

**Y TRIBIWNLYS EIDDO PRESWL**  
**RESIDENTIAL PROPERTY TRIBUNAL WALES**

**Reference:** RPT/0010/24

**In the matter of an application under s27 Housing (Wales) Act 2014 (“The Act”), appeal against refusal of licence**

**Tribunal Judge:** Ms Tonya Richards-Clarke

**Surveyor member:** Mr Tom Daulby

**Lay member:** Dr Angela Ash

**Applicant:** Mr Francis Kenneth Waters

**Representative:** Unrepresented

**Respondent:** Rent Smart Wales

**Representative:** Mr Richard Grigg

**Date of Hearing:** 24 October 2024

**Venue of Hearing:** Remote by MS Teams

**DECISION AND REASONS**

**The Application**

1. The applicant appeals, pursuant to section 27 Housing (Wales) Act 2014 (“the Act”), against the decision dated 30 May 2024 to refuse his application for an individual landlord licence. In the appeal letter 18 June 2024 [page 21-22 hearing bundle] the grounds for appeal set out in this application are that the applicant:
  - (a) Is not a criminal and all police records attached to his name have been brought about by the applicant’s employees working in his business.
  - (b) Is totally innocent of the sex crime attached to his name.
  - (c) Has passed the landlord exam with flying colours.
  - (d) Has been a landlord for a total of 30 years without any problems.
  - (e) Was told by Rent Smart Wales on 30 April 2024 that he was fully compliant licence holder and did not need to worry about anything.
  
2. In the decision Rent Smart Wales dated 30 May 2024 [hearing bundle pages 23 to 26] the respondent decided that following consideration of his landlord licence application Rent Smart Wales are not satisfied that the applicant meets the requirements to hold a licence because he has not been deemed to be a “fit and proper” person. In the decision letter the respondent states that *“In reaching this decision consideration has been given to your convictions. You were found guilty of sexual offences contrary to the Sexual Offences Act 2003 and this conviction remains unspent.*

*Of significance in reaching this decision was:*

*1. The nature of the convictions and that the offence is of a type specifically included in the Act as being material considerations for the “fit and proper” test, namely convictions involving violence.*

*3. The sentence imposed for the offence.*

*4. That the convictions which were determined on 27 October 2017, i.e. is fairly recent.*

*5. That the convictions remain unspent.*

*6. The mitigation you provided, in the form of an interview and written representations were insufficient to draw any alternative conclusion.*

3. Refusal of the licence application means that the applicant cannot undertake any letting or management activities at properties let on a domestic tenancy in Wales and would need to appoint a Rent Smart Wales licensed agent to carry out work on his declared properties.

### **Legal Framework**

4. Section 20 of the Act sets out the “fit and proper” person requirement.

#### ***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.*
5. 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".*
6. Paragraph 4 provides that *"when considering whether a person is "fit and proper" the licensing authority must have regard to any evidence that the person has committed any offence...listed in Schedule 3 to the Sexual Offences Act 2003"*. While 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."*
7. Further, 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.
8. 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."*
9. 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 in accordance with section 27(5)(b) of the Act.
10. In accordance with Regulation 29 (2) The Residential Property Tribunal Procedure and Fees (Wales) Regulations 2016 *"At a hearing the tribunal may, if it is satisfied that it is*

*just and reasonable to do so, permit a party to rely on reasons not previously stated and on evidence not previously available or not previously adduced.*

11. In accordance with the Residential Property Tribunal Procedure and Fees (Wales) Regulations 2016 and the relevant caselaw including Waltham Forest LBC V Hussain [2023] EWCA Civ 733 the Tribunal is to decide this appeal as a rehearing at the date of the respondent's decision; 30 May 2024.
12. 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 demonstrate to the tribunal, on the balance of probabilities, that he is a fit and proper person.

### **Documents**

13. The documents placed before the Tribunal was the hearing bundle of 586 digital pages.

### **The Hearing**

14. Mr Waters was unrepresented, and the Tribunal first asked whether any adjustments were required for Mr Waters to participate in the hearing. Mr Waters stated that none were required.
15. The Tribunal then confirmed that the parties had all the same documents and clarified that the issue in dispute is whether the applicant is a fit and proper person to be licenced as a landlord in accordance with s20 Housing (Wales) Act 2014. It was explained to Mr Waters that the decision of the licensing authority, Rent Smart Wales, on 30 May 2024, was to refuse his licence application on the basis that he is not a fit and proper person because of his conviction in October 2017 for sexual offences contrary to the Sexual Offences Act 2003 and his conviction in March 2024 for conducting letting and management activities without a valid landlord licence. Mr Waters was then given an opportunity to present his appeal.

### ***Applicant***

16. With respect to his 2017 conviction for a sex crime the applicant, Mr Waters stated that he was totally innocent, and that the complainant has colluded with another to obtain historical money. Mr Waters also stated that he had been let down by the legal profession and been found guilty of something that he had not done. Further, he had served 4 years in prison, 3.5 years on licence and this licence will end in May 2025.
17. With respect to his 2014 conviction for letting and management activities without a landlord licence, Mr Waters stated that he has passed the landlord exam as required and been granted a licence. Further, he has been a landlord for 30 years with any problems and he is being victimised despite being a genuine, honest person.

18. When asked about his health difficulties and caring for his son Mr Waters initially stated that he cared for his adult son every 10 minutes and then that his son has a carer 3 days a week and this will increase to 4 days weekly. He can manage to look after his properties despite his age and health problems.

