UNIVERSITY of York

Property Guardian Research

A Local Authority Pocket Guide to Property Guardians

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A Local Authority Pocket Guide to Property Guardians

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1st Edition

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Compiled by Professor Caroline Hunter and Jed Meers at York Law School, University of York, UK.

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If this document has been useful or if you have any questions or suggested additions, we would love to hear from you. Please contact us at:

contact@propertyguardianresearch.co.uk

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For more information on our research – or to request your own copy of this guide – please visit:

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Any remaining errors are the authors' own. If you spot any, do please get in touch to correct us, at: contact@propertyguardianresearch.co.uk

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This Guide

This document has arisen out of a research project by Professor Caroline Hunter and Jed Meers at York Law School, in partnership with Property Guardians UK, RH Environmental, and the Empty Homes Network. It is aimed at Environmental Health Officers working in Local Authorities in England.

We had three concerns. First, little is known about this phenomenon of 'property guardianship.' It has garnered an increasingly high profile in the media – being described variously as an 'exciting alternative to renting' or as paying the 'high price of cheap living.' The extent and operation of the sector is something which needed to be examined.

Second, the rights and experiences of the guardians themselves. The reliance of property guardian firms on utilising licence agreements – as opposed to tenancies – raises questions about the legal security of the guardians' occupation of these properties. Anecdotal concerns about the quality of accommodation are rife; as perhaps unsurprising given the nature of the properties at play, many having recently served a commercial function far removed from housing.

Third, the uncertainties faced by Local Authorities tackling the issues raised by property guardian companies. This is the reason for creating this guide. From our initial research, we understood that enforcement options were not always clear, property guardian companies were often arguing that elements of the Housing Act 2004 did not apply, or – more fundamentally – staff were not aware of property guardianship as a phenomenon or of such properties in their area.

It is hoped that this document can provide some assistance on the latter. It is designed to serve as an overview of property guardianship and provide concise responses to common problems we have identified. This is its first iteration. The guide is somewhat of a moveable feast and we are keen to develop its contents to meet the unanswered questions faced by Local Authorities working in the sector. To that end, please contact us with any suggestions at: contact@propertyguardianresearch.co.uk

Frequently Asked Questions

This section is designed as a Property Guardian 101, detailing concise answers to common questions about property guardianship.

What is a Property Guardian?

A property guardian is somebody who lives in property which would otherwise be vacant in order to secure it. The proposition is win-win: the property owner can enlist a property guardian company to secure an empty property far more cheaply (or even at no cost) than more traditional security measures, and those who live in it – the property guardians – can do so at lower cost than would otherwise be available to them in the private rented sector.

Property guardianship is therefore not a form of squatting; indeed, it is often with an eye to preventing the building being squatted that property guardian companies are engaged by property owners.

How long have Property Guardians been around for?

Although many of the largest companies – such as Camelot - have been in operation elsewhere since the 1990s, property

guardianship in its current form is fairly recent in the UK, with a number of dedicated property guardianship companies being established from 2001 onwards. Since then, the sector appears to have grown sizably, with far more companies in operation.

What sorts of properties do guardians occupy?

There are a vast variety of properties advertised on property guardian websites, ranging from museums and gymnasiums, to Little Chefs and warehouses. From our limited analysis of advertisement data, there appears to be around a 60% to 40% split between residential and commercial buildings. Particularly common properties under guardianship schemes are care homes, pubs, flats, and offices.

Where are the companies operating?

Although much of the high-profile activity of the sector has been confined to London and Bristol, it is important to underscore that the phenomenon is far from restricted to these areas. Our own analysis of property guardian advertisements indicates that companies are operating across England, with clusters of activity not just in London and the South-West, but also in Birmingham, north-west of England and west of Manchester.

