a banning order. It seems unusual for authority to make an application for a banning order to be delegated to Mr Berisha without at least review by a senior officer or the like. Mr Berisha explained he had liaised with senior figures at the Applicant and the Applicant's legal team had been involved, but perhaps such matters could be requirements. This may be an important safeguard in any event. Further, if specialist legal assistance had been involved at an earlier stage, the Applicant might have been in a position to provide adequate evidence of any other relevant convictions and evidence a case for a longer banning order.

Name: Judge David Wyatt

Date: 30 November 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).