

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0020/01/18

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

APPLICANT: Malik Properties Aberdare Limited.

RESPONDENT: Rent Smart Wales.

TRIBUNAL; Richard Payne (Legal Chair)
Roger Baynham (Surveyor Member)
Juliet Playfair (Lay Member)

HEARING DATE; 13TH April 2018 at Southgate House, Wood Street, Cardiff.

Appearances- Mr Ahsan Malik in person for the Applicant
Mr Richard Grigg, Solicitor, and Angharad Thomas, Group Leader, Rent Smart Wales,
for the Respondent.

DECISION

The tribunal unanimously finds that Mr Ahsan Nisar Malik, Director of the Applicant Company, is a fit and proper person to be licensed and the Applicant's appeal against the decision of Rent Smart Wales dated 5th December 2017 to refuse it a licence under Part 1 of the Housing (Wales) Act 2014 to carry out lettings work and property management work is allowed.

REASONS FOR THE TRIBUNAL'S DECISION.

Background

1. The Applicant Company, Malik Properties Aberdare Ltd, is a family run company with two directors Mr Ahsan Nisar Malik and his wife Mrs Saboohi Malik. The company owns and manages nine residential properties in the Aberdare area which are let out to individual tenants or families. None of the properties are Houses in Multiple Occupation (HMO's). It is common ground that Mr Malik is the individual within the company who undertakes the letting and property management activities.
2. On 8 September 2016 the applicant company submitted a corporate landlord licence application to Rent Smart Wales in respect of the company's nine properties with Mr Malik named as the connected user to that application. Mr Malik in that application declared that he had been convicted of a criminal offence and a suspended sentence was imposed upon him. Rent Smart Wales subsequently obtained a certificate of

conviction from Cardiff Crown Court which confirmed that on 24 March 2015 Mr Malik pleaded guilty to and was convicted of the offence of violent disorder, contrary to section 2 (1) of the Public Order Act 1986, and that on 12 August 2015 he was sentenced to 12 months imprisonment suspended for 24 months. Mr Malik was also ordered to carry out unpaid work for 150 hours before 11 August 2016, such work to be supervised by the probation service and he was also to pay a victim surcharge of £100 within 28 days.

3. By letter of 5th of December 2017, Rent Smart Wales refused a company landlord licence for the applicant upon the basis that Mr Malik, as the connected user to the licence application had not been deemed to be a “fit and proper person” following his conviction for violent disorder and sentencing on 12 August 2015. Mr Malik appealed to the tribunal by letter dated 27th of December 2017 against that decision. The tribunal’s task is conceptually straightforward; is Mr Malik a fit and proper person to hold a landlord licence on behalf of Malik Properties Aberdare Ltd?

The legal framework

4. In Wales, under the Housing (Wales) Act 2014, (“the Act”) it has been a requirement since 23 November 2016 for landlords of a dwelling subject to, or marketed or offered for let under a domestic tenancy, to be registered and licensed to carry out lettings and property management activities. Likewise any person acting as agent on behalf of the landlord of a dwelling marketed or offered for let under a domestic tenancy must be similarly licensed to carry out lettings and property management work. Section 3 of the Act compelled the Welsh ministers to designate a licensing authority for the whole of Wales. The County Council of the City and County of Cardiff were duly designated and exercise their licensing powers and duties under the name “Rent Smart Wales”.

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.¹ Whilst the Act is silent upon this matter, we consider that the tribunal's task is to look at the matter afresh, effectively by means of re-hearing the application, and that the tribunal 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.

13. There has been one previous hearing in this tribunal addressing the fit and proper person test under the Act in the cases of Tovey and Tovey v Rent Smart Wales (RPT/0001/05/16 and RPT/0002/05/16) heard on 4 November 2016 and recorded in a publicly available written decision dated 15 December 2016. Mr Grigg also represented Rent Smart Wales, upon that occasion and the applicants were represented by Counsel. It was accepted then and held by our colleagues that the burden of proof was upon each applicant to show that they were a fit and proper person and that 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. As a strict matter of law, our

¹ Section 27(5)(b) Housing (Wales) Act 2014.

colleagues' earlier decision is not binding upon us but we agree with them with regard to the burden and standard of proof and approach this case accordingly.

