

Y TRIBIWNLYS EIDDO PRESWYL YNG NGHYMRU

RESIDENTIAL PROPERTY TRIBUNAL IN WALES

Reference: RPT/0016/09/20

In the Matter of an Application under Section 27 of the Housing (Wales) Act 2014

APPLICANT: Aniela Orlicka

RESPONDENT: Rent Smart Wales ("RSW").

TRIBUNAL: Claire Jones (Legal Chair)
Paul Lucas (Surveyor Member)
Juliet Playfair (Lay Member)

HEARING DATE: 20 January 2021 by Cloud Video Platform remote hearing.

Appearances: Barry Cawsey, Counsel for the Applicant.

Richard Grigg, Solicitor and Christina Brown, Senior Housing Surveyor for the Respondent.

DECISION

By unanimous decision, the Tribunal has decided to quash the revocation of the Applicant's Agent Licence pursuant to Section 27(5)(d) of the Housing (Wales) Act 2014.

REASONS FOR THE TRIBUNAL'S DECISION.

The Background

1. The Applicant has acted as a property lettings agent since 2016, letting and managing a large portfolio of properties in Newport, to include several houses in multiple occupation (HMOs). The portfolio included properties owned by third party landlords, properties owned by the Applicant in her personal capacity and also properties owned by two companies; ADO Options Ltd ("the First Company") and ADO Empire Ltd ("the Second Company") of which she was Director.

2. RSW granted an Agent Licence to the Applicant dated 2nd November 2017, to expire on 1st November 2022. It contained a number of conditions including the following;

Condition 4

The licensee must comply with the Code of Practice for Landlords and Agents licensed under Part 1 of the Housing (Wales) Act 2014. A Copy of the Code can be viewed online on our Downloads Page. The Code contains two elements. First and foremost, it sets out what agents must do to keep to the conditions of this licence. All requirements given as ‘musts’ are already contained in legislation and are requirements the licensee should already be aware of due to the training completed to obtain this licence. The second element of the Code is information on what can be done to raise standards above the minimum level required by law. This is described as “Best Practice”, and is shown in shaded boxes throughout the document. These are carried out at the discretion of landlords and agents. Failure to meet Best Practice would not be a reason for Rent Smart Wales to revoke a licence.

Condition 7

This licence has been granted on the condition that the licensee is considered fit and proper. Should this change and the licensee or anyone associated with the licensee is convicted of an offence during the period of the licence the licensee must notify Rent Smart Wales within 14 days of being convicted. Please note driving offences are exempt.

3. On 4th November 2019, the Applicant pleaded guilty to 27 offences under the Housing Act 2004 following a prosecution brought by Newport City Council (“NCC”). She pleaded guilty to a further 30 offences in relation to the First Company under the same legislation. The Applicant and the First Company were convicted of these offences on 29th January 2020. The Applicant was fined £18,959 and the First Company was fined £180.
4. On 28th August 2020, RSW issued a formal notification of its decision to revoke the Applicant’s Agent Licence with effect from 29th September 2020 on the grounds that the Applicant had breached Conditions 4 and 7 of her licence and was not a “fit and proper person” to hold a licence in that she and the First Company, with which she was associated, were convicted on 29th January 2020 of housing offences.
5. The Applicant appealed to the Residential Property Tribunal in Wales.

