

# FIT AND PROPER PERSON DETERMINATION POLICY FOR ST ALBANS CITY & DISTRICT

Approved – Housing & Inclusion Committee 28<sup>th</sup> July 2021

## Introduction

The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020, require the manager of a site to be a Fit and Proper Person (“the Regulations”). Local authorities are accordingly required to introduce a fit and proper person test for mobile home site owners, or the person appointed to manage the site, unless they are eligible for an exemption under the Regulations<sup>1</sup>.

The Regulations, made on 23 September 2020, allow the local authority to receive applications from site owners, or the person appointed to manage the site, from 1 July 2021 up to and including 30 September 2021.

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 site owner “*is a fit and proper person to do so*” or has, with the site owner’s consent, “*appointed a person to manage the site.*”

Where a site owner or their manager fails the fit and proper person test, and they are unable to identify and appoint a suitable alternative manager, who must pass the fit and proper person assessment, the local authority can instead appoint a person to manage the site, but only with the consent of the site owner.

Principally, the fit and proper person test applies to a “relevant protected site”. A relevant protected site is a site, which requires a licence and which is not solely for holiday purposes or is otherwise not capable of being used all year round. The fit and proper person requirement will ensure that site owners, or their managers, have integrity and follow best practice. Additionally, it provides the safeguard that such individuals will not pose a risk to the welfare or safety of persons occupying mobile homes on the site i.e. park home owners.

## The Evidence

When conducting the fit and proper person assessment, a local authority must consider the following points relevant to the application:

1. **Is the individual able to conduct effective management of the site.** This includes, but is not limited to, securing compliance with the site licence and the long-term maintenance of the site. It follows that, the local authority must have regard to:
  - (i) whether the person has a sufficient level of competence to manage the site;

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<sup>1</sup> \*i.e. it is a non-commercial, family occupied site under Regulation 3

- (ii) the management structure and funding arrangements for the site or
- (iii) the proposed management structure and funding arrangements.

*(a) Competence to manage the site*

This includes reviewing the competency of the appointed individual. The individual must have sufficient experience in site management, or have received sufficient training, and be fully aware of the relevant law as well as health and safety requirements.

*The management structure and funding arrangements for the site*

The local authority should consider whether relevant management structures are in place and whether they are adequate to ensure effective management of the site. The local authority may want to ensure that the applicant has a robust management plan, this should also be reviewed to ensure it addresses the following issues: the pitch fee payment, proximity of the manager to the site, manager's contact details for residents (including out of office and emergency contact details), the complaints procedure, maintenance, staffing, and refuse removal.

It is advisable that the site is managed by an applicant based in the UK and a management structure would be unlikely to be suitable if the applicant is an individual, or a company (including its directors), which does not reside or have a permanent UK address. This is because there may complex issues as a result of this, such as needing the court's permission to serve a claim in a foreign country. The applicant's interest in the land will also have an important impact, as would their financial standing, management structures and competence, all of which could contribute to the overall assessment of their suitability to manage the site effectively.

*(c) The proposed management structure and funding arrangements in place for managing the site*

The local authority must consider whether the applicant has sufficient funds (or has access to sufficient funds) to manage the site and comply with licence obligations. Evidence of these funds should be readily available.

Another consideration is if funding is through a third party (including an associated company), the local authority should be wary if this is not disclosed as this will impact on the local authority's ability to deem whether the application is financially viable.

2. **Personal information relating to the applicant concerned.** This would include a criminal record check and should include evidence that the applicant:

- (a) has not 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) has not contravened any provision of the law relating to housing, caravan sites, mobile homes, public health, planning or environmental health or of landlord and tenant law;
- (c) has not contravened any provision of the Equality Act 2010 in, or in connection with, the carrying on of any business;
- (d) has not harassed any person in, or in connection with, the carrying on of any business;
- (e) is not or has not been within the past 10 years, personally insolvent;
- (f) is not or has not been within the past 10 years, disqualified from acting as a company director;
- (g) has the right to work in the United Kingdom and,
- (h) is a member of any redress scheme enabling complaints to be dealt with in connection with the management of the site (when this is in place).

