



**CRITERIA FOR FIT AND PROPER PERSON AND MANAGEMENT STANDARDS
&
STANDARD LICENCE CONDITIONS**

FIT AND PROPER PERSON AND SATISFACTORY MANAGEMENT ARRANGEMENTS

1. Part 3 of the Housing Act 2004 outlines that, when deciding whether to grant a licence or not the local authority (the “Authority”) is required to look at the following aspects of the management of the property (the “Property”) namely :
 - The proposed licence holder (the “Licence Holder”)
 - The proposed manager (the “Manager”)(if a different person from the Licence Holder)
 - The proposed management arrangements (the “Property Management Arrangements”)and if these are satisfactory then it must grant a licence;
2. The application will be checked to determine whether;
 - the proposed Licence Holder is a fit and proper (“Fit and Proper”) person to be the Licence Holder, and is, out of all the persons reasonably available to be the Licence Holder in respect of the house, the most appropriate person to be the Licence Holder;
 - the proposed Manager of the house is either – the person having control of the house, or a person who is an agent or employee of the person having control of the house;
 - the proposed Manager is a fit and proper person to be the Manager,
 - the proposed Property Management Arrangements for the house are satisfactory.
 - all persons involved in the management of the property are to be identified and assessed under the Fit and Proper person criteria.
3. The Authority will ensure, through this procedure that:
 - each case will be determined on its own merit; and
 - each specific offence, incident or issue will be considered in terms of its relevance to the holding of a Licence or to management and will take into account the gravity of the offence.
4. Where the information contained in the initial application is insufficient to determine suitability, we may contact the applicant to request further information. Where no other information is available or forthcoming, the Authority can refuse to grant the licence on grounds of insufficient evidence.

Fit and Proper Person Criteria

5. In deciding to grant a licence the LHA must be satisfied that the proposed licence holder is a fit and proper person to be the licence holder and that the proposed manager of the house is a fit and proper person to be the manager of the house.

This requirement is 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 to which the application relates and as such they do not pose a risk to the welfare or safety of persons occupying the property.

6. In determining whether a person is Fit and Proper the Housing Act 2004 Section 89 outlines the test, this includes assessing whether there has been any;
 - Offences involving fraud, or other dishonesty, or violence or drugs, or any offence listed in Schedule 3 to the Sexual Offenders Act 2003
 - Unlawful discrimination on grounds of sex, colour, race, ethnic or national origins, or disability
 - Breaches of housing or landlord and tenant law
7. When determining if the person is Fit and Proper the Authority will consider the following;
 - i. They are without any significant and relevant convictions, cautions, reprimands and warnings
 - ii. If involved in managing the house, they have the necessary experience and/or managerial skills and competence to successfully manage the property in accordance with satisfactory Management Arrangements
 - iii. They are aware of, and sensitive to, the needs of all sections of society;
 - iv. They are willing to engage with the Authority in the licensing procedure.
 - v. They have suitable Management Arrangements and funding arrangements

Application process - How we will determine whether a person meets Fit & Proper

The Licence Holder and Manager will be assessed under each of the following categories to determine whether they meet the Fit and Proper person requirements:

- i. They are without any significant and relevant convictions, cautions, reprimands and warnings
- ii. The applicant is to provide copy photo identification, such as Passport or Driving licence of the proposed Licence Holder.
- iii. The applicant may be required to provide a current Disclosure Scotland for the proposed Licence Holder and Manager.
- iv. Any significant and relevant convictions, cautions, reprimands and warnings showing up under this check will not necessarily mean that an application for licence will be refused. However, the nature of some offences will be viewed more seriously than others. Offences have been categorised into “Category 1”, “Category 2” and “Category 3”, where category 1 is to be regarded as the most serious.
- v. Due regard to the full circumstances surrounding the offence will be given.
- vi. If involved in managing the house, they must have the necessary experience and/or managerial skills and competence to successfully manage the property in accordance with satisfactory management standards
- vii. As of the 1st October 2014 it is a legal requirement for all managers to be a member of a redress scheme. Redress schemes for letting agency work and property management work (requirement to belong to a scheme) (England) Order 2014.
- viii. A manager must be either accredited, who has already passed the Fit & proper assessment, or be a member of a registered landlord or managing agent association such as the National

Landlords Association (NLA), Residential Landlords Association (RLA) or Association of Residential Letting Agents (ARLA).

