

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0032/07/18

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

APPLICANT: Mr Rhys George
RESPONDENT: Rent Smart Wales.
TRIBUNAL; Richard Payne (Legal Chair)
David Evans (Surveyor Member)
Juliet Playfair (Lay Member)

HEARING DATE; 22nd October 2018 at Waterfront Community Church, Langdon Road, Swansea.

Appearances- Mr Rhys George in person
Mr Richard Grigg, Solicitor, and Mr Jonathan Reed, Environmental Health Officer, Rent Smart Wales, for the Respondent.

DECISION

The tribunal unanimously finds that Mr Rhys George is a fit and proper person to be licensed and the Applicant's appeal against the decision of Rent Smart Wales dated 13th June 2018 to refuse him 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 was convicted of a serious criminal offence in 2011, sentenced to a term of 44 months imprisonment which has now been served, but the conviction remains unspent until February 2022. He is the owner of one rental property in Swansea, has completed all of the relevant courses to be licensed as a landlord but by letter of 13th June 2018 has been refused a landlord licence on the basis that he is not a fit and proper person to be so licensed under the Housing (Wales) Act 2014 ("the Act"). Mr George also has previous convictions that are now spent under the Rehabilitation of Offenders Act 1974 ("the ROA 1974").
2. Mr George appeals against the decision on the basis that notwithstanding that his conviction remains unspent and that he is therefore not deemed to be rehabilitated under the ROA 1974, that he is a changed person, that he is in fact rehabilitated, is living a lawful and hardworking life and that the changes that he has effected in his personal

life and situation mean that he is as a matter of fact now a fit and proper person to be granted a licence.

The legal framework

3. 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” (“RSW”).

4. 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.

5. 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.

6. 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.

7. 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.

(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.”

8. 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”.

9. 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.”

10. 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.”*

11. 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. The tribunal’s task is to look at the matter afresh, effectively by means of re-hearing the application, and 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.

Preliminary issue.

12. Within the paperwork provided by RSW were details of previous spent convictions relating to Mr George which RSW had relied upon in seeking to demonstrate that there was an established and unusual pattern of criminality which caused concern to them and, it was submitted, would accordingly place Mr George’s tenants at a higher risk of unlawful behaviour from him in the future. The tribunal, mindful of the contents of the ROA 1974 and in particular of sections 1, 4 and 7 raised the issue with RSW as to whether the past spent convictions should be taken into account at all by RSW or the tribunal in determining the current fitness and propriety of the applicant. Mr George had argued in simple terms and without reference to specific provisions of the ROA 1974 that spent previous convictions should not be taken into account.

13. For RSW, Mr Grigg referred to section 20(1) of the 2014 Act and the wording that the licensing authority must have regard to **all matters it considers appropriate**. He submitted that this provided the authority for RSW to consider spent convictions. The

tribunal noted that in RSW's written submissions, namely the statement prepared by Environmental Health Officer Jonathan Reed, it said; *"In determining to refuse this licence, RSW has considered not only an unspent conviction but also a series of spent convictions. Spent convictions have been taken into account and included in this submission to demonstrate that there has been a pattern of re-offending. It is appropriate in this case to have regard to these convictions as they provide an insight into the applicant's character and integrity, fundamental considerations in making a decision of fitness and propriety of the applicant to hold a licence for a 5 year period."*

14. Mr Grigg further referred to the rest of section 20, namely that amongst the matters to which the licensing authority **must have regard** is any evidence within subsections (3) to (5), which is reproduced at paragraph 7 of this determination above. Mr Grigg particularly referred to section 20 (4)(b) and its reference to the evidence appearing to the licensing authority to be relevant to the question whether a person is fit and proper person to be licensed. He also submitted that the guidance does not preclude taking into account previous convictions. Mr Grigg also made it clear however that RSW's principal objection to the granting of a licence relied upon the unspent conviction and it is this unspent conviction to which he attaches most weight.