The evidence and the hearing

14. Mr Malik attended by invitation at an interview to further investigate the fit and proper person aspect of the application on 11 October 2017. Present at this meeting were Angharad Thomas, Group Leader Enforcement of Rent Smart Wales, Sarah Rivers, Senior Environmental Health Officer and Shireen Ahmed, minute taker. This is consistent with paragraph 9 of the guidance which states that in some cases the licensing authority may wish to invite the applicant to a meeting to discuss and clarify any issues arising. Paragraph 9 further states *"If an applicant provides false or misleading information about unspent convictions, they commit an offence and can be fined on summary conviction. If an applicant has provided false or misleading information (without reasonable excuse) that may be a clear indication of their unfitness."*
15. Mr Malik was invited to agree the accuracy of the minutes that had been emailed to him, and he duly did so. He accepted in evidence that he had telephoned RSW and said the minutes were fine and that he was happy with them although he also requested a hard written copy.
16. It became apparent at the hearing and in submissions that there were five issues that RSW were concerned with and wished to rely upon in arguing that Mr Malik was not a fit and proper person to hold a landlord licence. These were as follows;
 - i. The conviction for violent disorder.
 - ii. A previous conviction in relation to licensing and the selling of alcohol to a minor.
 - iii. A previous caution for selling out of date goods in his shop.
 - iv. A previous conviction for criminal damage to the door of a shop when Mr Malik was living in Bristol.
 - v. An issue with rubbish accumulating at the rear of one of his properties and the way in which he had dealt with this.
17. Mr Grigg made it clear that when the original decision was made it was purely on the unspent conviction declared on the application form. This was a conviction for an offence of violence and it was submitted that this demonstrated that there was violence in Mr Malik's character and there could be a risk for tenants in the future in any fraught situation that may arise. As Mr Grigg put it "the vast majority of weight is on the violent offence which in itself is enough to decide that Mr Malik is not a fit and proper person". With regard to the criminal damage conviction, as Mr Grigg put it "some weight, but very little weight" should be attached to this but it does show that he has lost his temper in the past and could do so again in the future. With regard to the sale of alcohol to an underage person and the breach of licence again Mr Grigg said that it should have some weight but not too much and "it adds a little but not a lot". With regard to the issue of the rubbish and how that had been dealt with, Mr Malik was robustly cross-examined and Mr Grigg submitted that he had been deliberately misleading in his answers and his actions were not those of a reasonable landlord. Bearing in mind the

submissions about the weight to be attached to the five matters, we shall deal with the evidence and submission for each in turn.

The conviction for violent disorder

18. In his application, in his statement and in his oral evidence, Mr Malik explained the circumstances of his conviction for violent disorder. This related to what he described as a peace march in support of Palestine that took place on July 29, 2014 during both the summer holidays and Ramadan. He described it as having been very well organised and peaceful with marchers of all ages. He had attended with his adult daughters and his wife. He described that as the march progressed they could hear loud noises and people screaming and he could see bottles, tables and chairs being thrown at the marchers by a group of young men. He saw one man punching another man. He said he had been to see what was happening and called out to them to stop but he does not think that they heard him. He described that he threw a chair in the air to get their notice so they would hear him and his daughter grabbed him and ushered him away. He said that “in a moment of madness” he had thrown one chair but it was not aimed at anybody and nor did it hit anyone. He estimated that his actions had lasted for seven seconds and his family then continued upon the march. He described how three or four days later there was an article in the newspaper with a photograph of people wanted for questioning. He said that he recognised himself in the photograph and voluntarily handed himself in at the police station. In his written and oral evidence he had stated that it was not possible to identify him from the blurred photograph and this was also the view of his solicitor, but he thought it was correct to hand himself in. Whilst before he went to the police station he did not consider that he had done anything wrong, upon the advice of his solicitor he pleaded guilty at the first opportunity.

19. There were eight people charged with violent disorder. His co-defendants were those who had attacked the march and it appears that they were found guilty after a trial and were all sentenced to imprisonment. Mr Malik was sentenced, as set out in paragraph 2 above, to 12 months imprisonment suspended for 24 months, together with carrying out unpaid work and paying a victim surcharge. Mr Malik submitted a letter from his criminal defence solicitors Marchant Harries dated 14th of August 2015. This letter stated; *“Judge Fitton told all eight defendants that this case involved the very large public disorder in a busy place which resulted in significant public fear and, in some cases, some serious injury to individuals. It was clearly a case which required prison sentences to be imposed. He imposed immediate prison sentences upon all of the defendants apart from yourself. In your case, he accepted that yours was a single action which was truly a moment of madness. The judge fully accepted that you had shown genuine concern, remorse and shame. The judge gave you full credit for your early guilty plea and, in particular, the fact that you had promptly volunteered yourself to the Police.”*The tribunal did not have any other record of the judge’s sentencing remarks before it, but has no reason to doubt the contents of the solicitors’ letter.

