

Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

References: RPT/0001/05/16 Tovey (Mr Phillip Tovey)
RPT/0002/05/16 (Mrs Claire Lianne Tovey)

In the matter of Applications under Section 27 of the Housing (Wales) Act 2014

Tribunal: Dr Christopher McNall (Lawyer – Chairperson)
Mr Hefin Lewis FRICS (Surveyor Member)
Mr Bill Brereton (Lay Member)

Applicants: Mr Phillip Tovey
Mrs Claire Lianne Tovey
(Represented by Mr Rhys ab Owen Thomas, Counsel)

Respondent: Rent Smart Wales / Rhentu Doeth Cymru
(Represented by Mr Richard Grigg, Solicitor)

Hearing: Heard in public at the Residential Property Tribunal offices, Southgate House, Cardiff, on 4 November 2016

DECISIONS

RPT/0001/05/16:

Mr Philip Tovey's appeal against the decision of Rent Smart Wales dated 20 April 2016 to refuse him a licence under Part 1 of the Housing (Wales) Act 2014 to carry out lettings work and property management work with effect from 23 November 2016 is dismissed.

RPT/0002/05/16:

Mrs Claire Lianne Tovey's appeal against the decision of Rent Smart Wales dated 13 May 2016 to refuse her a licence under Part 1 of the Housing (Wales) Act to carry out lettings work and property management work with effect from 23 November 2016 is dismissed.

REASONS FOR THE DECISIONS

Introduction

1. The appellants, Mr and Mrs Tovey, are married. For some years, they have owned and personally managed a portfolio of residential lettings properties in and around Merthyr Tydfil and Bridgend.
2. The *Housing (Act) Wales 2014* introduced, with effect from 23 November 2016, a licensing scheme for landlords. To be licensed under this scheme, persons must be 'fit and proper'. The Welsh Ministers designated the County Council of the City and County of Cardiff as the Licensing Authority for Wales. The council exercises its licensing powers under the trading name 'Rent Smart Wales'.
3. By way of separate Application Forms, both dated 24 November 2015, Mr and Mrs Tovey each applied to Rent Smart Wales for a Landlord Licence, in anticipation of the licensing scheme coming into effect just under a year later. The Application Forms were each completed by hand, in hard copy.
4. Section 5 of the Application Form is headed 'Declarations'. Insofar as material, it reads as follows:

"Please read the following declaration carefully. Before the licensing authority can grant a licence, it must determine whether the application is a fit and proper person as defined in section 20 of the Housing (Wales) Act 2014.

For this purpose, you must declare if any of the following apply to you, or anyone associated or formally [sic] associated with you (whether on a personal, work or other basis relevant) [sic]

*(a) committed any offence involving:
(i) fraud or other dishonesty*

[...]

*I confirm that none of the above apply to me, or anyone associated or formally [sic] associated with me (whether on a personal, work or other basis) [**BOX 1**]*

If any of the above apply please provide relevant supporting information below to explain why (please note 'spent' convictions

in line with the Rehabilitation of Offenders Act 1974 do not have to be declared). The information provided will be assessed by the Licensing Authority and someone will contact you to discuss your application. The existence of such an issue might not prevent you being licensed; evidence is assessed on a case by case basis

When you are detailing offences, please specify the court and the date of the conviction:

[BOX 2]

[...]

I/we declare that the information contained in this application is correct to the best of my/our knowledge. I/we understand that I/we commit an offence if I/we supply any information to the licensing authority in connection with any of its functions under Part 1 of the Housing (Wales) Act 2014 that is false or misleading and which I/we know is false or misleading or am/are reckless as to whether it is false or misleading"

5. On Mr Tovey's application form, which he personally signed, Box 1 was left blank. In Box 2 was written:"x7 counts fraud 2015 x2 counts theft 2015. *See attached*". That referred to an attached letter, described as 'Supporting Notes', dated 24 November 2015.

6. The material part of that letter reads:

"I was originally charged with 17 offences, after a trial I was only found guilty of 9, 7 Fraud and 2 Theft. Whilst I respect the jury's decision I do not agree with it and still maintain my innocence.

I have been a landlord for over 10 years and never have had any issues with being prosecuted by any Local Authority. All our homes are to a decent standard and all tenancies follow the code of practice as laid out in the new Rent Smart Wales legislation. Furthermore the convictions had nothing to do with myself being a landlord and therefore [I] request registration be granted."

