

Collection and Use of Convictions Information Guidance



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Background

Cardiff Council has been designated the Single Licensing Authority (SLA) for Wales for implementation of Part 1 of the Housing (Wales) Act 2014. The Act places obligations on private landlords of rental properties to register with the designated Licensing Authority. In addition, those who actively let and manage rental property are required to obtain a licence to operate.

The Scheme is delivered by a service within Cardiff Council under the brand name of Rent Smart Wales (RSW).

Why does Rent Smart Wales ask for information about Convictions?

The Housing (Wales) Act 2014 (the Act), places a duty on the Licensing Authority to ensure that they are satisfied that the applicant is a fit and proper person before granting a licence under Section 19 (2) (a).

The Act details in Section 20, that in deciding whether a person is a fit and proper person to be licensed, a Licensing Authority must have regard to **all matters it considers appropriate**.

It goes on to say that:

Among the matters to which the **Licensing Authority must have** regard is any evidence that the person concerned 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.

The Act also specifies that evidence can be used if:

- it relates to **any other person associated or formerly associated with the Applicant (whether on a personal, work or other basis) and/or**

- 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.

The Regulation of Private Rented Housing (Information, Periods and Fees for Registration and Licencing) (Wales) Regulations 2015 requires that in an application for a licence, an Applicant must provide (amongst other things) details of the following in relation to themselves:

- any convictions of the applicant relating to offences involving the matters listed in section 20(3)(a) of The Housing (Wales) Act 2014 (the Act);
- any court or tribunal judgment against the applicant under the Equality Act 2010, and
- any convictions relating to offences in connection with any matter relating to the provisions referred to in section 20(3)(c) of the Act and any finding of a court or tribunal that the applicant has contravened any of those provisions.

Welsh Government has produced Guidance on the “fit and proper person” test for licensing of landlords and agents, which can be accessed [here](#) it states:

“the Licensing Authority must have regard to **all matters it considers appropriate**. Any evidence considered should be **relevant to the person’s fitness** to hold a licence and **let and manage rental properties in Wales**”.

What information does Rent Smart Wales Collect in regard to Convictions?

The information collected in regard to convictions will differ on a case by case basis as Rent Smart Wales has a duty to consider **all matters** it considers relevant. However, as a general rule, relevant information with regard to convictions would include:

- Any Unspent Conviction (in relation to The Rehabilitation of Offenders Act 1974)
- Unspent and Spent Convictions (in relation to The Rehabilitation of Offenders Act 1974) specifically in relation to:
 - (a) 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) 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) any provision of the law relating to housing or landlord and tenant,

- Any other convictions and/or information regarding non-compliance that Rent Smart Wales consider relevant,
- Any evidence of non-compliance with Regulatory Authorities
- Any mitigating circumstances

This information could be with regard to the Applicant, Licensee or any other person associated or formerly associated with the person (whether on a personal, work or other basis).

Typically, **only unspent convictions** are considered as part of the fit and proper person test, however, the Licensing Authority can, has and will consider spent convictions where they are relevant to letting and management of properties in Wales.

Driving offence information is not collected by Rent Smart Wales and do not have to be declared by the Applicant. However, **Rent Smart Wales reserve to right to collect, hold and process information** regarding such offences **if they are considered relevant** to the fit and proper test.

How do Rent Smart Wales Collect this information?

Information is collected from a number of sources including, but not limited to the:

Applicant

- Declaration by the applicant during the licence application process or during the licence term
- Provision of a data barring certificate
- Representations in connection with their conviction including:
 - Interview
 - Written
 - Pre-sentencing report from National Probation Service

- Witness Statements
- Sensitive character references
- Employment or professional tribunal/panel findings
- Medical assessments
- Other licences and registrations
- Formal notices/orders/cautions/fines
- Mitigating circumstances

Third party

- Third party declaration during the licence application process or the licence term, if the person is associated or formally associated with the applicant.
- Other third party with relevant intelligence

External organisations

- Subject Access Requests to obtain information from Police National Computer (PNC) Database
- Requests for Certificate of Conviction/Memorandum of Conviction from Crown/Magistrates courts
- Notification of prosecution outcomes from LA's and other enforcement bodies
- Information Requests under the Data Protection Act 2018 from other Regulatory Authorities

Independent investigations

- News sources (this is public and anecdotal)

What do Rent Smart Wales do with Conviction Information?

Conviction information will be used for the following purposes in line with duties placed upon the licensing authority and guidance produced by Welsh Government:

- To determine a licence application
- To amend a licence
- To regulate a Licensee

- To revoke a licence
- To assist local authorities and the licensing authority to carry out their legal duties under the Housing (Wales) Act 2014

The information is used to determine the fitness and propriety of an applicant or a licensee to ensure that those responsible for letting and managing property in the private rented sector are of sufficient integrity and good character. This determination includes an analysis of conviction information and any other relevant information such as housing enforcement history to ensure that the Applicant/Licensee does not pose a risk to the welfare or safety of tenants or the wider community

The information is interrogated to determine:

- Relevance and validity
- Whether a further investigation is required.
- Whether further requests for information or representations are required from either the applicant or alternative sources
- Whether the convictions are relevant. Where convictions are not relevant they will be disregarded from the investigation and investigation case closed.
- Whether other offences under the Housing (Wales) Act 2014 have been committed.

On conclusion of the investigation, a formal decision in respect of; the fitness and propriety of the applicant/licensee, or any breach of license conditions, will be made.

Storage and Retention

All personal data is stored safely and securely in line with current data protection legislation and Cardiff Council's retention policy.

Our retention policy sets out the timescales for retention and destruction of documents. The retention period is 6 + 1 years after the licence and/or registration expires, is withdrawn, revoked, or refused (whichever comes first). For further information, please contact Rent Smart Wales.

Rent Smart Wales reserves the right to hold prosecution information indefinitely where it believes that the information may have a bearing on current or future applications.

Your Rights under the Data Protection Act 2018

You are entitled to exercise your individual rights, including access to information, correcting inaccurate information or objecting to the processing of your personal data.

For more information on your rights, you can visit [this website](#).

You can also write to:

The Data Protection Officer,

County Hall,

Atlantic Wharf,

Cardiff,

CF10 4UW

Email: individualrights@cardiff.gov.uk