- ix. Checks will be made with other Council teams such as Housing Standards and with other local authorities, to check the applicant, proposed Licence Holder or Manager regarding their performance in handling disrepair complaints, dealing with anti-social behaviour and compliance with legal notices to identify any concerns relating to Management Arrangements.
- x. The applicant is to provide information relating to out of hours emergencies, anti-social behaviour, tenancy deposits, lettings and repairs reporting procedures.
- xi. The Management Arrangements provided in the application will be assessed against the Property Management Arrangements.
- xii. Through the application form, applicants must demonstrate an understanding of the needs of people from all sections of society.
- xiii. That their Property and Arrangements are promoted and accessible to all, without discriminating against race, colour, gender, religion, ethnic or national origin disability (where appropriate) or sexual preference; and are promoted and available to people whose backgrounds may include such circumstances as homelessness, mental health problems, bankruptcy etc, where the provision of support where necessary enables that person to successfully manage their tenancy;
- xiv. That all information relating to the tenancy, property and tenant rights and responsibilities is presented in a format accessible and understandable by the individual;
- xv. That the management of their property does not contravene relevant legislation and standards, such as the Race Relations Act and Statutory Code of Practice on Racial Equality in Housing.
- xvi. They have suitable management structures and funding arrangements
- xvii. The Licence Holder must normally reside within the United Kingdom.
- xviii. In addition to those financial responsibilities outlined in the Property Management Arrangement, the Authority would expect a successful licence applicant to have suitable funding arrangements in place to effectively deal with repairs etc when they arise.
- xix. As part of the application process, potential Licence Holders will have to show that they have suitable financial management procedures in place to ensure contingency funds are available for any repair or emergency remedial works needed. Further investigation, for example, examination of bank account statements may be required.

They are willing to engage with the Authority in the licensing procedure.

In addition to assessing compliance with current and previous licence criteria, the Authority will take into account the way in which the applicant has engaged with any previous licensing or enforcement procedures, both within or outside the Authority. The fact that the prospective Licence Holder may have been successful in mandatory licence applications is not sufficient evidence on its own to fully demonstrate engagement with previous application or enforcement processes.

It should be noted that this document and the fit and proper person criteria is not exhaustive and the Authority reserve the right to amend the Fit and Proper Person criteria and the Property Management Arrangements from time to time in line with government directives or through service

or policy development. Any amendments or changes to the document or the Criteria will be published and sent to existing Licence Holders and Managers.

Property Management Arrangements

It is expected that all information for the prospective tenant referred to in this document will be in a format and method understandable to them and makes it possible for queries or concerns to be easily raised.

The Licence Holder and Manager are to ensure that there are satisfactory Property Management Arrangements in place. Below are the standards that the Authority requires for each property.

Standard 1 – Letting Practices

The Licence Holder or Manager will be expected to demonstrate that they have a letting procedure in place that:

