



HYNDBURN
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SELECTIVE LICENSING

**Criteria for Fit and Proper Person and Management Standards
&
Standard Licence Conditions**

July 2012

Fit and Proper and Satisfactory Management Arrangements

In deciding to grant a licence the Council must be satisfied that the proposed licence holder is the most appropriate person, is 'fit and proper', and that the management arrangements for the house are satisfactory. The most appropriate person is the person in control of the house; in most cases the person who collects the rent, even if it is on behalf of someone else and who usually has day-to-day control of repairs and management responsibility (Housing Act 2004, s263). Similarly, if the licence holder appoints a manager to carry out part of the functions, the manager must also be deemed 'fit and proper'.

Section 89 of the Housing Act 2004 sets out the evidence basis for judgement about whether the relevant person is a fit and proper person and whether the proposed management arrangements are satisfactory.

In determining 'fit and proper' the legislation says that certain things must be taken into account by the Council, these include:

- 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

The Council must also consider whether the management arrangements for the house are satisfactory, the legislation states they must consider amongst other things, that:

- any person involved in the management of the house has a sufficient level of competence,
- any other person involved is fit and proper, and
- management structures and funding arrangements are suitable.

When deciding if the relevant person is 'fit and proper', the Council will consider the following:

- Nature of convictions – convictions relating to fraud, running unlicensed properties or violence may well affect someone's status as fit and proper. A conviction based on the existence of a Category 1 hazard would give some indication of an applicant's approach to health and safety in a property. The relevance of each conviction must be considered in relation to the management of the house.
- Weight of convictions – seriousness of conviction, the circumstances of the offence and any evidence showing good character since the date of conviction.
- Nature of contraventions – specifically officers' views on these. An isolated breach of the Housing Act 2004 may not in an officer's opinion affect a person's status as 'fit and proper'. Whereas persistent breaches however minor may affect a person's status as 'fit and proper'.

A **conviction** is the verdict that results when a court of law finds a defendant guilty of a crime.

A **contravention** is to act contrary to a rule, order, regulation or law, or of not fulfilling an obligation, promise or agreement.

The Council would not normally consider a landlord with a criminal record for unlawful evictions and harassment of tenants to be fit and proper person. In contrast, evidence of minor contraventions of housing or landlord and tenant law need not result in an adverse decision.

Evidence of any specified misconduct does not necessarily lead to the conclusion that the person is not a fit and proper person.

Discretion may be appropriate if an offence is isolated and 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.

Each case must be considered on its own merits.

Obtaining evidence for determining ‘fit and proper’

In order to help determine whether the relevant person is ‘fit and proper’ during the application process the proposed licence holder and any proposed manager will be required to complete a self declaration as to whether they 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, or contravened any provisions of the law relating to Housing or Landlord and Tenant Law.

Applicants will also be required to declare any criminal convictions of persons who are or were formally associated with the proposed licence holder or any proposed manager, whether on a personal, work, or other basis. Involvement with others convicted of criminal activity will not automatically preclude the applicant from holding a licence, but further information may be requested to establish the relevance of this to the question as to whether the applicant is a fit and proper person.

As part of the application process, the Council may contact other appropriate individuals or agencies in order to ascertain outside views on the suitability of the applicant to hold a licence. This could include previous and current tenants, other local authorities, the police etc.

Evidence of these activities is relevant if either the person who is being considered as a licence holder or a manager was involved in them himself or if someone associated or formerly associated with the person carried out the activities and it appears to the Council that such evidence is relevant. The association with the perpetrator of the activities may be a personal one, work related or on any other basis.

If there is evidence that a person associated, or formally 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 proposed licence holder’s or manager’s fitness (even if that person has himself or herself an unblemished record). The purpose of this requirement is to ensure that only fit and proper persons hold licences or are in any way involved in the management of licensed properties. 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, if he or she were not unfit, would be entitled to be the manager or licence holder.

Examples:

- A husband and wife, where the husband is the landlord (or indeed both he and his partner are joint landlords), but only the wife has applied for the licence. If there is evidence that the husband has committed wrongdoings and those wrongdoings are relevant to the wife's management of the property or licence, then the Council may refuse to grant her a licence.
- A landlord with an unsatisfactory record has nominated a 'manager' who has a clean record, but who has previously acted for the landlord whilst wrongdoings were committed. In this case, the Council may consider the managing agent by association to be unfit too.
- The director of company A has been prosecuted previously, and then starts to work for another managing agent B as a sole trader, employee or director. The new company could be found not to be fit and proper to manage or be a licence holder by association.