20. Mr Malik had also submitted a copy of the pre-sentence report that had been prepared by probation officer Mrs Patricia Beaumont on 25 June 2015 which made it clear that Mr Malik accepted responsibility for the offending and had contacted the police of his own

volition, that he expressed completely pro social views throughout and that although he had acted impulsively upon the occasion of the offence, that “he presented in interview as a thoughtful, responsible member of society, someone who is heavily involved with his local community.” A full ‘risk of serious harm’ analysis was undertaken and the likelihood of reconviction within two years was assessed as low. The risk assessment however did say that “when considering the issue of violence to the public and the likelihood of the occurrence of any harmful act, in this instance all information available indicates that the likelihood of Mr Malik harming others within the community is considered to be medium, since there are some indicators to show that he has the potential to cause harm, but is unlikely to do so unless there is some change in circumstances, such as finding himself and his family involved in a fraught situation, as occurred in this instance.” The report recorded that the offence appears to be totally out of character and that Mr Malik greatly regretted his involvement, that he was polite and fully cooperative throughout and there was nothing in his attitude to suggest he poses any risk to staff or to himself. He was not deemed to require any support from the probation service.

21. RSW note that as the conviction was for a custodial sentence of over six months and up to and including 30 months then, in accordance with the Rehabilitation of Offenders Act 1974 it will not be spent for four years after the end date of the sentence, that is until 12 August 2020. As an offence of violence it was an offence to which RSW had to have regard under section 20 (2). RSW in their written statement confirmed that when Mr Malik was interviewed by them he presented as a calm, well spoken individual who deeply regretted his actions. However RSW say that at interview Mr Malik stressed that the judge had awarded him the most lenient sentence possible compared to the other defendants. They point out that in fact it is possible to receive a fine for the offence of violent disorder and a fine would have been spent 12 months from the date of conviction. They say “it could be concluded therefore that the judge felt a rehabilitation period of 4 years was required”.
22. RSW cite the guidance produced by the Ministry of Justice on the Rehabilitation of Offenders Act 1974 which applies from 10th of March 2014. RSW quote the guidance with regard to convictions becoming spent and “as a result the offender is regarded as rehabilitated.” RSW point out that Mr Malik’s conviction was not yet spent and they also must take the seriousness of the offence into careful consideration when determining whether he is a fit and proper person. RSW say as follows;

“The potential risks of allowing a person who is not fit and proper to hold a landlord licence and therefore have responsibility for providing good quality housing for any tenant are not ones to ignore. Many tenants are in a vulnerable position; they are not experts on housing legislation and are often unaware of their rights or what safety measures a landlord should be taking. This means that they rely on having a landlord who as well as being knowledgeable is also trustworthy and honest.”
“Although Mr Malik presented himself as a well spoken, remorseful landlord who regretted his actions and considered himself to be an upstanding member of society who made a mistake in a moment of madness, Rent Smart Wales are still duty-bound to have regard to this conviction as it is both unspent and also relevant. In reaching

this decision it was felt that where a court case has taken place, and during that court case all mitigating factors have been presented to the judge who would have taken all of the facts into consideration when deciding on the appropriate sentence, it is not then appropriate for Rent Smart Wales to disregard this and reach a different conclusion. The judge has decided that Mr Malik will not be rehabilitated following his violent disorder conviction until 12 August 2020 and we must therefore respect this decision.

“The facts of the case are the primary importance [sic] when decisions are made. Whilst each case is looked at on its own merits and a blanket policy is not imposed which means convictions are a ban to having a licence, there does need to be some measure of consistency. This conviction is fairly recent, and is a violent offence which is unspent and which is specifically listed in the Act and guidance. For other similar convictions we have refused licences. To make a decision which is based on how the person presents their case would be wrong and consequently the decisions made would not be fair.”

23. The above passages highlight the thinking of Rent Smart Wales and are critical. In oral evidence Angharad Thomas affirmed this approach and said that she had not heard anything from Mr Malik’s oral evidence that would lead her to change her mind. She reiterated that the conviction implied that he was capable of doing the act he was convicted of and the law states that an individual is not rehabilitated until such time as the conviction is spent and until then that person is capable of undertaking that act. When asked if RSW had taken into account the contents of the pre-sentence report Miss Thomas said that they had to respect the conviction and that it was not for RSW to rehear the story. She did point out that every single landlord they had dealt with who has a conviction has said that they have acted out of character in a moment of madness. With regard to the guidance, Miss Thomas was asked how the conviction impacts upon the residents and the wider community? She said that she would interpret that as being how it impacted upon the residents of the area in which the offence took place although it could be read both ways, but she accepted that the conviction itself did not impact upon Mr Malik’s tenants in the community in which they live save for raising the issue as to whether the character of Mr Malik with a conviction for violence would potentially put the tenants at risk were he to find himself in a fraught situation with a tenant in the future.
24. Whilst Miss Thomas accepted that the pre-sentence report said that the likelihood of reconviction was low she pointed out that it did not suggest that there was no risk whatsoever. She asked whether Mr Malik had the capability to make threats and observed that the verbal abuse of tenants can be very hard to deal with, that management of tenancy can be about making tenants live in a safe way without harassment and a fear of reporting their landlords, and the fear of retaliatory eviction.
25. Also in the paperwork submitted by RSW was the report on the fit and proper person test that had been prepared by Sarah Rivers and submitted to Bethan Jones, the Operational Manager. This contained in a table, what was described as “an analysis of the pertinent considerations as suggested by the guidance in relation to Mr Malik’s case.” However, in the tribunal’s view this did not contain any proper analysis nor did it