7. We were not shown the indictment, but the following facts are not in dispute:

- (i) Following a 12 day trial before a jury in the Crown Court, in which Mr Tovey (as was his right) advanced Not Guilty pleas, he was convicted of 7 counts of 'fraud' and 2 counts of 'theft';
 - (ii) Some of these convictions were not unanimous but were by majority verdict;
 - (iii) Mr Tovey was acquitted of other charges;
 - (iv) On 12 May 2015 Mr Tovey was sentenced by HHJ Twomlow to a period of 18 months immediate custody;
 - (v) In accordance with the usual rules, Mr Tovey served some of that sentence in prison, with the remainder to be served on licence;
 - (vi) A compensation order of £10,194.54 was also made, and Mr Tovey's assertion that the compensation so ordered was paid within days of the order is not challenged.
8. On Mrs Tovey's application form, which she personally signed, Box 1 was ticked. The effect of that was that she therefore declared and confirmed that no-one associated with her, whether on a personal, work or other basis, had (amongst other matters) committed any offence involving fraud or other dishonesty. The abbreviation 'N/A' ('Not Applicable') was written in Box 2. Given the above undisputed facts concerning Mr Tovey and his convictions, which were known to Mrs Tovey when she signed her form, the entries in Box 1 and Box 2 on Mrs Tovey's form were both incorrect. Her declaration was therefore false.
9. Both applications triggered concern when received by Rent Smart Wales. On 18 March 2016 Mr and Mrs Tovey attended a meeting with two representatives of Rent Smart: Anne Rowlands and Bethan Jones. There is a dispute of fact as to what was said at that meeting.
10. On 18 April 2016, Angharad Thomas, another officer of Rent Smart Wales, submitted a report to the operational manager recommending that Mr Tovey be refused a licence.
11. On 20 April 2016, Bethan Jones considered that report and decided, adopting that recommendation, that Mr Tovey was not a fit and proper person to be granted a licence under Part I of the Housing (Wales) Act

2014. That decision was communicated to Mr Tovey in a letter of that same date. That is the decision against which Mr Tovey now appeals.

12. On 12 May 2016, Angharad Thomas submitted a report to the operational manager recommending that Mrs Tovey be refused a licence.
13. On 13 May 2016, Bethan Jones considered that report and decided, adopting that recommendation, that Mrs Claire Tovey was not a fit and proper person to be granted a licence under Part I of the Housing (Wales) Act 2016. That decision was communicated to Mrs Tovey in a letter of that same date. That is the decision against which Mrs Tovey now appeals.

The Law

14. Insofar as material, the Housing (Wales) Act 2014 says:

1 Overview of this Part

- (1) This Part regulates—
 - (a) the letting of dwellings under certain kinds of tenancy (which are defined as “domestic tenancies” in section 2), and
 - (b) the management of dwellings subject to such tenancies,
by means of a system of registration and licensing.
- (2) It requires landlords to be—
 - (a) registered for each dwelling subject to, or marketed or offered for let under, a domestic tenancy in respect of which they are the landlord (section 4), subject to exceptions (section 5);
 - (b) licensed to carry out certain kinds of lettings activities for dwellings marketed or offered for let under domestic tenancies (section 6), subject to exceptions (section 8);
 - (c) licensed to carry out certain kinds of property management activities for dwellings subject to a domestic tenancy (section 7), subject to exceptions (section 8).

[...]

- (4) “Lettings work” and “property management work” are defined for the purposes of the Part in sections 10 and 12; the definitions exclude certain persons and activities from the licensing requirements imposed on persons acting on behalf of landlords.

4 Requirement for a landlord to be registered

- (1) The landlord of a dwelling subject to, or marketed or offered for let under, a domestic tenancy must be registered under this Part in respect of the dwelling (see sections 14 to 17), unless an exception in section 5 applies.
- (2) A landlord who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) In proceedings against a landlord for an offence under subsection (2) it is a defence that the landlord has a reasonable excuse for not being registered.

6 Requirement for landlords to be licensed to carry out lettings activities

- (1) The landlord of a dwelling marketed or offered for let under a domestic tenancy must not do any of the things described in subsection (2) in respect of the dwelling unless—
 - (a) the landlord is licensed to do so under this Part for the area in which the dwelling is located,
 - (b) the thing done is arranging for an authorised agent to do something on the landlord's behalf, or
 - (c) an exception in section 8 applies.
- (2) The things are—
 - (a) arranging or conducting viewings with prospective tenants;
 - (b) gathering evidence for the purpose of establishing the suitability of prospective tenants (for example, by confirming character references, undertaking credit checks or interviewing a prospective tenant);
 - (c) preparing, or arranging the preparation, of a tenancy agreement;

- (d) preparing, or arranging the preparation, of an inventory for the dwelling or schedule of condition for the dwelling.

7 Requirement for landlords to be licensed to carry out property management activities

- (1) The landlord of a dwelling subject to a domestic tenancy must not do any of the things described in subsection (2) in respect of the dwelling unless—
 - (a) the landlord is licensed to do so under this Part for the area in which the dwelling is located,
 - (b) the thing done is arranging for an authorised agent to do something on the landlord's behalf, or
 - (c) an exception in section 8 applies.
- (2) The things are—
 - (a) collecting rent;
 - (b) being the principal point of contact for the tenant in relation to matters arising under the tenancy;
 - (c) making arrangements with a person to carry out repairs or maintenance;
 - (d) making arrangements with a tenant or occupier of the dwelling to secure access to the dwelling for any purpose;
 - (e) checking the contents or condition of the dwelling, or arranging for them to be checked;
 - (f) serving notice to terminate a tenancy.