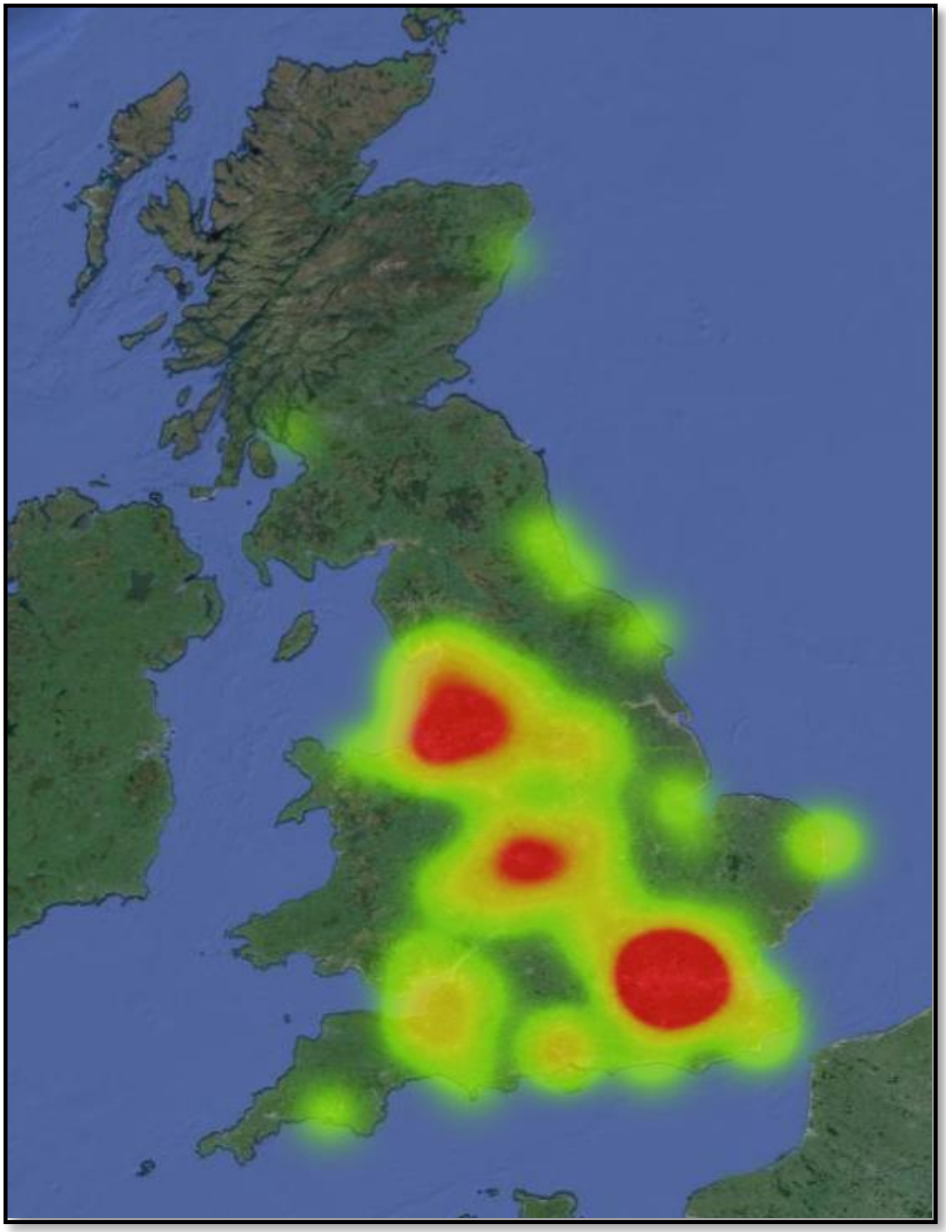

Figure: A heat-map of Property Guardian advertisements collected during research at York Law School in 2015.

How many Property Guardians are there?

The exact numbers of property guardians living in the UK is not known. Estimates range from conservative figures of around 4,000 to upwards of 10,000. Property Guardian UK – a campaign organisation led by property guardians - estimates that there are around 40 Property Guardian companies operating within London alone, with a smaller number operating nationally.

It does appear to be the case, despite this uncertainty on extent, that the numbers of property guardians across the UK are growing. This is both reflected in an increasing volume of properties being advertised – particularly on websites such as ‘spareroom.co.uk’ and on company specific websites – and in the increasing use of Property Guardian companies by Local Authorities themselves.

Is it like renting in the Private Rented Sector?

The distinction between being a property guardian and renting in the private rented is not always a clear one. In some respects, the fundamentals for property guardians can be similar to renting in the private rented sector. They are likely to have responded to a room or property being advertised online and to have paid a deposit alongside other

fees. They pay a ‘rent’, generally monthly, to the company and are protected by the Protection from Eviction Act 1977.