The local authority have a duty to investigate any conduct which could amount to harassment and any evidence obtained should be reviewed to determine whether it is sufficient to be used to prosecute a site owner. The local authority may also rely on convictions by the courts as evidence of harassing behaviour which would reduce the risk of the local authority being successfully challenged on any refusal to approve an applicant on this basis.

A local authority may have records of previous harassment complaints made against a site owner or their manager. Even if no action was taken on these complaints it is still advisable that these be taken into consideration in the fit and proper person determination. These complaints may identify further potential risks and can also provide an indication of potential underlying problems with the management of the site or the site owner's lack of experience/skills in dealing with customers. The local authority may also wish to address any underlying issues by attaching conditions to the individual's entry on the register.

3. Upon rejection of a person's application by any other local authority this should be centrally recorded and include the details of the person involved and the reasons for the rejection.

### **Items to take into consideration**

4. "The applicant" is defined at paragraph 2 of the Regulations as "the person who makes an application under regulation 6".
5. The "relevant person" is also defined at paragraph 2 of the Regulations to mean "the subject of the fit and proper person assessment under Regulation 7".
6. The conduct of any person associated or formerly associated with the relevant person (whether on a personal, work or other basis) is also an important factor to be considered in the fit and proper person assessment.

7. Site owners may be required to provide details of any current or former associates of the relevant person in the application form. Those associates will not include other current joint owners as that information would have already needed to have been provided in their own application forms.
8. It is not routinely required to provide information of all current or past associates of the site owner. However, it is advisable that, prior to making any final decisions, the local authority considers the conduct of past and current associates relevant to that individual's application. The site owner can be asked to provide additional information during the application process.
9. The local authority will be required to establish whether an individual is considered to be an associate of the relevant person and then whether their conduct is relevant to the application. A relevant associate could be defined as any individual who may have played a part, directly or indirectly, in a decision or action, which has had an impact on residents' rights, or the quiet enjoyment of their homes.
10. The Regulations are drafted widely giving the opportunity for the local authority to take into consideration other relevant matters. However, a local authority should be cognisant that poor management practices do not affect a person's conduct, unless they are also a breach of the criminal or civil law. A person cannot be deemed unfit due to conduct, simply because of poor management, although that factor is highly relevant to determining any question of suitability or competence. However, all conduct is relevant in relation to the person's fitness to hold a licence and/or manage the particular mobile home site.
11. The local authority are able to decide the specific matters they deem relevant to the fit and proper person application. These matters could be in relation to current or previous issues, or events, that have occurred in relation to the park site or any other park site owned or managed by the site owner or site manager in another local authority area. Additionally, the site owner's conduct regarding other business, outside of the park homes sector, can also have implications on the financial and management arrangements of the site in question. Any matters which the local authority believe to be of relevance to the application should primarily focus on the relevant person's conduct, competence and their suitability to manage the site.
12. It is advisable that evidence is obtained by the local authority to support any additional matters that they require to be taken into consideration for the application. This is to mitigate any risks should they face being challenged at a tribunal because of their final decision. The evidence could include previous tribunal and court decisions, documents or records from Companies House, or other public bodies or financial institutions. Allegations which have not been investigated or documented may be difficult to use as evidence to support an authority's decision.

## **Applications**

The Regulations use various terms in the application process and these are outlined below:

**As mentioned earlier “Relevant person” is defined in paragraph 2 of the Regulations and is** “the subject of the fit and proper person assessment under Regulation 7”. Please note that this could be the site owner or person appointed to manage the site by the site owner.

**“Relevant officer”** is defined in paragraph 1 of Schedule 2 of the Regulations, where the applicant is a company, a relevant officer will be a director or other officer of the company; or, where the applicant is a partnership, a partner; or, where the applicant is a body corporate, a member of the management committee of that body.

**“Required Information”** is defined in paragraph 14 of Schedule 2 of the Regulations (even though the Regulations incorrectly state that this information is contained in paragraph 13) as: the person’s name and business contact details; details of the person’s role or proposed role in relation to the management of the site; where the person has not yet been appointed, the address, telephone number and email address (if any) at which the person may be contacted in respect of the application; details of each relevant protected site (other than that to which the registration application relates) — for which the person holds a licence issued under section 3 of the Caravan Sites and Control of Development Act 1960, or in which the person has a legal estate or equitable interest, or which the person manages.

