

## **APPENDIX B      Fit and Proper Policy**



### **1. Why is there a test**

1.1 Under the Housing Act 2004, if the Council is to issue a selective licence, an additional HMO licence or a mandatory HMO licence it must be satisfied that the proposed licence holder is a fit and proper person and the most appropriate person to hold the licence. It 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 must be refused unless other arrangements can be agreed.

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 out by persons who are not 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 of safety of persons occupying the property.

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

2.1 This policy affects any property that requires a licence by the Council under the licensing of HMOs (Part 2 of the Housing Act 2004) and the licensing of other residential accommodation (Part 3) known as Selective Licensing..

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

3.1 This means the Council must consider licence holders, managers and others involved in the management of the property. 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. It is a licence condition for licence holders and managers to ensure their staff are fit and proper. 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.

3.2. 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.

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

4.1. 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 conviction 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.
- They have not been in control of a property, which has been subject to a control order under section 379 of the Housing Act 1985 in the last 5 years.
- They have not had a licence refused, been convicted of breaching the conditions of a licence under Parts 2 or 3 of the Act; or have acted otherwise than in accordance with a Code of Practice approved under section 233 of the Act that concerns a property in their ownership (whether or not in the Council's district).
- 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 have not been served with a Banning Order in accordance with part 2, chapter 2 of the Housing and Planning Act 2016.
- In addition, the Council may also take in to account whether any person associated or formerly associated with the applicant or manager has done any of these things, if it considers this information relevant.

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

5.1. Where a person has relevant unspent convictions and or has contravened provisions of relevant legislation or codes of practice then the Council may decide that that person is not fit and proper. Each case must be considered on its own merits. Evidence of any specified misconduct does not necessarily lead to the conclusion that the person is not fit and proper. The Council will adopt a common sense approach, exercising its discretion reasonably and proportionately, taking into account relevant factors and disregarding irrelevant factors.

5.2. 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 an licensable property
- the severity of the conviction/contravention in terms of impact, upon residents and the wider community
- when the conviction/contravention took place
- any mitigating circumstances
- any other relevant factors

5.3. 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.

5.4. 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 the Council deciding that a person is not fit and proper.

5.5. If an offence is isolated and/or there are mitigating circumstances this may not result in the Council deciding that the person is not fit and proper. 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.

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

6.1. 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.

6.2. Examples:

6.2.1. 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. There is evidence that the husband has committed wrongdoings and those wrongdoings are relevant to the management of the property and his fitness to be a manager or licence holder. Since the husband is joint owner and an associate of the wife it would be reasonable to assess whether the

husband is fit and proper given that he is an associate of the proposed licence holder. If the husband is found not to be fit and proper, then the Council may refuse to grant the wife a licence.

6.2.2. 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.

6.3. 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.

## **7. Duration**

7.1 If someone is found not to be fit and proper this will normally remain the case for 5 years. If a subsequent licence application is submitted within that period 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 she or he is a fit and proper person.

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

8.1. 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.

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

8.2.1. 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 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

8.2.2. 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 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.

### *8.3. Have they committed any offences involving fraud?*

8.3.1. 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 and will be engaged in financial dealings taking personal data from their tenants, so there may be opportunities for fraud.

8.3.2. 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)
- Conspiracy to defraud
- Obtaining money or property by deception
- People trafficking
- Being struck off as the company director

### *8.4. Have they committed any offences involving violence?*

8.4.1. 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

#### *8.5. Have they committed any offences involving drugs?*

8.5.1. 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 property. The nature, quantity and class of drugs will be taken into account.

#### *8.6. Have they committed any offences involving sexual offences?*

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

8.6.2. 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.

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

8.7.1. 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 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 property.

### **9. Private Sector Housing Enforcement Policy**

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

### **10. Data sharing**

10.1 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 on the basis of preventing and detecting crime and disorder, particularly other local authorities and the police. Property licence applicants agree to this when they sign the property licence application form.