Any differences boil down to the agreement between the guardian and the company. The majority of Property Guardian companies, however, provide their property guardians with ‘licence agreements’ as opposed to tenancies, with associated implications for the standards which apply to the latter but not the former (discussed in more detail below). These are often tied to shorter notice periods or certain conditions attached to occupying the property, or include terms which allow the company to move guardians between rooms at will or inspect the property without notice.

The key point of distinction – as will be well known to readers familiar with the case of *Street v Mountford* – is one of ‘exclusive possession.’ Namely, the extent to which a property guardian has their own space in the property, free from the interference of others. In many cases, a property guardian provided a licence is likely to in fact by occupying the property under a tenancy; particularly if they have their own lockable room, as appears to be the case in many such properties. The difference between occupying under a property guardianship scheme and the private rented sector more generally therefore, is a difference between a licence and a tenancy.

Are they mainly students and other young people?

Although there is limited evidence on the demographics of property guardians, our data suggest that the sector is more diverse than its characterisation in media reports and elsewhere may suggest. Property Guardians UK notes that Camelot – a leading operator – has previously stated that only 11% of its guardians are aged between 18-25.

In common with lettings agents and landlords, property guardian companies often subject prospective guardians to affordability assessments and students are frequently expressly barred from applying. This, coupled with the spread of companies operating in the sector, leads to a diverse group of people living as property guardians.

How does the cost compare to living in the Private Rented Sector?

The average cost of property guardianship schemes is difficult to estimate, not least because licence fees are often only advertised as minimum figures, rather than the actual cost of the property. Generally, properties advertised are cheaper than equivalents in the private rented sector, but guardian organisations have suggested that this gap has been closing. As an indication, many of the guardians involved in our research pay around £500-£700 in licence

fees in London, where they had previously been paying £700-£1000 elsewhere – generally for smaller accommodation. As would be expected, the costs vary substantially between companies, by location, and with reference to the condition and desirability of the property.

Do Property Guardians have to pay Council Tax?

Yes. Under S66(1) of Local Government Finance Act 1988, a property is considered a domestic property if it is used as living accommodation. The difficulty – especially considering the nature of the properties being occupied - is in determining the number of dwellings within the property and the extent to which any composite property exists.

For instance, within an office block, there may be very large communal spaces which may or may not be considered as living accommodation. Likewise, there may be clearly delineated dwelling spaces – due to, for instance, the erection of partition walls – or the space may be occupied communally by guardians. The correct course of action would be to consult the Valuation Office Guidance and a reference made to a technical advisor where necessary.

Who are the property owners using Property Guardian companies?

The range of buildings being advertised for occupation in property guardian schemes is indicative of the range of property owners approaching the companies. Many more traditional property management companies now offer property guardianship services – either directly or through another organisation – as part of their portfolio of services, and many property guardian companies are able to secure a property and have it occupied at very short notice.

It is apparent from Freedom of Information requests that the services of property guardian companies are frequently employed by Local Authorities in London and by NHS Trusts.

Who are the key players in the sector?

Within the UK, the largest operators are Global Guardians, Ad-Hoc, VPS Group, Live-in Guardians and Camelot Europe. Other operators may have a particularly strong presence in certain locations – such as Dot Dot Dot or Lowe Guardians. Within the Companies House register, there are a large number of other property guardian companies, but there is generally quite a large churn within the sector and a preponderance of very small operators, securing small numbers of properties for short periods.

How do I find out if there are Property Guardians living in my area?

It is not always easy to identify where property guardian companies are operating. Due to significant internal churn within the sector or the practice of maintaining waiting lists, available spaces are not always advertised publicly. It is worth looking online at larger companies which do advertise spaces; particularly Ad-Hoc, Global Guardians and Camelot. Smaller organisations also generally advertise on SpareRoom.co.uk – you can filter by rent level and see properties described as being for ‘property guardians’ or issued ‘on licence.’

In practice, the properties themselves are almost always identified with external signage to the effect of ‘this property is secured by property guardians’ or similar.

Do Property Guardians still have to pay a deposit and other fees?

The payment of a deposit and other fees is widespread in the sector. In common with the private rented sector, deposits are generally around the cost of the monthly fee, though this varies. Guardians may also pay fees for the administration of their agreement or have to purchase their own ‘fire safety

pack' – including fire extinguishers, smoke alarms, carbon-monoxide detectors, and so on.

