



Fit and Proper Person Criteria

Housing Act 2004
Part 3

Version 1



this is Redcar & Cleveland

Fit & Proper Person

Selective licensing can only seek to successfully combat repeat and severe antisocial behaviour where the criteria to be a fit and proper person or restrictions placed on the landlords ensures that only those with the desire to rent out properties in a responsible manner are able to operate in the selective licensing area.

Part 3 of the Housing Act 2004 states that, in order to be granted a licence, the proposed licence holder must be proved to be a 'fit and proper person'.

Landlords and managing agents operating privately rented accommodation in areas subject to selective licensing will have regular contact with members of the public. It is imperative that only those landlords or agents who are able to manage relationships with all sections of our communities and who show a level of understanding of their needs are granted a licence to operate.

This document aims to ensure that each potential licensee is transparently and equitably assessed. Failure to meet these standards will result in the refusal of the licence application and help reduce the number of privately rented properties being let with no proper checks or management procedures in place.

Redcar & Cleveland Borough Council (RCBC) 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 and will take into account the gravity of the offence.

It should be noted that this document is not exhaustive and the council reserve the right to change or make additions to the Fit and Proper Person Criteria in line with government directives and through service or policy development.

Definition

Individuals and agencies meeting the standards laid out in the Fit and Proper Person criteria will need to satisfy the council that they:

- are without any significant convictions, cautions, reprimands and warnings in relation to fraud or other dishonesty, violence, drugs or any other offence listed in Schedule 3 of the Sexual Offences Act 2003;
- have the necessary experience and/or managerial skills and competence to successfully manage the property;
- employ appropriate management structures and funding arrangements;
- are aware of, and sensitive to, the needs of all sections of society; and,
- are willing to engage with the council in the licensing procedure.

In determining the prospective licensee's suitability to hold a licence, the council will consider the following standards and criteria. As part of the application process, RCBC officers may contact other appropriate individuals or agencies in order to ascertain a view on the suitability of the applicant to hold a licence. This could include employers, previous and current tenants and other local authorities.

Convictions, cautions, reprimands and warnings

Applicants are required to declare any criminal convictions in relation to fraud or other dishonesty, violence, drugs or any other offence listed in Schedule 3 of the Sexual Offences Act 2003. A positive declaration will not automatically preclude the applicant from holding a licence, but further information may be requested. 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. Please see Appendix 1 for the list of convictions and their categories.

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

Where it appears to RCBC that the applicant meets all other aspects of the Fit and Proper Person Criteria we will invite the local police authority to comment as to whether they believe that granting the licence would undermine the antisocial behaviour reduction objective of the licensing scheme.

Effective management and managerial experience or skills to suitably manage the property

In accordance with the ethos and aims of the licensing scheme, all landlords and managing agents applying to hold licenses are expected to manage their properties suitably.

Guidance in relation to effective management standards are set out in Appendix 2.

Suitable funding arrangements

The council would expect a successful licence applicant to have suitable funding arrangements in place to effectively deal with repairs etc when they arise.

On request 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 statements may be required.

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

Housing Act Offences

- Protection from Eviction Act 1977
- Protection from Harassment 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 housing act offences

A caution, reprimand or warning for any Category 2 offences will be classed as a Category 3 offence.

Appendix 2

Satisfactory Property Management Standards

Through the application form, the council asks the applicant to highlight any previous experience they have in managing properties and any skills, experience or qualifications that have been gained that assist a person to manage a property suitably.

In addition to assessing compliance with current and previous licence criteria the Council will take into account the way in which the applicant has engaged with any previous licensing or enforcement procedures, both within or outside the borough. The fact that the prospective license holder may have been successful in other licence applications is not sufficient evidence on its own to fully demonstrate engagement with previous application or enforcement processes.

Factors that will be considered to ascertain if a property is satisfactorily managed include:

- that the applicant is suitably located in proximity to the licensable property to ensure adequate management, especially in 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, particularly overseas. In such circumstances, the Council would expect a local managing agent to be employed;
- that the applicant has no 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 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 has no history of frequent and substantial complaints from tenants relating to conduct considered to constitute harassment or attempted or actual unlawful eviction (under the provisions of the Prevention from Eviction Act 1977). Such a history will be considered to be an indication of unsatisfactory management arrangements; and,
- that the applicant has not breached any current or previous management regulations applicable to Houses in Multiple Occupation. Any such breach will be considered to be an indication of unsatisfactory management arrangements.

In order to demonstrate effective management practices are in place, landlords or managing agents will be expected to demonstrate that they have a letting procedure in place that should:

- provide 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) and payment methods;
- include referencing procedures. These procedures should not merely be credit references, but should include character references to indicate their suitability as a tenant. Ideally this will mean a reference from a previous landlord or, 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;
- provide clear information on who has responsibility for the payment of all utility charges and Council Tax;
- ensure prospective tenants are made aware of the standard operating procedures, such as emergency repairs, hours of contact etc; and,
- provide 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.

It is essential that the landlord or managing agents are familiar with legislation relating to tenancy agreements and possession proceedings. All parties included in the tenancy contract should be aware of their rights and responsibility under the agreement and landlords should be able to demonstrate that they make 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; and,
- local facilities and amenities, including refuse collection/recycling days, neighbourhood watch and residents' association details, post offices and shops etc.

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; 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 these behaviours.

All licence holders must make every possible step to ensure their tenants are able to live peacefully within their property. More specifically, license holders must:

- ensure any repairs are undertaken within a reasonable timescale;
- promptly tackle any antisocial or nuisance behaviour emanating from the property, whether perpetrated by the tenants or people visiting or living with them (A separate guidance document in relation to tackling Anti Social Behaviour can be obtained from the Housing Standards Team); and,
- respect the privacy of the tenant, for example by giving adequate notice (usually no less than 24 hours) when access to the property is needed.

Landlords and managing agents must be able to demonstrate a satisfactory understanding of relevant legislation and processes. Unless a tenant surrenders the property or the tenancy is ended by mutual agreement, 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. It is expected successful licence applicants will be able to evidence that;

- tenants are issued with clear information regarding the standard of cleaning and other arrangements for bringing the tenancy to an end. This information must include clear guidance regarding the standard of cleanliness and condition of the dwelling expected at the end of the tenancy and the consequences of failing to meet this standard; and,
- they have systems in place to promptly and efficiently return deposits and that any deductions are justified with evidence of expenditure, made available to the tenant.

Should you require any further guidance, please contact the Housing Standards Team:

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