relate the considerations to the matters set out in the guidance. For example one column stated “the seriousness of the conviction, in terms of impact, or potential impact, upon the residents and the wider community...”. The accompanying commentary simply said that the offence of violent disorder is very serious in nature and that seriousness was demonstrated by the fact that Mr Malik received a custodial sentence, albeit suspended. It simply said that should Mr Malik be involved in the letting and management of rental properties the safety and welfare of the tenants could be at risk because he is still within the rehabilitation period. We deal with this further below.

Previous conviction for selling alcohol to a minor

26. In Mr Malik’s statement of case he described a conviction dated 30th of June 2006 at Cynon Valley Magistrates Court under the Licensing Act 2003. He says this was because an employee of his had sold alcohol to a person under the age of 18 and he as the licensee was charged. He says that he pleaded guilty for which he was fined and ordered to pay costs. In RSW’s written statement they point out that at interview he was asked about previous convictions but he did not disclose the licensing act conviction and that therefore the information he gave in interview was not entirely honest as he failed to mention this when given the opportunity. This was not in the interview notes which as Mr Grigg established, Mr Malik had previously accepted as being accurate. Mr Malik for his part was adamant that he had mentioned this previous conviction. Miss Thomas for her part was equally adamant, “100% confident”, that he had not mentioned this at his interview on 11th of October 2017.
27. Miss Thomas said that although this was a spent conviction and accepted that Mr Malik did not have to disclose it to RSW she asserted that “the Act tells us that we can take into account spent convictions.” She also suggested that it was of relevance to the extent that the application to RSW is for a licence and the alcohol licence conviction shows that he did not abide by the conditions of his licence and has breached licence conditions in the past. There has to be some element of trust that a licence holder will abide by the conditions.

Previous caution for selling out of date food.

28. During Mr Grigg’s cross examination of Mr Malik, it was established that Mr Malik had also been cautioned for selling out of date goods in the past on a date that was not established with any clarity. Mr Malik accepted that this was the case but explained that it was his custom every night whilst running his shop to check the goods in the fridge when closing. He said that upon the occasion that led to the caution, a relative was very unwell in hospital and it was touch and go whether or not he would live, and upon that night Mr Malik had gone straight to the hospital. He said that the council found one item of meat that was out of date and this was the only such transgression in his 28 years as a shopkeeper. Mr Grigg again suggested that this was a matter that he could have mentioned at interview and did not do so, and Mr Malik accepted that he had not mentioned it and pointed out that it was a caution. In his closing submissions Mr Malik

denied that he had been dishonest in failing to mention this as it was a caution and he had not remembered it at the time.

Previous conviction for criminal damage.

29. In Mr Malik's interview, albeit in response to a question as to whether any civil action had been taken against him, he described when as a young man living in Bristol he had a disagreement with a shopkeeper and had left the shop, closed the door and the glass broke. He was taken to court and paid a £100 fine. He estimated it was 30/40 years ago and was perhaps around 1975 or some such date. In his later written statement of case for this appeal in fact he said that the offence of criminal damage was one for which he was sentenced at Bristol Magistrates Court on 16 May 1984 to pay compensation and that he received a 12 month conditional discharge. Mr Malik said there had been a disagreement with the shopkeeper involving Mr Malik's mother and when leaving he had slammed the door shut and the pane of glass broke. He accepted responsibility and pleaded guilty to the offence and paid the compensation ordered to the shopkeeper in full immediately after the hearing. Mr Malik pointed out that this was a spent conviction. Indeed by the tribunal's calculations this conviction would have been spent in May 1985, some 33 years ago.

30. When Miss Thomas gave evidence she was asked in what way the spent criminal damage conviction was relevant to RSW's considerations? She answered that this showed that Mr Malik was capable of committing an offence and some people will reoffend. She said that it sounds as if Mr Malik lost his temper and slammed the door and it appeared that he had lost his temper again with the violent disorder conviction. As previously stated, whilst not attaching much weight to this, Mr Grigg submitted that the incident shows that Mr Malik has lost his temper in the past and can therefore do so in the future.

Rubbish accumulating in a tenant's garden.