- actively encourages applicants from all backgrounds and makes clear that prospective tenants will not be discriminated against due to their race, colour, gender, religion, sexual orientation, ethnicity, disability or national origin or age.
- provides clear information to prospective tenants about the property including rent levels, due dates and increase dates, deposits, receipts, the terms and conditions of the tenancy, charges (including service charges), a rent book and payment methods.
- includes referencing procedures. These procedures should obtain from a prospective tenant formal identification and a satisfactory written reference (or at least two satisfactory references in a case where such person has previously been a tenant of more than one other property) which should include details of how that person conducted any such tenancy in terms of causing nuisance, anti-social behaviour, payment of rent and any breaches of the tenancy agreement. Where this is not possible, from an employer, educational professional or other responsible person who knows the prospective tenant well. It is not advisable to rely on references from friends or family members. Home visits should also be carried out to check the tenants housekeeping.
- provides clear information on who has responsibility for the payment of all utility charges and Council Tax.
- provides clear information about how deposits are to be held under the Tenancy Deposit Scheme, which was introduced by Part 6 of the Housing Act 2004.
- ensures prospective tenants are made aware of the standard operating procedures, such as emergency repairs, hours of contact etc.
- provides the tenant, on receipt of a deposit, with an inventory describing the state of the property and contents. Where practicable, photographic evidence should be included.

Standard 2 – Creating the Tenancy

The Tenancy Agreement issued must comply with current legislation. All parties included in the tenancy agreement should be aware of their rights and responsibility under the agreement and landlords should be able to demonstrate that they have made every reasonable effort to ensure the tenants awareness.

This could include providing clear, written descriptions of:

- the terms on which the property is to be occupied.
- an address in England or Wales for the tenant to use to serve notice.
- contact details for the landlord, agent or representatives, including emergency and 'out of hours' information.
- repair reporting procedures including maximum response times.
- the tenancy should contain acceptable behaviour clauses. Tenants should be provided with clear information about the level of behaviour expected of them whilst in the tenancy and their responsibilities both to the property and to their new neighbours and wider community. The information should also include examples of behaviour constituting antisocial behaviour and nuisance, as well as explaining clear consequences of displaying such behaviours.

Standard 3 – Managing the tenancy

They should make every possible step to ensure their tenants are able to live peacefully within their property. More specifically, they must:

- ensure any repairs are undertaken within a reasonable timescale;
- ensure the property is free from disrepair
- carry out quarterly checks of the property
- promptly tackle any antisocial or nuisance behaviour emanating from the property, whether perpetrated by the tenants or people visiting or living with them; and
- respect the privacy of the tenant, for example by giving adequate notice and ensuring permission is given (usually no less than 24 hours) before access to the property is needed.
- tackle any breaches of the tenancy agreement promptly, and take any necessary action.

Standard 4 – Tackling Antisocial Behaviour

The Authority recognises the difficulties faced by private landlords in addressing issues of antisocial behaviour, particularly relating to Possession Proceedings.

- The tenancy should contain acceptable behaviour clauses. Tenants should be provided with clear information about the level of behaviour expected of them whilst in the tenancy and their responsibilities both to the property and to their new neighbours and wider community. The information should also include examples of behaviour constituting antisocial behaviour and nuisance, as well as explaining clear consequences of displaying such behaviours.
- Ensure there is a clear procedure for dealing with anti-social behaviour (ASB), including warning letters, home visits and an escalation process.
- Landlords and Agents should seek advice from the Authority as soon as they become aware of nuisance or antisocial behaviour being perpetrated by their tenants or people visiting or living with them.
- The Authority and partners will work with landlords, managers and agents to develop an appropriate course of action for each case. This could include referral to mediation services, requesting action to regain possession of the property, the provision of a support service to the tenant.
- Where complaints against the property continue, Licence Holders and Managers will be requested to demonstrate measures undertaken to address the issues.
- Good references for tenants that have caused ASB should not be provided, in order to move a tenant on. Landlords, Managers and agents must always provide accurate and honest references to other landlords or agents on request.

Standard 5 – Ending a tenancy

Licence Holder or Manager should be able to demonstrate a satisfactory understanding of relevant legislation and procedures.

Unless a tenant clearly surrenders the property or the tenancy is ended by mutual agreement evidenced in writing, the correct legal notice must be served in order for the landlord to regain possession of the property. If the tenant fails to leave the property following the granting of a possession order, a Bailiff's Warrant must be obtained in order to evict the tenant.

