



**Notice of Decision to Amend the West Lancashire Landlord Accreditation Scheme**

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Decision of: Assistant Director of Community Services  
Relevant Managing director: Managing Director  
(People and Places)  
Relevant Portfolio Holder: Councillor D Sudworth  
Date: 6<sup>th</sup> May 2015

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**Background**

The West Lancashire Landlord Accreditation Scheme (WLLAS), which was launched in February 2012, aims to improve property and management standards in the private rented sector. The Scheme is run by the Residential Landlord Association (RLA) on behalf of West Lancashire Borough Council and Edge Hill University who part fund the scheme.

The WLLAS scheme is delivered under legal contact by the Residential Landlord Association. The contract requires each party to nominate a person responsible for conducting any reviews. David Tilleray (Assistant Director of Community Service) is the nominated officer for West Lancashire Borough Council and has the delegated powers in consultation with the portfolio, to agree any changes to the scheme. (Cabinet report November 2012).

The Private Sector Housing Team recently received a request to review the WLLAS scheme after it had come to light that a criminal landlord, who would not have passed the fit and proper person test, was renting a property to students through a WLLAS Managing Agent. On review of the scheme it became clear that Managing Agents are not required to undertake 'fit and proper person checks' of their client landlords.

**Information:**

A report was submitted to the portfolio holder for consideration on the 22nd April 2015 (Appendix 1) with additional information provided by email summarised in (Appendix 2) these were used to arrive at the following decision.

**Decision:**

Under the current scheme the Fit and Proper person test already applies to the Landlords and the Managing Agents (and their employees) and if they fail the test they are refused access to the West Lancashire Landlord Accreditation scheme (WLLAS).

The review to the scheme will now require WLLAS Managing agents to also undertake a fit and proper person check on their clients (i.e. any owner/s of any properties they manage). If the owner is a company/ partnership or trust all directors/ partners/ trustees should pass the fit and proper person test. If any of the relevant owners fail the fit and proper person check the Managing Agent must notify the Local Authority to seek a decision and either refuse management or offer management under a full management contract only. This would be to prevent any owner, who has not met the fit and proper person check, from having any management or financial control over the property.

**This Decision is made on the following basis:**


If the WLLAS Managing Agent is to offer a full

management contract the WLLAS Managing Agent must be satisfied, at the beginning of the agreement, that the property is in good condition and that that cost of any repairs maintenance and services provided can be met by the income generated through the rental income received by the Agent.


For Clients with only a single property it shall normally be sufficient for the WLLAS Managing Agent to have received a signed declaration from the client landlord that they meet the fit and property person test (Appendix 1). If the WLLAS Managing Agent has any information or reason to believe that the landlord is withholding information and in fact may fail to meet the fit and proper person check they must require him to provide a Basic Criminal Records Disclosure.

For clients with more than one property the WLLAS managing agent must require the owner(s) to provide a Basic Criminal Records Disclosure.

This decision is subject to consultation with other WLLAS partners in particular the Residential Landlord Association and Edge Hill University.

Signed:   
Portfolio holder

Date: 6<sup>th</sup> May 2015

Signed:   
May 2015  
Assistant Director of Community Services

Date: 6<sup>th</sup>

## Appendix 1:

Report of: Assistant Director of Community Services

Relevant Managing director: Managing Director (People and Places)

Relevant Portfolio Holder: Councillor D Sudworth

Date submitted: 22<sup>nd</sup> April 2015

### **Purpose of the Report**

To inform of a review to the West Lancashire Landlord Accreditation Scheme and to seek the portfolio holders agreement to the amendments.

### **Background**

The West Lancashire Landlord Accreditation Scheme (WLLAS), which was launched in February 2012, aims to improve property and management standards in the private rented sector. The Scheme is run by the Residential Landlord Association (RLA) on behalf of West Lancashire Borough Council and Edgehill University who part fund the scheme.

To join the scheme Landlords must comply with RLS's code of practice, they must attend training and must be 'fit and proper persons'. Managing agents may also apply to the scheme, they must satisfy the same requirements as WLLAS Landlords but they must also comply with some additional requirements e.g. all employees must be 'fit and property persons', and suitably trained, director(s) must undertake CPD and they must promote attendance at a WLLAS professionals development courses to their landlord clients.