I understand many of these properties are ex-commercial. How are they adapted for habitation?

In non-residential properties, it is common practice for property guardian companies to install wheel-in shower pods, install separate cooking facilities – limited generally to electric hobs and microwaves, and provide oil radiators. Sometimes, particularly in larger properties, companies will erect partition walls to assist in creating individual bedroom space.

The lease/licence distinction

As noted in the FAQs above, the vast majority of property guardian companies state that they offer their guardians 'licences' to occupy the property, as opposed to 'tenancies.' It is this distinction between a licence agreement and a tenancy which dominates much of the ongoing debate and legal challenges to property guardianship – including a high profile case in the County Court in Bristol.

It is important, therefore, to provide some overview of how this distinction is draw and what it means in practice for guardians occupying the properties. Although there are a number of key cases in this area, the key principles can be derived from *Street v Mountford* [1985] AC 809, which outlined the difference between a lease (a tenancy in our case) and a licence. For our purposes, there are three building blocks that can create a tenancy rather than a licence which warrant specific attention here.

(i) Rent for (ii) a period

First, in order to be a tenancy, the property guardian must be paying rent for a period. In the majority of scenarios, both of these will be met: the property guardian usually pays a fee (satisfying (i)) and does so monthly (satisfying (ii)).

(iii) Exclusive Possession

The more problematic issue is ‘exclusive possession.’ This can be broadly summarised as the occupant being able to exclude others (including the property guardian company) from a space – for instance, because they have their own bedroom/other space within the property. If for instance, a property guardian has a lockable room, to which they alone have been issued keys, which they occupy and then share communal space, they are likely to have a tenancy.

It is important to underscore that what matters is not necessarily what is contained within the agreement signed by the Guardian itself, but instead what actually happens in practice. Likewise, if agreements contain terms which may appear unreasonable or are designed to negate the existence of any exclusive possession (for instance, only being able to occupy the property for a certain number of hours each day), then – especially if not acted upon – these are likely to be dismissed as ‘pretences’ or a ‘sham’ (see *Aslan v Murphy (No 1)* [1990] 1 WLR 766.s

Within the context of property guardianship, there are certain factors to look out for which may weigh in favour of a licence as opposed to a tenancy:

1. Inspections of the property by the Property Guardian company: Are there frequent inspections without notice? What is the extent of those inspections? Is the right to no-notice inspections specified in the agreement signed by the Property Guardian?

2. Moving rooms within the property: Where guardians are regularly moved throughout the property, or where the guardians themselves decide on the allocation of space within it, they are more likely to be occupying on licence. For instance, if the guardian wishes to change rooms, is it the property guardian company they contact to do so, or can they take this decision with the other guardians? In practice, do guardians generally stay in the same allocated rooms throughout the property, or do is there movement within the occupied building?

3. The allocation of the space within the property: It is often apparent from some advertisements by Property Guardian companies that individual rooms are being advertised in the properties. The allocation of space within the property can be a relevant issue. If the other guardians are not notified of new arrivals, but they are instead simply allocated an individual bedroom then this would weigh in favour of a tenancy.

Although the Protection from Eviction Act 1977 – requiring four weeks' notice of possession – applies to both tenancies and licences, if the guardians do have a tenancy, certain further protections come into play. Particularly on further restrictions to seeking possession under the Housing Act 1988, and repair obligations under Landlord and Tenant Act 1985.

Fire safety packs and property guardian accommodation

As noted in the FAQs page above, it is common practice for property guardian companies to require guardians to purchase their own ‘fire safety packs’ before the start of their occupation of the property. These often include smoke alarms and carbon-monoxide detectors, amongst other items, such as fire blankets and extinguishers. The cost can often be sizable, with some firms charging upwards of £75-100.

There is nothing to stop the charging of such a fee. Indeed, at the time of writing, Property Guardian companies are unlikely to fall within the scope of ban on lettings agent fees which is currently out for consultation.

The fee itself, however, is irrelevant when considering the fire safety within the property. Non-payment for the fire-safety pack, or a failure to adequately install its components, does nothing to change the landlord’s duty to ensure that the property is fire safe.

There are two key elements which are worth drawing attention to. The first is the ambit of the duties in the Smoke and Carbon Monoxide Alarm (England) Regulations

2015/1693. Under s.1(a)(i), landlords are required to ensure that a smoke alarm is equipped on each storey of the premises in which a room is occupied, and under reg.1(a)(ii), to equip a carbon monoxide alarm in 'any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance.' Under reg.1(b), the landlord is required to ensure that both are in working order before the commencement of the tenancy.