31. At interview Mr Malik was asked if he had been subject to any formal notice or enforcement action relating to his properties. He answered that there had been one issue where a tenant had been sent to prison but the rent was still being paid. He said that the tenant had allowed rubbish to accumulate and had not been putting her bins out. In his written statement of case, he mentioned this incident and said that he had been served with a notice and following that, with the tenant's co-operation he dealt with the situation by removing the rubbish appropriately. He was cross-examined robustly about this incident and RSW had been in touch with Rhondda Cynon Taf Council and had obtained and included in their hearing bundle, 5 photographs taken on 27 September 2016, that depicted the rubbish. Mr Grigg sought to persuade us that Mr Malik was prepared to leave the rubbish outside the property for a number of weeks after becoming aware of it and that Mr Malik had been deliberately misleading to the tribunal in his answers over an evidential inconsistency about whether the tenants neighbours were concerned about the rubbish or not. Mr Grigg submitted that Mr Malik, upon his evidence left the rubbish there knowing that it was going to be a problem and suggested that these were not the actions of a reasonable landlord. Mr

Grigg suggested that he had had great difficulty in obtaining a cut-off point from Mr Malik, that is, after what period of time in weeks Mr Malik himself would have been prepared to clear the rubbish.

32. In fact the tribunal found that Mr Malik's evidence upon this subject was clear. Namely that a tenant of his was sent to prison for 8 or 9 weeks and whilst she was in prison it became apparent that there was rubbish in the backyard that served her tenancy. With regard to the photographs of the rubbish Mr Malik said that it was largely clothing and goods it was not food. Mr Malik says that he has had problems with this particular tenant before but his approach was to discuss the problem with the tenant to encourage her to clear the rubbish herself. He felt that if he was to have cleared it then she is likely to behave in the same way in the future. His intention was that when she came out of prison he believed she only had 2 or 3 weeks left to serve of her sentence, he was going to encourage and educate her to clean the rubbish and he said he would have been prepared to assist her in doing this. He explained that he had told the council that this was his approach and that the lady from the council agreed that it could be left for 2 to 3 weeks until his tenant came out. He said that he only found out that she was in prison when he first received a letter about this from the council. He was therefore clear that he would only have left the rubbish for a period of 2 to 3 weeks and if the council had not agreed with his approach and had asked him to clear it then he would have done so. He said that had there been food within the rubbish he would have cleared it because it otherwise would have attracted rodents. He also explained that this particular tenant had had a number of personal problems and was in arrears with her rent but he was dealing with this sympathetically.

The tribunal's findings and reasons.

33. As RSW had said, the offence of violent disorder is a serious one and any matter in particular that attracts a custodial sentence, albeit suspended is one that they must have regard to in accordance with the Act. The tribunal accepts entirely the sentiments expressed by RSW about the need for landlords to be fit and proper, the imbalance in the landlord and tenant relationship and the vulnerable situation in which some tenants may find themselves if a landlord were to behave unlawfully and unscrupulously. It is right and essential for the proper functioning of the licensing of landlords in Wales that RSW examine instances of offending closely. Neither RSW nor this tribunal can seek in any way to look behind the conviction for violent disorder which we accept is a serious offence. What RSW and this tribunal are charged with doing is considering the relationship between that offence and whether or not a person is fit and proper to be licensed.
34. As previously noted, under section 20 (1) RSW must have regard to all matters it considers appropriate. This gives RSW a broad and subjective discretion in its considerations. Section 20(2) makes it clear that "among the matters to which the licensing authority must have regard" is any evidence that the person has committed any offence involving violence. Although self-evident upon the face of the section it is worth reiterating that a conviction is simply one of the matters to which the authority must have regard. As we have seen, the Welsh government has issued guidance

paragraph 2 of which states that *“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.”* Paragraph 5 of the guidance states that any evidence considered by RSW *“should be relevant to the person’s fitness to hold a licence and let and manage rental properties in Wales.”*

35. In Mr Malik’s case, whilst accepting at all times that he was guilty of a violent offence, an examination of the circumstances of that offence and the mitigating factors such as are recorded in his solicitors’ letter and pre-sentence report and referred to in his statement of case and oral evidence is appropriate. Indeed it is essential to look into these matters in order to apply the guidance’s suggestions at paragraph 12 that the licensing authority may wish to consider the relevance of the conviction in relation to the applicant’s character and integrity to let or manage residential properties and the seriousness of the conviction in terms of impact or potential impact, upon the residents and the wider community. RSW have stated that a criminal conviction of the type mentioned in section 20(3) is not an automatic bar to the granting of a licence. As a statement of the law in Wales that is undoubtedly correct. However, the tribunal is concerned at RSW’s application of the law in this case and the emphasis upon the unspent conviction periods under the Rehabilitation of Offenders Act 1974.
36. In Mr Malik’s case there were a number of factors around the offence itself, the conviction and sentence that are relevant to consideration of whether or not he is a fit and proper person notwithstanding that conviction. Firstly, Mr Malik handed himself in to the police upon learning that they wished to speak to him. It was uncontested that had he not done so, he was unlikely to have been identified or convicted. Therefore, although this was an offence of violence, Mr Malik acted honestly in his dealings with the criminal justice system. Mr Grigg sought to establish that Mr Malik still did not really think that he had done anything wrong, upon the basis that Mr Malik expressed such sentiments when initially attending voluntarily at the police station. It is clear however that when appraised of the legality of the situation, Mr Malik pleaded guilty and he told this tribunal as he had told his probation officer and as he said in his statement of case that he appreciated his actions *“had been unacceptable and wrong.”* Secondly, Mr Malik pleaded guilty at the first opportunity. Thirdly, from the reported sentencing remarks of the judge, this was a *“moment of madness”*. Fourthly, Mr Malik paid the compensation and undertook his hours of community work. Fifthly, the 12 month sentence was suspended for 24 months that is until 12 August 2017. Sixthly, he was not deemed to require any supervision at all from the probation service.
37. Malik Properties Aberdare Ltd submitted the corporate landlord licence application to RSW on 8 September 2016, during the 24 month suspension period. By the time RSW wrote to Mr Malik on 27 September 2017 and by the time of his interview on 11 October 2017, that 24 month period had expired and Mr Malik was no longer at risk of imprisonment for the offence, albeit that the conviction remained unspent. Mr Malik has not been in any other trouble with the law since the incident that led to his