10 Meaning of lettings work

- (1) In this Part “lettings work” means things done by any person in response to instructions received from—
 - (a) a person seeking to find another person wishing to rent a dwelling under a domestic tenancy and, having found such a person, to grant such a tenancy (“a prospective landlord”);
 - (b) a person seeking to find a dwelling to rent under a domestic tenancy and, having found such a dwelling, to obtain such a tenancy of it (“a prospective tenant”);

subject to the following subsections.

- (2) “Lettings work” does not include anything in the following paragraphs (a) or (b)—
- (a) publishing advertisements or disseminating information;
 - (b) providing a means by which—
 - (i) a prospective landlord (or the prospective landlord's agent) or a prospective tenant can, in response to an advertisement or dissemination of information, make direct contact with a prospective tenant or (as the case may be) prospective landlord (or the prospective landlord's agent);
 - (ii) a prospective landlord (or the prospective landlord's agent) and a prospective tenant can continue to communicate directly with each other;when done by a person who—
 - (c) does no other thing within subsection (1), and
 - (d) does no property management work in respect of the property.
- (3) “Lettings work” does not include doing any one of the things in the following paragraphs (a) to (c)—
- (a) arranging and conducting viewings with prospective tenants;
 - (b) preparing, or arranging the preparation of, the tenancy agreement;
 - (c) preparing, or arranging the preparation of, any inventory or schedule of condition;
- when done by a person who—
- (d) does no other thing in those paragraphs or anything else within subsection (1), and
 - (e) does nothing within section 12(1) in respect of the property.
- (4) “Lettings work” also does not include—
- (a) doing things under a contract of service or apprenticeship with a landlord;
 - (b) doing things under a contract of service or apprenticeship, or a contract for services, with a person who is—
 - (i) instructed to carry out the work by a landlord, and
 - (ii) licensed to do so under this Part;
 - (c) anything done by a local housing authority (whether or not in exercise of its functions as a local housing authority);
 - (d) things of a description, or things done by a person of a

description, specified for the purposes of this section in an order made by the Welsh Ministers.

18 Licences that may be granted

A licensing authority may only grant the following kinds of licence under this Part—

- (a) a licence for its area for the purpose of compliance with sections 6 (requirement for landlords to be licensed to carry out lettings activities) and 7 (requirement for landlords to be licensed to carry out property management activities)

[...]

19 Licence application requirements

- (1) An application for a licence must—
 - (a) be made in such form as is required by the licensing authority,
 - (b) provide such information as is prescribed,
 - (c) provide such other information as the authority requires, and
 - (d) be accompanied by the prescribed fee.
- (2) Before granting a licence a licensing authority must be satisfied—
 - (a) that the applicant is a fit and proper person to be licensed (see section 20)

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.

27 Licensing appeals

- (1) An applicant for a licence or, as the case may be, the holder of a licence may appeal against the decisions of a licensing authority listed in subsection (2) to a residential property tribunal.
- (2) The decisions are—
 - (a) granting a licence subject to a condition, other than the requirement to comply with any code of

- practice issued by the Welsh Ministers;
 - (b) refusing an application for a licence;
 - (c) amending a licence;
 - (d) revoking a licence.
- (3) An appeal—
- (a) must be made before the end of the period of 28 days beginning with the date the applicant was notified of the decision (the “appeal period”);
 - (b) may be determined having regard to matters of which the licensing authority was unaware.
- (4) The tribunal may allow an appeal to be made to it after the end of the appeal period if it is satisfied that there is a good reason for the failure to appeal before the end of that period (and for any delay in applying for permission to appeal out of time).
- (5) The tribunal may confirm the decision of the licensing authority or alternatively—
- (a) in the case of a decision to grant a licence subject to a condition, direct the authority to grant a licence on such terms as the tribunal considers appropriate;
 - (b) in the case of a decision to refuse an application for a licence, direct the authority to grant a licence on such terms as the tribunal considers appropriate;
 - (c) in the case of a decision to amend a licence, direct the authority not to amend the licence or to amend the licence on such terms as the tribunal considers appropriate;
 - (d) in the case of a decision to revoke a licence, to quash that decision.
- (6) A licence granted by a licensing authority following a direction of a tribunal under this section is to be treated as having been granted by the authority under section 21(1).

15. In October 2015, the Welsh Government, pursuant to section 20(6) of the 2014 Act, issued a document, entitled *'Guidance on 'the fit and proper person' test for licensing of landlords and agents'*. That

Guidance was directed to Rent Smart Wales, but it is a public document.

16. The Guidance explains that the fit and proper person test has more than one purpose:

"This requirement is to ensure that those responsible for letting and managing a property in the private rented sector are of sufficient integrity and good character to be involved in the management of the property to which the licence relates. In addition, that they do not pose a risk to the welfare or safety of persons occupying the property".