Consideration of the preliminary issue.

15. The tribunal considers that Mr Grigg is mistaken in his submission upon the Guidance since, paragraph 6 of the guidance on "The fit and proper person test" at page 2 of the guidance (page 63 of RSW's hearing bundle) says; *"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...."*. The tribunal also considers that Mr Griggs's reference to section 20(4)(b) is misplaced upon this occasion since it is clearly related to section 20 (4)(a) immediately preceding it, as is clear from the use of the conjunction "and". Section 20 (4) refers to any other person associated or formerly associated with the applicant for a licence and the behaviour of that associate. Such matters did not form part of the considerations in this particular case.
16. The tribunal notes that in very broad terms (there are of course always exceptions), section 1 of the 1974 Act states that a criminal conviction is to be treated as spent once the period of rehabilitation for that conviction has expired. Section 4 of the Act on the effect of rehabilitation again broadly says that a person who has become a rehabilitated person for the purposes of this Act in respect of a conviction shall be treated for all purposes in law as a person who has not committed or been charged with or prosecuted for or convicted of or sentenced for the offence or offences which were the subject of that conviction and 4(1) says that no evidence shall be admissible in any proceedings before a judicial authority to prove that any such person has committed or been charged with or prosecuted for or convicted of or sentenced for any offence which was the subject of a spent conviction and that, section 4(1)(b), a person shall not in any such proceedings be asked, and if asked shall not be required to answer any question relating to his past which cannot be answered without acknowledging or referring to a spent

conviction or any circumstances ancillary to it. Section 4 (4) does allow the Secretary of State to make provisions modifying the protection from being questioned about spent convictions and to provide exceptions to the provisions allowing an individual not to disclose a spent conviction.

17. Section 7 of the ROA Act provides limits on rehabilitation and 7(2) sets out circumstances in which the admission of evidence relating to a person's previous convictions may be allowed (for example in criminal proceedings) and includes at 7(3) a general provision referring to any proceedings before a judicial authority in England and Wales or Scotland not covered by the various other explicit parts of the Act. This says that if at any stage in the proceedings the judicial authority is satisfied "*that justice cannot be done in the case except by admitting or requiring evidence relating to a person's spent convictions or to circumstances ancillary thereto, that authority may admit or, as the case may be, require the evidence in question notwithstanding the provisions of subsection (1) of section 4 above, and may determine any issue to which the evidence relates in this regard, so far as necessary, of those provisions.*"
18. Further, section 20 (1) of the Housing (Wales) Act 2014 does contain the very broad wording that the licensing authority must have regard to **all matters it considers appropriate**. The tribunal consider that this could include relevant spent convictions. For example, it may be that a landlord has been convicted of a regulatory criminal offence relating to his/her property. If the sentence was a fine, then the conviction would be spent after one year. In the tribunal's view, it would be contrary to the principles and intentions of the 2014 Act and RSW's functions, if such a spent conviction could not be referred to at all or taken into account in determining whether a landlord is a fit and proper person to be licensed. This is a hypothetical example and not related to the current case. Therefore the tribunal accepts that there will be cases where spent convictions can be taken into account by RSW, but that this is a matter that requires careful consideration in every individual case and a cogent analysis of the relevance of spent convictions to the issues relating to licensing as a landlord in the individual application. The reference to and use of spent convictions in fit and proper person determinations should not be automatic, particularly where applicants are not required to disclose spent convictions upon application.

The evidence and the hearing
Written Submissions and evidence.

19. The tribunal gave directions on 1 August 2018 to prepare this matter for hearing. RSW provided a file of evidence and written statement prepared by Jonathan Reed dated 30th of August 2018. The Applicant did not provide any further information in addition to his application form and his handwritten statement received by the tribunal on 21 June 2018. The tribunal considered the matter by way of a rehearing rather than a review of RSW's original decision based only upon the evidence available to them at that time. It was therefore open to both parties to present evidence or submissions that had not been before the original decision maker.

