

Y TRIBIWNLYS EIDDO PRESWYL  
RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0001/04/20

In the Matter of an Application under Section 27 of the Housing (Wales) Act 2014, appeal against refusal of licence.

APPLICANT: Michael Jones

RESPONDENT: Rent Smart Wales.

TRIBUNAL; Richard Payne (Legal Chair)  
David Evans (Surveyor Member)  
Bill Brereton (Lay Member)

HEARING DATE; 7<sup>th</sup> August 2020 by Cloud Video Platform.

Appearances- Mr Michael Jones in person for the Applicant  
Mr Richard Grigg, Solicitor, and Ms Christina Brown, Senior Housing Surveyor,  
Rent Smart Wales, for the Respondent.

**DECISION**

**The tribunal unanimously finds that Mr Michael Jones, is not a fit and proper person to be licensed. The Applicant's appeal against the decision of Rent Smart Wales dated 3<sup>rd</sup> March 2020, to refuse him a licence under Part 1 of the Housing (Wales) Act 2014 to carry out lettings and property management activities is refused.**

**REASONS FOR THE TRIBUNAL'S DECISION.**

**Background**

1. The Applicant is the landlord of one property at 72a Terrace Road, Mount Pleasant, Swansea, which he has owned and managed since 1986. The property is currently tenanted by a married couple who have held the tenancy continuously since June 2013. The tenants have a good relationship with the Applicant, and have expressed an interest in purchasing the property in due course.
2. The Applicant had originally applied for his landlord licence on 22 November 2016 but had not completed his application. This was picked up by Rent Smart Wales (RSW) as part of a data cleansing exercise, following which the Applicant then submitted his application for a landlord licence on 5<sup>th</sup> October 2019, disclosing during the process that he had a criminal conviction. The certificate of conviction and Disclosure and Barring Service Certificate contained within the Respondent's bundle, show that the Applicant

was convicted on 22 April 2013 of an offence of meeting a child following sexual grooming, on 1 June 2011, contrary to section 15 of the Sexual Offences Act 2003. The Applicant was sentenced on 17 May 2013 to 12 months' imprisonment, to register as a sex offender for 10 years and to be subject to a Sexual Harm Prevention Order for 10 years.

3. RSW in a letter to the Applicant dated 3 March 2020, refused his application for a landlord licence upon the basis that the Applicant was not a fit and proper person to be licensed upon the basis of the conviction. RSW found that the nature of the conviction was of a type specifically included in the Housing (Wales) Act 2014 ("the Act"), that the Sexual Harm Prevention Order and the Sex Offender Register requirements remain in place, and, given the sentence imposed and that there was insufficient mitigation following a telephone interview with the Applicant, concluded that he was unfit to be licensed. The Applicant appeals against that finding.
4. The tribunal notes that at the time of his conviction, Mr Jones was made subject to a Sexual Offences Protection Order (SOPO) but that these orders were replaced in law by Sexual Harm Prevention Orders (SHPO) following the implementation of the Anti-Social Behaviour, Crime and Policing Act 2014.

### **The legal framework**

5. Section 6 of the Act requires landlords to be licensed to carry out lettings activities which are further described at section 6(2) as follows;

*(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.*

6. Section 7 of the Act contains the requirement for landlords to be licensed to carry out property management activities described in subsection (2) as follows;

*(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.*

7. Under section 18 of the Act the licensing authority, Rent Smart Wales, may grant a licence to landlords to carry out letting and property management activities in accordance with sections 6 and 7 of the Act. Section 19 contains details of mandatory requirements for the licence application. Before Rent Smart Wales grant a licence to an Applicant they must be satisfied that certain training requirements have been met or will be met and that the applicant is a fit and proper person to be licensed.

8. Section 20 of the Act sets out the 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.*

.....