The application for inclusion in the fit and proper register, must therefore include the following:

The applicant and site details required

13. Details of the site and the applicant:

- (1) The applicant’s name and business contact details.
- (2) Where the applicant is not an individual, the following information in relation to the individual completing the application on behalf of the applicant and each relevant officer:
  - (i) the person’s name;
  - (ii) details of the person’s role (if any) in relation to the management of the site.
- (3) The name and address of the site.
- (4) Evidence of the applicant’s legal estate or equitable interest in the site.
- (5) Confirmation that the applicant is the occupier within the meaning of section 1 of the Caravan Sites and Control of Development Act 1960.
- (6) The name and business contact details of any other person that has a legal estate or equitable interest in the site.

14. The name and address of each other relevant protected sites:

- (1) for which the applicant holds a licence issued under section 3 of the Caravan Sites and Control of Development Act 1960;
- (2) in which the applicant has a legal estate or equitable interest; or
- (3) that the applicant manages.

15. The applicant must clearly specify whether their application is made in respect of either the applicant, or site owner, or the person that the applicant or site owner has appointed to manage the site.

#### Information relating to the site manager

16. In circumstances where a “site manager” has been appointed to manage a site more information is needed. The person who is applying for the site manager to be registered as a fit and proper person (the relevant person) must provide the following information: the site manager’s name and details of that person’s role (if any) in relation to the management of the site.

If the site manager has appointed or intends to appoint a further individual (“A”), ‘Required Information’ would also be needed from A. And where A is not a relevant officer of the site manager, the relevant officer to whom A is accountable for the day-to-day management of the site, should be the one to provide the Required Information.

#### Additional information when the applicant is the relevant person and an individual

17. When the applicant is the relevant person, and is an individual, and the applicant has appointed, or intends to appoint, someone else (“B”) to be responsible for the day-to-day management of the site, ‘Required Information’ would be needed from B. If B is not an individual but is, instead, for example, a company, and B has appointed an individual (“C”) to do the day-to-day management, ‘Required Information’ would be needed from C. Where C is not a Relevant officer of a company, the relevant officer to whom C is accountable for the day-to-day management of the site would also need to provide the Required information.

#### Additional information where applicant is relevant person and not an individual

18. When the applicant is the relevant person but is not an individual and the applicant has appointed or intends to appoint someone else (“B”) to be responsible for the day-to-day management of the site, Required information would be needed from this person. If B is not a Relevant officer of the applicant the person to whom B is accountable for the day-to-day management of the site (“C”) would also need to provide the Required Information. Where B itself is not an individual, the individual (“D”) that B has appointed or intends to appoint to be responsible for the day-to-day management of the site would also need to provide the Required Information. Where D is not a Relevant officer of B, the relevant Officer to whom D is accountable for the day-to-day management of the site would also need to provide the Required Information.

19. It can be seen from the above that the Regulations prohibit the operation of a relevant protected site unless the site owner or its site manager (whatever the management structure might be) has been assessed by the local authority as a fit and proper person to do so. This has been included to ensure that consistent standards are applied to companies and other organisations that are not individuals.

## **Criminal record certificate/s**

20. Criminal Records Certificates must be issued under section 113A (1) of the Police Act 1997 and will be required where: (a) the Relevant person is an individual and (b) for each individual in relation to whom the applicant is required to provide information for example, a site manager or individuals A, B, C or D as outlined above.
21. With reference to the above law, the Criminal record may be either basic or enhanced, at the discretion of the local authority.
22. The certificate must have been issued no more than six months before the date of the application. It is incumbent upon the site owner to ensure that any certificates provided meet this requirement.

## **Declaration**

A declaration made and signed by the “appropriate person”, which means:

- (a) where the applicant is a company, a director or other officer of the company;
  - (b) where the applicant is a partnership, one of the partners;
  - (c) where the applicant is a body corporate and the conduct of the management of the body is vested in its members, a member;
  - (d) where the applicant is not a body falling within (a) to (c) above, a member of the management committee;
  - (e) where the applicant is an individual, that individual.
23. Where the applicant is not the relevant person, the declaration must confirm that the applicant has made all reasonable enquires into the matters mentioned in paragraph 9 of the Regulations and considerations relevant to the fit and proper person assessment as set out below.
  24. The declaration should also state that the information provided in the application is correct and complete to the best of the applicant’s knowledge and belief.

