

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

Reference: RPT/0045/02/23

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

Tribunal Judge: Ms Tonya Richards-Clarke
Surveyor member: Mr Andrew Lewis BSc FRICS FCI Arb
Lay member: Mrs Carole Calvin-Thomas

Applicant: Mr Premeasren Patel
Representative: Mr Reza Choudhury (Counsel)

Respondent: Rent Smart Wales
Representative: Ms Bethan Jones

Date of Hearing: 19 January 2024
Venue of Hearing: Tribunal Office, Oak House, Cleppa Park, Newport, NP10 8BD

DECISION AND REASONS

The Application

1. The applicant appeals, pursuant to section 27 Housing Act 2014 (“the Act”), against the decision dated 30 January 2023 to refuse his application for an individual agent's licence. The grounds for appeal set out in this application are:
 - (a) A long history of landlord activity without any serious complaints.
 - (b) References.
 - (c) Failure of Rent Smart Wales to give credit for mitigation.
 - (d) The convictions are stale and will soon be spent.
 - (e) The applicant is not the same person as 1 year ago and is a good citizen always willing to help the community.

Background

2. On the 2 December 2016, the applicant was granted an individual landlord licence by the respondent, Rent Smart Wales. At this time, the applicant was a landlord conducting letting and management activities on his own properties. On 7 November 2019 Rent Smart Wales decided to revoke this licence to practice as a landlord in Wales. The reason for the revocation was the applicant's prior convictions for offences including fraud offences. The Certificate of Conviction (trial) certifies that the applicant:
*“Was between 30th August 2017 and 5th September 2017 and also on the 22nd January 2019 and 4th February 2019
Tried and Convicted upon indictment of:*

1. *Doing acts tending and intending to pervert the course of public justice.*
 2. *Dishonestly making a false representation to gain for one self/another or cause loss to another/expose other to risk contrary to s1(2) (a) (3) Fraud Act 2006.*
 3. *Obtaining money transfer by deception contrary to s15A Theft Act 1968.*
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 5. *Obtaining money transfer by deception contrary to s15A Theft Act 1968.” [page 55 of the respondent’s bundle].*
3. For these offences in the Order for Imprisonment the Crown Court at Cardiff sentenced the applicant to a total of 54 months' imprisonment. The Court further directed that the 191 days spent on bail with an electronically monitored curfew condition will count towards the sentence [page 127 respondent’s bundle].
 4. On 22 February 2022, the Residential Property Tribunal (Wales) dismissed the applicant’s appeal against the revocation of his landlord licence and decided that the revocation of his landlord licence stands. On 16 June 2022, the Upper Tribunal (Lands Chamber) refused the applicant permission to appeal against the decision of the Residential Property Tribunal (Wales), upholding the decision of Rent Smart Wales to revoke the applicant’s licence as a landlord in Wales in November 2019. The applicant then sought judicial review of the decision of the Upper Tribunal (Lands Chamber). Permission to appeal was refused by the Court of Appeal on 26 May 2023.
 5. On 11 March 2022, Mr Patel submitted a new individual agent licence application. In a decision dated 30 January 2023 the respondent decided that following consideration of the agent licence application Rent Smart Wales are not satisfied that the applicant meets the requirements to hold a licence because he has not been deemed to be a “fit and proper” person. In the decision letter the respondent states that *“In reaching this decision consideration has been given to your convictions. You were found guilty of dishonesty, fraud and perverting the course of justice contrary to section 15A of Theft Act 1968, Section 7(1) of the Fraud Act 2006, and section 1 (1) of the Criminal Attempts Act 1981.*
Of significance in reaching this decision was:
 1. *The nature of the convictions and that the offences are of a type specifically included in the function as being material considerations for the “fit and proper” test, namely convictions involving fraud and dishonesty.*
 2. *There is an element of dishonesty demonstrated throughout the offences that you have been found guilty of. After consideration, Rent Smart Wales is not satisfied the risks associated with this can be mitigated with bespoke licence conditions.*
 3. *The sentence imposed for the offence.*
 4. *That the convictions which were determined in 2018 and 2019, are fairly recent.*
 5. *That the convictions remain unspent.*
 6. *The mitigation you provided, in the form of an interview and written representations were insufficient to draw any alternative conclusion.*
 7. *There have been no material changes since the decision was made by the Residential Property Tribunal (February 2022) to uphold Rent Smart Wales’ revocation of your previous landlord licence.*

6. Refusal of the licence application means that the applicant cannot undertake any letting or management activities at properties let on a domestic tenancy in Wales.

