

**Y Tribiwnlys Eiddo Preswyl
Residential Property Tribunal Service (Wales)**

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**DECISION AND REASONS OF RESIDENTIAL PROPERTY TRIBUNAL
In the matter of an Application under section 27 of the Housing (Wales) Act
2014, appeal against refusal to grant a license.**

RPT ref: RPT/0047/07/18

Hearing: 22nd January 2019

Applicant: Martin Rohde

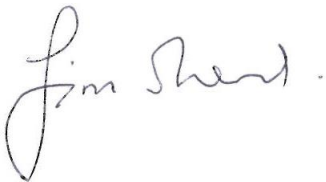
Respondents: Rent Smart Wales

Tribunal: Mr JE Shepherd – Legal Chairman
Mr K Watkins FRICS
Ms Jo Coupe FRICS
Dr. A. Ash (Lay Member)

ORDER

The appeal is dismissed.

Dated this 7th day of February 2019



J Shepherd
Chairman

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DECISION

Introduction

1. The Applicant is appealing the decision of Rent Smart Wales ("RSW") refusing to grant him a landlord license because he is not a Fit and Proper Person to hold one.

Background

2. The Applicant owns three rented properties at 1,2A and 2B Barn, Wherby Lane, Presteigne, Powys LD82DP ("The premises"). His ownership could not be verified because there is no land register evidence available (apparently there are no title deeds). He applied to RSW for a landlord licence to carry out management and /or letting activities at the premises. The application was a joint landlord application with Mayya Kostyuk. The reference name on the registration was given as Herford Housing Solution (" Herford"). Mr Rohde told the Tribunal that Herford had been set up when he had been refused an HMO license by Herefordshire Council. He says that the council advised him to do this although there was no evidence to support this statement (see further below).
3. Following his application Mr Rohde was invited to answer a series of questions by RSW in a letter dated 6th June 2018. He was warned that his application may be refused because of his association with Mayya Kostyuk who had been found guilty

of previous housing related offences. The questions were relatively wide ranging. Amongst other things they explored Mr Rohde's relationship with Mayya Kostyuk and whether he himself had been prosecuted or any civil action brought against him. In the event Mr Rohde did not answer the questions. He said in his submissions to the Tribunal that he didn't reply because he had nothing to add. He says he did contact RSW by phone to confirm this and he repeated this submission during the hearing. The Tribunal were not satisfied with Mr Rohde's explanation. On the face of the letter from RSW it was plainly important for him to provide answers to the questions they reasonably asked. No answers were forthcoming. This demonstrates a tendency for evasiveness by Mr Rohde which was also evident during the hearing.

4. RSW gathered evidence as to the character of both Mr Rohde and Mayya Kostyuk. Most of this evidence was provided by Herefordshire Council where Mr Rohde owns a number of properties (he said he owned around 25 properties in England). Jacqueline O'Mahony, an Environmental Health Officer for Herefordshire Council provided a statement of facts dated 21st August 2018 at Appendix 11 of RSW's submissions.
5. The witness for RSW, Christina Brown a Senior Housing Surveyor, provided the Tribunal with a helpful timeline of enforcement proceedings brought against Mr Rohde and Mayya Kostyuk, which is attached to this decision. Most of the evidence for the timeline was obtained from investigations with Herefordshire Council.
6. On 13th July 2018 RSW wrote to Mr Rohde and Mayya Kostyuk separately refusing to grant a license. The reasons given were Mr Rohde's close association with Mayya Kostyuk who had current convictions for housing related offences. It was also stated that RSW had taken into account Mr Rohde's own previous housing related conviction which was now spent. These were the only matters relied upon in the letter. In the event at the Tribunal RSW relied upon other enforcement action taken against Mr Rohde as detailed in the timeline attached. Mr Rohde had been given the opportunity to deal with all of this evidence in submissions and had done so in detail. The Tribunal was looking at the matter afresh therefore all of the evidence was potentially relevant to our decision.
7. Mr Rohde applied to the Tribunal on 22nd July 2018. In accordance with directions given RSW submitted their evidence on 30th August 2018. Mr Rohde filed his evidence late on 16th November 2018. He did not serve RSW with his evidence. At the start of the hearing there was a short adjournment so that Mr Grigg the solicitor representing RSW could read through Mr Rohde's evidence. It is unclear why Mr Rohde did not serve RSW. It was plain from the directions that he needed to do so. The Tribunal is grateful for RSW's flexibility which enabled the application to be heard rather than adjourned.