*(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).*

9. In October 2015 a document bearing the names of both Rent Smart Wales and the Welsh Government entitled 'Guidance on "the fit and proper person" test for licensing of landlords and agents' ("the guidance") was published. Paragraph 2 of the guidance states;

*"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".*

10. Whilst the guidance at paragraph 5 states that the licensing authority must have regard to all matters it considers appropriate it adds

*"Any evidence considered should be relevant to the person's fitness to hold a licence and let and manage rental properties in Wales."*

11. Paragraph 6 of the guidance makes it clear that in respect of criminal offences, Rent Smart Wales “*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 associated statutory instruments. Further, paragraph 12 of the guidance states that;

*“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.”*

12. An appeal against the decision of Rent Smart Wales may be made to the tribunal under section 27 of the Act. The tribunal may confirm the decision of the licensing authority or alternatively direct the authority to grant a licence on such terms as the tribunal considers appropriate (section 27(5)(b) of the Act. the tribunal can look at the matter afresh, by means of re-hearing the application, and can take into account evidence put before it by either party that may not necessarily have been in the contemplation of each party at the time of the original application and decision to refuse the licence. In other words, we can take into account matters raised and provided in this matter according to the tribunal’s directions that may not have been available at the time RSW made the original refusal decision.

13. The burden of proof is upon the Applicant, to show that he is a fit and proper person and the standard of proof is the civil standard, namely that it is for the Applicant to persuade the tribunal, on the balance of probabilities, that he is a fit and proper person.

### **The evidence and the hearing.**

14. Mr Jones presented his case politely and helpfully. He argued that Swansea Council Housing Team have described him as an exemplary landlord and that he ought therefore to be granted a licence. In the alternative, Mr Jones argued that RSW should grant him a licence with bespoke conditions.

15. Mr Jones set out 5 grounds of appeal as follows;

- i.* That he can demonstrate that he has been an exemplary landlord having rented the property continuously since 1986.
- ii.* That he has been landlord to the current tenants for over 6 years and it was at his tenants’ request that Mr Jones dispensed with the services of an agent.
- iii.* That he only has one rental property and his tenants are a married couple with no children.

- iv.* That he no longer has any other business interests and relies upon the monthly rental income.
  - v.* That his Public Protection Officer (PPO) fully supports him being the landlord of the property in question.
16. Mr Jones said that he considered the Sexual Offences Prevention Order with which he had to comply to be a positive process without which his rehabilitation back into society after serving a 6-month prison sentence would have been more difficult. He pointed out that he was allowed to move back into his own property (he had been previously renting) and this was approved by the Public Protection Unit and supported by his PPO, taking into account factors such as the proximity to the local primary school and his tenants. Mr Jones described a positive relationship with his PPO who periodically visits him unannounced, in addition to the more formal requirements of the order with which he has to comply. Mr Jones confirmed that he has fully complied with the notification requirements and the conditions of his SOPO/SHPO. Mr Jones also supplied ten character references which have been fully considered by the tribunal.
17. In oral evidence, Mr Jones expressed his belief that his offence was technically spent, he confirmed that he only had the one property, had no intention of buying or renting any other properties and he submitted that his management of his one property contained no risk to the public. He felt that RSW could protect the public by putting conditions upon the licence. Mr Jones was cross-examined by Mr Grigg who asserted that the conviction is not spent under the Rehabilitation of Offenders Act 1973 until the expiry of the 10 years of the SOPO/SHPO. Mr Jones accepted this and apologised if he was mistaken in this regard.
18. In relation to the grounds of appeal, RSW said as follows;
- i.* RSW do not dispute that Mr Jones has been an exemplary landlord.
  - ii.* RSW accept that it was the tenants who requested that Mr Jones dispense with the services of an agent. RSW accept the good working relationship between Mr Jones and his current tenants but have concerns if there were to be any changes such as new tenants and any frequent visitors to the property. RSW assert that the risk of harm to any young tenants or visitors remains while the SHPO and notification requirements remain in place as ordered by the Court.
  - iii.* RSW do not dispute that Mr Jones has only one rental property tenanted by a married couple with no children.
  - iv.* RSW state that refusing the licence application does not mean that Mr Jones would cease to be a landlord. He would still be able to obtain a rental income from the property but would need to instruct a licensed agent to carry out management and letting activities on his behalf. This could be a commercial agent or an individual known to him who satisfies RSW's agent requirements (as long as they are not merely a front for Mr Jones).
  - v.* With regard to Mr Jones's assertion that his PPO supports him being the landlord of the property, RSW contacted the PPO on 31<sup>st</sup> January 2020 on the email address supplied by Mr Jones but have received no response. The email was attached to the Respondent's bundle.
19. RSW submitted that in order for the SOPO/SHPO to be imposed by the Crown Court, the court must be satisfied that there is a risk to the public, and the court assessed the risk

as being deserving of a 10-year sexual offences prevention order. The Court consider Mr Jones to be a risk to the community for this period of time and RSW are guided by the court's assessment of risk. RSW in their written arguments, which were adopted by Mr Grigg at the hearing, consider that the conviction is relevant in relation to the Applicant's character and integrity to let or manage residential properties because the conviction arose as a result of the Applicant's behaviour. Mr Jones in his communications with RSW understood that some of his actions were wrong but regretted that he had not pleaded "not guilty".