Legal Framework

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

Fit and proper person requirement

- (1) *In deciding whether a person is a fit and proper person to be licensed as required by section 19(2)(a), a licensing authority must have regard to all matters it considers appropriate.*
 - (2) *Among the matters to which the licensing authority must have regard is any evidence within subsections (3) to (5).*
 - (3) *Evidence is within this subsection if it shows that the person has—*
 - (a) *committed any offence involving fraud or other dishonesty, violence, firearms or drugs or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (offences attracting notification requirements),*
 - (b) *practised unlawful discrimination or harassment on the grounds of any characteristic which is a protected characteristic under section 4 of the Equality Act 2010, or victimised another person contrary to that Act, in or in connection with the carrying on of any business, or*
 - (c) *contravened any provision of the law relating to housing or landlord and tenant.*
 - (4) *Evidence is within this subsection if— (a) it shows that any other person associated or formerly associated with the person (whether on a personal, work or other basis) has done any of the things set out in subsection (3), and (b) it appears to the licensing authority that the evidence is relevant to the question whether the person is a fit and proper person to be licensed.*
 - (5) *Evidence is within this subsection if it shows the person has previously failed to comply with a condition of a licence granted under this Part by a licensing authority.*
 - (6) *The Welsh Ministers must give guidance to licensing authorities about deciding whether a person is a fit and proper person to be licensed as required by section 19(2) (a).*
 - (7) *The Welsh Ministers may amend this section by order to vary the evidence to which a licensing authority must have regard in deciding whether a person is a fit and proper person to be licensed.*
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. Paragraph 4 provides that *“when considering whether a person is “fit and proper” the licensing authority must have regard to any evidence that the person has committed any offence involving fraud or dishonesty”*. While paragraph 5 states that the licensing authority must have regard to all matters it considers appropriate it adds *“Any evidence considered should be relevant to the person’s fitness to hold a licence and let and manage rental properties in Wales.”*
10. Further, paragraph 6 of the guidance makes it clear that in respect of criminal offences, Rent Smart Wales *“must have regard to”* any convictions unless the person is not obliged to disclose those convictions in accordance with the Rehabilitation of Offenders Act 1974 and associated statutory instruments.
11. Paragraph 12 of the guidance states that:
“In deciding whether a conviction is relevant to a person being a “fit and proper” person for the purposes of a licence, the Licensing Authority may wish to consider the following factors: the relevance of the conviction in relation to the applicant’s character and integrity to let or manage residential properties;
- *the seriousness of the conviction, in terms of impact, or potential impact, upon the residents and the wider community, including if more than one conviction is involved, the cumulative impact;*
 - *the length of time since any conviction; and*
 - *any mitigating circumstances.”*
12. An appeal against the decision of Rent Smart Wales may be made to the tribunal under section 27 of the Act. The tribunal may confirm the decision of the licensing authority or alternatively direct the authority to grant a licence on such terms as the tribunal considers appropriate in accordance with section 27(5)(b) of the Act.
13. In accordance with Regulation 29 (2) The Residential Property Tribunal Procedure and Fees (Wales) Regulations 2016 *“At a hearing the tribunal may, if it is satisfied that it is just and reasonable to do so, permit a party to rely on reasons not previously stated and on evidence not previously available or not previously adduced.*
14. The burden of proof is upon the applicant, to show that he is a fit and proper person, and the standard of proof is the civil standard, namely that it is for the applicant to demonstrate to the tribunal, on the balance of probabilities, that he is a fit and proper person.