Preliminary Issues

6. The Tribunal wished to ensure that there was total clarity on the nature of the application to be heard before it. There are two separate licensing regimes; firstly, the licensing of Houses in Multiple Occupation (“HMO”) pursuant to the Housing Act 2004 (“the 2004 Act”) which was administered in this case by NCC and secondly, the letting and management of private rented houses pursuant to the Housing (Wales) Act 2014 (“the 2014 Act”) and which is administered by RSW.
7. The Applicant completed the Tribunal’s “Form RPT 9” when submitting her appeal to the Tribunal on 17th August 2020. This form normally relates to the 2004 Act regime. The contents of the Application appeared to conflate licensing matters under the two separate regimes however. It appended a copy of the RSW licence, but also a letter dated 4th August 2020 from NCC to the First Company, communicating a decision to revoke the Company’s HMO licence and stating; “a formal notice will be sent to you in each case detailing the Council’s decision.” This letter referred to the right to appeal within 28 days from the date of formal notice.
8. The formal revocation by RSW of the 2014 Act licence of 28th August 2020 post-dated the application. The Tribunal office therefore wrote to the Applicant on 29th September 2020 and the response was as follows; “Hi I apply against revoke of my Rent Smart Wales Licence, there is no HMO Licences being revoked.” Both RSW and NCC were informed of the position and the Tribunal’s Vice-President duly exercised his powers under Regulations 6(2) and (3) of the Residential Property Tribunal Procedures & Fees (Wales) Regulations 2016, to relax the formal application requirements in Regulation 6(1) and treat the appeal on the basis that it was an appeal against RSW’s decision to revoke the Agent Licence. This decision being made in accordance with the overriding objective in Regulation 3(2) of dealing with an application fairly and justly and Regulation 6(2) on the basis that;
 - (a) *the particulars and documents contained in an application are sufficient to establish that the application is one which may be made to a tribunal; and*
 - (b) *no prejudice will be, or is likely to be, caused to any party to the application as a result of such dispensation or relaxation.*
9. Mr Cawsey agreed on behalf of the Applicant that there had originally been some confusion in relation to the appeal, however it was now absolutely clear that the appeal related to the RSW Agent Licence and he was not aware of any correspondence or documents subsequent to NCC’s letter dated 4th August 2020 which stated that formal notices would follow. Mr Griggs agreed on behalf of RSW that the issue had been raised with RSW and it had accepted that the appeal related to the RSW Agent Licence. RSW’s evidence and statement of 2nd November 2020 had been prepared on this basis.

10. The hearing therefore proceeded on the basis that the appeal was one in relation to RSW's decision to revoke the Agent Licence.
11. The Tribunal then raised one further point of clarification in relation to the nature of an Agent Licence and Mr Cawsey confirmed on behalf of RSW that if a person was granted an Agent Licence under Section 18(b) of the 2014 Act, RSW would not require that person to hold an additional Landlord Licence under Section 18(a) if they let and managed properties in their personal or Company Director capacity.

The Legal Framework

12. RSW have, in its written submissions, helpfully set out the main provisions of the applicable legislation, guidance and code. In summary however;

Section 18 of the 2014 Act provides that RSW may grant two kinds of licence, namely a Landlord Licence or an Agent Licence 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 a licence application. Before RSW grant a licence to an Applicant, they must be satisfied that the applicant is a fit and proper person to be licensed and that certain training requirements have been met or will be met.

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),

(b) it appears to the licensing authority that the evidence is relevant to the question whether the person is 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).

....

Section 22 of the 2014 Act provides that a licence must be granted subject to a condition that the licence holder complies with any code of practice issued by the Welsh Ministers under Section 40 (“the Code”). RSW may also grant a licence subject to such further conditions as it considers appropriate.

Section 23 states that the licence holder must notify the licensing authority in writing of certain changes and by virtue of Regulation 8 of the Regulation of Private Rented Housing (Information, Periods and Fees for Registration and Licensing) (Wales) Regulations 2015, this includes;

(e) any material change that would constitute evidence of the matters referred to in section 20(3) to (5) (fit and proper person requirement);

Section 25(1) of the 2014 Act provides that a licensing authority may revoke a licence if -

(a) The licence holder has breached a condition of the licence;

(b) The authority is no longer satisfied that the licence holder is a fit and proper person to hold a licence.

Section 27 sets out the licensing appeals process against certain decisions including revocation of a licence and Section 27(3)(b) states that an appeal may be determined having regard to matters of which the licensing authority was unaware. Section 27(5) states that in this instance; *the Tribunal may confirm the decision of the licensing authority or alternatively -*

(d) in the case of a decision to revoke a licence, to quash that decision.

Guidance

13. Guidance was issued by Welsh Government and RSW in October 2015 entitled; 'Guidance on “the fit and proper person” test for licensing of landlords and agents' (“the Guidance”). With regard to this test, 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”.

Paragraph 5 of the Guidance states that the licensing authority must have regard to all matters it considers appropriate and adds;

“Any evidence considered should be relevant to the person’s fitness to hold a licence and let and manage rental properties in Wales.”

Paragraph 6 of the Guidance makes it clear that in respect of criminal offences, RSW *“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.