20. By a letter of 13th of June 2018, RSW informed Mr George that it was not satisfied that he met the requirements to hold a licence because he had not been deemed to be a “fit and proper person”. The letter referred to sections 19 and 20 of the 2014 Act, to the guidance on being a fit and proper person and to the unspent conviction that Mr George has for supplying or offering to supply controlled drug – anabolic steroid – under the Misuse of Drugs Act 1971. The letter stated that;

“Of significance in reaching this decision was:

- 1. the nature of the conviction and that it is an offence specifically included in the Act as being a material consideration for the “fit and proper” test, namely a conviction involving drugs*
- 2. That the offence was committed in 2011*
- 3. The contact that you have had with Rent Smart Wales*

In light of this information, the licensing authority cannot conclude that you are sufficiently responsible to let and manage property in the private rented sector to which a licence under Part 1 of the Act would relate.”

21. In his appeal form to the tribunal, dated 6th of July 2018, Mr George said *“I believe that I have the right to appeal as I’m being judged on what happened almost 8 years ago! That is not who I am today. I served my time and punishment. I am a reformed success story and I would like the chance to speak to you regarding the licence I was refused not only that but my story too needs to be heard.”* Mr George further added in his hand written statement; *“My last date of conviction was over 7 years ago. While I take full responsibility for my actions I feel I have served the time, not only my freedom but my children’s and families time. Since I was released from HMP I have been a law-abiding citizen got myself a job and not long ago got my first home but because I work away a lot it makes sense for me to rent it out. The paperwork is not a true reflection of the person I am! Am I not allowed to start again? Doesn’t everyone make mistakes? Are we all going to be punished for the rest of our lives?.....I think it’s wrong to judge me for something that happened in 2011 also my children look up to me and need to see progression in life not for me to be victimised because of my past history. The past is the past not only that it was over 7 years ago. Please can you reconsider, it is imperative I get a licence as that will kick start some more positivity please don’t punish me for something I’ve been severely punished for over and over lost job opportunities lost family almost lost my children. Thanks for reading. Rhys George.”*

22. RSW, in its written submissions prepared by Mr Reed, referred to section 20 of the Act, section 6 of the guidance obliging RSW to have regard to any unspent convictions, and to paragraph 12 of the guidance which says;

“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."*

Reference was made to the duty imposed by section 20 (1) upon RSW to have regard to all matters it considers appropriate. The statement said that; *"In determining to refuse this licence, RSW has considered not only an unspent conviction but also a series of spent convictions. Spent convictions have been taken into account and included in this submission to demonstrate that there has been a pattern of reoffending. It is appropriate in this case to have regard to these convictions as they provide an insight into the applicant's character and integrity, fundamental considerations in making a decision of fitness and propriety of the applicant to hold a licence for a 5 year period."*

23. RSW referred to the Disclosure and Barring Service (DBS) certificate that they had asked the Applicant to provide which contains details of his previous convictions. It was noted that his conviction in relation to the supply of anabolic steroids was on 8 June 2011, he was sentenced to 44 months in prison and that conviction shall not be spent until 2022 under the ROA Act 1974. Reference was made to the Applicant's previous convictions and it was stated that *"The guidance states 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. It is not required that Applicants are given a further opportunity to provide representations and in this case it was not considered necessary to seek further representation as sufficient information has been provided via the provision of the DBS certificate and the already offered representation."*
24. RSW provided a copy of the DBS certificate. There was a small blank space upon that form for detailing offences, the court and the date of the conviction but in that space Mr George had written *"I have enclosed my basic DBS certificate. I don't claim to be the angel of the world but my past history is my past history I'm trying to move forward with my life."* RSW professed themselves to be concerned by this stating *"RG has provided a short unsolicited representation on this form and has conceded that there are concerns with his fitness and propriety but has diminished the gravity of the offences by referring to himself and this history with the use of the slang colloquial phrase: no "angel", apparently diminishing the significance of the conviction and intimating a lack of remorse."* RSW subsequently referred to these remarks as appearing flippant and indicating that he lacked appreciation for his unspent and previous convictions and has shown a lack of remorse and understanding of the weight offences of this nature are given in determining licence applications.
25. RSW included a newspaper report of the Applicant's offence from the South Wales Argus in January 2012 which included a quote from the relevant Detective Superintendent in the case indicating that the Applicant and a co-defendant were low level minions and street dealers that were connected with the higher end suppliers and

