FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**BIR/00CQ/HBA/2022/0001**
Applicant	**:**	**Coventry City Council**
Representation	**:**	**Mr Steven Chantler, Principal Environmental Health Officer**
Respondent	**:**	**Mr Carmelo Borsellino**
Representation	**:**	**Ms Leanne Buckley-Thompson of Counsel instructed by Band Hatton Button Solicitors**
Type of Application	**:**	**Application for a Banning Order – section 15(1) of the Housing and Planning Act 2016**
Tribunal Members	**:**	**Judge Anthony Verduyn** **Mr Robert Chumley-Roberts MCIEH, J.P.** **Mr Javed Arain**
Date of Hearing	**:**	**10th June 2022**
Date of Decision	**:**	**29th July 2022**

DECISION

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1. The Applicant Local Housing Authority ("**LHA**"), Coventry City Council ("**Coventry**") applies, under section 15(1) of the Housing and Planning Act 2016 ('**the Act**'), for a banning order against Mr Carmelo Borsellino ("**Mr Borsellino**"), who has been convicted of a Banning Order offence prescribed by the Act. Prior to the hearing taking place, the parties had agreed that there was a single issue in dispute between them and that was whether a Banning Order was warranted. They agreed that if such an

Order were to be made, it should have a duration of 12 months and allow Mr Borsellino to appoint an agent to manage the residential properties he lets.

LAW AND GUIDANCE

2. The statutory provisions relating to Banning Orders are contained within Chapter 2 of Part 2 of the Act.

3. In summary, an LHA may apply to this Tribunal for a Banning Order against a person who has been convicted of a banning order offence and who was a "residential landlord" (meaning a "landlord of housing" where "housing" means "a building, or part of a building, occupied or intended to be occupied as a dwelling or as more than one dwelling", under section 56 of the Act) at the time the offence was committed. Section 14 of the Act provides that if a Banning Order is made by the Tribunal, the person is banned from: (a) letting housing in England; (b) engaging in English letting agency work; (c) engaging in English property management work; or (d) doing two or more of those things.

4. Section 15 of the Act requires the authority to give the person a notice of intended proceedings before applying for a Banning Order. Notice of intended proceedings may not be given after the end of the period of six months beginning with the day on which the person was convicted of the offence to which the notice relates, and must: (a) inform the person that the authority is proposing to apply for a Banning Order and explain why; (b) state the length of the proposed ban; and (c) invite the person to make representations within a period specified in the notice of not less than 28 days.

5. Section 16(4) of the Act provides that in deciding whether to make a Banning Order against a person, and in deciding what order to make, the Tribunal must consider: (a) the seriousness of the offence of which the person has been convicted; (b) any previous convictions that 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.

6. The Ministry of Housing Communities and Local Government Guidance 2018 ('**MHCLG Guidance**"), published in April 2018, is non-statutory. The stated intention

of the Guidance is to help local authorities understand their new powers to ban landlords from renting out properties in the private sector. Its recommendations are not mandatory, but it is good practice for an LHA to follow them, and this Tribunal may take them into account when coming to its own decision.

7. The MHCLG Guidance notes the Government's intention to crack down on a "small number of rogue or criminal landlords [who] knowingly rent out unsafe and substandard accommodation" and to disrupt their business model. Paragraph 1.7 of the MHCLG Guidance states 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".

8. Paragraph 3.1 of the MHCLG Guidance states: "Local housing authorities are expected to develop and document their own policy on when to pursue a Banning Order and should decide which option it wishes to pursue on a case-by-case basis in line with that policy. Our expectation is that a local housing authority will pursue a Banning Order for the most serious offenders."