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.”*

The Code

14. Section 40 of the 2014 Act requires Welsh Ministers to issue a Code of Practice setting standards relating to letting and managing rental properties. As above, Section 22 makes it a condition that any person issued with a licence under Part 1 of the Act must comply with the Code of Practice. A document was duly published in October 2015 and is entitled; “Code of Practice for Landlords and Agents licensed under Part 1 of the Housing (Wales) Act 2014” (“the Code”). It contains certain “Requirements” as well as “Best Practice” to raise standards above the minimum required by law.

It also states;

“All landlords and agents who hold a licence under the Rent Smart Wales scheme must abide by the Requirements of the Code. A landlord or agent who fails to comply with any of the Requirements runs the risk of losing their licence which means that they would be unable to let or manage any residential properties.”

Paragraph 4.10 states, with regard to property conditions; *“A property must be kept in a safe condition, and with no unacceptable risk to the health of the tenants...”*

Paragraph 4.20 states; *“All requirements regarding mandatory licensing schemes and additional schemes for Housing in Multiple Occupation in Wales must be adhered to, along with all Houses in Multiple Occupation Management Regulations.”*

The evidence and the hearing.

Written evidence and submissions on behalf of the Applicant.

15. The Applicant’s appeal form dated 17th August 2020 includes four grounds of appeal to support her application as follows;
 - That the Tribunal set aside the finding that she was not a “fit and proper person” to continue as a licence-holder and essentially to quash the revocation decision.
 - That the convictions arose as a result of mistakes due to inexperience and lack of knowledge. The Applicant said that she had corrected her failures and was now a fit and proper person to continue to manage properties.
 - That she did not have the propensity to commit criminal offences and that she held the interests of her tenants in the highest regard.
 - That she understood her obligations to her tenants, NCC and RSW and society in general to provide a high standard of safe accommodation with no adverse impact on the local community.
16. The Applicant stated that she came to the United Kingdom in 2006 and that this was now her home. She is a single mother and is the sole wage earner.
17. The Applicant stated that she was a fit and proper person (to hold an Agent Licence); “with the right character and integrity and possessed of the proper knowledge and experience”. She wished to say how sorry she was for her conduct which resulted in conviction. She was embarrassed and ashamed that she had been convicted and it was a matter of huge regret, stress and upset for her.
18. The Applicant said she has always tried to be a good landlord and to look after her tenants and that the safety of her tenants was a top priority for her. She accepted that the breaches had the potential to have had a wider impact on others and the surrounding community.
19. The Applicant stated that she had entered guilty pleas to all charges at the earliest opportunity and that the conviction would be spent on 29th January 2021. She said she would never forget the circumstances that led to conviction and what she experienced since the conviction and that there would be no repeat of what had happened.

20. When the Applicant first started her business, she was letting properties to help immigrants to find affordable accommodation as, having been in the same position, she knew how difficult it could be to find a safe and comfortable room when first arriving in the country.
21. The Applicant stated that by 2019, she had responsibility for a number of houses and the LA would inspect them and she promptly remedied any issues of maintenance to the satisfaction of the LA. She currently owns six HMO's which had been inspected by the LA without giving rise to a complaint about her fitness to manage HMO's. She also owns two further properties which are let as single dwellings. The Applicant also let a number of other properties for an agency and private landlords, in relation to which the LA again raised no concerns. This represented 25 properties in total.
22. The Applicant stated that the convictions concerned four further properties, three of which were rented from a private landlord and the fourth from the same agency as before. She said she made the stupid mistake of assuming that all four houses had HMO licences. She accepted that she had ultimate responsibility however. With hindsight she said she had taken on too much responsibility and had too much to cope with and that she had learnt from her mistakes and had drastically changed her working practices.
23. As to the condition of the properties subject to conviction, the Applicant said she wrongly thought that these were the responsibility of the property owner or their managing agent. She now realised that this was wrong.
24. The Applicant said that as soon as breaches came to light, she immediately reduced her portfolio to ensure that the remaining properties were managed properly. She retained nine properties and was intending to reduce the portfolio to 5 HMO's only which she would maintain to a high standard. She also stated; "I will never manage HMO's for a third party in future."
25. At present, the Applicant's properties were being managed by a third-party agency whilst awaiting the outcome of her appeal at a cost of £900 per month plus further fees as well as £1,000 per month which she was currently paying in fines in connection with NCC's prosecution.
26. The Applicant stated that she has; "a good, honest and reliable character at my core. I have integrity. I have a strong work ethic".
27. The Applicant said that she was able to comply with the Code of Conduct. She accepted that she had not informed RSW of her convictions, however she said this was because she was told by the LA at court that they would inform RSW. She now realised that she should also have told RSW herself in any event.
28. Finally, the Applicant exhibited to her statement a number of character references from her tenants and photographs of some of the rooms that she lets which showed

the standard of room she makes available for tenants. She also appended a copy of a HMO licence which had been granted to the Applicant by NCC on 31st December 2019.