Importantly, however, these duties would apply to Property Guardian companies in their function as landlords regardless of whether the property guardians are occupying on licence or via a tenancy. The definition of 'specified tenancy' within the regulations is tied to s.150 Energy Act 2015, and includes 'any lease, licence, sub-lease or sub-tenancy' for which rent is paid and that grants 'one or more persons the right to occupy all or part of the premises as their only or main residence' (see reg.2 Smoke and Carbon Monoxide Alarm (England) Regulations 2015/1693). Though there are limited exemptions to this, none cover the circumstances of property guardians.

Where a Local Authority has reasonable grounds to suspect that this duty has not be complied with, they must issue a remedial notice to the landlord (here, the property guardian company) within 21 days, as outlined under reg.5 of the 2015

regulations. If there is non-compliance, the Local Authority can issue a penalty charge of up to £5,000 under reg.8 of the 2015 regulations.

Further protections apply to HMOs, as outlined in the Management of Houses in Multiple Occupation (England) Regulations 2006/372. In particular, regs.2-3, which require that:

- 'Fire fighting equipment and fire alarms are maintained in good working order' (Reg.2).
- 'All notices indicating the location of means of escape from fire are displayed in positions within the HMO that enable them to be clearly visible to the occupiers' (Reg.2).

Broader protections via the HHSRS and to licensable HMOs apply, as outlined in the section on the Housing Act 2004 below.

Control and standards under the Housing Act 2004

Both Parts 1 and 2 of the Housing Act 2004 are likely to be important in regulating properties occupied by guardians. There is some evidence that some guardian firms have sought to suggest that the 2004 Act does not apply to guardian properties – perhaps because they are often (ex-) commercial premises. For the reasons set-out below we do not think this is correct.

In this section of the guide we considered the main issues under the Housing Act 2004 for property guardian ('PG') buildings. These are:

- The meaning of 'residential premises'
- Who is covered by the Act: the 'person in control of the premises' and other definitions
- Grant, conditions and duration of HMO licences

Residential premises

Part 1 applies to "residential premises" (HA 2004, s.1). Residential premises are divided into a number of different types. For PG premises two will be relevant: 'dwellings' and 'houses in multiple occupation'.

Dwellings

A ‘dwelling’ (s.1(5)) is defined as: “a building or part of a building occupied or intended to be occupied as a separate dwelling”. According to the case law, a dwelling is somewhere in which all the major activities of life, such as sleeping, cooking and feeding, are carried out: *Wright v Howell* (1947) 92 S.J. 26; *Curl v Angelo* [1948] 2 All E.R. 189; *Metropolitan Properties Co (FCG) v Barder* [1968] 1 All E.R. 536. It does not matter for what purpose the building was originally constructed. It will not be separate if it involves sharing of living accommodation (see e.g. *Curl v Angelo*) – in which case it will be a HMO. There is no basis to suggest that, in the less likely scenario of a single person, a couple and a family unit living in a PG property, it is not a ‘dwelling’ under this definition.

Houses in multiple occupation

More likely, the property guardian premises will be shared living accommodation, in which case the residential premises are likely to fall within the definition of a house in multiple occupation (HMO). A HMO is defined by reference to the same provisions as apply to Pt 2. This definition is not simple or straightforward (there are potentially five different tests under which residential premises may be a HMO: see 2004 Act, s.254(1)) but the ‘standard test’ is most likely to come

into play for PGs (s.254(2)):

‘A building or a part of a building meets the standard test if—

(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;

(b) the living accommodation is occupied by persons who do not form a single household;

(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it;

(d) their occupation of the living accommodation constitutes the only use of that accommodation;

(e) rents are payable or other consideration is to be provided in respect of at least one of those persons’ occupation of the living accommodation; and

(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.’

Applying this definition to PGs:

- The primary unit is ‘living accommodation’, this is not defined but is likely to be interpreted broadly as was

the term ‘house’ in the predecessor statute (Housing 1985, s.345) which covered quite transient ‘houses’, eg hostels see *R v Camden BPL ex Rowton (Camden Town) Ltd* (1983) 10 HLR 28.

