

## **1. Fit and Proper Persons Assessment**

- 1.1. Under the Housing Act 2004, if the Council is to issue a Selective or an HMO licence ("licence"), it must be satisfied that the proposed licence holder is a fit and proper person and is the most appropriate person to hold the licence. The Council must also be satisfied that the proposed manager of the house is a fit and proper person to be the manager of the house. If not, the licence request must be refused, unless other arrangements can be agreed.
- 1.2. An existing licence may also be revoked (removed) where the Council no longer considers that the licence holder is a fit and proper person to be the licence holder, or where the Council no longer considers that the management of the house is being carried out by persons who are (in each case), fit and proper persons to be involved in its management.
- 1.3. These requirements are to ensure that those responsible for operating the licence and managing the property are of sufficient integrity and good character to be involved in the management of the particular residential property, and as such they do not pose a risk to the welfare or safety of persons occupying the property.
- 1.4. A person who has a banning order made against them is not Fit and Proper as per the Housing Act 2004. Where a person has a banning order, no further assessment is made under this policy. A banning order is a legal ban to prevent a person from letting out property for a specified period, introduced under the Housing and Planning Act 2016 from 06 April 2018.
- 1.5. For the purpose of this document, a person is both an actual person and a body corporate that is considered a "person in law", for example registered companies.

## **2. What properties does this policy affect?**

- 2.1. This policy affects any property that requires a licence under Part 2 and Part 3 of the Housing Act 2004.

## **3. Authorisation of Officers**

- 3.1 All officers applying the policy are fully trained, competent and authorised to carry out their duties. All investigations will be carried out in accordance with the requirements of the:
  - Human Rights Act 1998
  - Regulation of Investigatory Powers Act 2000
  - Police and Criminal Evidence Act 1984
  - Criminal Procedure and Investigations Act 1999
- 3.2 Officers also receive training in equality and diversity, unconscious bias and safeguarding

#### **4. What is meant by 'involved in the management'?**

- 4.1. This means the Council must consider licence holders, managers and others involved in the management of the residential property. This will not extend to, for example, all members of staff at managing agents who have limited access to a property, but it will be necessary to find out how repairs to the property are carried out. Licence holders and anyone else who is involved in the management of a licensable property are in a position of trust. The nature of their role means they will enter the property on occasion.
- 4.2. The licence holder and the manager can be two different people. Where this is the case, a decision must be made for each individual about whether they are a fit and proper person.

#### **5. What will the Council look at?**

- 5.1. The Council will consider a person 'fit and proper' if it is satisfied that;
  - They do not have any unspent convictions that may be relevant to their role as either licence holder or manager and, in particular, any conviction involving fraud or other dishonesty, or violence or drugs or any offence listed in Schedule 3 to the Sexual Offences Act 2003.
  - They have not been found by a court or tribunal to have practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business.
  - They do not have any unspent convictions in relation to any housing, public health, environmental health or landlord and tenant law; including any civil proceedings in which judgment was made against them. Housing law may include relevant planning permission offences. Although not stated in the Housing Act 2004, landlord and tenant law is interpreted as all legal requirements relating to letting property and includes requirements relating to letting agents.
  - They have accepted responsibility for their wrong-doing and put it right (for example, promptly paid the fine and has undertaken work required), thus demonstrating they have learnt from the offence and changed their behaviour.
  - They have not had a licence refused, been convicted or received a financial penalty for breaching the conditions of a licence under Parts 2 or 3 of the Act; or have acted otherwise than in accordance with the Management of Houses in Multiple Occupation (England) Regulations 2006.

- They do not own or have not previously owned property that has been the subject of an interim or final management order or a special interim management order under the Housing Act 2004.
- They are not listed on the Rogue Landlords Database (although a person listed may be still considered Fit and Proper following further investigation).
- In addition, the Council may also take into account whether any person associated or formerly associated with the applicant or manager, whether on a personal, work or other basis' has done any of these things, if it considers this information relevant.