Written evidence and submissions on behalf of RSW.

29. RSW provided a written statement together with a clear and comprehensive file of evidence which RSW referred to as its “Statement of Reasons”.
30. RSW highlighted the 27 offences for which the Applicant was prosecuted and the 30 offences for which the First Company was prosecuted on 29th January 2020 in relation to four HMO properties, which had not appeared on the RSW managed properties list for the Applicant.
31. RSW also focused on the fact that some of the offences were for failing to licence the four properties as HMO’s and to provide adequate fire safety measures required under various statutory and regulatory provisions. These were in addition to offences of failure to return documents and of structural, fixture, fittings or appliance safety and standards. RSW concluded that the Applicant was not a fit and proper person to manage and let properties on behalf of other landlords as there had been significant property management failures despite attending training and the reminder of legal responsibilities within the licence conditions.
32. RSW fairly confirmed that in response to a request for further information for the investigation into the Applicant’s fitness and propriety, that NCC’s response concluded; “that there was no other history to note other than the prosecution”.
33. RSW also raised concerns about possible non-protection of tenant deposits, access to properties without notice and the processes employed by the Applicant for re-possession.
34. In relation to the Applicant’s four grounds for appeal, RSW said as follows: -
 - 34.1 RSW do not consider that the Applicant is a fit and proper person to hold an agent’s licence as detailed in their officer decision report and formal revocation letter dated 28th August 2020.
 - 34.2 RSW dispute the Applicant’s inexperience and lack of knowledge in the private rented sector, as she had started to manage rental properties in 2016 and bought her first HMO in 2018. RSW also stated that the Applicant had sat a one-day classroom-based agent course delivered by an RSW-approved trainer in December 2016. The course covered legal responsibilities of both landlords and agents as well as a section on HMO licensing. The Code of Practice set out the requirements as well as best practice for landlords and agents and NCC make available a considerable amount of information on HMO licensing.
 - 34.3 As to the Applicant’s propensity to commit criminal offences, RSW do not comment. As to whether the Applicant holds the interests of her tenants in the

highest regard, RSW states that this is not borne out, due to her; “failing to adequately manage HMO properties and putting multiple tenants’ safety and well-being at risk at four different properties due to believing that she had no responsibility for their safety”.

34.4 RSW was of the view that the conviction showed that the Applicant did not fully understand her responsibilities as a landlord and managing agent. There was a potential impact on tenants, both physically and mentally as well as putting any visitors to the property and the wider community at risk. It had been necessary for NCC to intervene as regards safety of the properties. RSW referred to the high level of trust which was required between all concerned, due to the nature of an agent licence and the ability to manage any number of properties on behalf of other landlords.

34.5 RSW stressed the point that HMO properties are higher risk rental properties in terms of the number of tenants, size of properties, fire and appliance risks and the impact this has on local authority services where there is a failure to adhere to HMO management requirements. RSW were particularly concerned, as the properties which were the subject of prosecution were poorly managed by the Applicant and she is still managing HMO properties.

34.6. RSW have confirmed that the Applicant was not currently managing or letting any properties and she had appointed a licenced agent to carry out the management and letting activities for her properties. Tenants needed to have faith that the licensed agent status would mean that their house met minimum legal requirements and be safe and that management practices employed would be fair and legal and that the landlord/agent had been assessed to be “fit and proper” to hold a licence.

35. RSW concluded that the Applicant was no longer a fit and proper person to hold a licence and that she had also breached two of her licence conditions including failure to comply with the requirements of the Code and failure to inform RSW of her conviction or that of the First Company, this being a breach of licence condition 7.
36. RSW considered that, as housing offences are specifically mentioned in the legislation and that they therefore reflect on the character and integrity of a person, as such person is required to have a very high level of responsibility. RSW also referred to a pattern of management failures which the Applicant had; “been content to allow displays disregard for safety and welfare of their Tenants and undermines good faith”. RSW then said that the representations provided by the Applicant during the decision-making process did not allay RSW concerns.
37. RSW considered that it was duty bound to have regard to these convictions as unspent and relevant and revocation did not prevent the Applicant from being a landlord and receiving rental income.