Documents

15. The documents placed before the Tribunal were:
- (a) Respondent’s Bundle (paginated and numbered pages 1 to 221) including application 24 February 2023, respondent’s decision 30 January 2023, directions 21 June 2023, respondent’s evidence with appendices numbered 1-25.
 - (b) Applicant’s bundle (paginated and numbered pages 1-118) including Witness Statement applicant 8 January 2024 with appendices 1 to 11.
 - (c) Applicant’s skeleton argument 18 January 2024.

The Hearing

Preliminary Issues

16. The Tribunal was directed by the applicant to the decision in Waltham Forest LBC V Hussain [2023] EWCA Civ 733 where the Court of Appeal found that the First-tier Tribunal should consider whether a landlord was a “fit and proper” person on the date the local authority’s decision was made, not the date of any appeal. Any events which occurred after the local authority’s decision are not relevant to the First-tier Tribunal’s judgment. The “fit and proper” person test in this appeal formed part of a local authority’s HMO licensing assessment. In reliance on this the applicant submits that the relevant date for this tribunal to decide this appeal is the date of decision to refuse the licence, which is 30 January 2023.
17. This was not disputed by the respondent. Therefore, in accordance with the Residential Property Tribunal Procedure and Fees (Wales) Regulations 2016 and the relevant caselaw the Tribunal proceeded to decide this appeal as a rehearing at the date of the respondent’s decision; 30 January 2023.

Applicant’s evidence

18. The applicant, Mr Premeasren Patel adopted his witness statement 6 January 2024 [page 1-48 applicant’s bundle with eleven appendices pages 49-112]. By way of update the applicant gave evidence that the works at 56 Pen y Lan Road had been completed and the Tribunal was directed to the letter dated 8 August 2023 as confirmation of this [page 111 applicant’s bundle]. Second, the applicant relied on the e-mails at page 113-115 of the applicant’s bundle to as evidence that the applicant’s sister had informed the respondent of the applicant’s conviction when the power of attorney was provided in February 2019 for her to be able to deal with the applicant’s property affairs. The applicant was not cross examined by the respondent.
19. The character references relied on by the applicant [page 92-108 applicant’s bundle] were adopted as evidence. These were not challenged by the respondent. At this stage, the two witnesses that had attended the Tribunal to give evidence on behalf of the applicant were released.

Respondent’s evidence

20. The respondent’s witness Ms Rebeca Duncan adopted her witness statement dated 31 May 2023 [at page 14 of the respondent’s bundle]. It was Ms Duncan’s evidence that it was the applicant’s convictions for fraud and dishonesty offences that were the determining factor in the decision to refuse this application. The assessment was that the applicant was a high risk for further dishonesty offences. On cross examination it was Ms Duncan’s evidence that in his career as a landlord the applicant has not acted dishonestly. It was also Ms Duncan’s evidence that she had looked at the call centre notes regarding the conversation between the respondent’s call centre handler and the applicant’s sister in February 2019. Ms Duncan had not spoken to the call centre

handler. Nor were the call centre notes or any of the correspondence with the applicant's sister before the Tribunal. The Tribunal expressed disappointment that this information had not been produced when the respondent was on notice of this as an issue as to whether the applicant had informed that respondents of his convictions.

Respondent's submissions

21. The respondent relies on evidence in the bundle and before the Tribunal at the hearing. The respondents submits that the applicant is not a "fit and proper" person in accordance with s20 of the Act. This is because of his convictions in 2019 for dishonesty, fraud and perverting the course of justice.

Applicant's Submissions

22. The applicant relies on the applicant's skeleton argument and submits that the issue for the tribunal to determine are whether the applicant is a "fit and proper" person in spite of his convictions and the applicant meets the test in paragraph 12 of the guidance /s20 of the Act. The applicant submits that while it is not in dispute that in March 2019 he was convicted and imprisoned for the offences of dishonesty, fraud and perverting the course of justice this does not affect his ability to conduct property management roles. The Tribunal was directed to the respondent's evidence that there had been no concerns about the applicant's property management and character references were accepted at face value by the respondent. With respect to the risk of future dishonesty the applicant submits that this is his livelihood, and he would not recklessly put this at risk in the future. The Tribunal was therefore asked to consider the documentary and oral evidence and to quash the respondent's decision and grant the license on any terms or condition that it sees fit pursuant to s27(5) (b) of the Act.