9. At paragraph 3.3 of the MHCLG Guidance are set out the factors that a Local Housing Authority should take into account when deciding whether to seek a Banning Order; somewhat enlarging on statutory considerations. They are:

    - The seriousness of the offence: the Guidance sets out that all banning order offences are serious. The LHA should consider the sentence imposed by the Court for the Banning Order offence: the more severe the sentence, the more appropriate a Banning Order is. This factor is said to go to both the making of and the duration of a Banning Order;

    - Previous convictions/rogue landlord database: it is stated that the LHA should check the rogue landlord database to ascertain whether the landlord has committed other banning order offences or received civil penalties in respect of banning order offences. "A longer ban may be 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." Landlords are running a business and should be aware of their legal obligations.

- The effect of a Banning Order on the person or on any person that may be affected by the order, including:
    - The harm caused to the tenant: this is said to be a very important factor, and the greater the harm or potential for harm (which may be 'as perceived' by the tenant), the longer the ban should be. It is suggested that offences related to health and safety, for example, could be considered more harmful than other offences (the example given is fraud);
    - Punishment of the offender: a Banning Order is draconian, and any ban ought to be proportionate to the severity of the offence and whether there is a pattern of previous offending. It is important that it is set at a high enough level to remove the worst offenders from the sector, to have a real economic impact, and demonstrate the consequences of non-compliance.
    - Deterrence of the offender from repeat offending: 'The ultimate goal is to prevent any further offending'. This might be achieved by preventing the most serious offenders from operating in the sector again. The length of the ban should be long enough to be a likely deterrence to the offender from repeating offences;
    - Deterrence of others from similar offending: this can be demonstrated through the realisation of others that the LHA is pro-active in seeking such orders, and at such a level to punish and deter repeat offending.

10. At the same paragraph, the MHCLG Guidance states as follows: "A spent conviction should not be taken into account when determining whether to apply for and/or make a Banning Order".

11. At paragraph 5.2, the MHCLG specifically indicates that the Tribunal is not bound by, but may have regard to the Guidance (the word 'may' being permissive). At 5.3, the MHCLG Guidance specifically reserves the decision on the duration of any Banning Order to the Tribunal (though it must be minimum 12 months).

FACTUAL BACKGROUND

12. On 14th July 2021 at Coventry Magistrates Court, Mr Borsellino pleaded guilty to one charge of failing to comply with Regulation 4 of the Management of Houses in Multiple Occupation (England) Regulations 2006 ("**2006 Regulations**") contrary to section 234 of the Housing Act 2004 and was fined £1,350 (plus £135 victim surcharge). The Memorandum of Conviction reads:

> "On 17th July 2019 at Coventry [Mr Borsellino] failed to comply with regulations, namely Regulation 4(2) [of the 2006 Regulations] made in respect of a house situated at 12-14 Lower Ford Street, Coventry which was in multiple occupation in that [he] failed to ensure that any firefighting equipment and fire alarms are maintained in good working order, in that: (a) the fire door to the kitchen was wedged open with a fire extinguisher; (b) there were items on the escape route on the 1st and 2nd floor landings that impeded escape; and (c) the smoke detector had been removed from the cupboard under the first to second floor staircase." ("**the Conviction**")

No evidence was offered on several other counts and they were dismissed accordingly.

13. On 9th September 2021 Coventry served Mr Borsellino with a Notice of Intention to seek a Banning Order pursuant to Section 16 of the Act. The Notice referred to the Conviction and stated that Coventry intended to apply for a Banning Order that would last indefinitely. Mr Borsellino was given until 7th October 2021 to make representations, but no representations were made.

14. Further, on 22nd December 2021 Coventry served a Notice of Intent to include Mr Borsellino's details on the Rogue Landlord Database. No representations were received in relation to this notice and an entry was made in respect of Mr Borsellino under Section 28 of the Housing and Planning Act 2016 on 26th January 2022.

15. The current application was made to this Tribunal on 8th February 2022. Directions were made by the Tribunal on 25th February 2022, but three issues identified in those directions (whether Mr Borsellino had committed a Banning Order offence, whether notice of intended proceedings had been given and whether, at the time of the offence, Mr Borsellino was a "residential landlord") fall away as agreed by the parties at the time of the hearing, and substantiated by the materials filed by Coventry in support of the application in any event.