38. Finally RSW had taken into consideration the fact that the Applicant was associated with the First Company which was also convicted of a larger number of offences in January 2020.

The Applicant's oral evidence and submissions

39. Of the remaining nine properties within the Applicant's portfolio, four are on the market and two of these have been sold subject to contract. Retaining five or six properties is now the limit of the Applicant's aspirations and since February 2019 when the breaches came to light, she has drastically reduced the burden which she had imposed on herself. The burden had been reduced from 28 down to five or six at an absolute maximum.
40. The photographs appended to her Statement showed the standard of accommodation in three of the Applicant's current properties.
41. The NCC prosecution and subsequent conviction had been an incredibly painful lesson for her. She accepted her responsibilities and her duty to protect her tenants from harm. Her aspiration had originally been to better herself, however she had taken on too much responsibility and accepted that standards fell. She had learnt her lesson, had stripped back her interests to properties that only she was responsible for and now managed these remaining properties in a highly professional manner. She was asking to be given a second chance.
42. In response to questions from Mr Grigg and the Tribunal, the Applicant responded as follows;
- 42.1 She was not able to properly recollect the HMO section of the training which she had received in 2016.
- 42.2 She said that she had signed a tenancy agreement with the private landlords of the relevant HMO's and so thought she was acting as a tenant rather than an agent.
- 42.3 She had 37 tenants in the HMO properties, most of which were 6-bedroomed houses, with one other being a 7-bedroomed house. As regards the properties that have been sold subject to contract, one tenant had left already and the other was due to leave at the end of April 2021.
- 42.4 She had not engaged in further formal training since the 2016 course and said that she was not aware of what extra training she could do. She would do extra training if someone would tell her what she could do (other than reading material on the internet and on the housing forum to which she has access).
- 42.5 The Applicant confirmed that she was covered by a rent deposit scheme.
- 42.6 As regards the Second Company, the Applicant stated that it still exists at the moment and one of the remaining properties is in its ownership however she is

looking to simplify this arrangement. The First Company now deals only with refurbishment and building maintenance.

42.7 The four properties for which she was prosecuted did not appear on the managed properties list as she said this was an oversight, and that she had barely been on top of her paperwork at the time, whilst trying to look after her tenants.

42.8 She did have HMO licences for all properties within her current portfolio and NCC had not contacted her following the letter of 8 August 2020 which indicated that it had decided to revoke certain licences..

42.9 On the day of her conviction and sentence, the Applicant did not remember exactly how it communicated to her that the LA would inform RSW of the conviction, as that day had been a dreadful experience.

RSW's submissions and oral evidence

43. Mr Grigg said that RSW were relying on the 57 convictions which were not currently spent. He referred to all the details which were contained in the statement and said that Ms Christina Brown, Senior Housing Surveyor for RSW was available to answer any questions in relation to the detailed "statement of reasons".

44. In response to questions from Mr Cawsey and the Tribunal, Ms Brown confirmed that;

44.1 The on-going risks were that the Applicant would still be managing at least five properties in the light of proven serious breaches relating to fire safety, the lack of HMO licences and in relation to the condition of properties.

44.2 Although the portfolio may only consist of her own properties, the Applicant's licence will last for five years and, despite her current intentions, she will still have the ability to manage properties for other Landlords and there needed to be a relationship of trust in relation to agents.

44.3 There had been no reports of non-compliance since the prosecution and it was accepted that the Applicant had shown remorse and had made significant changes in her portfolio. It was stressed that although these were the first convictions regarding housing matters in five years and although offences overlapped regarding the Company, there had nevertheless been 57 separate housing offences.

44.4 As to the readiness of the Applicant to attend further training, there were several courses available on-line provided by RSW as well as courses made available by other training providers, which the Applicant could attend at will.

44.5 As well as the "fit and proper person" issue, RSW's decision was based on breaches of conditions 4 and 7 of her licence. Condition 4 referred to paragraph 4.10 of the Code of Practice which states; "A property must be kept in a safe

condition, and with no unacceptable risk to the health of the tenants...” and to paragraph 4.20 which states that all mandatory licensing schemes and additional schemes for HMO’s must be adhered to. Both conditions linked back to the evidence which was made available following the NCC conviction.

