

# Appendix Five

## The fit and proper test

### 1. Why is there a test?

- 1.1. In deciding to grant a licence the Council 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...’
- 1.2. 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... and where the Council no longer considers that the management of the house is being carried on by persons who are not in each case fit and proper persons to be involved in its management.
- 1.3. 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 persons occupying the property.

### 2. ‘Involved in the management’

- 2.1. Under section 66(6) of the Housing Act 2004 the Council must consider whether:
  - (a) A person involved in the management of the house has a sufficient level of competence,
  - (b) any other person involved is fit and proper, and
  - (c) management structures and funding arrangements are suitable.
- 2.2. 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 who have limited access to a property, but it will be necessary to find out how repairs to the property are carried out. The emphasis is on managing agents to ensure that their staff are fit and proper.
- 2.3. 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.
- 2.4. When making the decision, the Council must ask the following:
  - What are the management arrangements?

- Who is involved in the management?
- What precautions have been taken to ensure those involved in the management are fit and proper?

2.5. In the case of a key-holder, the Council must consider their involvement in the management of the house and whether they have a sufficient level of competence to be so involved.

### 3. What will the Council look at?

3.1. When considering whether a person is 'fit and proper' the Council must have regard (among other things) to whether the applicant has:

- any previous convictions involving fraud or other dishonesty or violence or drugs and sexual offences,
  - practised unlawful discrimination on the grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with the carrying out of any business,
  - contravened any provision of housing or landlord and tenant law,
  - acted otherwise than in accordance with an approved code of practice,
- or to anything else which is relevant.

3.2. When deciding, the following should be considered:

- Nature of convictions – convictions relating to fraud, running unlicensed HMOs 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 HMO.
- Weight of convictions.
- Nature of contraventions – specifically officers' views on these. An administrative or technical breach of the Management Regulations, for example an isolated incident of not displaying the Code of Good Management Practice, may not in an officer's opinion affect a person's status as fit and proper.

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

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

3.5. Under section 64 of the Act, both the proposed licence holder and the proposed manager must be fit and proper persons.

3.6. This policy is not intended to be exhaustive and the Council is entitled to take into account other factors in so far as they are relevant to the fitness and propriety 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 building, and in regard to criminal offences the Council must only have regard to unspent convictions.

3.7. 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.

3.8. 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.

3.9. Each case must be considered on its own merits.

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

3.11. Where a potential licensee or a manager has a relevant unspent conviction or contravention, in deciding whether they are fit and proper the Council will take into account the following factors:

- the relevance of the conviction/contravention in relation to the person's character and integrity to manage an HMO
- the severity of the conviction/contravention in terms of impact, upon residents and the wider community
- whether the person is accredited or has been trained to manage an HMO
- any other relevant matter
- any mitigating circumstances
- whether the proposed **manager** is fit and proper
- whether the proposed **licence holder** fit and proper
- whether there are satisfactory management arrangements
- who is involved in the management
- what precautions have been taken to ensure those involved in the management are fit and proper

3.12. These points should form the basis of the decision made. Any review or report produced should refer to each point.

#### **4. Consideration of 'persons associated or formerly associated' with the proposed licence holder or manager**

4.1. 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.

4.2. Examples:

4.2.1. In a partnership, where one partner is the landlord (or indeed both he and his partner are joint landlords), but only one partner has applied for the licence. If there is evidence that a partner has committed wrongdoings and those wrongdoings are relevant to the other persons management of the property or licence, then the Council may refuse to grant her a licence.

4.2.2. 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.

4.2.3. 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.

4.3. A refusal to grant a licence in these circumstances will normally only be made if:

- there is actual evidence of 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.

4.4. If someone is found not to be fit and proper this will normally remain the case for 5 years. If a licence application is submitted within that period the Council will reconsider a person's fit and proper status on the merits of that application. This policy would be used to make that decision and it would be up to the applicant to provide evidence which could demonstrate why they may be a fit and proper person at that point.

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

5.1. 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.

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

5.2.1. 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, for example points awarded under the HMO licensing points system (see below), 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

5.2.2. 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.

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

5.3.1. Licence holders and anyone else who is involved in the management of a licensable HMO 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.

5.3.2. 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
- Fraud
- Benefit fraud (particularly where tenants are on Housing Benefit)
- Conspiracy to defraud
- Obtaining money or property by deception

5.3.3. 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.

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

5.4.1. 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

5.4.2. 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.

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

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

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

5.6.1. As licence holders, managers and anyone else who is involved in the management of a licensable HMO will on occasion visit

tenants in their homes, convictions for sexual offences will be treated particularly seriously.

5.6.2. 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.

#### *5.7. Have they practiced unlawful discrimination?*

5.7.1. 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 Equality Act 2010. Consideration should be given to the nature of the unlawful discrimination and what bearing it could have on the management of a licensable HMO. Each case will be considered on its own merit.

### **6. HMO Licensing Points System**

6.1. Signing up to the West of England's Code of Good Management Practice provides supporting evidence that a person making a fit and proper person application will have satisfactory management arrangements in place for the property. A points system for non-compliance operates in a similar way to a driving licence. Persistent failures to abide by the code can lead to a licence being revoked. When the number of points reaches 15 this triggers a review of the person's fit and proper person status.

### **7. Private Housing Enforcement Policy**

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

### **8. Data sharing**

8.1. 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. Notification is given of this on the HMO licence application form.