dealers. RSW considered that it was possible that pressure from this criminal network could lead to reoffending and they believe that the Detective Superintendent considered the Applicant to be easily influenced. The statement said; *“RSW considers that RG could be put under pressure to use his rental property to engage in drug-related activities. This could expose tenants to criminal behaviour harmful to their health, safety and welfare.”*

26. RSW also draw attention to the Applicant’s submission that he has been a law-abiding citizen since the conviction in 2011 but state that in fact there has been a subsequent conviction for criminal damage in December 2014 and were concerned that the Applicant may be deliberately seeking to mislead the RPT or has failed to appreciate the significance of that conviction and consequently that his view of what is law-abiding is at odds with the expectations of RSW or that he may have forgotten that most recent conviction which would also be a cause for concern.
27. RSW’s written submissions also concentrated upon what they described as the second ground of appeal namely that the conviction should not curtail any future opportunities in the private sector housing market that the appellant has as he works away a lot and therefore rents out his property. RSW say that this shows that the Applicant’s main focus is putting in place arrangements which fit with his lifestyle and possibly the monetary gain this leads to and does not add any relevant argument which would reduce concerns about his character and integrity. RSW consider that the Applicant’s previous convictions demonstrate that his tenants could potentially be at risk of physical and psychological harm and that there is the potential to employ violence, dishonesty and damage property *“this has the capacity to at least damage the relations with his tenants and at most support behaviours involving coercion (such as in tenancy disputes, harassment and illegal eviction) and organised criminality in the promotion of drugs - related crime.”*
28. RSW also described their concerns that the level of criminality in the Applicant’s case was significant in relation to the character of the normal person and caused significant concern. RSW referred to Ministry of Justice statistics on offenders with long criminal careers and asserted that with the Applicant’s history *“This shows the risk to RG’s tenants is higher because of the previous criminal history. They are more likely to be exposed to drugs -related activities, being offered drugs, becoming addicted, and otherwise being exposed to other criminals and criminal activity. Refusing the licence for RG protects the health and safety and welfare of the tenants.”*
29. RSW further made submissions upon the vulnerability of tenants particularly where a tenant may fall out with the landlord and concluded that the landlord/tenant relationship assumes that the landlord is a person capable of being of such character that trust is not abused. RSW assert that *“In this case it is this capacity to trust RG that is being questioned.”* RSW’s concluding written submissions were; *“RG’s conviction history is significant yet RG has appeared flippant in relation to this history, the present impression is that he is unprepared to address these concerns. RG has shown that monetary gain, and personal convenience are the more significant motivations for obtaining the license as opposed to ensuring a safe environment for the tenant.*

RSW is tasked with protecting the future health, safety and welfare of the current and future tenants of both this dwelling and any additional dwellings being managed over the 5 year licence period. It is RSW's view that RG shall abuse his position of trust to the harm of his future tenants and this is why RG should not be granted a licence."

Evidence and submissions at the hearing.