16. Coventry set out its detailed case, pursuant to the directions of the Tribunal, and upon which submissions were made at the hearing.

17. On 18th September 2018 (with a revised/updated version produced in January 2021) Coventry approved the "Policy on Enforcing Standards in Private Sector Housing" which sets the framework for all housing enforcement activities in Coventry. The policy provides that Coventry will implement the powers under the Housing and Planning Act 2016 and Housing Act 2004 in accordance with guidance provided by government. In respect of Banning Orders, Coventry's policy is to consider these for the most serious offenders, meaning those who breached their legal obligations and rent out accommodation which is substandard and where previous sanctions, such as a prosecution, has not resulted in positive improvements. Coventry states that it has had full regard to its own policy, including its own specific guidance on Banning Orders, which substantially relies on MHCLG Guidance.

18. Coventry accuse Mr Borsellino of "flagrant disregard for housing legislation" and refer to two properties of which Mr Borsellino is a residential landlord: 12-14 Lower Ford Street, Coventry CV1 5QJ (i.e. the property referred to in the Conviction, "**Lower Ford Street**") and 400 Swan Lane, Coventry CV2 4QS ("**Swan Lane**").

19. In respect of Lower Ford Street, Coventry relates that on 2nd August 2016 it was contacted by West Midlands Fire and Rescue Service in relation to a fire at the property. The fire safety officer stated that although there was an alarm system installed, it was not functioning and according to the tenants it had not been heard or tested for several years. An inspection of the property was undertaken by Coventry on 8th August 2016 and revealed the property was an unlicensed HMO that contained multiple breaches of Regulations including, potentially significantly for later events, breach of Regulation 4(2). In particular, there was failure to ensure that any firefighting equipment and fire alarms were maintained in good working order, the system had failed to operate during a fire and there was insufficient evidence of any testing of the system. Further inspection took place on 18th October 2016 and an Improvement Notice was issued on 31st October 2016. An inspection of 3rd May 2017 led to prosecution for failure to comply with the Improvement Notice and conviction in absence on 25th September 2017. This conviction was for various offences, namely failure to comply with an Improvement Notice, failure to display landlord's contact name, address and number in

a prominent position, failure to ensure that any firefighting equipment and fire alarms were maintained in good working order, failure to ensure that there were handrails to stairs, and having control of a house in multiple occupation which was required to be licenced but unlicensed. Mr Borsellino was fined £770 (plus £77 victim surcharge).

20. Coventry was then pro-active in inspecting again on 17th July 2019, giving rise to **the Conviction.** Coventry maintain that the property continued to be a HMO which required a licence but was unlicensed, but also that Mr Borsellino: failed to display his contact name, address and number in a prominent position; failed to maintain common parts, fixtures, fittings and appliances. In particular, there was a hole in the wall above the first to second floor staircase which had been papered over with wrapping paper, the work surfaces containing the sink in the kitchen had dropped allowing water to flow behind units, the bathroom was unclean and the ceiling was mouldy, the entrance carpet was dirty and there was a broken electrical socket to the top floor right hand side bedroom, which led to the use of the six gang extension lead, which in turn could overload the system. Mr Borsellino was interviewed under caution where he was unable to provide any evidence of fire safety logs or inspections. Nevertheless, Mr Borsellino was only convicted on one count before the magistrates.

21. Coventry also refers to Swan Lane. Mr William Chandler, a tenant there, had complained on 30th June 2021 at the conduct of Mr Borsellino. On 26th July 2021 Mr Chandler complained again, claiming that Mr Borsellino had asked him to leave the property without giving him the correct notice. Coventry wrote to Mr Borsellino regarding this matter and also that the property appeared to be an unlicensed HMO. On 11th January 2022 a further complaint was received from Mr Chandler stating that Mr Borsellino had posted a notice requesting him to leave the property but in an apparently invalid form. Again Mr Borsellino was written to (on the 13th January 2022). On the 23rd July 2021 the property was inspected by Mr Steven Chantler Principal Environmental Health Officer. It appeared that the building had been converted in to flats without building regulations and it was considered to be an HMO which required to be licenced, but was unlicensed. Mr Borsellino also appeared to have failed to display his correct name, address and contact number in a prominent position. He had also failed to take safety measures, including that there is no automatic fire detection system within the building or the individual flats as required in HMOs of this type, and the exit