44.6 Following the sentencing hearing on 29 January 2020, the LA had contacted RSW to inform them of the outcome on 4 February 2020 as this was an arrangement agreed between local authorities and RSW in a memorandum of understanding. Condition 7 of the Agent Licence required the Applicant to inform RSW of the prosecution however.

44.7 The offences would become spent under the Rehabilitation of Offenders Act 1974 on 29 January 2021.

44.8 It was not the case that any conviction in relation to a housing offence would lead to a decision to revoke a licence, as each case would be looked at on its own merits and the licence-holder’s representations would be taken into account.

44.9 In terms of the process for investigation, RSW usually allowed a period of upgrading following reports in relation to property standards. Referrals were sometimes made to local authorities or the HSSC and if concerns were highlighted by a local authority or multiple complaints arose, then a “fit and proper person” test would be applied.

49.10 Ms Brown believed that HMO licences were in place for the Applicant’s six retained properties. There was no further information other than NCC’s letter dated 4 August 2020.

49.11 In terms of impact on residents and the wider community, RSW referred to the high number of tenants in HMO properties. The offences related to matters such as fire safety and structural safety and this did not give confidence as the Applicant was retaining a number of HMO properties. She had not carried out further training on a voluntary basis.

Closing submissions on behalf of RSW

50. Mr Grigg made it clear that the only power available to the Tribunal was to uphold or to quash the Agent Licence which had been granted in 2017 for a period of five years. As an agent, the Applicant could take on any number of properties and go back to the previous level of management activity, whereas it may have been more appropriate for her to have applied for a Landlord Licence instead.
51. The reality was that the Applicant had 57 unspent housing convictions, although it was accepted that these would soon be spent. Nevertheless, Section 20 of the 2014 Act did not limit the matters to which RSW must have regard to unspent convictions only. The Guidance made it clear that RSW could consider all matters

it thought appropriate and the Tribunal had previously considered the question of spent convictions and their possible relevance.

52. Mr Grigg stressed that there was a great difference in terms of the consequences of having an Agent Licence and a Landlord Licence and that whilst the Applicant had acted as an agent, the consequences of her business operation had been demonstrated. As an agent, it would be possible to take on as many properties as the Applicant wished.

Closing submissions on behalf of the Applicant

53. Mr Casway referred to the legislation and paragraph 12 of the Guidance and reflected on the four factors listed;

53.1 As to the conviction in relation to the Applicant's character and integrity to let or manage residential properties, the Applicant was of good character, a person of integrity and very suitable as shown in the character references appended to her statement. She loved being a landlord, thoroughly enjoyed her business and was well-liked by her tenants. There had been no adverse reports as to how she had conducted herself. Mr Casway did not want to minimise or trivialise the offences which were committed two years ago in relation to four properties however. The Applicant had been overwhelmed by what she had taken on and made genuine mistakes. She would be a remarkably foolish person to go back into the deep end following an experience which had scarred her. It had been a tremendously stressful time for the Applicant and she had been fully punished.

53.2 As to the seriousness of the conviction, in terms of impact, or potential impact, upon the residents and the wider community and the cumulative impact of the convictions, it was of note that there had been no complaints by residents and no adverse impact on the wider community. He appreciated that there was always potential impact, for instance from an undetected fire due to a faulty fire alarm. The context was the serious matter of tenant safety. The tenants in her remaining properties were in very safe hands and the properties were maintained to a high standard. In summary, this did not cross the line to necessitate revocation.

53.3 It had been a year since the convictions and sentence and the length of time since commission of the offences was two years. The Applicant pleaded guilty at the earliest opportunity and had had two years to reflect and to make significant remedial changes so as not to repeat previous foolish mistakes.

53.4 As regards mitigating circumstances, Mr Casway stated that the Applicant had been fully punished. She had suffered the stress of court proceedings and the loss of her hitherto good character. She appreciated that RSW remain of the view that she is not a fit and proper person to hold an agent licence. She has shown remorse, has accepted her mistakes, taken significant remedial action, had no previous or subsequent complaint and is not working against NCC or RSW. Mr

Cawsey stated that there could be absolute confidence that the Applicant would do a good job of this in future. The Applicant was terribly embarrassed and begged for this second opportunity to prove herself. She was subject to on-going financial hardship and although she had not needed to instruct a third-party agent pending this hearing as her licence had not yet been revoked, she considered that it would not be right to act otherwise as a law-abiding citizen.