The Applicant

30. Mr George spoke without any written notes or other aids and explained that he had a criminal record and that he was not trying to hide it. He accepted that since he had been released from prison he had one conviction and he described how he had gone to his ex-partner's house and she had slammed the door in his face. He accepted he subsequently damaged the door for which he was charged with criminal damage and he initially said that he spent 28 days in jail. He subsequently indicated that he thought he had served 9 weeks imprisonment and upon being released in or around February 2015 he had come straight to Swansea. He therefore said that the entry in the DBS certificate indicating he did unpaid community work for this offence in December 2014, was incorrect. He said that he understood the DBS check contained a number of details of previous convictions but he insisted that that did not describe the person he was now. He said that whilst in custody he realised that he had to change his life and he is now committed to looking after his family and his children and continuing to work hard.
31. Mr George said "I feel it's unfair, I'm trying to be a part of society and move forward. People think there is no rehabilitation and think that once you are a criminal you will always be a criminal. That's not the case." He accepted that when he was younger he was easily led and he thought that was the easy option. However he reflected that he had spent a lot of time in prison and when he was 'inside' he realised he had to make changes to his lifestyle. He resolved to move to Swansea upon his release from his last period of imprisonment and whilst this involved him cutting ties with many of his old contacts in Newport, it also had consequences for him since his partner did not want to move away from the Newport area.
32. Mr George described how he had grown up on a council estate in Newport and "we had nothing". He described undertaking a welding and fabrication placement at age 16 with an engineering company that went bankrupt and that he had gone back and forward to college and then fallen into a life characterised by criminal convictions. He did not have an employment history to speak of. He described how his father was ill and died whilst he was remanded in custody in November 2010. He described missing out on his children growing up, for example his son was 3 when he was sent to prison for the supplying drugs offence and was 6 when he was released. Whilst in custody he contemplated his situation and felt that if he remained in Newport where he knew a lot of people his old contacts would be leading the same lifestyle and he felt he needed a fresh start.

33. Mr George explained that whilst serving his sentence he studied for GCSEs in English and Maths and “did every course imaginable”. He described being reclassified to a category D prisoner, one of only five prisoners picked to go to category D. He recounted coming to Swansea and that he had wanted to do a plumbers course in Ty Coch College but “they knocked me back”. He described obtaining work with a traffic management company after spilling his heart out to the manager about the difficulties of trying to obtain work if you have a criminal record. He was paid the minimum wage. He learned about the Personal Track Safety (PTS) course from a friend, obtained his personal track safety certificate and applied for a job with Network Rail. He was unsuccessful, he believes because of his criminal history.
34. Mr George considered that the only way forward initially was to work for employment agencies and he went down that route. He continued to gain experience and in 2016 he started his own company RGPTS (Rhys George Personal Track Safety). He said that the company supplies plant and labour to work upon the railways. Initially it was just him working for the company and he described obtaining his first small contract and then building up a reputation from there to the extent that he has been able to take on another two employees. The company undertakes railway maintenance work, for example changing railway sleepers and tracks and he recently had a contract removing Japanese knotweed from railway embankments. He told the tribunal of contract work that he had undertaken in Oxford, Reading and Didcot, that he had worked on the Maerdy Road bridge in Cardiff and has a job in Weston-super-Mare in November 2018. As he is working away for considerable periods at a time he will often only be able to see his children every other weekend.
35. With regard to his rental property, there is currently a family there and it is managed by agents who are based in Newport. He satisfactorily answered questions from the tribunal related to the purchase of the property and his completion of online courses with RSW and demonstrated awareness of the regulatory requirements with regard to gas and electricity and the tenant’s deposit. He again stressed that he’s had “so many doors slammed in my face” that he wanted to be granted the licence and would view it as a turning point in his life. He said he would have no problems with any conditions of the licence and likened this to his PTS ticket which is subject to conditions.
36. With regard to RSW’s suggestions that his responses indicated a flippant attitude he strongly denied this and said that he is remorseful every single day and would change things if he could. He said that there was nothing flippant about his comments and he described that there was very little space to write in the box and he could have just ticked ‘no’ but he wanted RSW to listen to what he had to say. He explained that he was not invited to an interview with RSW and that everything was done by email. With regard to rehabilitation he described how “it is hard to rehabilitate but you have to rehabilitate yourself.” He described how he had been begging for help when in prison and had been to see his probation officer asking him for help with rehabilitation.
37. Under cross examination from Mr Grigg he described how his wider family have been able to purchase the property with a mortgage and then using money from his father’s estate and how he had started renting it out 12 months ago. His current tenant is a