## **6. How will the Council make their decision?**

- 6.1. The determination of whether a person is fit and proper is undertaken following receipt of information during the licensing application process or when reported during the period of the licence. The Council will gather evidence from the person who is being considered as not being "fit and proper" and if necessary other witnesses. The decision will be made by a senior officer who has not been involved with the investigation.
- 6.2. Where a person has relevant unspent convictions, received a financial penalty and/or has contravened provisions of relevant legislation then the Council may decide that that person is not fit and proper. Each case must be considered on its own merits.
- 6.3. In making decisions concerning a person being fit and proper to hold a property licence, or be a manager of a licensed property, the Council will consider the need to eliminate discrimination and advance equality of opportunity. The Council will carefully consider any equalities impacts arising out of the decisions. As part of the decision making the Council will consider whether the proposed action is a proportionate means of achieving a legitimate end. The Council will seek to mitigate any adverse equalities impacts where possible.
- 6.4. Assessments will take account of the following:
  - The nature of any convictions or contraventions – those relating to operating an unlicensed residential property or the need to have undertaken works in default of the owner are likely to be relevant. Likewise, those based upon the existence of a significant hazard may give an indication as to the applicant's approach to health and safety. However, an administrative or technical breach of a provision is unlikely to carry any significant weight in determining 'fit and proper' status
  - The number/weight of convictions or contraventions – multiple contraventions or convictions will normally carry more weight than isolated or one-off incidents, unless the single breaches are particularly serious.

- 6.5. Where there is evidence of specified misconduct then the Council, when deciding whether that misconduct means that the person is not fit and proper, will take into account the following factors:
- the relevance of the conviction/contravention in relation to the person's character and integrity to manage a residential property
  - the severity of the conviction/contravention in terms of impact, upon residents and the wider community
  - when the conviction/contravention took place
  - action taken by the person to right the wrong and preventative measures to avoid repeated misconduct
  - any mitigating circumstances
  - any other relevant factors
- 6.6. This list of factors is not intended to be exhaustive, and the Council will take into account any other relevant factors in so far as they are relevant to the fitness of the relevant person. In other words, the misconduct has to be relevant to the person's fitness to hold a licence and/or manage the particular residential property.
- 6.7. The Council would not consider a landlord with a criminal record for unlawful eviction and harassment of tenants to be a fit and proper person.
- 6.8. Minor contraventions of housing or landlord and tenant law may not result in the Council deciding that a person is not fit and proper, for example, where an offence is isolated and/or there are mitigating circumstances. Multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour which should be taken into account. A particularly serious view may be taken where the victim of any offence is vulnerable.
- 7. Consideration of 'persons associated or formerly associated' with the proposed licence holder or manager**
- 7.1. If there is evidence that a person associated, or formerly associated, with the person proposed to be the licence holder or manager of the property has committed any wrongdoings, that evidence may be taken into account in determining the fitness of the proposed licence holder, manager or other persons involved in the management of a property (even if that person has himself or herself an unblemished record). It would not be appropriate for a licence to be granted to someone, or for someone to be the manager of a property, if that person was merely acting as a 'front' for someone else who would not be a fit and proper person. It would also not be appropriate if someone's ability to manage a property satisfactorily would be unduly influenced by an associate who was not or would not be considered fit and proper.
- 7.2. Examples:

- *Joint owners, A and B, where one owner is the landlord (or indeed both owners are joint landlords), but only owner A has applied for the licence. There is evidence that owner B has committed wrongdoings, and those wrongdoings are relevant to the management of the property and their fitness to be a manager or licence holder. Since owner B is joint owner and an associate of owner A it would be reasonable to assess whether owner B is fit and proper given that they are an associate of the proposed licence holder. If owner B is found not to be fit and proper, then the Council may refuse to grant owner A a licence.*
- *The director of company, A, has been prosecuted previously and convicted a number of times for failing to manage a property. A then starts to work for another managing agent, B, as an employee. Depending on A's duties B may need to satisfy the Council that he or she is fit and proper if employee A is involved in the management of a property. If A is required to satisfy the fit and proper test and fails it, B, i.e. the employer, could be found not to be fit and proper to manage or be a licence holder by association.*

7.3. A decision that someone is not fit and proper or a refusal to grant a licence in these circumstances will normally only be made if:

- there is actual evidence of relevant misconduct by the associated person and
- the associate's fitness is directly relevant to the applicant or proposed licence holder's fitness to manage the property or hold the licence.

## **8. Duration**

- 8.1. If a person has been convicted on an offence and determined not to be Fit and Proper this will remain the case for a period of 3 years unless the person has been entered on to the Rogue Landlord database, in which case the period will be as specified on the database.
- 8.2. If a person is found to have committed an offence and that person accepts a formal caution or is issued with a financial penalty instead of being prosecuted, and determined not to be Fit and Proper this will remain the case for a period of 1 year unless the person has been entered on to the Rogue Landlord database, in which case the period will be as specified on the database.
- 8.3. If a subsequent licence application is submitted within these periods, the Council will reconsider a person's fit and proper status on the merits of that application. The applicant will be expected to provide evidence which demonstrates why they are a fit and proper person.

## **9. Offences / evidence of contraventions**

9.1. The following examples give a general guide to the action which might be taken where convictions are disclosed or where there is evidence of contraventions proved to the satisfaction of the Council.