The authority expects applicants, Licence Holders and managers to be able to evidence that:

- they will comply with current legislation in order to gain possession of the property.
- tenants are issued with clear information regarding the arrangements for bringing the tenancy to an end. This information must include clear guidance regarding the condition of the property expected at the end of the tenancy and the consequences of failing to meet this standard.
- the Tenancy Deposit Scheme is used to promptly and efficiently return deposits and that any deductions are justified with evidence of expenditure, made available to the tenant.

Standard 6 - Other relevant issues

In addition to the specific standards outlined above, the authority may take into consideration the following points:

- that the Licence Holder or manager be suitably located to the licensable property to ensure adequate management, especially with regards to accessing the property, arranging repairs and being available to the tenants. Whilst each application will be considered individually, it is the view of the Authority that it is difficult to successfully manage a property when the landlord or agent are based a significant distance away, particularly overseas. In such circumstances, the Authority would normally expect a local managing agent to be employed, within 40 minute drive of the property.
- that the applicant, landlord, manager or agent has a significant history of legal notices, work in default or enforced sales. Such a history will be considered to be an indication of poor management in relation to repairing obligations.
- that the applicant, landlord, manager or agent has no significant history of frequent and substantive complaints and/or successful civil actions relating to the unreasonable withholding of deposits. Such a history will be considered to be an indication of poor management in terms of collection and return of deposits.
- that the applicant, landlord, manager or agent has no history of frequent and substantial complaints from tenants relating to conduct considered constituting harassment or attempted or actual unlawful eviction. Such a history will be considered to be an indication of unsatisfactory management arrangements.
- that the applicant, landlord, manager or agent has not breached any current or previous management regulations applicable to Houses in Multiple Occupation (HMO). Any such breach will be considered to be an indication of unsatisfactory management arrangements.

List of convictions, cautions, reprimands or warnings

Category 1 Offences

A conviction for these offences will usually result in the licence application being rejected.

Offences of dishonesty

Benefit fraud (offences under ss111A and 112 of the Social Security Administration Act 1992)

Forgery

Burglary

Conspiracy to defraud

Obtaining money or property by deception

Offences of violence

Murder

Manslaughter

Arson

Malicious harm (s20 Offences against the Person Act 1861)

Possession of a firearm

Possession of an offensive weapon

Actual bodily harm (s47 Offences Against the Person Act 1861)

Grievous bodily harm (s18 Offences Against the Person Act 1861)

Robbery

Riot

Affray

Any racially aggravated offence (Crime and Disorder Act 1988)

Offences relating to drugs

Supply of drugs

Sexual and indecency offences

Rape

Soliciting

Indecent assault

Indecent exposure

Any other offence under Schedule 3 of the Sexual offences act 2003

Housing Act Offences

Protection from Harassment Act 1997

Protection from Eviction Act 1997

Any conviction for failure to comply with the licensing regime as set out in the Housing Act 2004 (s95)

Provision of false or misleading information (s238 of Housing Act 2004)

Obstruction (s241 of the Housing Act 2004)

Failure to comply with a licence condition (s95 of the Housing Act 2004)

Failure to hold a relevant licence (s72 of the Housing Act 2004)

Breach of improvement notices and prohibition orders (s35.6 s32.2b of the Housing Act 2004)

Category 2 Offences

A conviction for these offences will be viewed seriously and, following further investigation, could result in the licence application being rejected:

Offences of dishonesty

Handling or receiving stolen goods

Theft

Offences of violence

Violent disorder

Police assault

A caution, reprimand or warning for any Category 1 offences will be classed as a Category 2 offence.

Category 3 Offences

A conviction, caution, reprimand or warning for these offences may also be taken into account and further information will be requested in order to determine the relevance of these offences. If deemed to be relevant or sufficiently severe, these offences could result in the licence application being rejected:

Offences of violence

Common assault

Criminal damage

Obstruction

All other offences relating to dishonesty, drugs, sexual and indecency, Housing and Landlord and Tenant.