single mother with two young children. He conceded that he should have mentioned the last conviction for which he was sent to prison for 9 weeks but he explained that he was not the best writer and that was why he was here before the hearing today to explain and to appeal and do things properly. He explained that he wanted to manage the property himself because the use of an agent would cost him 14 or 15% of the rent and although he accepted that if he had to pay the agents then he would do so but he has his own bills to pay and would prefer to manage the property himself without having to pay agents fees. He made it clear that if there were problems with his tenant then he would use the proper legal procedures.

Rent Smart Wales

38. Mr Reed gave evidence for Rent Smart Wales and described how the Disclosure and Barring certificate (DBS) had clarified the information gathering process and how there were no areas of uncertainty with regard to Mr George's convictions. Mr Reed was asked whether, having heard Mr George's evidence today, he considered that there was a lack of remorse? Mr Reed answered, "I don't consider that there's been a significant portrayal of remorse that is unconnected with a commercial interest as a motivating factor." RSW's statement expressed concerns that the property could be used for drug-related activity and Mr Reed was asked whether he still had such concerns. He answered that it was still a possibility and that circumstances could change, that Mr George has an unspent conviction for drug offences and said "I haven't heard anything that would preclude concerns if Mr George's circumstances were to change." "I've witnessed so far in these proceedings an account by Mr George as to how he has bettered his financial situation by setting up a business, engaging in contract work and in the circumstances if these beneficial bettering factors were to change I would have regard to the unspent conviction, that factor has not been extinguished at all."
39. Mr Reed was asked by the panel if there was anything that Mr George could have done to satisfy RSW that he was a fit and proper person or whether the unspent conviction remained the deciding factor? Mr Reed felt that the unspent conviction remained a factor that weighed very heavily. He said that the primary concern would be the question of a vulnerable tenant who would have a formerly convicted drug dealer as a landlord and whether a convicted drug dealer should have access to a potentially vulnerable tenant over a 5 year period. He also considered that Mr George's previous convictions raised widespread character concerns owing to the number and type of previous convictions. With regard to the question of spent convictions, Mr Reed said that he did not rely upon these as the basis for the decision although he attributed some weight to them. He was asked if, having heard from Mr George today he had changed his view about his concerns with regard to drugs and drug-related activity? Mr Reed answered that the concerns were still there although he conceded that the matter was not as clear-cut as it had initially been presented to the tribunal but that was not to say that the concerns raised by the conviction have been extinguished. He again referred to the fact that a tenant's position could well be one of duress and a tenant may not be in a position to make an appeal where the tenant is in a position to be abused or harassed in some manner although he accepted that RSW did not have any knowledge of Mr George's current tenant.

40. The tribunal asked Mr Reed for his views upon any extra conditions were a licence to be granted to Mr George and he explained that although there is potential for bespoke conditions further investigations would need to be made. He explained that such bespoke conditions would generally be designed to limit the access of the licensee to high risk areas of the tenant's life and that previous examples of such had been in relation to ensuring the deposits of tenants are being protected and controlling how keys are managed and stored.
41. The tribunal asked Mr Reed, with reference to paragraph 12 of the guidance which refers to any mitigating circumstances, if he thought that Mr George has done as much as he can to turn his life around and was that not a mitigating circumstance? Mr Reed answered that his understanding was that this referred to the commission of the offence and the conviction and whether there were mitigating circumstances in relation to that. He repeated his view that the conviction was unspent and his understanding was that Mr George is not rehabilitated until the date when the conviction is spent. He said there was not a blanket ban on those with unspent criminal convictions being licensed as landlords but he felt that it would be a difficult position for Mr George to reach to demonstrate that he was fit and proper due to the fact that his rehabilitation period will be ongoing until 2022.