- (a) is met if the physical lay-out of the building is not self-contained flats;
- (b) is a matter of fact as to the nature of the occupants and their relationship to each other – see s.258.
- (c) again a matter of fact – but it is likely that this is the ‘main residence’ for the PGs – even if, for example, they have postal addresses elsewhere.
- (d) There may be issues on this if, for example, the building also includes work space. But that non-accommodation use would need to be significant use. Note as well rebuttable presumption that this condition and (c) is satisfied in any proceedings: s.260.
- (e) is satisfied by ‘other consideration’, for example, a licence payment.
- The basic amenities in (f) are defined in s.254(8) as: a toilet, personal washing or cooking facilities and in most property guardian buildings one or most of these will be shared.

If there is any dispute as to the application of the definition, then an HMO declaration under s.257 should be made. The onus would then be on the property guardian company or the owner of the building to appeal the notice.

Application to Parts 1 and 2

Taking the definitions, it is clear local authorities will have powers and in some cases the duty (if there is a category 1 hazard: see 2004 Act, s.5), to take action if the premises are hazardous. In relation to the specific provisions of Part 2 of the 2004 Act relating to the licensing of houses in multiple occupation, the obligations on the landlord and the duties and powers of the local authority will come into play if the premises are of three or more storeys and contain five or more guardians: see 2004 Act, s.55 and Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006 (SI 2006/371). It will also come into play if the local authority have designated an area in which other houses in multiple occupation require licensing.

Who is covered by the Act: the 'person in control of the premises' and other definitions

If the property guardian building is residential accommodation, the next important questions are:

- If there is a hazard under Part 1 of the 2004 Act on whom should any notice or order by served and
- If it does require licencing who should apply for the licence.

Part 1

If there is a hazard, the usual way forward will be to decide between an improvement notice, a prohibition order or a hazard awareness notice.

For both an improvement and a hazard awareness notice the person on whom the notice is served depends on (2004, Sched. 1):

- If the building has flats or not – we will not consider flats further here;
- If a dwelling or HMO, whether it is licensed or not (for dwellings under Part 3 and for HMO under Parts 2 or 3).

If the premises is **not** licensed the notice is served on the 'person having control of the' dwelling or HMO or in the case of an HMO alternatively the 'person managing it.' The 'person having control' is defined in s.263(1), (2). There are two limbs:

- The person who receives the rack-rent of the premises (ie not less than two-thirds of the full net annual value of the premises);
- The person who would so receive it if the premises was so let.

The 'rack-rent' means the 'full amount which a landlord can reasonably be expect to get from a tenant' having regard to

any rent restrictions: *Rawlance v Croydon* [1952] 2 QB 803. The application to this to property guardians is not simple but would seem to be as follows:

- In cases where the licence agreements with the property guardians are genuine, there is no one who is in receipt of the rack-rent. In such cases, the person who would so receive is not the property guardian company, but the building owner;
- In cases where the agreements with the occupants are not genuine licences but tenancies (see the section on the lease/licence distinction above on this), the property guardian firm is the person in control either because the 'rents' are two-thirds of the full new annual value, or would be the person who would so receive it if the premises was so let.

For HMOs the person managing the premises must be an owner or lessee of the premises who receives rents or 'other payments' (for example, licence payments) from the tenants or licensees of the premises: s.263(3)(a). Where the owner or lessee does through a managing agent, that agent is also a 'person managing' the premises: 263(3)(b). So the owner/lessee is definitely the person managing. Arguably the property guardian firm is the agent of the owner/lessee in receipt of the rent or other payment and also the manager.

If the premises **is** licensed the improvement and/or a hazard

awareness notice must be served to the holder of the licence (see below): Sched. 1(1).

A prohibition order, that is not a flat, must be served on (Sched. 2(2)):

- An owner or occupier
- A person authorised to permit persons to occupy the whole or part of those (this will include the PG firm);
- A mortgagee

HMO Licences

Under Part 2 of 2004, anyone could apply for a licence for HMO. Under s.63 and the Licencing and Management of HMO and Others (Miscellaneous Provision) (England) Regulations 2006 (SI 2006/373) an application for a licence must include the proposed licence holder's details. It must also include the details of the proposed manager. Under section 64(3)(b) the local authority must be satisfied that the proposed licence holder is 'out of all persons reasonably available to be the licence holder in respect of the house, the most appropriate person…' Accordingly there is some leeway in deciding whether the property guardian firm or the owner of the building should be the licensee. On the other hand, the proposed manager must (s.64(3)(c)) be either the 'person having control' of the HMO (see above) or an agent or employee of the person having control. If not the person

having control, arguably, a property guardian firm is the agent of that person.

