

Y TRIBIIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL

REF: RPT0026/02/21

Applicant: PULLMAN PROPERTIES LTD

Respondent: RENT SMART WALES

In the matter of an Application under Section 27 of the Housing (Wales) Act 2014, appeal against refusal of a Licence.

Tribunal: Trefor Lloyd (Legal Chair)
Johanne Coupe (Surveyor Member)
Bill Brereton (Lay Member)

Hearing Date: 12th October 2021 Virtually on the CVP Platform

Advocates: Mr Joseph Waite for the Applicant Company
Ms Brownell (Solicitor) for the Respondent

Witnesses: Mr Joseph Waite for the Applicant Company
Mr Jonathan Reed for the Respondent

THE DECISION

1. The Tribunal unanimously finds that Pullman Properties is a fit and proper entity to be licensed, and the appeal against the decision of Rent Smart Wales dated the 14th July 2020 to refuse Pullman Properties a Licence under Part 1 of the Housing (Wales) Act 2014 to carry out letting work, and property management is granted unconditionally.

REASONS FOR THE TRIBUNAL'S DECISION

Background

2. The Applicant owns 4 properties in Llanelli and the surrounding area. By way of a letter dated the 14th of July 2020 it was refused a Landlord Licence on the basis that it was not a fit and proper person / legal entity to be so licensed under the Housing (Wales) Act 2014 ("the Act") due to its close association and control by Mr Joseph Waite who has at the time of this Appeal, seven unspent convictions for fraud.
3. The Appellant appeals against the decision on the basis (i) Mr Waite's conviction is irrelevant in relation to being fit and proper to manage rental properties as it had no relation to property rental and there is nothing to indicate that Mr Waite would pose a risk to tenants financially; (ii) The conviction was determined in 2016 and is said by the Respondent to be fairly recent, however the date of determination should be less

of interest and the date of offences committed more relevant, these were between November 2013 and January 2014. and; (iii) the fact that the conviction remains unspent is irrelevant as if it was spent it would not have been disclosed.

Legal Framework

4. In Wales, under the Housing (Wales) Act 2014 ("the Act") it has been a requirement since 23 November 2016 for landlords of a dwelling subject to, or marketed or offered for let under a domestic tenancy, to be registered and licensed to carry out lettings and property management activities. Likewise, any person acting as agent on behalf of the landlord of a dwelling marketed, or offered for let under a domestic tenancy must be similarly licensed to carry out lettings and property management work.
5. 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").
6. Section 6 of the Act requires landlords to be licensed to carry out letting 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.

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

- (2) The things are -
 - (a) Collecting rent;
 - (b) being the principal point of contact for the tenant in relation to matters arising under the tenancy;
 - (c) making arrangements with a person to carry out repairs or maintenance;
 - (d) making arrangements with a tenant or occupier of the dwelling to secure access to the dwelling for any purpose;
 - (e) checking the contents or condition of the dwelling, or arranging for them to be checked;
 - (f) serving notice to terminate a tenancy.
7. Under Section 18 of the Act the Licensing Authority, Rent Smart Wales may grant a licence to landlords to carry out letting and property management activities in accordance with Sections 6 and 7 of the Act. Section 19 contains details of mandatory requirements for the licence application. Before Rent Smart Wales grant a licence to

an Applicant it must be satisfied that certain training requirements have been met, or will be met, and that the Applicant is a fit and proper person to be licensed.

8. Section 20 of the Act sets out the fit and proper person requirement:
 - (1) In deciding whether a person is a fit and proper person to be licensed as required by Section 19(2)(a), a Licensing Authority must have regard to all matters it considers appropriate.
 - (2) Among the matters to which the Licensing Authority must have regard is any evidence within subsections (3) to (5).
 - (3) Evidence is within this subsection if it shows that the person has -
 - (a) committed any offence involving fraud or other dishonesty, violence, firearms or drugs or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (offences attracting notification requirements).
 - (b) practised unlawful discrimination or harassment on the grounds of any characteristic which is a protected characteristic under Section 4 of the Equality Act 2010, or victimised another person contrary to that Act, in or in connection with the carrying on of any business, or
 - (c) contravened any provision of the law relating to housing or landlord and tenant.
9. 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).
10. 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 they do not pose a risk to the welfare or safety of persons occupying the property".
11. 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".
12. 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".*

13. 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. Whilst the Act is silent upon this matter, we consider that the Tribunal's task is to look at the matter afresh, effectively by means of rehearing the application, and that the Tribunal can take into account evidence put before it by either party that may not necessarily have been in the contemplation of each party at the time of the original application and decision to refuse the licence.