conviction on 29 July 2014. At the time of his interview therefore, there had been a three-year period of “good behaviour”.

38. Although RSW’s report dated 20 November 2017 prepared by Sarah Rivers and addressed to Bethan Jones, Operational Manager of RSW purported to analyse the considerations set out in the guidance, this analysis was inadequate. It was not analysis in the proper sense of that word. For example under the consideration as to the relevance of the conviction in relation to the applicant’s character and integrity to let or manage residential properties, there was simply a statement of fact of Mr Malik’s conviction. This contains no analysis. In terms of the seriousness of the conviction and its impact or potential impact upon residents and the wider community again the ‘analysis’ simply says that tenants could be at risk because he is still within the rehabilitation period.

39. The tribunal would have expected at this point for there to have been consideration of factors such as the number of properties that Mr Malik and his company are involved in managing, how long that involvement is and consideration of any information specifically in relation to his letting and management activities. Further where considerations of the impact of the conviction upon residents and the wider community are at large, it is necessary to examine any positive evidence about an applicant’s contribution to the community. In Mr Malik’s case notwithstanding the incidents mentioned in this decision, there was much evidence about the positive contribution he has made and continues to make to the community. He was a shopkeeper for over 30 years. He told us that during that period of time he has faced some challenges, including racist abuse and heightened tensions for example when the USA and the UK military forces were involved in the Muslim country of Afghanistan. Mr Malik is a founding member and trustee of his local mosque and has been for many years. He told the tribunal of the services that the mosque provides to the community. It is open to all in relation to some of its facilities although used largely by Muslim members. The mosque have recently bought a school and own a four-bedroom flat which is available for the use of troubled youngsters. He described when the Muslim community had bought a plot of land for Muslims he went to every house nearby to explain and communicate to any concerned residents about the mosque’s proposals.

40. Mr Malik, under cross-examination from Mr Grigg, explained that there have been occasions when he was running his shop when he has had to deal with shoplifters and to use what he described as a citizen’s arrest to keep suspected offenders in his shop until the police arrived. Mr Grigg questioned him carefully to explore whether such citizens arrests involved the use of force and in what circumstances. Mr Malik answered that he and his son would speak aggressively to the offender and ask them to remain in the corner until the police arrived and this seemed to work. He explained that this has only happened on 4 or 5 occasions in 28 years. Whilst it was perfectly proper of Mr Grigg to explore this line of questioning, given RSW’s submissions that Mr Malik’s conviction demonstrated a potential for loss of temper and violence, the tribunal was impressed with Mr Malik’s evidence. It is clear from what he said that establishing a shop and a presence in a small valleys town was not without its challenges over the years, but the tribunal find that Mr Malik has sought to deal with problems that arose in a reasonable

fashion. In his interview with RSW he mentioned that he has seen people fighting outside his shop and has intervened to stop this.

