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Mobile Homes (Wales) Act 2013 – Information Sheet

Fit and Proper Person Test

Advice for Local Authority Officers

August 2014



This information is part of a series about the rights and obligations of mobile home owners, site owners and local authority officers in Wales.

This information gives some basic guidance to local authority officers about the 'fit and proper person' test which applies to mobile home licence holders under the Homes (Wales) Act 2013.

This factsheet does not give an authoritative interpretation of the law; only the courts can do that. Nor does it cover all cases. If further advice or information about legal rights or obligations is needed, a Citizen's Advice Bureau or a solicitor should be contacted.

Introduction

In deciding to grant a site licence for a regulated mobile home site under the Mobile Homes (Wales) Act 2013, a local authority must be satisfied that the site owner *“is a fit and proper person to manage the site or (if the owner does not manage the site) that a person appointed to do so by the owner is a fit and proper person to do so...”* or *“has, with the owner’s consent, itself appointed a person to manage the site.”*

This requirement is to ensure that those responsible for operating the site licence and managing the site are of sufficient integrity and good character to be involved in the management of a regulated site for mobile homes to which the application relates and as such they do not pose a risk to the welfare or safety of persons occupying mobile homes on the site.

A licence should be refused if there is a finding that the licence holder and/or his manager is unfit, if there are doubts as to someone’s fitness these can be addressed through the setting of appropriate site licence conditions. However, the question of the person’s fitness must be in relation to the **management** of the mobile home site to which the application relates.

1. Evidence

When considering whether a person is 'fit and proper' the local authority must have regard to any 'wrong doings' of the person concerned. These are evidence that the person has:

(a) committed any offence involving fraud or other dishonesty, violence, firearms or drugs or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (offences attracting notification requirements),

(b) practised unlawful discrimination or harassment on the grounds of any characteristic which is a protected characteristic under section 4 of the Equality Act 2010 or victimised another person contrary to that Act, in or in connection with the carrying on of any business, or

(c) contravened any provision of the law relating to housing (including mobile homes) or landlord and tenant.

2. Items to Consider

A local authority must also consider evidence that anyone associated or formerly associated with the person has done any of the offences set out above and whether that evidence is relevant to the question of whether the person is a fit and proper person to manage the regulated site.

Local authorities should not consider poor management practices as wrong doings, unless they are in breach of the criminal or civil law. A person cannot be deemed unfit, simply because of poor management, although that is highly relevant to determining any question of suitability or competence (as discussed below).

The wrong doing has to be relevant to the person's fitness to hold a licence and/or manage the particular mobile home site to which the application for a licence relates and, in regard to criminal offences, the local authority must only have regard to unspent convictions.

An unspent conviction will not necessarily prevent a fit and proper judgement by the local authority. A local authority should not adopt a blanket policy with respect to its treatment of wrong doings. Each case must be considered on its own merits and if a licence is to be refused on the ground that a person is unfit, the local authority must be able to defend that decision with cogent reasons. Upon refusal, the local authority must notify the person of the reasons for the decision and their right to appeal. The proposed licence holder then has 28 days to appeal to the Residential Property Tribunal against the decision.

3. Applications

In an application for a site licence the proposed licence holder must provide details of the following in relation to him/herself and the proposed manager (if the applicant is not to be the licence holder):

- details of any refusal to grant a licence, or details of the revocation of a licence in the past 3 years in respect of a regulated mobile home site under his/her management or ownership.
- the details of any offence involving fraud, violence, firearms or drugs or any offence listed in Schedule 3 of the Sexual Offences Act 2003. This should include the offence, the date of sentence and the court that passed sentence.
- any findings of a court/tribunal that the person has practised unlawful discrimination under Section 4 of the Equality Act 2010.
- any judgement entered against that person in relation to a contravention of housing (including mobile homes) or landlord and tenant law (and, in so far it relates to the housing or landlord and tenant law, any contravention of any enactment relating to public or environmental health)

Since an applicant for a licence must disclose his/her and any proposed manager's wrong doings, if any, a local authority should normally have sufficient information to decide a person's fitness based on the application. If the local authority is satisfied that it has sufficient information (being that supplied in connection with the application) to make a determination, it may require the applicant to provide further details. In some cases it may wish to invite the applicant and/or the manager to a meeting to discuss and clarify any issues arising.

If an applicant provides false or misleading information about any wrong doings, he commits an offence and can receive an unlimited fine upon summary conviction. If an applicant has provided false or misleading information (without reasonable excuse), that would be a clear indication of his unfitness. Local authorities should not routinely make police checks or request information on criminal convictions. This is particularly the case because any evidence relating to criminal convictions is only part of the picture in assessing a person's fitness.

Where a business or organisation is to be the licence holder or manager, a 'fit and proper person' declaration signed by the company secretary or other responsible person is needed on behalf of the company, partnership or trust. Any employee who is involved with the management of the mobile home site can be regarded as an 'associate'. Consequently, in signing the declaration the responsible people should be satisfied that these employees would be able to sign the declaration themselves, for example by requesting CRB or Disclosure Scotland checks.

4. Seeking further evidence

In some circumstances it may be appropriate for the local authority 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 or the Disclosure Barring Service (DBS). A Disclosure Scotland Criminal Conviction Certificate costs around £25, a standard DBS check costs around £26 and an enhanced DBS check £44. These services 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 2013 Act for that person to seek or provide the information to a local authority.

Consequently a local authority must have good reasons for asking that person to do so, especially if the local authority 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 local authority has had a history of complaints or problems with the site owner or manager (which in themselves might not amount to 'evidence' of unfitness to meet the test), but further investigation may be required,
- there is reason to believe that an applicant has been evasive or untruthful in his application for a licence,
- the applicant, or proposed manager, is unknown to the local authority and has not demonstrated any history or competence of managing a regulated mobile home site, or;
- the local authority 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.

In deciding whether a wrong doing (including a criminal offence) is relevant to the determination of a person's fitness a local authority may wish to consider the following factors:

- the relevance of the wrong doing(s) in relation to the person's character and integrity to manage a regulated mobile home site,
- the seriousness of the wrong doing(s) in terms of impact, or potential impact, upon the site residents and the wider community, including if more than wrong doing has been carried out the cumulative impact of that,
- the length of time since any wrong doing,
- and any mitigating circumstances.

In the case of an applicant who has a relevant conviction which was correctly declared, a judgement must still be made taking account of other information available about the applicant and if necessary by interview to assess whether he or she is able and willing to operate in a manner regarded by the local authority as fit and proper. In considering past actions of the applicant and the conviction, the local authority should consider whether any problems are likely to occur again

and whether they are likely to affect the applicant's management and conduct on the site. In particular, the nature of any agency arrangement should be taken into account.

It is quite possible to conclude that if the applicant represents a low risk, registration is appropriate. It should be noted however that future actions may result in an applicant failing the fit and proper person test in the future, leaving the applicant open to an unlimited fine and the revocation of the licence.

Local authorities will need to establish a decision-making process for applications which do not allow for a clear cut decision, but are encouraged to delegate routine decision making functions to officers.

5. Completion

Where a licence holder under the Mobile Homes (Wales) Act 2013 contravenes the fit and proper person test during the period of the licence, a local authority may apply to the Residential Property Tribunal Wales for an order revoking the site licence. A person guilty of an offence is liable on conviction to an unlimited fine.

Similarly, the fit and proper person status can be removed from managers and anyone else involved in the management of the site. It would then be a breach of a licence condition if that person continues in that capacity.

If the local authority is however satisfied that the applicant is a fit and proper person to manage the site then Section 3 of the application for a site licence is completed.