Witness Statement Evidence

14. We considered the matter by way of a rehearing based solely upon the evidence available at the time. Accordingly, it was open to both parties to present evidence or submissions that had not been before the original decision maker.
15. On behalf of the Appellant we were provided with a document dated 16th August 2021 referred to as the Skeleton Argument of Pullman Properties Ltd in support of the appeal. This document was produced by Mr Waite but did not include a Statement of Truth. The initial page of the document can be summarised as being the argument being put forward on behalf of the Appellant, that Rent Smart Wales has put too much weight on the convictions of Mr Waite in assessing the fit and proper person test and furthermore it is asserted that there is little or no benefit in terms of any financial risk in refusing the licence.
16. The remainder of the document responds to the statement filed on behalf of Rent Smart Wales by Mr Jonathan Reed which consists of a two-page statement dated the 11th June 2021 which includes a Statement of Truth. That statement confirms that Mr Reed is employed by Rent Smart Wales as an Environmental Health Officer and is tasked with assessing licence applications of this nature. Attached to the statement is a document titled Skeleton Argument which consists of a number of appendices including guidance on the fit and proper person test and also the certificates of conviction and minutes of a representation meeting together with the refusal decision letter dated 14th July 2020 at page 60 in the Respondent's bundle. The letter sets out the following:-

In reaching this decision, consideration has been given to the convictions from an associated person. This person was found guilty of a fraud/dishonesty related offence, contrary to the Fraud Act 2006 and this conviction remains unspent.

Obviously the significance in reaching this decision was:

1. *The nature of the conviction and the offence is of a type specifically included in the Act as being material consideration for the fit and proper test namely a conviction involving fraud/dishonesty.*
2. *The sentence imposed for the offence.*
3. *That the conviction was determined on the 21st July 2016, i.e. is fairly recent.*
4. *That the conviction remains unspent.*
5. *The mitigation provided in the form of an interview was insufficient to draw any alternative conclusion.*

The Evidence at the Virtual Hearing

17. Mr Waite was asked at the outset why there was no Statement of Truth attached to his Skeleton Argument/Witness Statement especially as the directions that had been issued earlier on required the same. Mr Waite's answer was that he had simply forgotten to do so and went on to confirm the veracity of his Witness Statement/Skeleton Argument in relation to the points set out therein.
18. Mr Waite's evidence in chief stood as per the Skeleton Argument which in summary made the following points:
 - a) There had been no issues raised at any point in the ten years relating to tenants having to deal with Mr Waite in relation to all matters including paying and discussing rent and dealing with repairs etc.
 - b) Only three tenants had been evicted during the ten-year period and all evictions were done professionally via the court process at all times.
 - c) Rent payable was accounted for on-line using an account package called "Xero" and tenants can request statements at any stage.
 - d) Furthermore, the appointment of an agent would not mean any difference in practical terms as the company would still own the properties. The company would still receive money from the tenants albeit via a third- party management agent who would simply collect the rent, take a percentage and thereafter account the remainder to the company. The agent would not be responsible for payment of mortgages etc.
 - e) In essence the company would therefore be worse off as it would be receiving less rent than it would if it had a licence in its own right.
19. In terms of Mr Waite's convictions, the details are contained at pages 39 and 40 of the Respondent's bundle. Between the 10th November 2013 and the 20th November 2013 Mr Waite made four false representations in order to make gain for self or another or cause loss to other/expose other to risk. And again, between January 7th and 13th of 2014 he made another three false representations. He was convicted at Swansea Crown Court on the 21st July 2016 and sentenced to a Confiscation order together with 30 months concurrent imprisonment and also prohibited for serving as Company Director for a period of 5 years.

20. By the time of the hearing Mr Waite had again become a Company Director of the Appellant company and the previous director who had stood in during the period of Mr Waite's disqualification, a Mr Iwan Brain, had resigned.
21. In relation to Rent Smart Wales reliance upon the convictions, Mr Waite submitted that they are placing far too much weight on a single short period of offending conducted over a period of two to three months as opposed to a ten-year track record of letting activity and that the convictions were nearly spent.
22. Mr Waite was cross examined by Ms Brownell on behalf of Rent Smart Wales. He agreed he had seven counts of forgery, five in November 2013 and two in January 2014. He said that they had been undertaken in order to keep his business afloat and pay staff. He had a telecommunications company and was also in receipt of regular commission from an insurance company. The insurance company withdrew the commission payments resulting in financial difficulties.
23. He agreed the convictions were not spent but in his words "were not far off – one year left". He told us that he had paid the £37,000 compensation and proceeds of claim payment of £55,000 all amounts had been paid. The fraud counts had been undertaken against Barclaycard in order to gain money to satisfy debts. He accepted that he had dishonestly acted in a criminal manner.
24. He was pressed on the comment he had made on the third paragraph of his statement that it was a single event and that was not correct. Mr Waite again disagreed with this and said it was a two/three months and all part of a single period. The issue was a singular event as far as he was concerned. When it was put to him that by virtue of the content of paragraph 14 of his statement that his conduct had only affected Barclays Bank, he was seeking to minimise his crime he disagreed and said that the point he was making was that such a sum to such a big organisation would not be as significant as to a normal person.
25. He agreed that he had day to day conduct of managing four properties and that rental arrears had accrued back in 2018 when he did not have his eye on the ball and in any event given the time it took due to the current eviction rules to obtain vacant possession of the property the arrears had grown. Mr Waite further confirmed he was now involved with three or four companies and the director of three or four companies as opposed to 2013/14 when he was director and involved in seven or eight companies.
26. Mr Waite was then asked questions by the tribunal's lay member Mr Brereton and confirmed that 2014 was the last time he had offended and there had been no criminal activity since then. He also confirmed that he had not had any complaints in relation to the way he managed the properties and housing matters. He had been dealing with properties for over ten years and to his knowledge had never had a single complaint.
27. He was then asked by the Tribunal Chair how he would obtain assistance if needed. Mr Waite's answer was if it was a maintenance matter he would seek building