20. RSW point out that they are duty-bound to take the conviction into account as it is unspent and relevant, and submit that the question of conditions does not arise unless the tribunal is satisfied that Mr Jones is a fit and proper person to be granted a licence. Mr Grigg submitted that the conviction for meeting a child following sexual grooming is not spent until 17 May 2023 and this offence was so serious that Mr Jones cannot satisfy the fit and proper person test.
21. Mr Jones submitted that he presented zero risk to children and that his conviction was in relation to a specific case. He only has one house and pointed out that for twenty-six years he ran a hotel in Swansea, over 1500 children stayed there and there had never been any problems with children. Mr Jones said he would never be a risk to anyone and was a law-abiding citizen. He stressed that he had never withheld information from anybody and was saddened that RSW was not able to accommodate any conditions in his circumstances. He referred to his references, his compliance with his notification and SHPO order requirements and his willingness to comply with any conditions imposed and to report to RSW if his current tenants were ever to leave.

### **The tribunal's findings and reasons.**

22. The tribunal accept that RSW must have regard to Mr Jones conviction since it is for an offence listed in Schedule 3 to the Sexual Offences Act 2003 and attracts notification requirements. The tribunal also accept that RSW are correct in submitting that the tribunal cannot consider conditions for a licence unless we are first satisfied that Mr Jones is a fit and proper person to be licensed. RSW is also able, under section 20 (1) of the Housing (Wales) Act 2014 to have regard to all matters that it considers appropriate. RSW have, fairly, conceded that they do not have any concerns about Mr Jones' current management of his property or relation with his current tenants, but point out that tenants can change. Although Mr Jones says that his tenants are not planning to move out or change, this does not detract from the reasonableness of RSW's concerns on this point.
23. The tribunal finds that the fact of Mr Jones particular conviction means **that he is not a fit and proper person to be licensed by RSW**. In the Respondent's bundle they included a news report from 26 April 2013 about Mr Jones's court case. The report included these details: *"Prosecuting barrister Patrick Griffiths said: "...The defendant admits there had been previous contact with the complainant, who was 15 at the time". He said Jones had admitted he intended to have non-penetrative sex with the boy on the occasion where Jones arrived at his home, but said the meeting did not progress to a face to face*

*meeting because Jones was not able to enter his house.”* This report was not challenged by Mr Jones although Mr Jones gave a different version of events to the tribunal.

24. The tribunal noted the Respondent’s observation that Mr Jones regretted that he had not entered a ‘not guilty’ plea. The tribunal asked Mr Jones about this, and Mr Jones confirmed that he had been advised to plead guilty and he believed he could have successfully challenged the charge, but he had the pressure of two sick relatives at the time and it would have been a gamble, as, had he been found guilty after contesting the charge he would have been sentenced to a longer term of imprisonment. Mr Jones gave further details of the background to the offence, which had arisen because he had been exchanging messages with the victim on a Facebook chat group for gay men in the Swansea area. Mr Jones said that the victim had approached Mr Jones wanting help with his sexuality and described the start of six months of mainly text messages and one or two telephone calls. The victim had a disability and Mr Jones told the tribunal that he was going to get in touch with a disabled wheelchair user that he was aware of who would also be able to offer advice to the victim. Mr Jones confirmed to the tribunal that this other disabled gentleman was in his late 20s. Mr Jones had posted condoms through the letter box for the victim who had told Mr Jones that he did not know how to use one.
25. The tribunal noted the Respondent’s suggestion that Mr Jones lacked remorse and insight into the offence. Mr Jones categorically denied this and said that he felt very sorry for the boy in question and that he regretted that he had continued the contact once he knew the victim was fifteen. Mr Jones however told the tribunal that *“I had no intention to meet, I felt I was not doing anything wrong”*. Mr Jones said that he had so much remorse and sadness for his stupidity and ignorance, and that words cannot convey that, and he was full of remorse for his actions and wished it had never happened.
26. The tribunal put to Mr Jones that he was viewed as a risk at law for 10 years. Mr Jones said that his understanding was that if he had been sentenced to a six-month prison sentence then the SOPO/SHPO would have been for 7 years but if the sentence was one year, as in his case, that this is automatically increased to 10 years. He said of the length of the SOPO/SHPO: *“... Everyone is tarred with the same brush. It doesn’t reflect the severity – it could be a minor sexual offence.”*
27. The tribunal was concerned that despite the fact of his criminal conviction, Mr Jones, as reflected by his comments to RSW and his oral evidence to the tribunal, does not really feel that he has done anything wrong and regrets in some ways that he pleaded guilty.
28. Section 15 of the Sexual Offences Act is reproduced here;  
***Meeting a Child following sexual grooming etc.***  
*(1) A person aged 18 or over (A) commits an offence if-*  
*(a) A has met or communicated with another person (B) on one or more occasions and subsequently-*  
*(i) A intentionally meets B*  
*(ii) A travels with the intention of meeting B in any part of the world or arranges to meet B in any part of the world, or*  
*(iii) B travels with the intention of meeting A in any part of the world,*