### **Review of the West Lancashire Landlord Accreditation Scheme (WLLAS)**

The WLLAS scheme is delivered under legal contact by the Residential Landlord Association. The contract requires each party to nominate a person responsible for conducting any reviews. David Tilleray (Assistant



Director of Community Service) is the nominated officer for West Lancashire Borough Council and has the delegated powers to act accordingly.

The Private Sector Housing Team recently received a request to review the WLLAS scheme after it had come to light that a criminal landlord (who would not have passed the fit and proper person test) was renting a

property to students through a WLLAS Managing Agent. On review of the scheme it became clear that Managing Agents are not required to undertake 'fit and proper person checks' of their client landlords.

To remedy the above it is proposed that the scheme is amended to require managing agents to undertake 'fit and proper person checks' for client landlords and any landlords who do not pass the test must be either refused management services by the WLLAS Managing Agent or only offered a full management contract. The full management contract would prevent the landlord from having any management or financial control over the property. To ensure that the WLLAS Managing Agent has full financial control over the property they would need to be satisfied, at the beginning of the agreement, that the property was in good condition and that that cost of any repairs maintenance and services provided can be met by the income generated through the rental income received by the Agent.

Full management control for the purposes of above would mean; managing and arranging for the landlord any services, repairs, maintenance, improvements, insurance, rent collection, rent deposits and tenancy matters including rent arrears and other breaches of the tenancy agreement.

It is not intended that the above would apply to properties where a managing agent is managing as freeholder for leased blocks of flats.

This will ensure that any private rented properties owned by criminal landlords will only be managed by

WLLAS accredited Managing agents if the criminal landlord is excluded from any management or financial control.

The managing agent will be required to notify the local Authority if they become aware of any criminal landlords for properties they are managing.

Any new contracts entered into will include a break out

clause so that if a landlord commits a relevant crime or if the agent becomes aware of a relevant crime and full management control is not agreed, that the contract can be terminated by giving notice of no more than 3 months.

### **Implementing the review**

RLA have already been consulted regards this proposal.

They have requested that existing members and other stakeholders be consulted regards these amendment for their comments.

Following agreement from the review team, The West Lancashire Landlord Accreditation Scheme Rules and Requirements will need to be amended and implemented.

Agreement will need to be reached regards the approach to be taken for existing contracts which WLLAS managing agent hold with client landlords.

Managing Agents will need to include in any application for new new contracts a 'fit and proper person' declaration and where necessary require the submission of a Basic Criminal Records Check.

For single property Clients it shall normally be sufficient for the WLLAS Managing Agent to have received a signed declaration from the client landlord that they meet the fit and property person test. If the WLLAS Managing Agent has any information or reason to believe that the landlord is withholding information and in fact may fail to meet the fit and proper person check they must require him to provide a Basic Criminal Records Disclosure.

## **APPENDIX**

**In arriving at the above decision the following options were considered and it was decided that Option 2 was more favourable for the tenants, the Local Authority and the Managing Agents.**

Option 1:

To Prevent WLLAS Managing Agents from renting properties owned by criminal landlords.

### **Advantages:**

The approach would prevent any bad press from damaging the reputation of the accreditation scheme and the reputation of the University and West Lancashire Borough Council

### **Possible negative consequences:**

However criminal landlords cannot be prevented from renting properties unless this has been determined by the courts, or the property is a licensable HMO and the landlord is unable to find an appropriate person to act as License Holder (there are only 26 licensed HMOs within the Borough).

The criminal landlords may decide to manage the property themselves or use a rogue managing agent.

The criminal landlord may decide to sell the property which could lead to uncertainty for the occupying tenants, some of who may have lived in the property for many years.

If a client Landlord is convicted of an offence during the course of a WLLAS Managing Agent Agreement, they would need to terminate their contract. If the landlord receives a custodial sentence this could lead to the property being left without management or being left empty.