*Respondent*

19. In response Mr Grigg, on behalf of the respondent, Rent Smart Wales submitted that it was the applicant's conviction for sexual offences in 2017 that was the determining factor in the decision to refuse his landlord licence application. The respondent relies on evidence in the hearing bundle before the Tribunal at the hearing. We were directed to the certificate of conviction [page 110 digital bundle] and the respondent submits that the Tribunal cannot go behind the findings of the Criminal Court. Little weight is given by the respondent to the second conviction and that would not ordinarily stop the grant of a licence. When regard is had to s20 Housing Act 2014 and the associated Guidance the respondents submits that the applicant is not a "fit and proper" person because of his conviction in 2017 for sexual offences. This conviction was for sexual offences with a 13 year old over a period when the applicant was in a position of trust as her employer. As a landlord the applicant would be in a position of trust and would likely come across vulnerable individuals. Mr Grigg submitted that the seriousness of this conviction was enough to show that the applicant was not a fit and proper person to be granted a landlord licence.

**Tribunal Findings and Reasons**

20. The Tribunal must have regard to the applicant's 2017 conviction since it is for an offence specifically mentioned in s.20 (3) of the Act, namely a convictions for an offence listed in Schedule 3 to the Sexual Offences Act 2003. The evidence before the Tribunal is that in October 2017 the applicant "*was tried and convicted on indictment of causing/inciting a child to engage in sexual activity [1 count] and sexual activity with a child [6 counts]*" [hearing bundle page 110]. The applicant was sentenced to 2922 days in prison and placed on the Sex Offender Register indefinitely. The applicant's conditional release date was 17 May 2021, and the sentence and licence expiry date is 17 May 2025 [hearing bundle page 277]. While Mr Waters claims that he is innocent, that he was convicted of these offences is not in dispute. Nor is it in dispute that both at the date of the consideration of the application and at the date of decision the applicant's convictions were not spent in accordance with the Rehabilitation of Offenders Act 1974 and associated statutory instruments.
21. In the decision 30 May 2024, the respondent has decided that the applicant is not a "fit and proper" person to hold a landlord licence because of his conviction in 2017 for sexual offences and his history of non-compliance with Rent Smart Wales. The Tribunal, as the appeal tribunal, must look at the case afresh and place themselves in the position of the licensing authority when considering whether the Applicant is a "fit and proper" person to be licensed under the Act.

22. In the consideration of whether the applicant is a “fit and proper” person the Tribunal has had regard to the “fit and proper” requirement in section 20 of the Act together with the Guidance. Regard must be had to any evidence that the person has committed any offence listed in Schedule 3 to the Sexual Offences Act 2003. It is not in dispute that in 2017 the applicant was convicted of causing/inciting a child to engage in sexual activity. In accordance with paragraphs 4 and 12 of the Guidance the Tribunal is satisfied that that these convictions are relevant to being a “fit and proper” person for the purposes of a licence. This is because the Tribunal found the applicant has been convicted of an offence listed in Schedule 3 to the Sexual Offences Act 2003 in that the applicant has been convicted of causing/inciting a child to engage in sexual activity [s10 Sexual Offences Act 2003] and this offence is listed s21 Schedule 3 Sexual Offences Act 2003. In addition, the Tribunal found that these convictions were highly relevant to the applicant's character and integrity to let or manage residential properties. The Tribunal further found that this conviction is serious in terms of its impact on residents and the wider community and led to a sentence of imprisonment of 8 years. Further it is 7 years since this conviction, the applicant was released from prison on license on 17 May 2021 and this licence does not expire until 17 May 2025.
23. The Tribunal took account the mitigating circumstances put forward by the applicant. The applicant is elderly and has stated that he has a number of health problems and is a carer for his son. The Tribunal also understood the applicant’s desire to return to the management of his properties. That said, the applicant did not demonstrate any remorse, and his evidence was that he is able to manage his properties despite his age, ill health, and caring responsibilities. The convictions are 7 years old; the applicant is currently in licence until May 2025 has been placed on the sex offenders register indefinitely. Further the conviction is for sex offences against a child this is an offence to which regard must be had in considering whether a person is a fit and property person to be licenced (s20(3) the Act). In addition, in accordance with section 6 and 7 of the Act letting activities and property management work by landlords includes collecting rent, being principal point of contact, arranging repairs or maintenance, access to the dwelling for any purpose, checking the contents or condition of the dwelling and serving notice to terminate a tenancy. These are examples of activities where a landlord is in a position of trust as he was in the circumstances of his 2017 conviction for sexual offences. The Tribunal therefore found that applicant’s conviction to be highly relevant to his character and integrity to let or manage residential properties.
24. On balance the Tribunal did not find that the factors put forward by the applicant outweigh the decision by the respondent on 30 May 2024 that the applicant is not a “fit and proper” person because of his conviction for sexual offences with a child in 2017. Because of his conviction and sentence in 2017 of an offence listed in Schedule 3 to the Sexual Offences Act 2003 the Tribunal was not satisfied that the applicant is of sufficient integrity and good character to be involved in the letting and management of his property. Nor was the Tribunal satisfied that the applicant does not pose a risk to the welfare or safety of persons that may occupy his property. The applicant has not discharged the burden of proof to demonstrate to this Tribunal, on the balance of probabilities, that he is a “fit and proper” person.

25. Therefore, having considered all the evidence, the legislative framework and the Guidance, the Tribunal find that on the balance of probabilities that the applicant is not a “fit and proper” person to be licensed as a landlord. For these reasons, the Tribunal dismisses the application and confirms the decision of the respondent 30 May 2024.
26. The Tribunal was not asked to make a costs order by either of the parties and does not consider in any event that a costs order is appropriate.

Dated this 12<sup>th</sup> day of November 2024

TE Richards-Clarke  
Tribunal Judge