17. It goes on to say (at Paragraph 12):

"In deciding whether a conviction is relevant to a person being a fit and proper person for the purposes of a licence, the Licensing Authority may wish to consider the following factors:

- the relevance of the conviction in relation to the applicant's character and integrity to let or manage residential properties;*
- the seriousness of the conviction, in terms of impact, or potential impact, upon the residents and the wider community, including if more than one conviction is involved, the cumulative impact;*
- the length of time since any conviction; and*
- any mitigating circumstances."*

18. In relation to the consideration of persons associated or formerly associated with the proposed licence holder, the Guidance says (at Paragraphs 13 and 14):

"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 ...

However, a refusal to grant a licence in these circumstances should only be made having considered all the 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"*

Our jurisdiction, and the scope of these appeals

19. The Tribunal's jurisdiction to hear these appeals is to be found in section 27 of the 2014 Act, and our powers are set out in section 27(5). We can confirm Rent Smart's decision to refuse a licence (s 27(5)) or we can direct Rent Smart Wales to grant a licence on such terms as we consider appropriate: s 27(5)(b)
20. Neither appellant put forward any conditions upon which a licence should be granted. Their cases were simply that they should each be granted an unconditional licence.
21. Section 27 contains no guidance as to whether the Tribunal's powers are fully appellate or of a narrower, supervisory, character. The question was raised with the parties in advance of a pre-trial review, at which it was agreed by both parties, each with the benefit of legal advice and representation, that the Tribunal's jurisdiction is fully appellate, and is not of a supervisory character. These appeals were conducted on that footing.
22. Hence, the Tribunal's task is to look at the matter anew (in effect, as a re-hearing) and to make the decision for itself. For these purposes, the Tribunal is not engaged in a form of judicial review, which would simply examine (applying the well-known principles articulated by the Court of Appeal in *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223 at 233-234) whether Rent Smart Wales, as the decision-maker, had made any mistakes in arriving at its decision sufficient to justify setting that decision aside on public law grounds.
23. However, and for reasons which we shall return to later in these Decisions, we are bound to note some concerns as to the manner in which the decisions to refuse licences had been taken which could have led to a different outcome had our jurisdiction been supervisory

rather than fully appellate.

The role of the Guidance, and other legislative materials

24. In strict terms, the Guidance does not have the force of law. It is not (for example) a Welsh Statutory Instrument. But at the pre-trial review, both parties agreed that the Guidance should be treated as authoritative.
25. Moreover, at the pre-trial review, both parties agreed that there was no proper basis (applying the guidance given by the Judicial Committee of the House of Lords in *Pepper v Hart* [1992] UKHL 3) for the Tribunal to look behind the Act and the Guidance to the legislative debates and any other available materials to see if there is anything in them which might assist in ascertaining how people in the position of the Appellants are to be treated under the scheme. Accordingly, we have not looked at any such materials.

The Burden and Standard of Proof

26. We agree with Counsel for the Applicants that the burden of proof is on each applicant to show that they are a fit and proper person, and that the standard of proof (which is simply put in the legislation as 'satisfied') is the civil standard, and is not the more exacting criminal standard. Hence, the task for each applicant is to persuade the Tribunal, on the balance of probabilities, that they are a fit and proper person.
27. We also accept Mr Thomas' submission that the Housing (Wales) Act does not impose an absolute bar, or 'blanket ban', on the licensing of landlords who have criminal convictions for fraud and dishonesty. In the absence of any such absolute bar, then it is right to say there must be circumstances in which persons with such convictions can be licensed. Given the absence of an absolute bar, then, where there are convictions of a relevant kind, it seems to us that the applicant's attitude to those convictions and their attitude and insight to their offending behaviour which led to those convictions are also relevant factors, to be given appropriate weight, in assessing whether they are a fit and proper person.
28. We also consider that we should look not only at the attributes of the person applying to be licensed, but we should also look at and take into account the nature of the enterprise in relation to which that person seeks to be licensed: for instance, identification and assessment of the

number of properties; the nature of those properties and their occupants; and the tasks which the landlord proposes personally to undertake.

29. We also consider that the nature of an applicant's engagement and compliance with the licensing process is a relevant factor in assessing whether that person is fit and proper.

The Evidence

30. Mr and Mrs Tovey both gave evidence by way of witness statements, supported by statements of truth, and oral evidence before us. We were therefore in a position not only to hear each appellant give oral evidence, but also to hear that evidence explored and tested in cross-examination. We were also in a position to assess the demeanour of each appellant, not only when themselves giving evidence, but also when hearing their spouse give evidence, although we bear in mind the dangers of a tribunal reaching decisions on the credibility of witnesses *merely* by reference to their demeanour.