Submissions.

42. Mr Grigg submitted that the original decision was fairly straightforward with regard to the conviction for the supply of drugs and that someone who is a convicted drug dealer is not a fit and proper person to be licensed. He accepted that the tribunal's job was to look at matters afresh not just the decision that RSW had made at the time and accepted that more information had today been provided by Mr George who had presented himself very well and had certainly turned his life around and is now in a good position. However that doesn't change the offences that he had committed and the licensing authority are to have regard to all matters that it considers appropriate. Mr Grigg said that the decision was not as clear-cut as originally had been thought but the main issue remains the unspent conviction. He did say that some weight was given to the spent convictions as they demonstrated a pattern of behaviour. He pointed out that although Mr George had said he had been law-abiding since being released from prison for the drug offence, in fact the DBS certificate had shown another conviction and Mr George had accepted that he had been convicted and served a short period of time in prison. Mr Grigg asked whether Mr George has sufficient integrity and concluded that he did not. His conviction was for a serious offence of supplying drugs for which he was given a lengthy custodial sentence. He referred to landlords being in a position of power as regards tenants and submitted that RSW would find it hard to accept that somebody with Mr George's unspent conviction would be a fit and proper person to be a landlord.
43. Mr George asserted that he is now a fit and proper person. He made it clear that he was not trying to sugarcoat any of his previous convictions or his current unspent conviction. He accepted that he had spent a considerable period of time in prison but also that that was some time ago and his character at the time of the offences does not reflect the man that he is today. With regard to the criminal damage conviction for which he served

a short period of imprisonment, he pointed out that this was on the DBS document that he sent to RSW and so he was certainly not trying to hide it. He said whether a conviction was spent or unspent makes no difference so far as he is concerned because he is a changed man, he is fitting in with society, he has a viable business, he employs people and he says that he is a success story and has now come full circle. He again referred to having had numerous doors slammed in his face in the past but maintains that if another door was slammed in his face and he was not granted the licence it would not in any event stop him from progressing with his life.

Decision.

44. The tribunal unanimously finds that Mr Rhys George is a fit and proper person to be licensed and the Applicant's appeal against the decision of Rent Smart Wales dated 13th June 2018 to refuse him a licence under Part 1 of the Housing (Wales) Act 2014 to carry out lettings work and property management work is allowed. The tribunal does not consider that there should be any special conditions attached to the licence.
45. The tribunal very carefully considered all of the written and oral evidence in reaching its decision. We were very impressed with the evidence given by Mr George. In our assessment he spoke honestly and candidly. He did not seek at any stage to minimise the seriousness of any past offending, nor when he spoke of difficulties in the circumstances of his early life on a council estate in Newport, did he seek sympathy or suggest that this was a reason or excuse for offending behaviour. Indeed he volunteered that it was not. He spoke convincingly about his desire to rehabilitate himself, about the many obstacles that he had found in his path in the search for employment after leaving prison and the way in which he had overcome these. The tribunal considered that Mr George had demonstrated commendable strength of character and insight by recognising that he needed to make major changes in his life in order to break the cycle of offending that had previously characterised it. We have no doubt that the decision to leave Newport came at great personal cost to him in terms of his relationship and the consequent difficulties that has caused him in having contact with his children who still reside there. At the same time, that decision was clearly the correct one.
46. We do not consider that Mr George was attempting to mislead RSW by his mistake over the latest criminal damage conviction. It was on the DBS form that he submitted and he spoke in detail about it.
47. To go from having no real employment history and an unenviable criminal record, to gaining qualifications in track safety, forming his own company, obtaining specialised contract work and employing others is in our view a very significant achievement. Mr George told us of the long hours that he was working. Whilst we of course note and accept that his conviction is not spent under the 1974 Act until 2022, we do consider that there was considerable evidence before us that Mr George is significantly rehabilitated in a very real and practical sense. To use Mr George's own analogy, whilst it may be that he has found a number of doors slammed in his face in the past, the tribunal consider that the door to being a responsible landlord is open to him and the tribunal expects him to manage his property and his tenants with all due responsibility.