doors to each flat were not fire doors as required and needed the use of a key, which would hinder the escape of the residents in the event of fire. There were no handrails to the stairs in common parts. Again Mr Borsellino was interviewed under caution. Investigations are ongoing and no prosecution has yet been initiated.

22. In submissions, Mr Chantler asserted the seriousness of breaches that relate to fire safety and the apparent lack of improvement in the standards of Mr Borsellino property management, notwithstanding re-inspections and previous prosecutions. Indeed, such management as there was, appeared to be reactive and not proactive.

23. Mr Borsellino provided a witness statement in reply to Coventry's application. He asserted that it was "wholly unnecessary and indeed slightly vindictive". He points out that the 2017 prosecution concerned issues that arose before the implementation of the Act and he said these should be disregarded. He claims he was only successfully prosecuted, because he did not attend by reason of being in hospital. He describes his conviction in 2021 as the result of a plea bargain, and that for the trial he produced a witness statement showing that the relevant matters in the court summons had, in the main, been adequately dealt with." Coventry's "star witness" had not attended. Further, he confirmed that Regulation 4 relating to fire safety in the 2006 regulations had now been complied with in full. He produced various photographs and certificates in support of this contention. In his defence, he asserts that many of the concerns were the result of tenants neglect, not poor management. These related to poor cleaning and ventilation. Significantly, in his evidence to the magistrates court in 2021, he accepted that the fire door to the kitchen was temporarily wedged open with a fire extinguisher and there were some items on the escape route to the first and second floor landings, these did not prevent escape from the property, and most of these items have been placed there by tenants. He stated that his HMO licence application has been unfairly rejected. His sons now essentially manage the properties for him and he stated he has little involvement due to his age (he was born on 6th August 1943). He admits that in relation to Swan Lane, on two separate occasions he served incorrect notices on Mr Chandler. He asserts that he will comply with the law in future. He denies that this property is an HMO requiring licencing. Even so "in order to avoid incurring substantial legal costs in defending a threatened prosecution I decided instead to reach an agreement with the council without any admission of liability whereby I pay a £5,000 civil fine over a six

month period." He states this was a pragmatic decision. "I will admit that I have not addressed all the management regulation issues with this property as set out by the Council but I am working on it." He asserts that "fire doors are fitted to the entry to each flat and no keys required" and the property has the necessary gas safety certificates. Mr Borsellino accepts that he has caused unnecessary problems by not notifying his solicitor of paperwork received from Coventry, including the notice of intention to make a Banning Order and the notice of intention to place him on the rogue landlords register. He asserts that he provides a safe place for people to live and put a roof over their heads. At present there are only two tenants of the lower Ford Street property and three in Swan Lane. He puts down his problems to being disorganised, but he asserts that the evidence before the Tribunal is sufficient to show that he can manage these properties via his sons. He offers suitable conditions to be set down by the Tribunal to allow him to continue to do the same. He is willing to make HMO licence applications for both properties and he is also, if necessary, happy to engage the services of professional letting or managing agent. He says he feels that this is a "test case" brought against him as an example.

24. Coventry responded to this witness statement. In respect of the first conviction, it was pointed out that merely because an offence predated the coming into effect of the Act, did not mean that it could be disregarded. Coventry cited the case of Hussain v London Borough of Waltham Forest 2020 EWCA Civ 1539. Coventry had indicated that it was willing to have the proceedings adjourned before the Magistrates Court, but the court declined and continued in the absence of Mr Borsellino. Coventry accepts that there was a plea bargain in 2021, but it said that this does not diminish the importance of fire safety to the tenants. It should also be noted that the offence of failing to comply with the relevant regulation is one of strict liability. Overall, Coventry asserts that as a professional residential landlord there is a duty on Mr Borsellino to ensure that he is aware of his legal obligations and comply with them.

