



Bristol City Council Fit and Proper Policy

Introduction

This policy applies to any property that is required to be licensed by the Council under the Housing Act 2004 ('the Act').

In deciding whether to grant a property licence, the Council (as the local housing authority), 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.' If it is not satisfied, it must refuse the licence unless other satisfactory management arrangements can be agreed.

The fit and proper person 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 or safety of persons occupying the property.

Who does it apply to?

The policy applies to licence holders, managers and others involved in the management of properties (including those proposed to be). 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 include those who have a more active role in the management of a property. It is a licence condition for licence holders and managers to ensure that their staff are fit and proper.

There may be more than one licence holder and/or manager and the licence holder and manager. Where this is the case, a decision must be made for each individual about whether they are a fit and proper person.

Banning Orders

The Act states that a person **is not** a fit and proper person if a banning order under section 16 of the Housing and Planning Act 2016 is in force against the person.

There are a number of specified offences for which a banning order can be made. These are outlined in the [Schedule Offences of the Housing and Planning Act 2016 \(Banning Order Offences\) Regulations 2018](#). It is important to note that committing one or more of these offences does not automatically mean that a banning order should be made and '[Banning Order Offences under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities](#)' should be followed.

In certain circumstances, a banning order may be the most appropriate course of action as opposed to determining whether someone is a fit and proper person. Careful consideration should be given as to the most appropriate course of action, taking into account the guidance specified above and the contents of this policy.

Consideration of ‘persons associated or formerly associated’ with the proposed licence holder or manager

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 wrong doings (includes convictions, offences and other misconduct), 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.

A refusal to grant a licence in these circumstances should only be made if:

- There is evidence of relevant misconduct by the associated person; and
- The associate’s fitness is relevant to the applicant or proposed licence holder’s fitness to manage the property or licence.

Examples:

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 wrong doings and those wrong doings 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.
2. The director (person A) of a property management company has been prosecuted previously and convicted a number of times for failing to effectively manage a property. Person A then starts to work for another property management company as an, employee. Depending on Person A’s duties, the new employer will need to satisfy the Council that he or she is fit and proper if they are involved in the management of a property. If Person A is required to satisfy the fit and proper test and fails it, the new employer could be found not to be fit and proper to manage or be a licence holder by association.

3. First-Tier tribunal decision involving Bristol City Council: http://www.residential-property.judiciary.gov.uk/Files/2017/June/CHI_00HB_HMV_2016_1_09_Jun_2017_10_00_07.htm

Consideration of fit and proper person status

In deciding whether a person is a fit and proper person to be the licence holder or manager of the property, the Act states that the Council must have regard (among other things) to whether a person has:

- Committed any offence involving fraud or other dishonesty, or violence or drugs, or any offence listed in Schedule 3 to the Sexual Offences Act 2003;
- 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;
- Contravened any provision of the law relating to housing or of landlord and tenant law
- Acted otherwise than in accordance with any applicable code of practice approved under section 233 (HMOs only).

Other considerations as to whether a proposed landlord or manager is a fit and proper person include where a person:

- Has contravened 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 being made against him;
- Has contravened any legal requirement as a letting or management agent;
- Has had a licence refused or revoked (in consequence of the licence holder breaching the conditions of his licence) in relation to Part 2 or 3 of the Act;
- Owns or manages or has owned or managed an HMO or house which has been the subject of an interim or final management order under the Act.

In addition, consideration should be given to whether any person associated or formerly associated with a proposed licence holder or manager, has done any of the things above.

Requesting further information

In some circumstances it may be appropriate for the Council to seek further information on whether a person has relevant convictions. Currently this can be done through the basic disclosure service offered by Disclosure Scotland. That service will give details of all unspent convictions, if any. However, the service is only available to the person whose record is being sought and there is no requirement in the 2004 Act for that person to seek or provide the information to the Council. Consequently the Council must have good reasons for asking that person to do so, especially if the Council is to consider that a refusal

to do so may indicate that the person in question is not a fit and proper person. Such reasons may include that:

- The Council has had a history of complaints or problems with the landlord (which in themselves might not amount to 'evidence' of unfitness to meet the test), but further investigation may be required;
- The applicant has been evasive or untruthful in his application for a licence;
- The applicant, or proposed manager, is unknown to the Council and has not demonstrated any history or competence of managing HMOs or other private rented properties;
- The Council has reasonable grounds to suspect that the applicant, or the proposed manager, has committed an offence which is relevant to the determination of any question of his/her fitness; or
- The property is an HMO and provides accommodation mainly (outside of family units) to vulnerable persons

Determining whether someone is a fit and proper person

Where any of the wrong doings outlined in the preceding sections apply to a proposed licence holder or manager, 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 wrong doing 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.

Where there is evidence of specified wrong doing, then the Council, when deciding whether that wrong doing means that the person is not fit and proper, will take into account the following factors:

- The relevance of the wrong doing in relation to the person's character and integrity to manage residential properties and in particular the type of property to which the licence relates;
- The seriousness of the wrong doing in terms of impact, or potential impact, upon the residents and the wider community;
- When the wrong doing took place
- And any mitigating circumstances

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. The misconduct has to be relevant to the person's fitness to hold a licence and/or manage the particular residential property.