Local Authority Properties

There are particular issues if the premises are owned by a local authority. Because of the decision in *R v Cardiff C.C. ex p Cross* (1982) 6 HLR 1, a council cannot serve a notice on itself. The same would be the case in terms of a licence. However, as discussed above, in some circumstances the property guardian firm have the legal liability as the person having control or their agent.

It will always be difficult in a case where the owner of the building is a local authority. Even if action cannot be taken, authorities should ensure any property that is managed by property guardian firms comply with the standards in the Housing Act.

Grant conditions and duration of HMO licences

Before granting a licence under Part 2, an authority must be satisfied as to a number of matters, in particular that the licence holder is a fit and proper person and that the HMO is being managed effectively. Certain licence conditions must be imposed on the granting of every licence and authorities have the discretion to impose other conditions. Failure to

obtain a licence and breach of licence conditions are criminal offences. Furthermore, in certain circumstances, a landlord may be required to repay rent received while the HMO was unlicensed. There are a number of particular issues with property guardians that are worth considering.

Planning Permission

In some cases, buildings used for property guardians do not have planning permission for residential use. The lack of planning permission is a relevant factor in deciding to grant or not a licence: *Waltham Forest LBC v Khan* [2017] UKUT 135 (LC). In this case a licence was sought by the landlord under Part 3 of the 2004 Act and the local authority limited the licence to one year with the intention that, during that period, the planning status of the flats should be regularised. The similar argument under Part 2 can be made.

Temporary Exemption

Under section 62 there will be no offence of failing to obtain a licence if a temporary exemption is granted. The exemption is for 3 months plus potentially a second 3 months. The exemption can only be granted if the authority is notified by the person having control or managing the HMO of his 'intention to take particular steps with a view to securing that the house is no longer required to be licensed.'

For some property guardian buildings with known very short use for property guardians, it may be suitable to serve a temporary exemption notice.

Suitability

For most property guardian buildings which require a HMO licence the main issue will be suitability around the standards of heating, washing and toilet facilities, kitchens and fire precautions. A set of minimum standards are laid down in the Licensing and Management of HMO and Others (Miscellaneous Provision) (England) Regulations 2006, but authorities need to consider if particular conditions (under s.67) will be necessary given the often different types of buildings – particularly ex-commercial premises - occupied by property guardians.

Duration

Most licences are granted for 5 years (under s.68), and the fee is fixed accordingly. For property guardian buildings, if there is evidence that the use of the building as an HMO is going to cease earlier, a short licence and lower fee may be appropriate.

Statutory Nuisances under the Environmental Protection Act 1990

The use of the Environmental Protection Act 1990 (EPA) to deal with premises occupied by guardians that are 'in such a state as to be prejudicial to health or a nuisance', (s 79(1)(a)) or otherwise a statutory nuisance is obvious.

The main issue will be responsibility for the nuisance. Under sections 79(7) and 80(2) this is person to 'whose act, default or sufferance' the nuisance is attributable. In some cases, eg of noise this may be the guardians themselves. When the defect is of a structural character, however, responsibility lies exclusively with the owner: s.80(2)(b). This would over issues such as broken window frames or leaking roofs leading to dampness. The EPA does not define the meaning of owner, but the term is to be construed in the light of the detailed definition in the Public Health Act 1936: see *Camden LBC v Gumby* [2000] 1 WLR 465. This is similar to the definition of 'person have control' of a dwelling or HMO in the Housing Act 2004. This application to building with PG occupiers is discussed above.

Some nuisances sit in a greyer space in terms of responsibility. For example, in a large building such as ex-hospital or care home in which the space heating is provided through electric radiators in the occupied rooms, by the PG firm. If the building suffers from condensation dampness, who is the responsible person: the owner who has agreed with the PG firm that the original heating will be disabled, the PG company for providing inadequate radiators or the occupiers who dry their washing in the rooms despite being asked not to? The decision may not be obvious.

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If this document has been useful or if you have any questions or suggested additions, we would love to hear from you. Please contact us at:

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