The purpose of 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 and as such they do not pose a risk to the welfare or safety of the persons occupying the property.

Consideration of 'fit and proper'

The following examples afford a general guide to the action which might be taken where convictions and cautions are disclosed or where offending behaviour is proved to the satisfaction of the Council.

Offences involving fraud

Licence holders and anyone else who is involved in the management of a licensable house 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 with their tenants, so there may be opportunities for fraud.

In particular an application will normally be refused where the person has a conviction for an offence where the victim has been deprived of money, property or other benefit by misrepresentation/deception on the part of the offender including:

- Theft
- Burglary
- Benefit fraud (particularly where tenants are on Housing Benefit)
- Conspiracy to defraud
- Obtaining money or property by deception

Weight should be given to the circumstances of the offence and any evidence showing good character since the date of conviction. Each case will be considered on its own merit.

Offences involving violence

Fit and proper person status will normally be refused 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

Weight will be given to the circumstances of the offence and any evidence showing good character since the date of conviction. Each case will be considered on its own merit.

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 house. The nature, quantity and class of drugs will be taken into account. Each case will be considered on its own merit.

Offences involving sexual offences

As licence holders, managers and anyone else who is involved in the management of a licensable house will on occasion visit tenants in their homes, convictions for sexual offences will be treated particularly seriously.

Fit and proper person status will normally be refused where a 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. Each case will be considered on its own merit.

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 house. Each case will be considered on its own merit.

Evidence of contraventions

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, evidence of poor management, previous history, prosecutions, simple cautions. 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

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 rented house and the potential harm caused must all be considered. Also to be considered are 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.

Whilst the Council must have regard to these matters it cannot assume their relevance but must determine this in deciding whether or not the person is fit and proper. Clearly it may be appropriate to overlook minor isolated infringements of housing law or remote associations with rogue landlords.

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. When making this decision, the Council will take into account their fitness to hold the licence or to manage the property.

This means the Council must consider licence holders, managers and others, including key-holders. This will not extend to, for example, all members of staff at a managing agent the emphasis is on managing agents to ensure that their staff are fit and proper.

The Council will adopt a common sense approach, exercising its discretion reasonably and proportionately, taking into account relevant considerations and disregarding irrelevant considerations.

The licence may be revoked where the Council no longer considers that the licence holder is a fit and proper person to be the licence holder or the Council no longer consider that the management of the house is being carried out by fit and proper persons.

Management arrangements

The licence holder and managers must 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 Council that it is difficult to successfully manage a property when the landlord or agent are based a significant distance away. The Council especially will consider an overseas licence holder as inappropriate, in such circumstances, the Council would expect a local managing agent to be employed.

The Council would expect a successful licence applicant to have suitable funding arrangements in place to effectively deal with repairs etc when they arise. As part of the application process, potential licence holders will have to declare that they have suitable financial management procedures in place to ensure contingency funds are available for any repair or emergency remedial works needed.

Licence Conditions

Whilst the refusal of licences is concerned with driving out bad landlords issuing of licences are focused on improving management standards. Not all landlords who currently under perform do so deliberately; many are simply lacking in competence. Central to the idea of selective licensing is that landlords are helped to manage their property effectively. Standards are achieved by imposing conditions on the granting of a licence.

Section 90 of the Housing Act 2004 imposes certain mandatory conditions which the Council has no discretion to vary and it gives the Council the power to include such conditions it considers appropriate for regulating the management, use or occupation of the house concerned.

The following five conditions are mandatory conditions imposed by the Housing Act 2004 and the Council has no discretion to vary these conditions:

- If there is a gas supply in the house, the licence holder must produce to the Council a current Gas Safety Certificate and must forward this to the Council on an annual basis for their inspection;
- 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;
- Smoke alarms must be installed in the house which should be maintained in good working order, and that on demand, the licence holder must supply the Council with a declaration as to the condition and positioning of such alarms;
- The licence holder must supply the occupiers of the house with a written statement on the terms of occupation of the house (tenancy agreement). The Licence Holder shall provide a copy of the said terms to the Authority on demand. The Licence Holder shall also ensure that the Tenancy Agreement complies with current legislation;
- The licence holder must demand references from persons who wish to occupy the house.