assistance, if it was a legal matter instruct solicitors as he had done in relation to serving the notices and effecting eviction. He said he would take professional advice if he could not deal with it himself.

28. He finally said that he regretted the mistake, it had been a very costly mistake financially costing him up to £100,000 and the loss of a business. He stated “a costly mistake I very much learnt from it”.
29. We then heard from Mr Jonathan Reed. With our permission Ms Brownell adduced the following evidence in chief.
 - a) The main reason for refusing the company as a fit and proper person was the unspent convictions of Mr Waite a person who has significant control over the company. Dishonesty was a significant matter. Mr Waite had been tried in the Crown Court and as sole director there would be no-one to monitor his activities.
 - b) Rent Smart Wales was concerned about Mr Waite’s conduct and activities of, for example having to deal with assessing the suitability of tenants, their references, credit checks, tenancy agreements, inventories, matters arising during the tenancy, repair and maintenance and serving notices. These were all matters covered by statute and Rent Smart Wales could not be satisfied that Mr Waite would follow the proper actions given his dishonesty/fraud convictions. Furthermore, there was greater concern now as he was once again the sole director.
 - c) When asked by Ms Brownell if there were any mitigation offered, Mr Reed answered in the affirmative. He said Mr Waite was familiar with management issues, kept a reserve of cash, had supplied the gas certificates. Furthermore, an informal notice had been dealt with directly.
 - d) As far as Mr Reed was concerned however the focus was on the welfare of the tenants that was the key concern.
 - e) He was then asked if bespoke conditions had been considered to which he again answered in the affirmative but then went on to say that as Mr Waite was not a fit and proper person conditions could not assist.
 - f) He went on to tell us that agents that are licensed are deemed to be fit and proper. There are safeguards in place.
 - g) Finally, he was asked that if there was anything he had heard during Mr Waite’s evidence that had made him reconsider. To this Mr Reed answered that whilst Mr Waite recognised his conduct, his role as sole director was a huge concern. In Mr Reed’s opinion what he had heard as answers for Mr Waite “seemed to diminish the offence”.
30. Mr Waite then cross-examined Mr Reed. He firstly asked him how being a sole director in a small company was detrimental. Mr Reed answered that the reason was there was no-one else to oversee any wrongdoing, no checks, no balances. Then Mr Waite put to Mr Reed that he was not trying to diminish his offending by making reference to Barclaycard and the loss of £35,000 not being a significant sum to Barclaycard.

31. Mr Reed said that it was not the financial expediency it is the moral or ethical impact. Mr Reed said he could not understand why the company put itself forward to apply for a licence given Mr Waite's convictions to which Mr Waite replied it was one three-month period in 40 years.
32. Mr Waite went on to put to Mr Reed that the informal notices, being complaints for smoke and waste that had been referred to Rent Smart Wales must have been to do with the tenants. Mr Reed stated that he was unable to confirm as he had no detail.
33. Mr Waite then questioned Mr Reed on conditions. It was put to Mr Reed that he had not considered conditions formally in terms of the decision he had not undertaken the balancing exercise, he had come to a decision before looking at the balancing exercise and the possibility of conditions. Mr Reed's answer was you firstly consider the fit and proper person test and then if that does not apply consider the conditions.
34. Asked how a managing agent would assist as at the end of the day all the agent would do would collect the money being paid to the company. Mr Reed's answer was that a managing agent would have a redress scheme and could deal with data protection.
35. Mr Reed was then asked how many people with unspent convictions had been considered fit and proper. The initial answer from Mr Reed was that in terms of unspent convictions he was not aware of any. He confirmed that he dealt with some 200 applications per annum but it varies, they were currently in a spike as licences were expiring. Mr Reed then recalled on reflection that he had granted one licence to a person with an unspent conviction relating to a firearms offence.
36. Mr Reed was then again asked how an agent would assist. Mr Reed answered that the agent would take money, had business safeguards to carry out management activities. The agent would be a reputable business to safeguard the property management.
37. Mr Reed was then asked by the tribunal's surveyor member Ms Coupe if he had inspected any of the properties, to which the answer was no, he had not. He was also asked about his comments that the issue was the welfare of the tenants whereas he seemed to be dealing with the monetary basis as a potential fraud in the future. The answer from Mr Reed was that fraud and dishonesty type offences could lead to the possibility of offences relating to personal sensitive data, dealing with vulnerable tenants and access to tenants' homes when they were not there.
38. Mr Brereton then asked Mr Reed about the informal notices and Mr Reed confirmed that he had no detail as to whether it was an issue to do with the landlord or the tenant.
39. We then heard closing submissions from Ms Brownell on behalf of Rent Smart Wales. She submitted that the Tribunal has to find that on the balance of probabilities if the applicant is a fit and proper person. On any view the offences are serious as is indicated by the nature of the imprisonment and compensation, Mr Waite accepts criminality and dishonesty whilst Rent Smart Wales accepted the offences were