The following gives a general guide to the action which might be taken where there is evidence of wrong doings.

In these situations, the Council **would not normally deem a person to be fit and proper:**

- Where they have a criminal record for unlawful evictions and harassment of tenants;
- Where they have a conviction for an offence in which the victim has been deprived of money, property or other benefit by misrepresentation/deception, including:
 - Theft;
 - Burglary;
 - Fraud (including benefit fraud, particularly where tenants are in receipt of Housing Benefit);
 - Conspiracy to defraud;
 - Obtaining money or property by deception;
 - People trafficking;
 - Being struck off as a company director
- Where they have 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
- Where they have a current conviction for an offence contained in schedule 3 of the Sexual Offences Act 2003

In the following situations, **careful consideration should be given** to determining whether a person is fit and proper:

- Where a person has contravened housing law, landlord and tenant law or any legal requirement relating to letting or management agents, including consideration of: previous history, evidence of poor management, prosecutions and simple cautions. In particular, in relation to contraventions under:
 - Housing Act 2004;
 - Public Health Acts of 1936 and 1961;
 - Building Act 1984;
 - Environmental Protection Act 1990;
 - Town and Country Planning Act 1990;
 - Prevention of Damage by Pests Act 1949;
 - Protection from Eviction Act 1977;

- Local Government (Miscellaneous Provisions) Acts of 1982 and 1976;
- Housing Grants, Construction and Regeneration Act 1996;
- Local Government and Housing Act 1989;
- Housing and Planning Act 2016;
- Tenant Fees Act 2019

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/CPN. 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 contraventions, 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.

- Where a person 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.

- Where a person has practised 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 property.

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.

Review of Fit and Proper Person Status

The Council has the power to revoke a licence in a number of circumstances. These are set out in sections 70 (Mandatory and Additional licences) and 93 (Selective licences) of the Act. This includes 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 in each case fit and proper persons to be involved in its management.

The Council **must** revoke a licence if a banning order is made under section 16 of the Housing and Planning Act 2016 (sections 70A and 93A of the Housing Act 2004).

The tests for determining whether a person is fit and proper are the same as those that apply when considering an application for a licence.

If the decision is made that someone is not fit and proper, the licence should be revoked, following the procedures set out in the Act.

Satisfactory management arrangements are not a consideration when making a decision to revoke a licence. It is only applicable when determining whether to grant or refuse a licence.

Duration

If someone is found not to be fit and proper, this will normally remain the case for a period of **five 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 the proposed licence holder or manager is a fit and proper person.

Satisfactory Management Arrangements

The Council must be satisfied that *'the proposed management arrangements...are satisfactory'* before granting a licence.

Those arrangements include (but are not limited to) consideration of:

- Whether any person proposed to be involved in the management of the house has a sufficient level of competence to be so involved;
- Whether any person proposed to be involved in the management of the house (other than the manager) is a fit and proper person to be so involved; and
- Whether any proposed management structures and funding arrangements are suitable.

It is the **proposed** competences and structures that need to be satisfactory, not those actually pertaining at the date of application. Thus arrangements can be made satisfactory through the imposition of conditions in the licence.

It is for the Council to determine whether a person has sufficient competence to be involved in the management of a property and, of course, the level of competence required will in some measure be determined by the complexity of the management challenges posed. The Council should, therefore, be looking at the applicant's experience and track record of managing residential property and, in particular where he/she is the existing manager, the property to which the application relates.

The test should not, however, be set too high. Competent managers need to know their legal obligations and work within them, but it does not mean they need a formal housing or legal qualification. Where a deficiency is identified and can be addressed this should be done through a licence condition (e.g. requirement to attend a training course). In most cases landlords who belong to a recognised trade association or are members of an accreditation scheme (which could include the [West of England Rental Standard – Rent With Confidence](#)) should be regarded as having the necessary competence to be involved in the management of the property because, at least such organisations can be called upon for advice and assistance where necessary.

The management structures must be such that the manager is able to comply with any licence conditions and deal with the day to day operation management issues that arise as

well as being able to deal with longer term management issues. In considering whether the structures are appropriate the Council may wish to take account of the following:

- Evidence as to whether the systems in place are sufficient to enable the manager to comply with any condition of a licence;
- Or, if such systems can be put in place through a condition of a licence to ensure compliance;
- Evidence of the systems for dealing with:
 - emergency repairs and other issues;
 - routine repairs and maintenance to the property and its curtilage;
 - cyclical maintenance;
 - management and the provision of services (if any) to the building and its curtilage;
 - management of tenancies or occupants;
 - management of the behaviour of tenants, occupants and their visitors to the property;
 - neighbourhood issues (including disputes)
- Evidence of structures for engagement with the local authority, police and other agencies, where appropriate

The manager may be asked to demonstrate much of the above evidence so he can attend to matters promptly and retain an overview on the condition of the property and the management of the tenancies. The Council must also be satisfied that the financial arrangements relating to the property are suitable. In that regard the manager must be sufficiently funded or have access to funding to carry out his obligations under the licence and his/her general management functions.

Satisfactory management arrangements are not a consideration when making a decision to revoke a licence. It is only applicable when determining whether to grant or refuse a licence.

Private Housing Enforcement Policy

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.

Data sharing

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. Property licence applicants agree to this when they sign the property licence application form.