In addition to the above mandatory conditions the legislation gives the Council the power to attach local conditions to licences. The Council has discretion to vary these with every licence issued; conditions can be added or removed subject to individual circumstances and on appeal.

It is proposed local conditions will in general require the licence holder to ensure that:-

- Where there are gas appliances in the house, a suitable carbon monoxide detector must be provided, maintained in good working order and tenants made aware as to its operation;
- If the house is legally required to have an Energy Performance Certificate then it must be produced to the Council;
- The Licence Holder must produce to the authority a Periodic Electrical Report (PIR) carried out by a suitably qualified electrical contractor who must be registered/member of an approved body such as NICEIC, NAPIT, etc. or registered to undertake electrical works in accordance

with Part P of the Building Regulations. This report must be no more than 5 years old and must be supplied to the landlord licensing team within the first twelve months of the licence period.

- The licence holder must ensure, throughout the period of the licence, that the premises are covered by a valid Periodic Electrical Report (PIR), where the report states the installation is unsatisfactory this must be remedied within 28 days and the licensing team notified upon completion of such works. If a report expires during the term of the licence, an up-to-date report must be provided to the landlord licensing team within 7 days of the expiry date;
- At the start of any tenancy occupiers are informed of their responsibilities with regards to the storage and disposal of household waste;
- Licensed properties are kept secure and free from accumulations of refuse during any unoccupied period;
- The Licence Holder must take all reasonable and all practicable steps for preventing and dealing with antisocial behaviour and undertake a thorough process of incremental 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 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;
- The Licence Holder must ensure that all repairs, which the landlord is responsible for under the terms of the tenancy agreement, to the house or any installations, facilities or equipment within it, are to be carried out by competent and reputable persons and that they are completed within a reasonable timescale to a reasonable standard;
- A copy of the licence including the conditions attached to it is provided to all tenants.
- All tenants of the licensed property are provided with the details of the licence holder and if applicable manager agent, including a contact address, daytime telephone number and an emergency telephone number;
- The licence holder and any appointed manager provide an up to date contact point (including telephone number) for the Council, so that problems with the house can be swiftly addressed;
- The licence holder must arrange for access to be granted at any reasonable time and must not obstruct council officers carrying out their duties including the surveying of the property to ensure compliance with licence conditions and any relevant legislation;
- The Licence Holder and any manager must attend a Landlord Development Day within one year of date of issue of licence;
- The Licence Holder and/or their Manager are required to make no less than quarterly visits to the property, a record of these visits must be kept and be available to the Council on request;
- The licence holder must advise the Council in writing of any proposed changes to the construction, layout or amenity provision of the house;

- The licence holder shall inform the council of any change in ownership or management of the house;
- The licence holder shall inform the Council of any new convictions or contraventions that adversely affect the 'fit and proper' declaration made by themselves and/or any manager;
- The licence holder should advise all new tenants to contact the Fire Service for a free Home Safety Fire check

Additional conditions in appropriate circumstances

For furnished tenancies:

- An annual portable appliance test (PAT) be carried out on any portable appliances supplied by the landlord, the appliances clearly labelled with the date of test and when the next test is due, and the certificate produced to the Council;
- The Licence Holder shall ensure that any furniture supplied at the start of a tenancy is in a safe and good condition. All upholstered furniture and covers and fillings of cushions and pillows should comply with Furniture and Furnishing Regulations (Fire) (Safety) Regulations 1988 and maintained or replaced as far as is the Licence Holder's responsibility throughout the tenancy (under the terms and conditions of the Tenancy Agreement). A declaration as to the safety of such furniture must be provided to the Council on request;
- Where a house is let on a furnished tenancy then the licence holder must provide all tenants with a full inventory agreed at the commencement of the tenancy;

For licences where a Management Order has previously been in force:

- Where the Council has incurred expenses as a result of having to make a Management Order with regard to the house which have not been subsequently recovered by the rent paid during the duration of the Order, then the payment of that debit is a licence condition.

Any licence holder found to be in breach of the licence conditions can face a fine of up to £5,000 upon conviction in a magistrate's court. In such circumstances, the Council would then consider whether it is appropriate to revoke the licence and make a Management Order taking over the management of the property.