54. Turning to the licence condition 4, Mr Cawsey stated that the Applicant could comply with the licence conditions. Her breach had arisen from a genuine mistake when she had taken on too much.
55. In relation to licence condition 7, Mr Cawsey submitted that this was a technical breach of condition, that there had been no risk of non-notification. There had been no deception or harm and the Applicant did not intend to be in breach again in the future.
56. In conclusion, Mr Cawsey submitted that there were no risks to clients and tenants. The Tribunal could have the utmost confidence that tenants would be safe and that the Applicant would comply with housing legislation in future. He invited the Tribunal to quash the licence revocation.

The Tribunal's findings and reasons.

57. Having carefully considered all the written evidence, including all Statements, Appendices and Exhibits, the evidence presented at the hearing and the parties' submissions, the Tribunal has decided on a unanimous basis, that in the circumstances of this case, the revocation of the Applicant's Agent Licence, as communicated in a letter by the RSW to the Applicant dated 28th August 2020, be quashed.
58. The Tribunal have considered this matter with full regard to the background to the 2014 Act and the clear intention of the legislation to improve standards of letting and management in the private rented sector and to raise awareness of the respective rights and responsibilities of landlords, agents and tenants. It is also mindful that RSW is carrying out a vital role in this context to help raise standards.
59. The Tribunal is mindful that the fact that a conviction falls within the categories listed within Section 20(3) and (4) of the 2014 Act, does not of itself mean that a person necessarily cannot be a fit and proper person for the purposes of the 2014 Act. It is a matter which needs to be taken into account however. The wording of Section 20 is broad and the Tribunal must therefore consider all appropriate matters. In addition, by virtue of Section 27(3)(b) of the Act, the Tribunal is able to have regard to matters of which the licensing authority was unaware and RSW will have been unaware of many of the matters which were before the Tribunal for consideration.

60. The Tribunal considers that both the Applicant and the witness for RSW were both reliable and credible witnesses and they responded to all questions put to them in a helpful and candid manner. The key facts of the case were not in dispute and ultimately the question of whether the Tribunal should uphold or quash the decision of RSW to revoke the Applicant's Agent Licence rests upon the Tribunal's judgment as to whether it is satisfied that the Applicant is a fit and proper person to hold a licence and also whether the breaches of conditions of that Licence justify such revocation.
61. In this matter, RSW was notified by NCC on 4 February 2020 that the Applicant and the First Company had been convicted of 27 and 30 serious offences respectively, dating back to matters which had been committed in February 2019. The evidence comprised of the full memoranda of conviction and photographs taken during the property inspections that led to the conviction. The photographs showed disrepair and reflected poor standards of management in the properties which were the subject of the prosecution by NCC.
62. It was necessary therefore for RSW to have regard to the Applicant's convictions for a large range of housing offences in relation to four properties and these convictions remained un-spent at the date of hearing. RSW have, fairly, conceded that they have not received complaints about the Applicant's management of HMO or other properties. Despite the fact that the Applicant states that she has no intention of expanding her portfolio again, this does not detract from the reasonableness of RSW's concerns on this point as there is always the potential that the Applicant could nevertheless take on more properties as an agent up to the point of expiry of her current Agent Licence in November 2022.
63. The Tribunal considers that the conviction of the Applicant and her Company for 57 separate housing offences in relation to four properties was a very serious matter indeed and that this was reflected in the total fine and costs of just over £19,000 which was now being paid off by the Applicant at the rate of £1,000 per month.
64. With regard to the "fit and proper person" test, the Tribunal has carefully considered the provisions of Section 20 and paragraph 12 of the Guidance. It is mindful that the factors listed in the Guidance are those which may be taken into account in deciding whether a conviction is relevant to a person being a fit and proper person. As such, there is an element of discretion, however the Tribunal has considered each factor as follows;

64.1 The convictions were not spent at the date of the hearing and were highly relevant to the question of letting and managing residential properties. The Tribunal is also concerned that following prosecution, the Applicant had not voluntarily signed up to any further relevant training courses. Nevertheless, the Tribunal also considers that there were positive indicators to take into account in

deciding whether the convictions reflected upon the character and integrity of the Applicant to let or manage residential properties going forward. The Tribunal considered the Applicant to be an honest witness who fully accepted responsibility for her failures, did not seek to down-play the seriousness of the offences in any way or seek to blame others. The Applicant had also significantly reduced the portfolio for which she was responsible and she was now concentrating all her efforts on HMO properties which were licensed and over which she had control as Landlord.