Mr Tovey

His Convictions

31. In relation to Mr Tovey:
- (i) His convictions, as already set out above, involved dishonesty and fraud;
 - (ii) He has been involved in property lettings since about 2005. The offences were committed between 31 July 2012 and 9 November 2012. Hence, they were committed when Mr Tovey had already been involved for several years in property lettings and management;
 - (iii) He was convicted of 9 separate offences, committed over a period of several months, and against more than one victim;
 - (iv) His convictions were relatively recent. Giving the Guidance the interpretation which is most favourable to Mr Tovey, they were approximately 18 months before the coming into effect of the licensing regime;

- (v) At the time of the hearing, and although the custodial part of his sentence had expired, his sentence was not completed. As such, he had not, at the time of the hearing, entered the 'buffer period' provided by the *Rehabilitation of Offenders Act 1974*, although he will have done so by the time that the licensing regime comes into effect;
 - (vi) His Application Form and covering letter, in declaring his convictions, were neither false nor misleading.
32. Dishonesty is an element of each offence of which he was convicted. It is an element of the offence of theft in section 1 of the *Theft Act 1968*, and it is also an element for each of the particular offences falling under sections 2, 3, and 4 of the *Fraud Act 2006* ('fraud by false representation', 'fraud by failing to disclose information', and 'fraud by abuse of position' respectively). Although we were not provided with the indictment, the best evidence - being an email from Mr Tovey's criminal solicitor - was that the fraud offences were ones of false representation.
33. Therefore, in order for him to have been convicted, the whole jury (or, in the case of the majority verdicts, at least 10 of the jury) must have been satisfied so that they were sure that Mr Tovey had acted dishonestly. The jury (or, as relevant, a majority of it) must have been satisfied so that it was sure that his behaviour was dishonest according to the ordinary standards of reasonable people (an objective element) and that he himself knew it to be dishonest according to those standards (a subjective element). Taking the table at pages 249 and onwards of the bundle as accurate, then the jury, in convicting Mr Tovey, rejected his case, in relation to fraudulent invoices, that the work had been done and he was entitled to charge for it. It also rejected his case, in relation to the theft offences, that he had no intention to deprive and was in the process of returning the money.
34. These were largely 'white-collar' offences, involving fraud on an employer (Relief Care Services Limited). The production of false and misleading documents - namely, false over-invoicing - by one of Mr Tovey's businesses to his employer - was involved.
35. The sentencing judge was satisfied, even having heard mitigation on Mr Tovey's behalf from leading Counsel, that the offences, regarded cumulatively, were sufficiently serious that the only appropriate sentence was one of immediate (and not suspended) imprisonment.

36. In our view, the sentencing remarks were relevant to put the offences into context. Those remarks are a matter of public record, having been made in open court by the Judge. Neither party provided the remarks. However, Mr Tovey's sentencing hearing had attracted public attention to the extent that it was reported on 'Wales Online' on 12 May 2015. That report contained certain extracts from the sentencing remarks. We decided to admit that report into evidence, although we have regard only to the reported sentencing remarks and not to the journalistic commentary on them or to the headline.
37. The quoted sentencing remarks were put to Mr Tovey. These included: *"It wasn't financial need that led to this but financial convenience because you thought you could get away with it ... you used the system to claim money you were not entitled to, knowing that you would be trusted and no questions would be asked. It was a serious abuse of a position of trust and over a short period was serious and sustained...the offending was calculated and persistent"*.
38. Although he was somewhat equivocal (Mr Tovey's evidence to us was that he was *'not suggesting that [those things] were not said'*) Mr Tovey accepted the gist of the remarks. Mr Tovey took issue with the accuracy of the basis upon which he had been sentenced, although he accepted that *'as far as the Judge was concerned, I was in a position of trust'*, with the suggestion that he did not agree with the Judge. So far as we need to be, we are confident Mr Tovey was sentenced on an accurate basis: Mr Tovey had been represented at his sentencing by leading Counsel and we are confident that any inaccuracies in the way in which the case was put by the prosecution to the sentencing judge would have been immediately corrected on Mr Tovey's behalf.
39. Mr Tovey put forward a lengthy explanation as to the background to the charges. He said that the charges and his subsequent trial were part of a 'witch hunt' against him instigated by a disgruntled former employer with whom he had fallen out and against whom he had brought (he said successfully, although we were not shown any evidence of this) a claim in the Employment Tribunal. That explanation, suggestive that the charges were advanced vindictively and oppressively by people who he had fallen out with, completely disregards the role of the police and the Crown Prosecution Service as investigating and prosecuting authorities. We are bound to assume that this was the same explanation presented to, and rejected by, the jury at the criminal trial. We regarded this part of Mr Tovey's evidence as an attempt to minimise his offending behaviour and also as an unappealing attempt, wrongly, to characterise himself as the victim.