25. Counsel for Mr Borsellino produced a helpful skeleton argument in advance of the hearing. She usefully adopts the mandatory matters that this Tribunal must consider under Section 16(4) of the Act.

26. In respect of the seriousness of the offence of which Mr Borsellino has been convicted, she comments as follows: although the offence is one of strict liability, it is entirely

appropriate for the Tribunal to consider the scale of severity of it. She states there is a big difference between a regulation breach where no fire safety measures are in situ and one where such measures are deficient. There is also a scale of deficiency. Mr Borsellino appreciates the importance of fire safety. The fire extinguisher wedging open a kitchen fire door was a temporary interference with it. That, and most of the other items complained about, had been in place through the activities of the tenants. She also asserts that Mr Borsellino pleaded guilty to put this matter behind him, and had in fact provided evidence to the magistrates that these issues have been adequately dealt with. The property now complies with the statutory requirements.

27. In respect of any previous convictions that the respondent has for a Banning Order offence, she comments as follows: the 2017 conviction was spent, as only a fine was imposed, and it expired on or about 25th of September 2018. Under MHCLG guidance, "A spent conviction should not be taken into account when determining whether to apply for and or make a banning order". The conviction itself is not disputed, nor the fine. In Camden LBC v Simple Properties Management Ltd LON/00BA/HBA/2020/0011, the Tribunal followed the guidance and held it could not take into account a spent conviction, but Counsel acknowledged that it was further held that they were entitled to take into account a person's inclusion on the database of rogue landlords in relation to that conviction. Although that may be the case, it is not understood that Mr Borsellino was entered onto the database in respect of the aforementioned previous conviction. Counsel then repeated the excuse given by Mr Borsellino for his non-attendance. She also contends that Coventry did in fact seek to prove matters in absence, rather than actively seek to adjourn the hearing. Mr Borsellino has not been prosecuted in respect of allegations relating to Swan Lane, and he has not admitted the basis before the civil penalty which he agreed to pay. She then pointed to the evidence for the works that Mr Borsellino has done to improve that property and its safety.

28. In respect of whether Mr Borsellino is or has at any time been included in the database of rogue landlords, she comments as follows: although Mr Borsellino was entered on the database, this was because he did not inform his solicitor of the paperwork relating to it. She accepts that he cannot go behind the entry, but he can be removed from the database once his conviction in 2021 is spent.

29. In respect of the likely effect of the Banning Order on Mr Borsellino and anyone else who may be affected by the order, she comments: Mr Borsellino feels that he is being made an unfair example of by Coventry and that being elderly and having poor English is being taken advantage of by the LHA. A Banning Order will cause Mr Borsellino to lose rental income which tops up his pension and which he cannot replace. Unless he were permitted to appoint a managing agent that he would have to sell the properties. That would have an impact upon his tenants, as they would have to leave. She contends that Mr Borsellino has made a concerted effort to rectify the issues at his properties and he is willing to agree conditions including to make application for HMO licences and the appointment of a professional agent to assist him in management.

30. Overall Counsel contends that Banning Orders are reserved for those who flout their legal obligations and rent out accommodation which is substandard. They are intended to be used against serious offenders, but Mr Borsellino is not such an offender; especially in light of the full circumstances as set out in his case.

31. In submissions, Counsel focussed on the conviction and observed that, with a maximum fine of £5,000, a penalty of £1,350 showed that this was not considered the most serious matter. Guidance does not identify reactively responding to housing management issues, rather than proactive management, as a factor in Banning Orders. Nor should deterrence be a factor in this case, as Mr Borsellino had health issues and had tried to deal with matters on his own as an independently minded person, but now his sons assist and intend to continue to do so. As to the spent conviction, this does not prevent one considering the underlying conduct, but the Guidance is clear and Coventry should not have focused on the details of sentence and such things, which are precluded from consideration. Similarly a civil fine, without admission of liability, is not an appropriate factor; nor is this the appropriate venue for assessing whether there has been an offence or not. In any event, it would be for Coventry to prove the offence, not for Mr Borsellino to disprove it.