This could lead to an increased burden on the Local Authority who are left dealing with un managed and empty properties though enforcement.

Empty properties often targets for anti-social behaviour. The criminal landlord may also be unable to pay Council Tax on the property leading to a loss of income to the Local Authority

The WLLAS Managing Agent may decide to leave the accreditation scheme rather than loose a landlord client with a criminal background.

Option 2:

To require WLLAS Managing Agents to only offer criminal landlords a full management contact.

### **Advantages**

This would allow the WLLAS managing agents to offer a Full Management Contract which would prevent the landlord from having any management or financial control over the property.

Should a landlord be convicted of an offence during the course of a tenancy, this would provide a criminal landlord with access to a professional managing agent and the tenants would receive a quality property management service and feel assured that their tenancies are safe.

This approach would reduce the burden placed on the Local Authority who are left dealing with un managed properties through enforcement.

The tenant's needs and housing standards will be maintained if a WLLAS Managing Agent can offer a Full Management Contract.

### **Possible negative consequences**

The general public may consider the WLLAS Managing Agents association with a criminal landlord to be inappropriate and could lead to bad press and damage the reputation of the scheme the university and West Lancashire Borough Council.

**Signed Declaration for single client landlords:**  
The following details must be supplied



- a) Information concerning any unspent convictions against you or any offence involving fraud or other dishonesty, or violence or drugs or any offence listed in Schedule 3 to the Sexual Offences Act 2003.
- b) Details of any finding by a court or tribunal against you for the practise of 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.
- c) Details of any contravention by you of any provision of any enactment relating to housing or landlord and tenant law; including any civil proceedings in which judgement was made against you.
- d) Information about any property which you own or have owned which has been subject to a control order under section 379 of the Housing Act 1985(a) in the last 5 years;
- e) Information about any property for which you have been refused a licence under Parts 2 or 3 of the Act;
- f) Information about any act by the proposed licence holder not in accordance with any Code of Practice approved under section 233 of the Act that concerns a property owned by him;
- g) Information about any property that you own or have owned that has been the subject of any proceedings (whether court or otherwise) by a local authority, including details of any work that the local authority has carried out as a result of default.

In addition the managing agent may approach other authorities such as the Police, Fire and Rescue Service, Office of Fair Trading, Citizens Advice bureau, Health and Safety Executive and any internal department or agent of the Council.

If any of the items described in a) to l) above apply, please provide details below. If none apply, please write NONE.

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Appendix 2:

Additional information provided by email:

**24 April 2015 06:20: From:**

**[\[david@davidsudworth.com\]](mailto:david@davidsudworth.com)**

I have considered this further and was wondering what the legal position would be if we went with Option 1?

I'm thinking in terms of possible discrimination and also the differing levels of offences.

For example, where could we feasibly set a threshold? A serious offence such as murder is very different from shoplifting yet they are both criminal acts. What would be the legalities regarding that?

Also, what about people who, having served a custodial (or indeed suspended sentence) and therefore 'rehabilitated' in the eyes of the law, who may want to join. They would still be a 'criminal' in the sense their conviction wasn't spent, but technically free to do as they wish in terms of letting market activities

Also, regarding the above, what are the practicalities of WLBC being able to effectively police all of this?

Would introducing DBS/CRB checks be an option?

How does this tie in with what we are trying to do and with Section 89 of the Housing Act 2004?

**On 27 Apr 2015, at 12:34, From Weston, Lucy**

**<[lucy.weston@westlancs.gov.uk](mailto:lucy.weston@westlancs.gov.uk)>**

The fit and property person declaration I included in the report is used in the applications for mandatory HMO licensing. This has been pulled from the Housing Act 2004 Section 66 which covers the test for fitness and satisfactory management arrangements for License holders of HMOs (or other properties subject to selective licensing).

As a threshold is difficult to set, the Managing Agent / Local Authority would have to make a decision on a case by case basis.

I was intending that the Managing Agents should require CRB checks for all landlord clients who have more than one property - the signed declaration should only be available for single property landlords (this was to avoid

a negative impact on the Managing Agents business). For the accreditation scheme, we would have to require the Managing Agent to notify the Local Authority of any signed declarations / disclosures and to provide their opinion on the suitability of a client landlord for our consideration.

