

Left In The Lurch – Another UK Landlord Convicted Following Tenant’s Unlawful Waste Operations

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Recent case law demonstrates that regulators are prepared to prosecute landlords as a direct result of their tenants’ unlawful waste operations. Landlords should consider this possibility when negotiating with prospective tenants and put in place reasonable safeguards to protect themselves. However, victims of fly-tipping may potentially face a similar risk of prosecution against which such safeguards will not be available.

Facts

In 2015, Anthony Joyner leased part of his land in Totnes, Devon to a new wood recycling business, Woody’s Recycling. The company directors, Steven Loveridge and David Weeks, assured Mr Joyner that they had the necessary permits for their operation. In fact, the amount of waste brought onto site far exceeded the 1,000 tonne limit allowed under the site’s waste exemption. Although the waste deposited was mainly wood, it also included mattresses, plasterboard, plastics and metal. No waste ever left the site.

In early 2016, after Mr Loveridge was sent to jail for an unrelated offence, Mr Joyner locked the gates to the recycling centre, causing the business to cease trading. The closure left approximately 10,000 tonnes of waste wood on site. In April 2016, Mr Joyner approached another recycling business to see if it was interested in taking the waste wood. However, he was advised that the waste was of poor quality, had little, if any, commercial value and would cost up to £750,000 to remove.

On 16 May 2016, the Environment Agency was informed that the fire service was dealing with a wood fire at the site. The fire covered the area of a football pitch, burned for 5 days and cost the fire service an estimated £28,000 to attend and extinguish.

Prosecution

Mr Joyner was convicted of knowingly permitting the keeping of controlled waste on land in respect of which no environmental permit was in force, in a manner likely to cause pollution to the environment or harm to human health, contrary to the [Environmental Protection Act 1990](#). Mr Joyner was ordered to pay £12,250 by way of fine, costs and compensation. The Environment Agency is also taking action against Mr Joyner for the clearing up of the site and a hearing is due to take place in

December.

Mr Loveridge and Mr Weeks were convicted of operating an unlawful waste operation contrary to the [Environmental Permitting \(England and Wales\) Regulations 2010](#). Mr Loveridge was given a 6 month prison sentence and Mr Weeks was ordered to pay more than £11,000 by way of fine and costs.

Analysis

This case echoes the other recent case of [Mark Stone and Salhouse Norwich Limited v Environment Agency](#), where a director was found personally liable after his company's tenant vacated its premises leaving 471 tonnes of waste mattresses behind. In that case, the High Court agreed with the Environment Agency that the company's 10-month delay in removing the waste and the fact that it had no permit authorising its storage amounted to unlawfully storing the waste. Furthermore, the company's director was convicted of consenting to or conniving in the unlawful storage of the waste.

These cases represent salutary lessons for landlords. It is clear that where an errant tenant ceases trading leaving behind waste stored unlawfully, regulators are prepared to take action against the landlord. To protect themselves from this eventuality, landlords should carry out reasonable due diligence checks on prospective waste sector tenants to obtain comfort that they will not leave them with liability for clean-up. For example:

- what experience and qualifications does the tenant have;
- what references can they provide;
- have they been convicted of any offences in the past, especially waste offences; and
- what permits or exemptions will be required for the proposed operation?
- Landlords should consider how they can monitor compliance from time to time (for example, obtaining copies of any regulatory correspondence and reports), what steps they can take under the lease if the tenant is non-compliant, and how they would pay for site clearance in the tenant's absence (for example, some form of security).

Victims of fly-tipping do not have the same opportunity as landlords to vet the people who bring waste unlawfully onto their land, and yet they potentially face the same consequences. If waste were fly-tipped onto private land, the landowner may be required to remove the waste at its own effort and expense promptly or risk being prosecuted for knowingly permitting the waste to remain. This would be particularly galling if (as is so often the case) the 'real' criminal who illegally dumped the waste in the first place cannot be identified.

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National Law Review, Volume VIII, Number 346

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