## **Considerations relevant to fit and proper person assessment**

25. Proper management of the site includes, but is not limited to, securing compliance with the site licence and the long term maintenance of the site.
26. To be able to secure the proper management of the site, the local authority must (amongst other things) have regard to whether the relevant person has a sufficient level of competence to manage the site and the management structure or proposed management structure and funding arrangements.

## **Decisions, notification and rights of appeal**

27. The local authority must make a decision on the application in a timely and practicable manner and either:

- (a) where the decision is to grant the application unconditionally and include the relevant person on the register for 5 years, serve a final decision notice on the applicant; or
- (b) otherwise, serve a preliminary decision notice on the applicant.

28. On receipt of an application the local authority may:

- (a) grant the application unconditionally;
- (b) grant the application subject to conditions; or
- (c) reject the application.

### **Granting the application unconditionally**

29. Where a local authority is satisfied that the applicant meets the fit and proper person test unconditionally, they must include the applicant on the register for 5 years. The authority must issue a final decision notice to the applicant to inform them of its decision.

30. The final decision notice must clearly state:

- (a) the date the final decision notice is served;
- (b) the final decision;
- (c) the reasons for the decision;
- (d) when the decision is to take effect;
- (e) information about:
  - (i) the right of appeal to the First Tier Tribunal; and
  - (ii) the period within which an appeal may be made.

### **To include the applicant on the register subject to certain condition(s)**

31. In some circumstances, the local authority can specify that the individual for the fit and proper person test will only be successful if certain conditions are met. If these conditions are satisfied, the local authority can grant an application subject to those condition(s). The local authority can also grant an application for less than 5 years.

32. It may be the case that a local authority decides to include the person on a register subject to condition(s), if it would only be satisfied that the person would meet the fit and proper requirement if the condition(s) were complied with. An applicant will be able to appeal against the decision to attach (or vary) any condition to an entry on the register. It is therefore imperative that the local authority have clear and justifiable reasons for attaching any condition(s) and that any conditions imposed can be enforced by the local authority.

33. Conditions will need to be clearly stated for the applicant's understanding and this will also allow for the local authority to ensure that they are enforceable.

An example of the requirements are included in the Table 1 below.

Table 1

<b>Specific</b>	The specific condition/s a site owner is being requested to address.
<b>Measurable</b>	The conditions required and the outcome(s) expected.



<b>Achievable</b>	The applicant should be reasonably expected to be able to achieve the condition. For example, it may not be reasonable to expect a site owner of one small site to have the same resources to introduce the same procedures as a medium sized company.
<b>Realistic</b>	The applicant should have a clear understanding of how the required outcome can be reached and that there are no circumstances or factors which would make the achievement of the outcome impossible or unlikely.
<b>Timebound</b>	A clear timescale in which the task/action must be completed.

What can a condition relate to?

34. The fit and proper person test is aimed at ensuring that the person managing the site is competent and the conditions should relate directly to the person's ability to secure the proper management of the site.
35. Where a person has contravened legislation, or committed offences set out in paragraph 2 above, it is not recommended that conditions are set in relation to those matters. This is because such a condition would be unlikely to meet the tests set out above in paragraph 33. For example, if a person has committed fraud or violence, that specific incident cannot be reversed by requiring the person to perform a specific task.
36. The local authority is advised that, in cases where the person has committed those listed offences or contravened legislation, these breaches should be considered, together with all the other information available, when reaching their preliminary decision.
37. An example of a condition could relate to the payment of an annual fee. A condition can also be set with respect to ensuring the relevant person has the ability to secure the proper management of the site. In summary, conditions can relate to any factors which are relevant to the person's competence to manage the site, the management structure, or funding arrangements for the site, an associated person's influence, and any other relevant factors.