40. Mr Tovey repeatedly told us that he 'respected' the jury's verdicts, but that he did not 'accept' them. But, when asked, Mr Tovey was unable to explain to us in clear terms what he meant by the expression (which was strikingly similar to one reported as having been used on his behalf by Mr Taylor QC at the sentencing hearing). Our strong impression was that the expression was being used by Mr Tovey, mantra-like (i) as a handy formula to deflect criticism; (ii) to attempt to camouflage the fact that he still does not accept that he was rightly convicted, or (in his own words) that he had 'done anything wrong', and (iii) to minimise his wrongdoing.
41. We do not consider that it is relevant, or counts against Mr Tovey, that he did not appeal his convictions. We accept that he acted on legal advice received at the time. Nor is the fact that Mr Tovey was acquitted of other charges relevant to this exercise. Mr Tovey's letter of 10 May 2016 says that his Not Guilty convictions were 'almost 50% of the convictions ... Number of offences (only 9 in total). Yet no mention of the 8 I was found not guilty of'. We reject this approach, which again seems an attempt to minimise his offending behaviour, and we reject the suggestion that Mr Tovey should be given credit for not guilty verdicts.
42. In the course of his evidence, Mr Tovey asserted to us that he had served his sentence, in the sense of having completed it. But that was not correct. Although Mr Tovey had indeed served the custodial portion of his sentence, he was, at the time of the hearing before us, still on licence. His sentence had not been completed. When this was pointed out to Mr Tovey by the Tribunal, he quickly accepted the point. However, we do not consider that Mr Tovey could have been labouring under any genuine mistake, given (i) his obvious intelligence and facility with dates and numbers; and (ii) the simple fact that the expiry of his sentence would (without overstatement) be a matter of enormous importance to him. We assessed his evidence in this regard to be an attempt by him to minimise the consequences of his wrongdoing and to present himself in a more favourable light than was properly consistent with the facts.
43. Hence, we had serious concerns not only as to the nature and number of his convictions, but also as to his attitude to those convictions and his insight and attitude to his offending behaviour which had led to those convictions.

His role as a landlord

44. We are not able to make a comprehensive series of findings about Mr Tovey's property lettings business and/or his wife's. We were not presented with any single schedule of all the properties, their ownership, or their dates of acquisition.
45. Mr Tovey said that he had married in July 2011, and that his wife had built up her portfolio after the marriage, and that he had not added to his portfolio since 2012. When it came to the value of the portfolio, which was put at £3m, with an unencumbered value of £2.2m, it was not clear whether Mr Tovey was referring to his properties, or to his wife's, or both.
46. We accept that Mr Tovey has taken deposits for 14 properties and had protected the same in a Tenancy Deposit Scheme. We accept that these include at least one HMO and that his tenants include some persons in receipt of Housing Benefit, and hence to some degree financially vulnerable. We note the view of his own counsel at the criminal trial that the two counts of theft upon which Mr Tovey was convicted involved vulnerable victims (Hayes and Thomas).
47. When it came to his present, and anticipated future role, Mr Tovey took particular issue with the note of the meeting which had taken place on 18 March 2016, and especially the following passage:

"Approach to property management.

Mr Tovey stated that he provided his tenants with a good service. He develops a good relationship with them and acts on any complaints quickly. He advised that he was very 'hands on' and that he was the first point of contact for all his tenants. Mrs Tovey does not generally undertake the letting and management work (although she did get involved during the period of Mr Tovey's imprisonment)..."

48. As we understood it, Mr Tovey initially denied that he had said these things, although in cross-examination he did accept that he 'did recall saying 'very hands on'. Having made that concession, he then sought to explain that as meaning 'in terms of maintenance' rather than in terms of administrative tasks.

49. We are bound to say that we accept that some of Mr Tovey's criticisms of the typed note put forward by Rent Smart Wales have force. The typed note was not written on the day, but was written over a month later, on the basis of notes which Bethan Jones and Ann Rowlands had taken on the day. Given that the content of the typed note and what had been said at the meeting was obviously in dispute, and Rent Smart Wales wished to rely on the typed note as evidence, it was surprising that the original notes were not put before us in evidence so as to allow us to assess the degree of correspondence between them and the typed note. Moreover the typed note had been composed not only by Ann Rowlands and Bethan Jones, both of whom had been at the meeting, but also by Angharad Thomas, who had not been at the meeting. We share some of Mr Tovey's concern about the manner in which the typed note had been composed, and then, having been so composed, had been deployed by Rent Smart Wales. Had our jurisdiction been of a supervisory character, these features may well have had some bearing on the outcome.
50. However, we reject Mr Tovey's evidence that he had not said he would be 'hands on', or words of like effect, so as to give Rent Smart the impression that the nature of his involvement as a landlord would be focussed on maintenance and other practical/'hands-on' tasks. We judge that evidence to be an attempt by Mr Tovey to mislead Rent Smart Wales into believing that what he said he would be doing as a landlord going forward had little to do with the character of his offending in the past, so as to enhance his prospects of obtaining a licence. In advancing that case before us, he was also attempting to mislead us.
51. We do not need to accept or rely on the note to make that finding. A participant at that meeting, Bethan Jones, was present in the hearing room whilst Mr Tovey was giving his evidence. When her turn came to give evidence, she said, credibly and without prompting, that *'the way he (that is, Mr Tovey) described his application today does not match what he told (me) at the meeting'*. We accept Ms Jones' evidence.
52. Even though the documentary evidence before us is relatively scant, we make the following findings about the business. Much of the oral evidence was that Mr Tovey and Mrs Tovey did things together. We accept that evidence. We find that the portfolios of their individual properties, irrespective of their legal ownership and/or the name of the registered proprietor and/or the name in which they are held, are in reality managed by both Mr and Mrs Tovey together. We find that, in effect, this is a single business notwithstanding any ostensible

separation of properties between Mr and Mrs Tovey for tenancy deposit scheme or other legal purposes.