41. In terms of evidence about how he manages his properties, he explained in his interview that if notified of a problem he will go and try to fix it straightaway and he gave an example of being told that one of his tenants cooker had broken, that he attended at the property straightaway, ordered a new cooker which was fitted the next day. He spoke of his use of the tenancy deposit scheme, that he has attended the appropriate landlord courses and his approach is to communicate with his tenants and work with them and not against them. In oral evidence he explained that many of his tenants have been with him for considerable periods of time, for example 10 or 11 years, 6 years 4 years and 5 years. When it was put to him that there was a risk of a moment of madness with his tenants if there was something that provoked him he answered "100% not".
42. The RSW report of 20 November 2017 stated in paragraph 11 that Rhondda Cynon Taf local authority had been contacted in relation to any representations that they may have had about Mr Malik or Malik properties Aberdare Ltd, after checking the registration of the properties on their database they confirmed that no complaints had been made and there was no history of non-compliance.
43. There was therefore certainly information available about Mr Malik's property management at the time that the original decision by RSW was made but this does not appear to have been subject to any thorough analysis. The RSW report of 20th of November 2017 says *"The mitigating circumstances suggest that Ahsan Malik does understand his responsibilities as a landlord. He also gave a good account of the reasons behind his conviction. However, the mitigating circumstances do not deviate from the fact that Ahsan Malik has been convicted of a serious violent crime and the conviction is unspent."*
44. The tribunal finds, having closely examined all of the written and oral evidence and having taken into account the guidance, that the conviction in this particular case does not impact negatively upon Mr Malik's character and integrity to let or manage residential properties, nor does the conviction in this particular case impact or potentially impact upon Mr Malik's tenants and the wider community in which they live. In the balancing exercise that RSW and now the tribunal are to undertake, we find that there is considerable evidence of integrity and good character in relation to Mr Malik. His commercial and voluntary activities over a considerable period of time in the Aberdare and Cynon Valley area are to his credit. He has raised a family and his adult children all have good careers and contribute positively to society. He demonstrated a sympathetic and understanding approach to his tenants, some of whom, upon his evidence, have not enjoyed the stability of family life and financial comfort that many people take for granted.
45. There were differences of opinion expressed in the evidence as to whether Mr Malik had mentioned the conviction for selling alcohol to a minor at his interview with RSW. In oral evidence before us Mr Malik also pointed out other very minor inaccuracies in the interview account. In relation to the differing accounts of what was said at interview, we

prefer the evidence of RSW. At that interview Angharad Thomas and Sarah Rivers were present together with a dedicated minute taker in Shireen Ahmed. It is clear that Mr Malik was convinced that he had mentioned the alcohol licence conviction. We find, upon the basis of the minutes and Miss Thomas's oral evidence that he had not. However we do not consider that there was any dishonesty in Mr Malik's assertions, having had the opportunity to closely listen to and observe him giving evidence and being cross-examined. The tribunal are satisfied that Mr Malik held an honest but mistaken belief in this regard.

46. With regard to the issue of the rubbish, the tribunal find that Mr Malik dealt with that in an appropriate and sympathetic manner to his tenant and liaised with the local authority to agree a solution. Further, it is of course a tenant's responsibility to dispose of rubbish during the tenancy but this had not happened initially in this case owing to the incarceration of Mr Malik's tenant.

RSW's approach to unspent convictions and the Rehabilitation of Offenders Act 1974

47. The determinative factor for RSW was that Mr Malik's conviction remains unspent. Their approach was set out in paragraph 22 above. As can be seen RSW feel it is not appropriate for them to "disregard" the sentence imposed by the trial judge and they say they must respect the fact that "the judge has decided that Mr Malik will not be rehabilitated....until 12 August 2020." Although RSW say that a blanket policy is not imposed which means convictions are a ban to having a licence, there is a danger that RSW's approach to the periods of time within the Rehabilitation of Offenders Act 1974 means that in practice there will be a ban on licensing those with unspent convictions. The Act does not say that those with unspent convictions are not fit and proper people to be licensed. It was open to the National Assembly when the act was passed to have included such a provision. It did not. Section 20(2) makes it clear that a relevant conviction is **among the matters** that RSW is to have regard.
48. There is nothing in the guidance to suggest that whether a conviction is spent or not should be a determinative factor. The guidance is clear at paragraph 9 that "*when considering an application for a licence, the Licensing Authority must be satisfied that it has sufficient information from the applicant in relation to their convictions, in order to decide whether a person is fit and proper based on their application.*" As can be seen, the guidance recommends inviting an applicant to a meeting to discuss and clarify any issues arising, which was what happened in this case. Paragraph 12 of the guidance says that "*In deciding whether a conviction is relevant to a person being a fit and proper person....*" RSW may wish to consider certain factors. It is clear from the guidance therefore that it is open to RSW to find that a conviction is not relevant.
49. Further in the factors set out in paragraph 12 of the guidance, although the length of time since any conviction is mentioned, there is nothing upon whether that conviction should be spent or not. The tribunal considers that the guidance is and can only be intended to apply to unspent convictions. Paragraph 9 refers to an applicant committing an offence if they provide false or misleading information "about unspent convictions". In the Ministry of Justice guidance note about the 1974 Act included in RSW's hearing

bundle, it states *“for most purposes the Act treats a rehabilitated person as if he or she had never committed an offence and, as such, they are not obliged to declare their caution(s) or conviction(s), for example, when applying for employment or insurance.”*

