

Appendix 1**Policy: Fit and Proper Person – Private Sector
Housing**

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1. Purpose.

1.1 Under Parts 2 and 3 of the Housing Act 2004 (“the Act”), the Council must be satisfied that:

- the proposed licence holder is a fit and proper person and the most appropriate person to hold the licence; and
- any proposed manager of the property is a fit and proper person to be involved in its management.

1.2 Where the Council is not so satisfied, it must refuse to grant a licence unless suitable alternative management arrangements can be agreed.

1.3 A licence may be revoked if, at any time, the Council is no longer satisfied that:

- the licence holder remains a fit and proper person; or
- the property is being managed by fit and proper persons.

1.4 The purpose of the fit and proper person test is to protect occupiers, neighbours and the wider community by ensuring that those responsible for licensed properties demonstrate integrity, competence and a record of lawful and responsible conduct.

2. Scope

2.1 This policy applies to all properties requiring a licence under:

- Part 2 (HMO licensing).

This policy would also be applicable to all properties requiring a licence under Part 3 (Selective Licensing) of the Housing Act 2004, if any such schemes are introduced.

2.2 The policy applies to licence holders, proposed licence holders, managers and any other persons the Council considers to be involved in the management of a licensable property.

2.3. This policy does not apply to residential caravan sites licensed under the Mobile Homes Act 2013 as a separate policy and process exists for this function.

3. Policy

3.1 Persons “Involved in the Management”

3.1.1 A person is considered to be “involved in the management” where they have a significant role in:

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- repairs and maintenance;
 - compliance with legal requirements;
 - management of tenancies or occupants;
 - handling of rent, deposits or personal data;
 - dealing with complaints, antisocial behaviour or emergencies.

3.1.2 This may include owners, directors, partners, managers and agents. It will not normally extend to staff with purely administrative or incidental contact unless their role gives rise to relevant concerns.

3.1.3. Where the licence holder and manager are different persons, the Council will make a separate assessment for each.

3.2. The Fit and Proper Person Assessment

3.2.1. In determining whether a person is fit and proper, the Council will have regard to **any information it considers relevant**, including (but not limited to) whether the person has:

- Committed any offence involving fraud (including benefit fraud), violence, drugs or offences listed in Schedule 3 of the Sexual Offences Act 2003;
- Practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origin or disability in or in connection with any business
- Ever contravened any provision of any laws relating to Housing, Public Health, Environmental Health or Landlord and Tenant law (including harassment and illegal eviction)
- Owned or managed an HMO or house which has been subject to enforcement action under Part 1 of the Housing Act 2004
- Had a licence refused or revoked, or breached licence conditions;
- Owned or managed a property which has been the subject of an interim management order, special interim management order, or final management order under the Housing Act 2004
- Acted otherwise than in accordance with approved codes of practice or recognised standards;

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- Ever been convicted or received a Civil Penalty Notice for non-compliance of a Statutory Notice under Housing, Environmental Health, Landlord and Tenant, Public Health, Health and Safety, Building Regulations or Planning Laws
 - Been in control of a property where works have been carried out in default
 - Failed to cooperate with enforcement action or demonstrated disregard for legal obligations.
 - Been subject to prosecution and/or Civil Penalty action for housing related offences

3.2.2 A person subject to a banning order under the Housing and Planning Act 2016 will not be considered fit and proper.

3.2.3. A person on the 'Rogue Landlord Database'.

3.2.4. This list is not exhaustive. The absence of a specific matter does not prevent the Council from finding a person not fit and proper.

3.3. Associated and Formerly Associated Persons

3.3.1. In determining whether a person is fit and proper, the Council may take into account the conduct of any person or body associated or formerly associated with the applicant or proposed manager, where relevant.

3.3.2 This may include, but is not limited to:

- family members, partners or former partners;
- business partners or associates;
- companies, partnerships or limited liability partnerships;
- directors, officers, shadow directors, persons with significant control, shareholders or beneficial owners;
- parent, subsidiary or successor companies;
- managing agents or contractors acting on behalf of the applicant.

3.3.3 The Council may take such associations into account where it considers that:

- the applicant or proposed manager is acting as a proxy, front or nominee for another person or company;
- control or influence over the property or its management may be exercised by a person or body that would not be considered fit and proper; or

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- the association is otherwise relevant to the effective, lawful and responsible management of the property.

3.3.4. A licence may be refused or revoked on this basis where there is evidence that:

- an associated or formerly associated person or body has engaged in conduct relevant to the fit and proper person assessment; and
- that conduct materially affects the applicant's or proposed manager's suitability to hold a licence or manage the property.

3.3.5. The Council will consider the nature, extent and relevance of any association on a case-by-case basis. The existence of an association alone will not automatically result in refusal.

3.4. Decision-Making and Weighting of Evidence

3.4.1. Each case will be determined on its individual merits. The Council will exercise its discretion reasonably and proportionately.

3.4.2 In assessing relevance and weight, the Council may consider:

- the seriousness and nature of the conduct;
- risk posed to occupiers or others, particularly vulnerable persons;
- patterns of behaviour or repeated non-compliance;
- how recent the conduct was;
- evidence of remediation, learning or sustained compliance;
- any aggravating or mitigating circumstances.

3.4.3. Isolated or minor breaches will not automatically result in refusal. However, repeated failings, serious misconduct, or disregard for legal duties are likely to weigh heavily against an applicant.

3.4.4. The Council will not be bound by previous findings of fitness and may reassess fitness at any time during the life of a licence.

3.5. Outcome and Appeals

3.5.1. Any person not being a Fit and Proper Person as per section 3.2, will be refused a licence. Appeals against a decision to refuse or revoke a licence can be made to a First Tier Property Tribunal.

3.6. Duration of Findings

3.6.1. Where a person is found not to be fit and proper, this will normally be considered to remain the case for up to five years.

3.6.2. Any subsequent application will be assessed afresh. The burden will rest with the applicant to demonstrate suitability.

3.7. Relationship to Enforcement Policy and Data Sharing

3.7.1. This policy operates alongside the Council's Private Sector Housing Enforcement Policy and the Private Sector Housing Civil Penalty Policy.

3.7.2. Information relevant to the fit and proper person test will be shared with other statutory bodies, including the 'Rogue Landlord Database', other local authorities and the police, where lawful and necessary for the prevention or detection of crime or the exercise of statutory functions.

4. Policy Considerations

4.1 Risk

4.1.1. Failure to have a policy on the assessment of Fit and Proper Licence Applicants under Parts 2 and 3 of the Housing Act 2004, could result in the Council issuing a licence to a person who has not been given due consideration, as required by the legislation. This policy has been developed in conjunction with the other Authorities within Nottinghamshire to improve the consistency of approach.

4.2 Assertions

4.2.1. It is asserted that the Policy covers all of the minimum statutory requirements of the Act and Associated Guidance.

4.3 Responsibilities

4.3.1. It is the responsibility of all Officers to adhere to the policy.

5. Related Policies, Standards and Guidelines

This policy should be read in conjunction with the Private Sector Housing Enforcement Policy, the Private Sector Housing Civil Penalties Policy, the Caravan Site Fit and Proper Person Policy (if applicable) and the relevant procedures, standards and guidelines relating to Private Sector Housing Enforcement functions.

6. Enforcement

Any **user** or **administrator** found deliberately contravening this policy **may** be subject to disciplinary action and, where appropriate, legal action.

7. Review

This document will be reviewed every 5 years as a minimum or wherever there may be a change in legislation or influencing circumstances.

8. Document Attributes

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