53. Mr Tovey struck us an intelligent and articulate individual. He was obviously well-versed in the law of residential landlord and tenant and was able to speak confidently and accurately about it - for instance, when it came to responding from questions from the Tribunal as to the mechanics of the Tenancy Deposit Scheme. We found it wholly plausible that he had managed to develop and retain a valuable and successful property portfolio.
54. We have no hesitation in finding, as a fact, that, as between Mr Tovey and Mrs Tovey, Mr Tovey is the governing mind of the business when it comes to administrative matters such as the drawing up of tenancy agreements and inventories and the giving of notices.
55. We also find that Mr Tovey's involvement with the management of all the properties, whether ostensibly owned by him or by his wife, does now and in the future would, if he was licensed, extend to all aspects of the landlord-tenant relationship - from desk-based tasks such as the drawing up and execution of tenancy agreements, through the taking of deposits and the compiling of inventories and schedules of condition, to inspecting the properties, answering the phone from tenants, going out to visit the properties to respond to complaints, and to perform acts of maintenance.
56. We are bound to say at this point, and for reasons which will be developed further below, that our conclusions as to the true nature and extent of Mr Tovey's involvement with the lettings business are reinforced by our conclusions as to the true nature and extent of Mrs Tovey's involvement with that business. In short, for reasons which we shall explain, we entirely reject Mrs Tovey's evidence as to the nature of her involvement, ostensibly in connection with her portfolio, with matters such as tenancy agreements and notices.
57. We have taken care to treat the appeals of Mr and Mrs Tovey separately, and each on their own merits, but it seems to us that we cannot entirely ignore that the appeals are, in reality, and to some degree, inter-dependent. With that in mind, we are confident, for the reasons which we develop below, that, if Mr Tovey were refused a license, but Mrs Tovey were granted a license, that Mrs Tovey would nonetheless be acting as a 'front' for Mr Tovey.

Positive features

58. We accept that in June 2010 (that is, well before the offences were committed) Mr Tovey was personally licensed by Bridgend County Borough Council under The Licencing Act 2003 (Personal Licences) Regulations 2005. We also accept that he notified Bridgend County Council of his convictions: the same were noted by it in November 2015. We note that Mr Tovey (i) should have notified the local authority that he had been charged by no later than his first appearance in the Magistrates' Court: section 128(1) of the Licencing Act 2003, and we do not know whether that was done; but (ii) he was then under a duty to notify the authority of his convictions '*as soon as reasonably practicable after conviction*': section 132(2)(a) of the 2003 Act. He was convicted on 12 May 2015 but he did not notify Bridgend until 14 July 2015. Although there was a gap of two months, we give Mr Tovey the benefit of the doubt and, given that he was incarcerated at the time, we find that he notified Bridgend as soon as reasonably practicable.
59. Mr Tovey also voluntarily registered with Landlord Accreditation Wales and has been registered with the National Landlords' Association since January 2012. In 2016 he has completed a significant amount of Continued Professional Development ('CPD') with that body, although most of this is self-certified and is by way of reading journals etc. We do treat this as mitigation, but we give it limited weight.
60. We accept that Bridgend had not received any complaints about any of Mr Tovey's properties.
61. We note the refusal by Bridgend County Borough Council in early 2016 to grant Mr Tovey an HMO Licence under section 64 of the Housing Act 2004 until his conviction is spent. We give no weight to that refusal since (i) this appeal does not concern that refusal and (ii) Bridgend states that it has a policy of refusing to consider someone as fit and proper until their conviction is spent. The 2014 Act and the Guidance contain no such policy.
62. We note the evidence that the locks have been changed at the properties, so that Mr Tovey cannot obtain access to them when the tenants are out. We consider that this action, taken by Mr Tovey in an attempt to allay Rent Smart's concerns, all flows from a misunderstanding by Rent Smart as to the Guidance, and the nature of

Mr Tovey's convictions. He was not convicted of burglary or breaking and entering. His offences were committed with a paper and pen, not with a lock-pick.

Mrs Tovey

63. Mrs Tovey's application form was factually incorrect, both in terms of the declaration in Box 1, and the 'n/a' in Box 2.
64. Honesty and integrity in connection with the application process is obviously highly relevant given that some of the licensed functions involve the preparation of documents (such as tenancy agreements) which govern the legal rights and responsibilities of the parties, and upon which not only the immediate parties but also third parties (such as, in the event of any dispute, a court or Tribunal) must be able to rely.
65. Mrs Tovey was asked as to the circumstances in which her Application Form came to be completed. Given the entries made in Box 1 and Box 2, her evidence as to how this had come about was crucial.
66. Unfortunately, her evidence on the point was entirely unsatisfactory. Her written position was that she had made 'an honest mistake', without any intention to deceive, and that she 'did not appreciate' that the form meant she 'had to disclose her husband's conviction' (note the singular) 'when he had done so'. In her written evidence, she said nothing as to how this alleged 'mistake' had come about. Before us, she initially said that she had read the declaration carefully, and that she had 'misinterpreted' the question and had made a 'genuine mistake'.
67. We reject that explanation. The Declaration is entirely clear and straightforward. The language is clear, and in our view any reasonable person in Mrs Tovey's position would have declared her husband's convictions, which on any view must have had a profound effect on her life. The convictions were not for arcane offences. Theft and Fraud obviously involve dishonesty. Convictions for 'fraud' obviously involve fraud.
68. The matter of how the form came to be completed in the way it was explored further. In response to a direct question, Mrs Tovey said that she remembered filling out her application. She also said that her husband had filled out his form, and that his form was in his handwriting. But when the two forms - hers and her husband's - were put side by side, and a similarity between the handwriting on the two