The Law

8. Under s. 19 (2) of the Housing (Wales) Act 2014, before granting a licence a licensing authority must be satisfied that the applicant is a fit and proper person to

be licensed. S.20 of the Act details how the licensing authority decides whether a landlord is a fit and proper person:

20.— Fit and proper person requirement

(1) In deciding whether a person is a fit and proper person to be licensed as required by section 19(2)(a), a licensing authority must have regard to all matters it considers appropriate.

(2) Among the matters to which the licensing authority must have regard is any evidence within subsections (3) to (5).

(3) Evidence is within this subsection if it shows that the person has—

(a) committed any offence involving fraud or other dishonesty, violence, firearms or drugs or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (offences attracting notification requirements),

(b) practised unlawful discrimination or harassment on the grounds of any characteristic which is a protected characteristic under section 4 of the Equality Act 2010, or victimised another person contrary to that Act, in or in connection with the carrying on of any business, or

(c) contravened any provision of the law relating to housing or landlord and tenant.

(4) Evidence is within this subsection if—

(a) it shows that any other person associated or formerly associated with the person (whether on a personal, work or other basis) has done any of the things set out in subsection (3), and

(b) it appears to the licensing authority that the evidence is relevant to the question whether the person is a fit and proper person to be licensed.

(5) Evidence is within this subsection if it shows the person has previously failed to comply with a condition of a licence granted under this Part by a licensing authority.

(6) The Welsh Ministers must give guidance to licensing authorities about deciding whether a person is a fit and proper person to be licensed as required by section 19(2)(a).

(7) The Welsh Ministers may amend this section by order to vary the evidence to which a licensing authority must have regard in deciding whether a person is a fit and proper person to be licensed.

9. The Welsh government has issued guidance on the Fit and Proper Person test pursuant to s.20(6) above. The relevant parts of the guidance state:

4. When considering whether a person is “fit and proper” the licensing authority

must have regard to any evidence that the person concerned has.

• committed any offence involving fraud or dishonesty, violence, firearms or drugs or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (offences attracting notification requirements);

• practised unlawful discrimination on the grounds of any characteristic which is a protected characteristic under section 4 of the Equality Act 2010, or victimised another person contrary to that Act, in or in connection with the carrying on of any business; or

• contravened any provision of the law relating to housing or landlord and tenant.

5. This list is [not] exhaustive and the Licensing Authority must have regard to all matters it considers appropriate. Any evidence considered should be relevant to the

person's fitness to hold a licence and let and manage rental properties in Wales.

6. In respect of criminal offences, the Licensing Authority must have regard to any convictions, unless the person is not obliged to disclose those convictions in accordance with the Rehabilitation of Offenders Act 1974 and the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975/1023) (as variously amended).

7. Each application should be considered on its own merits and if a licence is to be refused on the ground that a person is not fit and proper, the Licensing Authority must be able to justify its decision with clear reasons.

13. If there is evidence that a person associated, or formerly associated, with the person applying to be licensed, has done any of the things listed under section 20(3) of the Act, that evidence must be taken into account in determining whether the applicant is a fit and proper person. The purpose of this requirement is to ensure that only fit and proper persons hold licences. It would not be appropriate for a licence to be granted to someone, if that person was acting as a 'front person' for someone else who, if they were not unfit, would be entitled to be a licence holder.

14. However, a refusal to grant a licence in these circumstances should only be made having considered all evidence including:

- evidence of offences having been committed by the associated person; and*
- the associate's fitness is directly relevant to the applicant's fitness to let and manage under the terms of the Act.*

The hearing

10. In his application Mr Rohde stated that his conviction for breaching an Emergency Prohibition Order by allowing the property in question to be occupied was spent. This was undoubtedly correct because he was convicted in 2014 and the conviction would have been spent after 12 months under Section 5 of the Rehabilitation of Offenders Act 1974. Technically, the convictions of Mayya Kostyuk and Herford Housing Solutions for a total of 7 HMO related offences were also spent at the date of the Tribunal hearing. These convictions took place on 19th January 2018 and the hearing was on 22nd January 2019. The Tribunal accepts Mr Grigg's interpretation of the Welsh government guidance namely that although unspent convictions had to be considered by the licensing authority (and by implication the Tribunal) spent convictions did not. Nevertheless it was open to the authority to consider spent convictions if it thought they were relevant. In the present case RSW considered that the 2014 conviction of Mr Rohde was illustrative of the start of a pattern of behaviour which has continued up until the convictions of Mayya Kosyukk and her company as illustrated by the Timeline provided by RSW. The Tribunal considered these submissions were well made and that all of the convictions were potentially relevant to the decision at issue.