- (b) A intends to do anything to or in respect of B, during or after the meeting mentioned in paragraph (a) (i) to (iii) and in any part of the world, which if done will involve the commission by A of a relevant offence,*
- (c) B is under 16, and*
- (d) A does not reasonably believe that B is 16 or over.*

29. Mr Jones's evidence to the tribunal was in clear contradiction to the newspaper report of 26<sup>th</sup> April 2013 of the prosecuting barrister's comments and basis of guilty plea. The tribunal unanimously finds that Mr Jones lacks insight into the seriousness of the offence. The tribunal was concerned to hear Mr Jones saying that he had tried to facilitate the 15-year-old victim contacting another disabled homosexual man in his late 20s, without any apparent consideration as to the potential seriousness and potential criminality of that situation. Mr Jones minimised his conduct and the offence, and his potential risk to the public.
30. The tribunal is unable to look behind the criminal conviction (but for the sake of clarity, has no reason to do so in any event), and the tribunal likewise notes that the Crown Court sentencing judge imposed the SHPO/SOPO and notification requirements for a period of 10 years. These are a reflection of the Crown Court's assessment of the risk to the public and the measures necessary to mitigate and manage that risk. The tribunal does not give any credit to Mr Jones for complying with the notification and SOPO/SHPO requirements, because it would expect nothing less.
31. With regard to Mr Jones's character references, which were numerous and highly complimentary, the fact is that in law, Mr Jones has lost his good character by virtue of his unspent conviction, and this remains the case even though he may retain the many positive aspects of his personality attested to by his referees.
32. The tribunal notes that in the Welsh government guidance to the fit and proper person test, paragraph 2, as set out at paragraph 9 of this decision above, the guidance draws a distinction between needing to be of sufficient integrity and good character to be involved in the management of the property to which the licence relates, and then states that "*in addition, that they do not pose a risk to the welfare or safety of persons occupying the property.*" The tribunal consider that the approach taken in this particular case by RSW is correct. RSW have first assessed whether Mr Jones is of sufficient integrity and good character to be granted a licence but have concluded that he is not by virtue of his unspent conviction and the nature of that conviction. The tribunal agree that it cannot be said that Mr Jones, with this unspent conviction is of sufficient integrity and good character to be granted a licence. The tribunal, like RSW accept that Mr Jones does not pose a risk to the welfare or safety of his current tenants, but note that this factor only arises in the guidance if RSW and/or the tribunal are satisfied as to the first part relating to integrity and good character. The tribunal is aware that the guidance is just that, and is not legally binding, but considers that the approach it suggests is relevant and helpful and see no reason to depart from it in this case.
33. At paragraph 12 of the guidance, it is suggested that RSW may wish to consider the seriousness of the conviction in terms of impact, or potential impact, upon the residents and the wider community. It is clear that convictions for the serious offence contrary to section 15 of the Sexual Offences Act 2003 will impact upon the victim, but also the wider community in which such offences are viewed with opprobrium. As an individual with an unspent conviction for this offence, and an ambivalent attitude to his



wrongdoing, Mr Jones is not a fit and proper person to be licensed to carry out lettings and property management activities.

34. The tribunal was not asked to make any costs orders by either of the parties and does not consider in any event that a costs order is appropriate.

DATED this 28<sup>th</sup> day of September 2020.

A handwritten signature in black ink, consisting of a stylized, cursive 'M' followed by a horizontal line that loops back to the left.

CHAIRMAN