48. Despite the concerns of RSW as expressed by Mr Reed, the tribunal does not consider that Mr George is likely to become involved in drug-related activity and criminality. He was involved in serious offending in the Newport area where he had a criminal history. The changes that he has made in his life after being released from prison, in moving cities and in working hard to obtain qualifications and set up a company are changes of such magnitude that the tribunal considers that these factors are of relevance to the applicant's character and integrity to let or manage residential properties. His recent history, upon careful consideration and upon balance, outweighs the serious unspent conviction when analysing the relevance of that conviction to Mr George's current situation and suitability to be granted a licence.
49. Mr Reed's answers to the tribunal's questions demonstrated a degree of rigidity and inflexibility in his thinking. He did not appear to consider that Mr George was particularly remorseful and he emphasised that he considered that Mr George was motivated to have a licence for economic reasons. The tribunal disagreed with Mr Reed's assessment and, if, by managing his property himself, Mr George can benefit to some extent financially, then that is an entirely proper view for Mr George to take and not one that deserved to be treated with suspicion or reserve.

Further general observations.

50. The tribunal recognises the difficult job that RSW has in implementing and maintaining the licensing of private landlords in Wales and the need to ensure that where there are vulnerable tenants that they are adequately protected and that standards for private rented accommodation in Wales are driven up and maintained. From the cases involving RSW that have come before the tribunal, it is clear that RSW staff work with dedication and make their decisions in good faith. Although it should be obvious, we nevertheless stress that each decision is made upon its own merits reflecting the particular circumstances of the individual case. There is no doubt that Mr George has an unspent conviction for a serious offence. Drug dealing and its attendant consequences and problems can and does blight individuals and communities. Nothing in this tribunal's decision in any way minimises the seriousness of Mr George's past offending. RSW were entirely correct in treating the matter seriously.
51. However, Mr Griggs submission that it would be hard to see how anyone with a conviction for dealing drugs could be a fit and proper person demonstrates a concentration upon the offence not the offender. We recommend that even where the offending is deemed by RSW to be so serious that the granting of a licence is inappropriate and the applicant is not a fit and proper person, that all applicants should be invited to a personal interview. Whilst an unspent conviction is inescapable and indisputable it is still appropriate to investigate the current circumstances of the applicant and give them an opportunity to provide further information in support of their application. Whether an applicant then chooses to attend for interview is a matter for them.

52. Mr George was not offered an interview. The tribunal also consider that RSW were misplaced in suggesting and emphasising both in their written and oral evidence, that Mr George lacked remorse and was behaving flippantly solely on the basis of a few words that he had written on the DBS form that he sent into RSW. That was an entirely disproportionate response to a few words on a form and it was wrong for RSW to have firstly drawn such conclusions about flippancy and lack of remorse from them and secondly for Mr Reed to have maintained that position at the hearing after hearing Mr George's evidence. It may be of course that even had he been offered and attended at an interview, RSW would have assessed Mr George as not being fit and proper, but we consider that in the interests of procedural fairness all applicants should be treated in the same way.

53. We have addressed the issue of spent convictions earlier in this decision, but we recommend, as the RSW scheme continues and develops, that in accordance with section 20 (7) the Welsh ministers consider using their power to vary the section or to update the guidance in section 20(6) to specifically give further information and guidance upon spent convictions and how they are to be dealt with. We believe that this would be of benefit to all applicants for licences and indeed to RSW.

DATED this 13th day of February 2019.



CHAIRMAN