Tribunal Findings and Reasons

23. The Tribunal must have regard to the applicant's convictions since they are for offences specifically mentioned in s.20 (3) of the Act, namely offences involving fraud or dishonesty. The evidence before the Tribunal is that in March 2019 the applicant was convicted for dishonesty, fraud and perverting the course of justice and was sentenced to a total of 54 months imprisonment. The applicant was released from prison in or around October 2020 and no further offences have been committed since his release. This is not in dispute. Nor is it in dispute that both at the date of the consideration of the application and at the date of decision the applicant's convictions were not spent in accordance with the Rehabilitation of Offenders Act 1974 and associated statutory instruments.
24. In the decision 30 January 2023 the respondent has decided that the applicant is not a "fit and proper" person to hold an agent's licence because of his convictions in 2019 for dishonesty, fraud and perverting the course of justice. The Tribunal, as the appeal tribunal, must look at the case afresh and place themselves in the position of the licensing authority when considering whether the Applicant is a "fit and proper" person to be licensed under the Act.

25. In our consideration the Tribunal does not place weight on the allegation the applicant failed to disclose his conviction to the respondent in 2019. This is because the respondent has failed to disclose the contact with the applicant's sister regarding the provision of the power of attorney while the applicant was in prison.
26. In the consideration of whether the applicant is a "fit and proper" person the Tribunal has had regard to the "fit and proper" requirement in section 20 of the Act together with the Guidance. Regard must be had to any evidence that the person has committed any offence involving fraud or dishonesty. It is not in dispute that in 2019 the applicant was convicted of offences involving fraud and dishonesty. In accordance with paragraph 12 of the Guidance the Tribunal is satisfied that that these convictions are relevant to being a "fit and proper" person for the purposes of a licence. The offences are for fraud and dishonesty in relation to forged documents including wage slips and leases and a fraudulent mortgage application. In these circumstances the Tribunal found that these convictions were highly relevant to the applicant's character and integrity to let or manage residential properties. The Tribunal further found that the convictions are serious and led to a sentence of imprisonment of 54 months, and that it was less than four years since the date of the conviction.
27. The Tribunal took account the mitigating circumstances put forward by the applicant. The applicant is remorseful, he has been a good landlord as is demonstrated by the number of tenants that put forward supporting statements and references. The Tribunal also understood the applicant's desire to return to the management of his properties; this is his livelihood, and he wants to return to managing properties. That said, the Tribunal does not accept that at less than four years old the convictions are stale. Further the convictions are for fraud and/or dishonesty for financial gain and regard must be had to any offence involving fraud or dishonesty (s20(3) the Act). In addition, in accordance with section 12 of the Act property management work includes collecting rent and serving notice to terminate a tenancy. These are examples of activities where an agent is in a position of trust and there is a risk of fraud or dishonesty for financial gain.
28. On balance the Tribunal did not find that the factors put forward by the applicant outweigh the decision by the respondent on 30 January 2023 that the applicant is not a "fit and proper" person because of his conviction for dishonesty, fraud and perverting the cause of justice. The applicant has not discharged the burden of proof to demonstrate to this Tribunal, on the balance of probabilities, that he is a "fit and proper" person.
29. Having considered all the evidence, the legislative framework and the guidance, the Tribunal find that on the balance of probabilities that the Applicant is not a "fit and proper" person to be licensed to conduct lettings and property management activities. For these reasons, the Tribunal dismisses the application and confirms the decision of the respondent 30 January 2023.

30. The Tribunal was not asked to make a costs order by either of the parties and does not consider in any event that a costs order is appropriate.

Dated this 5th day of February 2024

TE Richards-Clarke
Tribunal Judge