### **Decisions not to include the applicant on the register**

38. Should the local authority determine that the applicant does not meet the requirements, and attaching conditions would not be appropriate, a local authority can refuse to grant the application.
39. Where a local authority makes a decision to include the applicant on the register, subject to conditions, or not to include the applicant on the register, a preliminary decision notice to the applicant must be issued.
40. The preliminary decision notice must clearly state:
  - (a) the date the preliminary decision notice is served;
  - (b) the preliminary decision;
  - (c) the reasons for it;
  - (d) the date it is proposed that the final decision will have effect;

- (e) information about the right to make written representations
- (f) where the preliminary decision is to refuse the application, the consequences of causing or permitting the land to be used as a relevant protected site in contravention of the regulations; and
- (g) where the preliminary decision is to grant the application subject to conditions, the consequences of failing to comply with any conditions.

### **Right to make a representation**

- 41. An applicant who receives a preliminary decision notice will have 28 days in which to make representations to the local authority. The 28-day period begins with the day after the day on which the notice was served.
- 42. The local authority is obliged to consider and take any representations it receives into account before making a final decision.

### **Final decision notice**

- 43. The local authority must, as soon as reasonably practicable, after the end of the period allowed for making representations, make a final decision and serve the decision notice on the applicant.
- 44. The final decision notice must set out:
  - (a) the date the final decision notice is served;
  - (b) the final decision;
  - (c) the reasons for it;
  - (d) when the decision is to take effect;
  - (e) information about the right of appeal and the period within which an appeal may be made;
  - (f) where the decision is to refuse the application, the consequences of causing or permitting the land to be used as a relevant protected site in contravention of the regulations; and
  - (g) where the decision is to grant the application subject to conditions, the consequences of failing to comply with any condition.

### **Appeals**

- 45. The applicant can decide to appeal the decision by making an application to the First-tier Tribunal (Property Chamber) (“the tribunal”) within specific timeframes set by the tribunal. The applicant is permitted to appeal against any decisions served by the Local Authority. These could include:
  - (a) including the relevant person on the register for an effective period of less than 5 years;
  - (b) including the relevant person on the register subject to conditions; and
  - (c) rejecting the application.
- 46. Where an applicant accepts a local authority’s decision not to include the person originally stated in the application on the register, they will be required to seek

alternative management arrangements to comply with the fit and proper person requirement. If they fail to do so they will be committing an offence.

47. An appellant will not be able to claim compensation for losses incurred pending the outcome of an appeal.

### **Withdrawal or amendment of notice**

48. There may be circumstances where a local authority may decide not to continue or to withdraw a previously agreed action such as after serving:

(a) a preliminary decision notice but before service of the final decision notice;

(b) a final decision notice but before the decision to which it relates takes effect; or

(c) a notice of proposed action but before the proposed action is taken.

49. To withdraw or amend a notice, the local authority must serve notice to the person on whom the original notice was served.

50. There are no requirements for notices to contain specific information, however, it is recommended that a withdrawal or amendment notice should state:

(a) That it is withdrawing/amending the original notice (a copy of the original notice should be attached for reference);

(b) the reasons for withdrawing the notice;

(c) the date it takes effect; and,

(d) the implications of the decisions in relation to the person's entry on the register.

### **Removal from the register**

51. If, after a person is included in the register, and new evidence relevant to the person's inclusion becomes available, the local authority may decide to:

(a) remove the person from the register;

(b) impose a condition on the inclusion of the person in the register (whether or not there are conditions already imposed);

(c) vary a condition; or

(d) remove a condition.

52. The local authority must use their judgement when determining whether to review an entry and consider any subsequent actions are required. It is recommended that any such decision should be related to the person being a fit and proper person rather than, for example, site licensing issues which are governed separately. If the local authority decides to take any of the actions listed in paragraph 51 (a) to (c) above, the local authority must serve a notice of any proposed action on the occupier.

53. The notice of proposed action must clearly state:

- (a) the date the notice of proposed action is served;
- (b) the action the local authority proposes to take;
- (c) the reasons for it;
- (d) the date it is proposed that the local authority will take the action;
- (e) information about the right to make written representations;
- (f) where the proposed action requires the removal of a person from the register, the consequences of causing or permitting the land to be used as a relevant protected site in contravention of the regulations; and
- (g) where the proposed action is to impose a condition on the inclusion of a person in the register or to vary a condition, the consequences of failing to comply with said conditions.