A caution, reprimand or warning for any Category 2 offences will be classed as a Category 3 offence

LICENCE CONDITIONS

In these conditions, “house” is meant to refer to the building or part of a building, which is licensed under Part 3 of the Housing Act 2004.

“Council” refers to the local housing authority, namely Hyndburn Borough Council.

MANDATORY CONDITIONS IMPOSED BY THE HOUSING ACT 2004(as amended)

1. If gas is supplied to the house the licence holder must produce to the Council annually for inspection a Gas Safety Certificate obtained in respect of the house within the last 12 months.
2. Electrical appliances and furniture supplied by the landlord must be kept in a safe condition, and that on demand, the licence holder must supply the Council with a declaration as to the safety of such appliances and furniture;
3. The licence holder must —
 - a) (i) ensure that a smoke alarm is installed on each storey of the house on which there is a room used wholly or partly as living accommodation; and
 - (ii) keep each such alarm in proper working order;
 - (b) supply the authority, on demand, with a declaration by him as to the condition and positioning of such alarms.

For the purposes of this condition a bathroom or lavatory is to be treated as a room used as living accommodation.

4. The licence holder must supply the occupiers of the house with a written statement of the terms of occupation of the house (tenancy agreement).
5. The licence holder must demand references from persons who wish to occupy the house.
6. The licence holder must:-
 - a) ensure that a carbon monoxide alarm is installed in any room in the house which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance;
 - (b) keep any such alarm in proper working order; and
 - (c) supply the authority, on demand, with a declaration by him as to the condition and positioning of any such alarm.

For the purposes of this condition, a bathroom or lavatory is to be treated as a room used as living accommodation.

And also, for the purposes of this condition “room” includes a hall or landing.

7. The licence holder must:
 - (a) ensure that every electrical installation in the house is in proper working order and safe for continued use; and
 - (b) supply the authority, on demand, with a declaration by him as to the safety of such installations.

For the purposes of this condition “electrical installation” has the meaning given in regulation 2(1) of the Building Regulations 2010.

LOCAL CONDITIONS IMPOSED UNDER SECTION 90 HOUSING ACT 2004

8. The Licence Holder must take all reasonable and all practicable steps for preventing and dealing with antisocial behaviour and undertake reasonable and effective steps to deal with any complaints, which have been made either directly to them, or via the Local Authority, regarding their occupiers. For the purposes of these conditions, antisocial behaviour is taken to comprise behaviour by the occupants of the house and/or their visitors, which objectively viewed causes a nuisance or annoyance to other occupants of the house, to lawful visitors to the house or to persons residing in or lawfully visiting the locality of the house;
9. The licence holder must, on demand from the Council's Selective licensing team, provide details of any investigations carried out relating to anti-social behaviour including copies of warning letters sent / notices of seeking possession served on the tenants of the property for breaching tenancy agreements and causing anti-social behaviour, within 14 days of it being demanded;
10. The licence holder must ensure the gardens, yards and other external areas are cleared of rubbish, debris and accumulations and are cleaned between tenancies.
11. The licence holder must ensure that all refuse and unwanted items are cleared from the house before a new tenant moves in.
12. The licence holder must take all reasonable steps to secure the property when unoccupied from unauthorised entry. The security measures used must not be detrimental to the amenity of the area e.g. windows and doors must not be boarded up.
13. Where window locks are fitted, the Licence Holder must ensure that keys are provided to the relevant occupants.
14. Where previous occupants have not surrendered keys, the Licence Holder must arrange for a lock change to be undertaken, prior to new occupants moving in;
15. The licence holder must ensure that a copy of the licence including the conditions attached to it is provided to all tenants;
16. The licence holder must ensure that all tenants of the licensed property are provided with details of the licence holder and, if applicable, details of the managing agent, including a contact address, daytime telephone number and an emergency telephone number;
17. The Licence Holder must ensure that occupants of the Property receive written confirmation detailing the arrangements that have been put in place to deal with repair issues and emergencies should they arise. These arrangements should cover the management arrangements that will be put in place in the licence holder's absence.
18. The licence holder and any appointed manager must provide to the Council up-to-date contact details, including a telephone number, so that problems with the house can be addressed quickly;
19. The licence holder must ensure that there is suitable and sufficient buildings insurance cover for the property at all times – when occupied and when unoccupied. This should include cover for rehousing in the event of there being a need.
20. The licence holder and / or his manager are expected to improve and maintain their knowledge and competency by undertaking training and development in housing related matters. It is expected that the licence holder will complete at least five hours training per year. This may include attendance on training courses relating to housing either locally or nationally, completing a recognised online training course or even attending a private landlord meeting or event. Evidence to support this must be produced to the Council's Selective Licensing Team on demand.