9.2. *Have they contravened housing law or landlord and tenant law?*

- Careful consideration should be given to an application where a person making a fit and proper person declaration has contravened housing law or landlord and tenant law. In particular, consideration should be given to contraventions under:
  - The Public Health Acts of 1936 and 1961
  - The Building Act 1984
  - The Environmental Protection Act 1990
  - The Town and Country Planning Act 1990
  - The Prevention of Damage by Pests Act 1949
  - The Protection from Eviction Act 1977
  - The Local Government (Miscellaneous Provisions) Acts of 1982 and 1976
  - The Housing Grants, Construction and Regeneration Act 1996
  - The Local Government and Housing Act 1989
  - The Housing Act 2004
  - Regulations pertaining to letting and management of properties, for example The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014, The Smoke and Carbon Monoxide Regulations 2015 (as amended), The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (note this is not an exhaustive list).
- Contravention of one of the above Acts could result in informal action where a person is asked to complete works, formal action where a legal notice is served, remedial action or work in default, or a prosecution. The nature of the contravention, its relevance to the management of a house and the potential harm caused must all be considered. It may also be relevant to consider the circumstances of the contravention, the number of contraventions and evidence to show good character since the date of the contravention. Each case will be considered on its own merit.

9.3. *Have they committed any offences involving fraud?*

- Licence holders and anyone else who is involved in the management of a licensable residential property are in a position of trust. The nature of their role means they will enter the property on occasion and will be engaged in financial dealings and taking personal data from their tenants, so there may be opportunities for fraud.

- In particular a person will normally be found not to be fit and proper where the person has a conviction for an offence in which the victim has been deprived of money, property or other benefit by misrepresentation / deception on the part of the offender including:
  - Theft
  - Burglary
  - Fraud
  - Benefit fraud (particularly where tenants are in receipt Housing Benefit/universal credit)
  - Conspiracy to defraud
  - Obtaining money or property by deception
  - People trafficking
  - Being struck off as the company director

9.4. *Have they committed any offences involving violence?*

- A person will not normally be considered to be fit and proper where the person making a fit and proper person declaration has a conviction for the offence of:
  - Murder
  - Manslaughter
  - Arson
  - Malicious wounding or grievous bodily harm
  - Grievous bodily harm with intent
  - Actual bodily harm
  - Grievous bodily harm
  - Robbery
  - Racially aggravated criminal damage
  - Common assault
  - Common assault which is racially aggravated
  - Assault occasioning actual bodily harm
  - Possession of an offensive weapon
  - Possession of a firearm

9.5. *Have they committed any offences involving drugs?*

- Careful consideration should be given to an application where a person making a fit and proper person declaration has committed a drug related offence. Consideration should be given to the nature of the offence and what bearing it could have on the management of a licensable residential property. The nature, quantity and class of drugs will be taken into account.

9.6. *Have they committed any offences involving sexual offences?*

- As licence holders, managers and anyone else who is involved in the management of a licensable residential property will on occasion visit tenants in their homes, convictions for sexual offences will be treated particularly seriously.
- A person will not normally be considered fit and proper where the person making a fit and proper person declaration has a current conviction for an offence contained in schedule 3 of the Sexual Offences Act 2003.

9.7. *Have they practiced unlawful discrimination?*

- Careful consideration should be given to an application where a person making a fit and proper person declaration has practiced unlawful discrimination. Unlawful discrimination can include findings of an Industrial Tribunal on unlawful employment practice such as discrimination under the Disability Discrimination Act. Consideration should be given to the nature of the unlawful discrimination and what bearing it could have on the management of a licensable residential property.

## 10. Enforcement Policy

10.1. This policy forms an appendix to Corporate Enforcement Policy, which promotes efficient and effective approaches to regulatory inspection and enforcement to improve regulatory outcomes without imposing unnecessary burdens.

## 11. Appeals

11.1. If the decision is made that the person is not fit and proper, a notice of intention must be served if the licence is to be either refused or revoked. This notice gives the recipient the opportunity to make representations to the Council which will be considered by a senior officer who has not been involved with the case.

11.2. After considering any representation, the Council will serve a notice of decision and the recipient of the notice can appeal to the First Tier Tribunal if they disagree with the decision made. Details of how to appeal are included in the notice served by the Council.

## 12. Data sharing

12.1. Where permitted by law, Information used and ascertained for the purpose of deciding whether a proposed licence holder or manager is fit and proper is shared with other statutory bodies, particularly other local authorities and the police. Selective and HMO licence applicants agree to this when they sign the licence application form.