50. The tribunal consider that it is over mechanistic and prescriptive to rely upon and equate the precise date upon which an offender’s conviction will be spent and he or she will be rehabilitated under the 1974 Act, with their fitness to be licensed for letting and property management activities. For example, in Mr Malik’s case this would mean that on RSW’s case, Mr Malik would not be a fit and proper person to hold a licence on 11 August 2020, but that he would be on the 12th or 13th of August 2020. That would be a legal fiction. RSW’s reasoning that the judge has decided that Mr Malik will not be rehabilitated until 12 August 2020 and that they must therefore respect this decision, is mistaken. The functions of a Crown Court judge in sentencing any offender are not in anyway undermined or disrespected by RSW finding that an individual is a fit and proper person to undertake property letting and management activities before that conviction becomes spent. The Crown Court judge will have heard evidence and mitigation upon the specific offences before it and sentenced accordingly. Mr Malik’s ability to manage property is unlikely to have been an overriding consideration for the sentencing judge. The Crown Court and RSW undertake wholly different functions with different purposes. Focusing upon rehabilitation periods under the 1974 Act and attributing greater weight to it than to current and ongoing evidence directly related to an applicant’s property management activities may lead to unjust outcomes and in practice equates to a blanket ban not contemplated by the Act or the guidance.

51. Likewise, the tribunal is concerned as to the approach taken in relation to Mr Malik’s spent convictions and caution. Whilst Mr Grigg stated that he attaches little weight to the criminal damage conviction, the tribunal attach no weight whatsoever to it. The conviction of 16 May 1984 would have been spent in May 1985, 33 years ago. It is a curious feature of this case that RSW pay great heed to the guidance on the Rehabilitation of Offenders Act 1974 and the periods for unspent convictions and yet spent considerable time in the hearing upon matters that Mr Malik, as he pointed out, was not obliged to declare to RSW at all. Paragraph 6 of the guidance says that *“In respect of criminal offences, the licensing authority must have regard to any convictions, unless the person is not obliged to disclose those convictions in accordance with the Rehabilitation of Offenders Act 1974 and the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975... (as variously amended).”* There was nothing put before the tribunal by RSW to suggest that Mr Malik was obliged to disclose the criminal damage or alcohol licence conviction or the food safety caution. These were all long since spent and, notwithstanding that RSW suggested that the alcohol matter was relevant because it related to a breach of licence, (in fact it was an employee of Mr Malik who breached the condition in practice) the tribunal finds that these matters should have played no part at all in RSW’s decision-making process. They are all spent and should have been entirely disregarded by RSW. It was wholly disproportionate to cite a spent conviction from 1984 in support of a misplaced contention that this suggests a propensity to violence and loss of temper, whilst apparently ignoring the peaceable and lawful activities of Mr Malik in the intervening 30 year period until the violent disorder incident in July 2014. In the tribunal’s view, those spent convictions and caution are in any case

simply not relevant to his current fitness to be licensed for property management activities.

52. Whilst Miss Thomas said in oral evidence that the Act allows RSW to take into account spent convictions, it does not do so explicitly and the tribunal assumes that Miss Thomas is referring to RSW's wide subjective duty in section 20 (1) to have regard to all matters it considers appropriate. There is an obvious tension between the Rehabilitation of Offenders Act periods for spent convictions and the guidance, although as Miss Thomas said it may be that an applicant may have recently spent convictions for regulatory offences directly relating to property licensing and management. In such a scenario she considered that it would be appropriate for RSW to take such matters into account. Whilst there is force in that contention, RSW must carefully consider the efficacy and relevance of their approach into older spent convictions and cautions.

Concluding remarks.

53. The tribunal unanimously finds Mr Malik to be a fit and proper person to be licensed under the Act and allows his appeal. The tribunal was impressed with Mr Malik's evidence and demeanour, with his approach to property management and to his relationship with his tenants. He is a man who has made a considerable positive contribution to his community over many years. The tribunal reject Mr Grigg's submission that he has a propensity for violence and could be a risk to his tenants and reject the allegations that he had been deliberately misleading in his evidence in relation to the issue of the rubbish.

54. The tribunal recognise that RSW have an important and difficult job to do in upholding private property management standards and licensing private landlords. The tribunal finds that RSW have acted in good faith throughout and, as Miss Thomas pointed out, are charged with ensuring that only suitable people are licensed as fit and proper given the important responsibilities that landlords have in relation to their tenants. Mr Malik has been found to be a fit and proper person but the Rent Smart Wales scheme is a relatively new one and it is hoped that the tribunal's determination and comments in this case will assist in the ongoing management and development of the scheme. In those circumstances, notwithstanding that Mr Malik has succeeded in his appeal, we do not consider that it is appropriate to make any order as to the repayment of the hearing fee. RSW were entitled to approach this case in the manner that they did and, together with Mr Malik, to seek a determination from this tribunal.

DATED: 4th day of July 2018.



CHAIRMAN