21. The Licence Holder and/or their Manager are required to visit the property within three to six months of the commencement of the tenancy and thereafter no less than annually. During these visits the Licence Holder and/or their Manager should take all reasonable steps (with or without access inside) to ensure: a) compliance with the conditions of this licence and b) that the property is secure and has not been abandoned. A record of these visits must be kept and be available to the Council on request;
22. The licence holder must ensure that that any persons involved with the management of the house are to the best of their knowledge “fit and proper persons” for the purposes of the Act.
23. The licence holder should advise all new tenants to contact the Fire Service for a free Home Safety Fire check.*
24. The licence holder must ensure that a detailed inventory is carried out which is agreed with each tenant before commencement of their occupation of the house and kept on file by the licence holder at their business address. (Draft Inventory forms are available from Hyndburn Borough Council).
25. The Licence Holder and his managing agent must inform the licensing team of the authority within ten working days of any changes in their circumstances as follows:
 - a) Details of any unspent convictions not previously disclosed to the Local Authority that may be relevant to the Licence Holder and/or his managing agent and their fit and proper person status and in particular any such conviction in respect of any offence involving fraud or dishonesty, or violence or drugs or any offence listed in Schedule 3 to the Sexual Offences Act 2003;
 - b) Details of any finding by a court or tribunal against the Licence Holder and /or his managing agent that he/she has practiced unlawful discrimination on grounds of sex, colour, race, ethnic or national origin or disability in, or in connection with, the carrying on of any business;
 - c) Details of any contravention on the part of the Licence Holder and/or his managing agent of any provision of any enactment relating to housing, public health, environmental health or landlord and tenant law which led to civil or criminal proceedings resulting in a judgment or finding being made against him/her;
 - d) Information about any property the Licence Holder and/or his managing agent owns or manages or has owned or managed for which a local housing authority has refused to grant a licence under Part 2 or 3 of the Act, or has revoked a licence in consequence of the Licence Holder breaching the conditions of his/her licence;
 - e) Information about any property the Licence Holder and/or his managing agent owns or manages or has owned or managed that has been the subject of an interim or final management order under the Housing Act 2004;
 - f) Advertising of the property for sale;
 - g) Change in managing agent or the instruction of a managing agent;
 - h) Change of address of Licence Holder or landlord.
26. The Licence Holder must ensure that any monies owed to the Council in respect of the annual monitoring fees, are paid promptly in line with the Council’s Selective Licence Fee Structure.
27. Where the property is sold, the licence holder must notify the Council’s Selective Licensing Team and pay any outstanding licence fee monies owed to the Council in full, within 14 days of the property being sold.

* NB To receive a free Home Fire Safety Check tenants can log on to:

<http://www.lancsfirerescue.org.uk/fire-safety-check/>

or phone Lancashire Fire and Rescue Contact Centre on 0800 169 1125.

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