11. At the hearing Mr Rohde referred the Tribunal to his written submissions in which he had traversed each of the breaches relied upon by RSW. In summary:

a) Prosecution for breach of the EPO in allowing a prohibited property to be occupied (2014): He raised a number of issues concerning this conviction including a claim that the Local Authority had revoked the EPO on 25th June 2012 (in fact it was varied); a claim that a RTM organisation had been responsible; a claim that he had pleaded guilty on the advice of his solicitor only and that his solicitor had sought to retract his guilty plea. He also complained about the fact that it had taken the local authority a period of 7 years to bring enforcement action - in effect blaming them for what he considered their intransigence.

b) Improvement Notice served on Mr Rohde due to HMO issues (2011): Mr Rohde said that he complied with the notice. This appears to be true because the notice was revoked but only in 2014.

c) An HMO declaration which was served by Herefordshire County Council on Mr Rohde in 2014 because of problems at one of his properties with multi-occupancy, anti-social behaviour etc. This HMO declaration was appealed to the Upper Tribunal by Mr Rohde. The Upper Tribunal found that at the date of the inspection the premises were an HMO and the declaration was upheld. Mr Rohde stressed the fact that he had never disputed that the premises were an HMO at the time of the inspection, his appeal was based on the fact that the premises were no longer an HMO.

d) A Section 4 Prevention of Damage by Pests Act 1949 notice was served on Mr Rohde in 2014 regarding accumulations of rubbish at one of his properties. Mr Rohde says that no consultation had been carried out and he had resolved the issue as soon as the notice was served.

e) Abatement notices were served on Mr Rohde due to water leaks from his premises into flats below in 2012 and 2015. Mr Rohde argued that on both occasions he had not been at fault and had rectified the situation once he had been made aware of it.

f) In 2016 Mr Rohde was found guilty of Transporting Waste without a waste carrier's license, Depositing Commercial Waste at a Household Recycling Centre and failing to produce transfer documents to an officer. He was fined £1749. Mr Rohde said he had appealed the conviction to the Crown Court and had won the appeal and he was awarded costs. He didn't produce any documentation to confirm this.

g) An Emergency Prohibition Order had been served on Mr Rohde by Herefordshire Council in 2017 because a family were occupying a dangerous second floor flat with no fire precautions. Mr Rohde had appealed the notice but the appeal had been dismissed. He said that the Tribunal had been critical of the Local Authority's lack of cooperation.

h) On 19th January 2018 Herford were convicted of three offences of permitting occupation of an HMO by more people than allowed under a licence; failing to comply with an HMO License condition and failing to provide a satisfactory means of escape in case of fire. Mayya Kostyuk was found guilty of two counts of failing to comply with an HMO license; one count of failing to provide a satisfactory means of escape in case of fire and one count of failing to provide the Local Authority with copies of a written statement of occupation of HMO premises.

12. In his written statement to the Tribunal Mr Rohde made various excuses for the conduct relied upon for these latter offences. Significantly he did not seek to distance himself from either Herford or Mayya Kostyuk. Indeed he gave a detailed description of the premises involved using his personal knowledge. It was clear that he was also personally involved in the conduct complained about. For example he said in his written statement: "I can state that the property was used for customers who in fact rented rooms on a daily basis and signed a hotel type agreement....I can state that on the morning of the inspection the tenant who it was alleged was sleeping in the utility room had in fact handed the keys to me that morning for room number eight."