54. A notice of proposed action is not required if the local authority decides to remove a condition attached to an entry. A removal of a condition is viewed widely as being a positive step, which is unlikely to be opposed. It is for that reason that a notice of proposed action is not required. As good practice though, it is recommended that the local authority makes the site owner or their manager aware of the decision in writing and also ensure the register is updated.

### **Notice of action taken**

55. Where a notice of proposed action is given, the occupier will have 28 days, starting from the day after the notice is served, in which to make representations.

56. The local authority must, as soon as reasonably practicable after the end of the 28-day period, decide whether to carry out the proposed action.

57. Where the local authority decides to take the action, the local authority must serve a further notice on the occupier, indicating the action that has been taken, within the period of 5 working days beginning with the day after the day on which the action was taken.

58. The notice of action must set out—

- (a) the date the notice of action is served;
- (b) the fact that they have taken the action;
- (c) the reasons for doing so;
- (d) the date the action was taken;
- (e) information about the right of appeal and the period within which an appeal may be made;
- (f) where the action is to remove a person from the register, the consequences of causing or permitting the land to be used as a relevant protected site in contravention of regulations; and
- (g) where the action is to impose a condition on the inclusion of a person in the register or to vary a condition, the consequences of failing to comply with any condition.

### **Offences**

59. There are 3 offences which can occur within the Regulations. They are as follows:

- Operating a site in contravention of the fit and proper person regulations - The site owner will have certain defences under the Regulations in any proceedings brought against them.
  - Withholding information or including false or misleading information in the registration application - The site owner will not have any defences under the Regulations in any proceedings brought against them for this offence.
  - Failing to comply with a specified condition - The site owner will have certain defences under the Regulations in any proceedings brought against them.
60. The local authority are responsible for enforcing the regulations. A site owner found guilty of any of the above offences will be liable on summary conviction to a level 5 (unlimited) fine.

### **The Fit and Proper Persons Register**

61. The local authority must set up and maintain a register of persons who they are satisfied are fit and proper persons to manage a site in their area. This register must be open to inspection by the public during normal office hours. This register also must be published online.
62. The register will provide a record of the outcome (as discussed above) of the fit and proper person tests the local authority have carried out for sites. There is a template available on the Government Guidance, referred to as Annex A, and the register must include the following:
- (a) the name and business contact details of the person;
  - (b) the name and address of the relevant protected site to which the application relates;
  - (c) the status of the person (site owner or manager of the site);
  - (d) the dates of the first and last day of the period for which the person's inclusion in the register has effect;
  - (e) whether any condition is attached to the person's inclusion in the register; and
  - (f) where any condition is attached to the person's inclusion in the register—
    - (i) the number of any such conditions;
    - (ii) the dates of the first and last day of the period for which any such condition applies (if applicable); and
    - (iii) the date any condition is varied or satisfied (if applicable).
63. Where a person has met the fit and proper person test, the register will give details of that person and of the site, including decisions made on how long a person's inclusion is for, up to a maximum of 5 years.
64. In order to comply with the fit and proper person requirement a site owner must at least two months before the period (e.g. 5 years) comes to an end submit a new application for the person (or alternative) to be included in the register.

65. Where there are rejected applications, the following information must be included in the register:

- (a) the name and address of the site to which the application relates;
- (b) that an application in respect of the site has been rejected; and
- (c) the date on which the application was rejected.

Details of the rejected application will remain on the register until a successful fit and proper person application is made in respect of the owner or manager of the site.

It must be noted that the name of the rejected applicant will not be included on the register. The local authority will however be able to consider requests for further information about the entry on the register, for example, the details of the specific conditions attached and any additional information, on a case by case basis and in accordance with data protection legislation.

66. Where the local authority has, with the site owner's consent, appointed a person to manage the site, the local authority must include the following information:

- (a) the name and business contact details of the person;
- (b) the name and address of the site which the person has been appointed to manage;
- (c) the status of the person;
- (d) the dates of the first and last day of the period for which the person's inclusion in the register has effect;
- (e) whether any condition is attached to the person's inclusion in the register; and
- (f) where any condition is attached to the person's inclusion in the register—
  - (i) the number of any such conditions;
  - (ii) the dates of the first and last day of the period for which any such condition applies (if applicable); and
  - (iii) the date any condition is varied or satisfied (if applicable).