

## Fit and Proper person criteria



### Fit and Proper Person and Management Arrangement Criteria for Selective Licensing

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 three aspects of the management of the property (the “Property”) and if these are satisfactory then it must grant a licence:
  - 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”)
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;
  - That the proposed Manager is a fit and proper person to be the Manager;
  - That the proposed Property Management Arrangements for the house are satisfactory; *and*
  - 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.

### Definition of Fit and Proper Person Criteria

5. A Fit and Proper person means that they are morally suitable.
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;
  1. They are without any significant and relevant convictions, cautions, reprimands and warnings
  2. 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
  3. They are aware of, and sensitive to, the needs of all sections of society;
  4. They are willing to engage with the Authority in the licensing procedure.
  5. 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.

*They are without any significant and relevant convictions, cautions, reprimands and warnings*

8. The applicant is to provide a current Disclosure and Barring Service (DBS) check for the proposed Licence Holder and Manager, if either party has not previously met the Fit and Proper person criteria.
9. 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.<sup>1</sup>

10. Due regard to the full circumstances surrounding the offence will be given.

*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*

11. As of the 1<sup>st</sup> 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.

12. The Client Money Protection for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 requires that managers must join a government approved ‘client money protection scheme’ if they are a letting or property management agent in the private rented sector in England and they hold clients’ money. Details of government approved schemes can be found at: <https://www.gov.uk/client-money-protection-scheme-property-agents>

13. Landlords and managing agents must be aware of their rights and obligations under the Tenant Fees Act 2019, and ensure they act lawfully with regard to payments in connection with a tenancy.

14. A manager must be either accredited, who has already passed the Fit & proper assessment, or a member of a registered landlord or managing agent association such as NLA, RLA, UKALA, RICS.

15. Checks will be made with other departments such as Streetscene, Housing Renewal, with other local authorities, to check the applicant, proposed Licence Holder or Manager regarding performance in handling disrepair complaints, dealing with anti-social behaviour, compliance with legal notices to identify any concerns relating to Management Arrangements.

16. The applicant is to provide information relating to out of hours emergencies, anti-social behaviour, tenancy deposits, lettings and repairs reporting procedures.

17. The Management Arrangements provided in the application will be assessed against the Property Management Arrangements.

*They are aware of, and sensitive to, the needs of all sections of society*

18. Through the application form, Applicants must demonstrate an understanding of the needs of people from all sections of society.

19. 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

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<sup>1</sup> The Authority is permitted to consider the underlying conduct behind spent convictions, as confirmed by the Court of Appeal in *Hussain v Waltham Forest LBC* [2020] EWCA Civ 1539. When a local authority exercises its functions under Parts 2 and 3 of the Housing Act 2004 it is doing so as a judicial authority, and consequently is able to consider the underlying conduct of spent convictions, overriding S.4(1)(a) of the Rehabilitation of Offenders Act 1974.

problems, bankruptcy etc, where the provision of support where necessary enables that person to successfully manage their tenancy;

20. That all information relating to the tenancy, property and tenant rights and responsibilities is presented in a format accessible and understandable by the individual; and  
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.

*They have suitable management structures and funding arrangements*

21. The Licence Holder must reside within the United Kingdom.
22. 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.
23. 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 credit reference checks or examination of bank account statements may be required.

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

24. 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.
25. 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 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 require for each property.

## Standard 1 – Letting Practices

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.
- Abides by the Tenant Fees Act 2019.
- Includes referencing procedures which include obtaining from a prospective tenant formal identification the taking of reasonable steps to obtain a satisfactory written reference from his/her existing landlord or from somebody who has been his/her landlord within the last two years prior to granting the tenancy. The landlord/manager should request 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 and for what period.
- 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 responsibilities 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.
- Local facilities and amenities, including refuse collection/recycling days, neighbourhood watch and residents' association details, post offices and shops etc.
- Provision of alley gate keys where applicable.
- 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 must 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 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 must 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 expect a local managing agent to be employed, within a 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 HMOs. Any such breach will be considered to be an indication of unsatisfactory management arrangements.

Appendix 1 – 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.

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