32. Finally, and by way of Reply, Mr Chantler pointed out that the Council offered help and training, but Mr Borsellino did not use its services. It expected landlords to be professional, even if only seeking to top up their pensions. There was no evidence that the sons were any better qualified than Mr Borsellino. Safety is an important matter and unsafe properties put lives at risk, and merely to be reactive is not enough. What

distinguishes Mr Borsellino is lack of responsiveness and improvement, such that Coventry have a lack of confidence in his progress.

DECISION

33. The Tribunal gave careful consideration to all the facts and matters placed before it by the parties and their advocates (save the spent conviction).

34. The Tribunal is required to consider the matters set out in Section 16(4) of the Act and will address these first and as a basis for its considerations. The seriousness of the offence in question, can only relate to the Conviction. The type of offence is a serious one in relation to housing regulations, with a maximum fine of £5,000. Since it relates to fire precautions, it goes to one of the most important aspects of health and safety for tenants. Indeed, one of Mr Borsellino's properties had suffered a fire in the recent past and that precipitated a long series of investigations into his management of his properties. In terms of mismanagement, this was a serious matter. Mr Borsellino was fined £1,350, including, no doubt a discount for a plea of guilty. The offence was obviously not treated as the most serious of its type by the magistrates, but their focus was upon the offence and its immediate circumstances rather than the somewhat broader issues engaged in an application for a Banning Order. Indeed, the MHCLG Guidance in suggesting the most serious cases will lead to applications for Banning Orders, does not preclude such applications for less serious ones. Mr Borsellino says his conviction was part of a plea bargain, but the Tribunal is unimpressed with attempts to avoid or diminish the seriousness of having been convicted in relation to fire safety. Mr Borsellino cannot be heard to contest his guilt, when he admitted it before the magistrates, whatever justification he may think he had for such an admission at the time. Indeed, it is notable that Mr Borsellino consistently seeks to deny or diminish his culpability in respect of housing issues. It may be the case, that the tenants had propped open a fire door with a fire extinguisher, but legal responsibility reposes with Mr Borsellino none-the-less. It was also notable that obstruction to the escape route, even on Mr Borsellino's evidence, was not entirely a matter of his tenants placing items on the landings. As to the removal of a smoke detector, that is also something for which Mr Borsellino rightly answered. The impression formed by the Tribunal is that Mr Borsellino did not and does not appreciate the critical importance of fire safety in the properties he owns.

35. In relation to previous convictions, the Tribunal accepts that the 2017 conviction is spent and falls outside the considerations under this heading. The Tribunal also disregards the civil penalty accepted by Mr Borsellino, as this is not a conviction. The Tribunal has regard to Hussain v London Borough of Waltham Forest [2019] UKUT 339 (LC) where Holgate J. and the Chamber President considered the Rehabilitation of Offenders Act 1974 and treatment of spent convictions when refusing or revoking Selective Licences. The Upper Tribunal distinguished admissibility of conduct underlying a conviction and overriding the protections of the 1974 Act where necessary to do justice under section 7(3). Hussain was subsequently upheld on appeal [2020] EWCA Civ 1539. It follows that the condition of the property at the time of the fire and Mr Borsellino response is relevant, but the conviction itself (and the civil penalty) are wholly disregarded.

36. It is relevant that Mr Borsellino appears on the database of rogue landlords. It appears to this Tribunal to be part of a pattern of behaviour on his part, where steps taken by authorities are not heeded and acted upon. His failure to act under an Improvement Notice precipitated the Conviction. Notwithstanding that he had access to legal advisors, he failed to respond to the notice regarding the database and the notice preliminary to these proceedings. There is no evidence before us that he sought to take up any training as a landlord, whether offered by Coventry or any other provider. His presence on the Rogue Landlord database, without objection on his part, forms part of a worrying failure to respond, even to pressing and important matters.