forms was put to Mrs Tovey, her evidence disintegrated to the extent that her counsel had to intervene. Exceptionally, and at the request of her counsel, we granted Mrs Tovey a short adjournment in which to compose herself.

69. Having had a short break, Mrs Tovey's evidence was that her recollection was now that her husband had filled in both forms.
70. If that was indeed the truth, then it would have serious implications for Mr Tovey's case as well since, if Mr Tovey had filled in both forms, then the whole of Mrs Tovey's evidence about *her* having made a mistake in filling in *her* form was simply untrue, and both she and Mr Tovey must have known that it was untrue.
71. We do not need to go that far. In the space of a few minutes, punctuated by an opportunity to compose her thoughts, Mrs Tovey gave the Tribunal, in relation to a matter which was obviously highly relevant to her appeal, and in relation to which she must have had personal knowledge, two completely different and irreconcilable accounts. Although she apologised, she was unable to explain how this had come about.
72. Mr Tovey had already given his evidence and there was no application to recall him. However, Mr Tovey was seated at the back of the hearing room during this passage of his wife's evidence. We were able to observe his demeanour. It was most telling.
73. Ultimately, it is not the task of the Tribunal to seek to ferret out some explanation for conflicting or nonsensical evidence. Perhaps fortunately, our task is simpler. We have to assess whether Mrs Tovey, in this regard, did, as she said, make a genuine mistake.
74. We do not consider that she did. We cannot accept Mrs Tovey as a witness of truth when it came to the matter of how her form had come to be completed in the way it was. We are driven to conclude by the way in which her evidence emerged that her evidence to us on this point was not brought about by any lack of knowledge, or confusion, or misunderstanding, but was simply dishonest. She was not telling us the truth when it came to this matter, and she was caught out.
75. She thereby failed to demonstrate integrity, both in the application process and in the appeal process. In our view, this factor, in and of itself, would have been sufficient to disqualify Mrs Tovey as a fit and proper person.

76. But, even if it were not, we nonetheless reject Mrs Tovey's evidence as to the true extent of her involvement with the lettings business. Her evidence was that she deals with the tenancies on a day to day basis; that she does viewings and inventories; that she does tenancy agreements; and that she serves notices.
77. However, she was unable to explain to the Tribunal the difference between a 'section 8' notice and a 'section 21' notice. That is not arcane or recondite knowledge. In our view, it is knowledge which any reasonably competent landlord owning and personally managing a large and valuable portfolio of residential properties would have.
78. Mrs Tovey was asked what she would do if she had a problematic tenant, who was not, for instance, paying the rent, and with whom no understanding could be reached. Her answer was that she and her husband would discuss it, and that she would 'file a Court form'. She was extremely vague about the process of recovering possession. Again, this is not arcane knowledge. It is knowledge which, if she was really managing a property portfolio in the way she described, she would have been able to tell us about.
79. That passage of Mrs Tovey's evidence served simply to reinforce our impression, obtained from Mr Tovey's evidence, that there is in reality one lettings business and that Mr Tovey was and is the governing mind behind it.
80. Mrs Tovey failed to satisfy us, even on the balance of probabilities, that she was herself independently managing the properties in her portfolio, or, if Mr Tovey was refused a licence, that she would be able to do so.

Conclusions

81. We must assess whether, on the balance of probabilities, Mr Tovey is a fit and proper person to be licensed. Taking all the above matters into account, and for the reasons set out, we conclude that he is not. Taken in combination, the number and nature of his convictions, his attitude to those convictions and his offending and the rest of the evidence, significantly outweigh the positive and mitigating features which he has been able to put forward. His appeal is therefore dismissed.
82. We apply the same test to Mrs Tovey. For the reasons set out above, she is not a fit and proper person to be licensed, and her appeal is therefore dismissed.

A Postscript

83. The licensing scheme is an important one. We were concerned to note Rent Smart Wales' evidence that no training had been given on the proper application of the 'fit and proper' test under this particular legislation. Those responsible for making important licensing decisions are reliant on the Guidance, which is expressed in necessarily broad terms, and their personal knowledge. Training in the scheme would serve to enhance the consistency and fairness of decision-making and in turn would also enhance public confidence in the scheme.

Dated this 15th day of December 2016

A handwritten signature in cursive script, appearing to read 'Lunhall', written in black ink.

CHAIRMAN