13. It is clear to the Tribunal that Mr Rohde has a close association with both Mayya Kostyuk and Herford. During the hearing he was not forthcoming on the issue but merely stated that Ms Kostyuk was "a manager". Significantly in his written statement however he says:

"The circumstances surrounding the company are that the LA refused to give me a HMO License. As a result I tendered a few other people as possible candidates but were denied. I then put forward an application in the name of Mayya Kostyuk, the LA rejected this on the grounds that they alleged that she had to (sic) close an association with me. I was then advised to if M Kostyuk (sic) formed a company then the LA stated they would grant a licence. I would then employ the company Herford Housing Solutions Ltd to manage the HMO property. This was done and the LA issued a licence. At that time I was also in discussions with the LA regarding the provisions of the licence however they chose to inspect and prosecute".

14. Even if (which seems unlikely) the Local Authority did give Mr Rohde this advice his statement makes it very clear that he had at least a working involvement with Mayya Kostyuk and that the company was essentially a vehicle to allow him to obtain an HMO license. He owned the property in which Herford had an office. All of the later prosecutions of Herford and Maya Kostyuk involved property owned by Mr Rohde. The guidance from the Welsh Government makes clear that it would not be appropriate for a licence to be granted to someone, if that person was acting as a 'front person' for someone else who, if they were not unfit, would be entitled to be a licence holder.

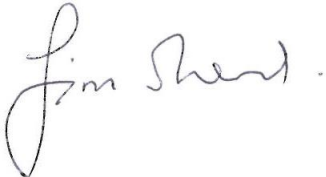
15. During the hearing Mr Rohde accepted that he could not go behind the convictions of Mayya Kostyuk or Herford. Although the convictions were technically spent at the date of the hearing the Tribunal notes that the guidance from the Welsh Government states that the Licensing Authority may wish to

consider the relevance of the convictions in relation to the applicant's character and integrity to let or manage residential properties and the length of time since the conviction. The Tribunal considers that the convictions of Mayya Kostyuk and Herford are highly relevant in the present case. Moreover the convictions are recent.

16. It was clear from his submissions that Mr Grigg, the solicitor for RSW, relied mainly on the convictions of Mayya Kostyuk and Herford, and Mr Rohde's association with both. However Mr Grigg also submitted that the timeline of enforcement demonstrated a pattern of conduct on the part of Mr Rohde. As already indicated the Tribunal considers this submission well made. It is a cause of some concern to the Tribunal that rather than showing contrition and providing some hope for improvement in the future Mr Rohde sought at virtually every opportunity to pass the blame onto others such as the Local Authority or to seek to excuse his conduct. The Tribunal considers that there is little hope that Mr Rohde will reform on current evidence. It is clear that Herefordshire Council have formed a dim view of them stating amongst other things "They are amongst our top Rogue Landlords in Herefordshire" (email dated 23rd May 2017 from Jackie O' Mahony to RSW). This is not language that the Tribunal would use but the purpose of landlord licensing in Wales is to prevent unsuitable landlords from operating in order to try and improve living conditions for tenants and standards in the private rented sector. The Tribunal unanimously considers that Mr Rohde is not a suitable landlord to obtain a licence.

The appeal is dismissed.

Dated this 7th day of February 2019

A handwritten signature in cursive script, appearing to read "J Shepherd".

J Shepherd
Chairman

Timeline

-
- 2018 Mayya & Herford Housing Solutions Limited prosecuted for total of 7 HMO related offences
 - 2018 Martin Rohde appealed Emergency Prohibition Order (EPO) below, EPO upheld by Tribunal on 10.07.18. EPO still in operation.
 - 2017 EPO – 2nd floor attic flat, no fire precautions and looked like a building site. Occupied by family x 2 children.
 - 2017 Fire service served Prohibition Order
 - 2016 Martin Rohde convicted of waste offences and fined. Fly tipping and no waste transfer licence (commercial waste).
 - 2015 Abatement Notice – Martin Rohde. Leaks in property affecting neighbour
 - 2014 Martin Rohde prosecuted for breaching EPO and allowing a prohibited property to be occupied. Fined.
 - 2014 HMO declaration served, property over occupied, ASB issues. Notice was appealed. Appeal went to upper tribunal, and Notice was upheld
 - 2014 Service of Prevention of Damage by Pests 1949 Notice - accumulations
 - 2012 Abatement Notice – water leaks onto flat below
 - 2011 Improvement Notice (category 1 hazards) served on Martin Rohde due to HMO issues
 - 2006 EPO served on St Martin's house (which led to conviction in 2014).