undertaken eight years ago it did not accept that it was a singular offence. She made reference to the fact that Mr Waite had referred to Barclaycard not losing out and submitted that this was evidence of a lack of insight into the offending diminishing the significance and a lack of integrity. She finally submitted that there is evidence that Mr Waite under pressure, i.e. financial pressure, would break the law.

40. Mr Waite in closing submissions told us that the arrears referred to would have been thousands of pounds in any event as it took six months to evict the tenant at the time. The time he discovered the arrears they were only some £1,000.
41. He submitted that the Respondent refers to the offending as being recent whereas it was not, it was seven years ago and will be spent in a year, and a fresh application could be made without any difficulty in granting a licence as in his view spent convictions were not relevant.
42. Of the three matters that had to be considered he admitted he fell down on one, being the presence of convictions. He had been managing property for ten years without any issue. That outweighs the convictions especially so as only one year is left unspent.
43. Mr Reed did not carry out a proper balancing exercise, he simply concentrated upon it being a series (in his eyes) of serious convictions and he clouded his mind with the conviction issue alone.

Decision

44. The Tribunal having considered carefully all the written evidence including all the exhibits, and the evidence presented at the virtual hearing together with the submissions, unanimously find that in the circumstances of this individual case the Applicant is a fit and proper person to be licenced, and as such the appeal against the decision of Rent Smart Wales to refuse a licence under Part 1 of the Housing (Wales) Act 2014 to carry out letting work and property management work is allowed.
45. Whilst we accept Mr Waite's convictions are serious matters having considered the entirety of the evidence submitted by Rent Smart Wales and specifically the oral and written evidence of Mr Reed, we do find that in this specific instance Mr Reed seems to have dwelt entirely upon the dishonesty convictions. His answers to questions about conditions having been considered was to say the least vague. Despite Ms Brownell's sterling attempts when adducing evidence in chief he did not come across as a convincing witness who had considered carefully all aspects of the application. In our view the exercise should have been to consider firstly whether or not the Applicant in essence makes the grade i.e. is a fit and proper person and if the decision in that regard is in the negative there should then at least have been consideration of any relevant condition that could have been imposed to allay any perceived fears and such consideration documented with reason as to why they would not assist. For example, there could have been a condition that the Applicant company has more than one director at all material times. Neither of the parties have suggested any

conditions being attached to the licence. In this instant case we as a Tribunal do not consider that any conditions need to be imposed.

46. As set out above whilst we appreciate the seven convictions for fraud are serious matters, we accept Mr Waite's submissions that they were undertaken during a short period of time. We accept his explanation for the reasons for the offending was to try and preserve a business and pay his staff. Those reasons alone of course do not justify such a course of conduct but do place the offending in context.
47. We, in coming to our decision have taken into account Mr Waite's otherwise clean record and the absence of any management issues with the properties concerned. There is for example no evidence of any complaints from tenants. We also accept Mr Waite's submissions that simply instructing an agent would not achieve anything in relation to overall control in terms of ownership of the properties.
48. Whilst it is fair to say that this is a very finely balanced matter and we understand fully how Rent Smart Wales as the Respondent came to its initial decision, having heard from Mr Waite we accept that he understands the significance of his offending, he is remorseful and given those factors together with the reality of the position that his convictions will be spent in approximately 12 months, the other factors being the absence of any complaints and his ability to properly manage properties (as accepted by the Respondent) just in our view tips the balance in favour of granting a licence.
49. Whilst we again emphasise that this is a finely balanced matter, in taking all matters in the round, in the circumstances, and for the reasons as are aforesaid this appeal is granted.

Dated the 12th day of November 2021

Procedural Chairman