37. The likely effect of a Banning Order requires careful consideration because much can depend on the terms of the Banning Order that may be made. Mr Borsellino says he will lose an important supplemental income for his pension and so will suffer an undue hardship. The Tribunal considers that this objection has to be put into context. Mr Borsellino was keen to emphasise that he provides housing at the bottom end of the market, providing shelter for people who otherwise are considerably disadvantaged. The Tribunal accepts that this is the market in which he operates, but housing in these circumstances must be safe. If anything, the need to protect tenants from their own lapses in judgement may be all the more important in such cases. Furthermore, relying on the rent to support personal income, somewhat presupposes that the rent may not be required to be invested in the properties to make them safe. Mr Borsellino is a

professional landlord, as rent forms one of his only two income streams, and professionalism requires that he comply with the law, even if that means there is no rent available for his personal profit. There is no evidence before the Tribunal that Mr Borsellino's sons are any better qualified than he is to undertake the management of properties, although they appear to have taken a hand in making good some of the recent deficiencies. The Tribunal considers that the issue of hardship to Mr Borsellino can be mitigated by the requirement for a professional manager to be appointed. If this leads to a reduction in net rent available to Mr Borsellino, then this reflects the economics of renting properties and should he wish for a simpler return he can sell up and invest elsewhere. The appointment of an independent manager may also suit the interests of the tenants, who would otherwise have to move were Mr Borsellino to be more comprehensively banned. Overall, the fact that tenants may have to move out in these circumstances is not a strong indicator in this case against making a Banning Order if a Banning Order were necessary, since not making an order in such circumstances may condemn the tenants to living in dangerous housing.

38. The Act does not limit the considerations of the Tribunal, so long as the factors set out above have been considered. The Tribunal is entitled to give broad considerations to the case before it, and that includes consideration of the problems addressed by the policy of the Act. Mr Borsellino knowingly rented out unsafe and substandard accommodation; that much is clear, because he failed to respond to inspections and an Improvement Notice, notwithstanding a recent history of a fire. He disregarded his legal responsibilities. The Tribunal rejects the suggestion that he was being singled out by reasons of issues of age and language skills, and finds that he was rightly identified as a landlord of properties that, in their condition, risked the safety of his tenants. He allowed his tenants to be in harm's way. Deterrence is an important consideration for this Tribunal and it finds that Mr Borsellino has not been deterred by inspections and notices and cannot be relied upon to respond were the Tribunal to make no Order. It seems to the Tribunal that he would be as likely to disregard the terms of such a decision, insofar as they were critical of him, as he disregarded notices in the past. There is very little in the material before the Tribunal from which it can conclude that a permanent change will arise in the management by Mr Borsellino of his properties, notwithstanding the engagement of his sons. He is too inclined to put matters behind him, without modifying his behaviour; an example of this being no longer seeking legal

advice between conviction and the current application, thereby ignoring two important notices.

39. Overall, the Tribunal recognises that there are more serious offences and more persistent offenders than Mr Borsellino. The Tribunal also recognises that a Banning Order is a draconian penalty. Coventry should not have sought an indefinite Banning Order, as that would be reserved for the most serious of cases, and would be disproportionate to the current matter. Even so, this case is sufficient to warrant a Banning Order. In order to allow Mr Borsellino to mitigate the impact of the Order he shall be given a period of 6 weeks to appoint an independent and professionally qualified managing agent for his properties. Failing such an appointment then the full force of the Order should take effect. The Tribunal understood the parties to be agreed that this should be for the period of a year, if made at all, but the Tribunal determines that the correct period is near the statutory minimum but should make allowance for a manager having the full benefit of a year to review and (if necessary) resolve issues with the properties. Hence the Order will be somewhat longer than the parties agreed and shall be for 15 months in this case.

Judge Anthony Verduyn

Dated 29th July 2022

