

Antisocial Behaviour etc (Scotland) Act 2004 - Procedure for Disposal of Applications – Registration of Private Landlords**Report by Director, Corporate Resources****1 Hearings to Determine Applications where the Applicant may not be fit and proper**

As the registration process involves a “light touch”, there is no provision for consultation as would happen with normal forms of licensing e.g. the Police. In deciding whether a person is fit and proper, the local authority shall have regard *inter alia* to whether the applicant has committed any offence involving (i) fraud or other dishonesty; (ii) violence; or (iii) drugs or has contravened any provision of the law relating to the housing or landlord and tenant law. There is a right of appeal against any decision to the Sheriff. If the local authority proposes to refuse an application for registration, the local authority shall, if it considers that the applicant can/or might be able to take action to avert that proposed refusal, give the applicant advice on the appropriate action to take.

2 Disposal of Applications for Registration at Hearings

The Procedure for considering applications and hearings is as follows:-

Given that there is no consultation about the application and the applicant has been provided with information about his fitness and properness:-

- 1 the applicant is given the opportunity to respond;
- 2 the Members are given the opportunity to question the applicant;
- 3 the applicant is given the opportunity to sum up; and
- 4 the Committee take a decision on the matter in the presence of the applicant.

The Committee may first adjourn but only for the expressly stated purpose of seeking procedural or legal advice (normally from the Clerk or Legal Advisor) and not for the purpose of taking the decision in private. The reasons for making the decision should be explained when conveying the decision.

3 Consideration of Applications where Landlord has Previous Convictions

A balanced conclusion requires to be reached as to whether the person poses any risk as a Landlord. Evidence must be as sound as possible as there is a right of appeal. The decision as to whether someone is fit and proper is a judgement. Assessment should be made of the risk that the Applicant may fail to act properly in relation to future letting activity and whether/to what extent problems from the past are likely to recur.

The decision should probably focus on the person's ability to meet the requirements of housing legislation rather than past activity which has already been penalised.

There may be mitigating circumstances that could suggest that the behaviour was out of character; the Applicant has changed his/her lifestyle; or the Applicant had taken steps to ensure that there would be no transgression in the future. The Applicant could appoint an Agent to act on his/her behalf; not that that in itself could make the Landlord any more fit and proper and, therefore, 'registrable'.

For such an arrangement to be acceptable, a suitable agreement would have to be in place. Such an agreement would have to be signed by both parties based on an established code of practice e.g. RICS, etc; have clear lines of authorisation; set out clearly the responsibilities of the owner and agent; and provide adequate further power to an agent to Act. The Local Authority is required to give advice to Landlords to that effect and that, if such information is provided, they could become eligible for registration (but success is by no means guaranteed). Checks must be in place to ensure that the Landlord carries out any requirements made of him/her. Any decision to refuse to register is likely to have serious implications from the owner (and agent) as well as the tenant.

The tenant's security continues until the tenancy ends (or there is a breach of tenancy; and the Landlord or Agent must use lawful means only to bring the tenancies to an end. Eviction is not the only option available to a Landlord in such circumstances – he or she could sell or transfer ownership.)

Providing false information is an offence. If the Authority concludes that false or omitted information was not due to simple error or misunderstanding and the owner has committed an offence, a report can be sent to the Procurator Fiscal. The Authority might judge that a conscious deception rendered the Applicant an unfit and improper person to be letting houses and so reject the Application. A rent penalty notice could be applied.

4 Recommendation

It is recommended that the Committee note the terms of the report.

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Background Papers:
Antisocial Behaviour Etc (Scotland) Act 2004