64.2 The seriousness of the conviction had a potential to impact upon the residents and the wider community as there was a potential that failure of provision of adequate standards in terms of fire safety and structure could have had serious knock-on impacts and consequences and this was accepted by the Applicant.

64.3 The Tribunal considers that the conviction was relatively recent, however it also notes that the conviction would become spent under the Rehabilitation of Offenders Act 1974 within just over a week of the date of the hearing, as the sentence had been one of a fine and the Tribunal are mindful of the fact that the purpose of the legislation is about allowing rehabilitation of offenders within appropriate time-scales in order that offenders were afforded the chance to reform.

64.4 The Tribunal accepts that in this case there are a number of significant and compelling mitigating factors. It notes that the Applicant had pleaded guilty at an early opportunity and has not sought to excuse her failures. She had drastically reduced her property portfolio and was now concentrating on managing up to six HMO's which she owned. She had demonstrated that she could work with NCC and RSW and she is passionate about her business and her work with tenants. References from her tenants show that the Applicant makes extensive efforts in relation to practical management of her properties and they have a high regard for her. The prosecution had been an extremely traumatic experience and she feels very ashamed about it. She is still paying off the fine at a rate of £1,000 per month and this has been a salutary lesson. She had also engaged an agent to manage her properties while she awaited the appeal hearing and this demonstrates respect for the appeal process. Finally, the Tribunal has been impressed by the Applicant's attitude. She had shown an impressive work ethic, dedication and willingness to learn from her mistakes.

65. In addition to the mitigating factors, the Tribunal notes that NCC had granted a HMO Licence to the Applicant on the 31st December 2019, despite the fact that the Applicant had pleaded guilty on the 4th November 2019 to the range of housing offences which included HMO-related offences. The HMO licensing regime under the 2004 Act contains a "fit and proper person" test similar to that contained in the 2014 Act and the Tribunal considers that this suggests that NCC considered her to be a fit and proper person in general terms at that time to hold a licence despite the evidence which had emerged in relation to the prosecution.

66. With regard to the breach of two conditions of the Agent Licence, the Tribunal is of the view that the breach of Condition 4 of the Applicant's Licence is intrinsically linked to the evidence which has emerged from the NCC prosecution and at the time of the commission of the offence. It agrees that the Applicant had not kept the four properties in a safe condition and with no unacceptable risk to the health of the tenants. She had also failed to adhere to all requirements in relation to HMO's. Despite this breach of the condition however, in light of the Tribunal's acceptance of significant mitigating factors in relation to the "fit and proper person" test, the Tribunal considers that this mitigation is also applicable in relation to Condition 4. The Tribunal is therefore satisfied that in the light of the Applicant's experience of the prosecution, it is highly unlikely that there will be a repeat breach of this condition.
67. In relation to Condition 7, the Tribunal considers that the breach of condition was in all the circumstances, a technical breach and that it was extremely unlikely that there would be a repeat breach of this condition. The Tribunal accepts the Applicant's evidence that she was told at court that NCC would inform RSW of the conviction and this is indeed what occurred six days later in accordance with a memorandum of understanding between NCC and RSW. The Applicant accepted that this was her duty, however the Tribunal does not consider that this breach alone or cumulatively would merit revocation of the licence.
68. The Tribunal has also carefully considered the clear distinction between an Agent Licence and a Landlord Licence in terms of the nature and scope and the responsibilities which attach to each. It is satisfied however that the Applicant is now a fit and proper person in the light of her modified and realistic plans and attitude for the future. The continuation of her Agent Licence now provides the Applicant with an opportunity to work with NCC and RSW, to ensure that she is fully trained on all aspects of property lettings and management and is able to adopt best practice as well as meeting the requirements of the Code.
69. In conclusion, having carefully considered the number and seriousness of the housing-related convictions and the breach of Licence conditions, although it is a finely balanced judgement, the Tribunal finds that the mitigating factors tip the balance in favour of the Applicant and it considers that she is of sufficient integrity and good character to retain her Agent Licence. We therefore uphold the Applicant's appeal.

DATED this 15th day of February 2021

CN Jones

CHAIRPERSON