In terms of policing the 'fit and proper person checks' - in the first instance it would be for the Managing Agent to do this but with a requirement to notify the Local

Authority for our approval.

I wouldn't expect this to cause too much work to the Local Authority.

I'm of the opinion that Option 2 is the correct option as this mirrors how this operates for Licensed HMO's.

The following information on HMO Licensing may help - An application for an HMO license must be submitted from an owner (which may be a company, partnership or trust with a number of directors / partners/ trustees) or other person who has been given authority from the owner to act on their behalf (e.g. managing agent).

The person making the application must state:

The license holder (this must be the most appropriate person out of those reasonably available) and

The person managing the property (this must be the person having control of the property).

The fit and property person check relates to the License Holder and the person managing the property. Not the Applicant

I have highlighted the above because you could have an applicant with a criminal record who employs a third party to be the license holder and manager. Under this scenario the applicant (provided he is not the license holder or person managing the property) would not need to be a fit and proper person.

Option 2 which will only allow a WLLAS Managing Agent

to take business from a criminal landlord if they have full control, is consistent with licensing.

HMO Licensing cases:

In one case a landlord who was the license holder of an HMO had failed to comply with an Improvement Notice and was prosecuted. His conviction meant that he was no longer a fit and proper person to act as License Holder.

He applied to the Local Authority for a new license

under his daughters name (which we refused due to the association) so he employed a managing agent to be license holder and manager. The Local Authority did consider refusal to license but the Housing Act 2004 Section 64 which outlines the granting and refusal of licenses only requires the License Holder and Manager to be a 'fit and proper person' and for the proposed management arrangements to be satisfactory. On this basis the license was granted.

I hope that this additional background information is helpful in considering the Options for the WLLAS Managing Agents.

**28 April 2015 13:19 From:**  
**david@davidsudworth.com**

The following is from the Housing Act 2004 Section 89; note at subsection 2a – we must have regard to any person who has

a) 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 (c. 42) (offences attracting notification requirements);

How does Section 89 tie in with what we are trying to do?



**28 Apr 2015, at 15:20, From Tilleray, David  
<David.Tilleray@westlancs.gov.uk>**

These look like the requirements used for HMO Licensing, which Lucy intended to be the basis. We had also looked at the criteria used for the Fit & Proper test for Taxi Licensing, but these might be too onerous in one sense, in that they are for persons in close proximity with vulnerable clients, so we'll look at the HMO criteria

first.

**28 April 2015 16:19; From David Sudworth  
[mailto:david@davidsudworth.com]**

My concern is that the Act as stated says we should give due regard to any persons who have a certain list of convictions.

Can we therefore say that any persons who are not able to meet the fit and proper persons test under Section 89 of the Housing Act 2004 cannot be part of the scheme?

That way we'd be having regard to legislation but not imposing a blanket ban on those who may have for instance convictions will fall outside those categories?

**01 May 2015, at 15:21, From: Weston, Lucy  
<lucy.weston@westlancs.gov.uk>**

The Fit and Proper person check which is already in place for the accreditation scheme RLA can provide a copy if you wish – this is based on the test in the Housing Act 2004 for licensing.

Under the current scheme the Fit and Proper person

test already applies to the Landlords and the Managing Agents (and their employees) and if they fail they are refused access to the scheme.

The only question left is if the Managing agents should do a fit and proper person check on their clients (i.e. the owner/s of the property). Of course because of the business their clients could be a company/ partnership or trust so there could potentially be a number of

individuals involved so this could be onerous but I think that we can require this. But we do need to decide what we are going to require our managing agents to do if their client(s) (or any of the directors/partners or trustees) fail the test. I have tried to summarise the consequences of both options i.e. either refusing to work with them at all or only offering them property services on a full management basis.

**01 May 2015 15:39 From: David Sudworth  
[mailto:david@davidsudworth.com]**

I think the full management option is appropriate so therefore I am happy to go with your recommendation

Can we update the policy and implement this ASAP

