

Chief Inspector of the Scottish Fire and Rescue Service  
1R, St Andrew's House Edinburgh EH1 3DG

## **Determination of a Dispute under Section 67 of the Fire (Scotland) Act 2005**

Determination reference No. 1/2018  
EXPLANATORY NOTE

### **Introduction**

Section 67 of the Fire (Scotland) Act 2005 provides for the determination of a dispute between an enforcing authority and a person with fire safety duties in respect of compliance with the fire safety obligations imposed by Part 3 of that Act.

An application for the determination of a dispute was received in respect of a house in multiple occupation (HMO). The dispute is between the enforcing authority – the Scottish Fire and Rescue Service (“SFRS”) - and the property owner. I was asked by the owner to determine the acceptability of bedroom locking devices. This note explains the determination given.

### **Background**

This determination applies to a single property. A dispute exists between the parties involving a number of properties which are HMOs. In the properties, the door locks fitted to individual bedrooms are of a mortice type which can be locked and unlocked from the outside only; once locked they cannot be unlocked from the inside as the key access point on the room side is blanked off by a plate. This means that a person in a bedroom would be unable to open the room door if the door is locked by the key on the outside.

Scottish Government guidance on fire safety in buildings such as these is available on the [FireLaw website](#). There are two guides which apply to HMOs, dependent on size of premises (both of which are scheduled for replacement by a single guide). The guides assist people with responsibility for premises to enable them to comply with fire safety law via a risk assessment process. Much of the technical content of the guides comprises benchmarks against which existing fire safety measures can be compared.

The guides are generally written on the basis that enforcing authorities should not seek to compel these benchmarks on a prescriptive basis. Prescription is not compatible with fire safety risk assessment and all premises will be different, with each risk assessment being site specific and decisions in respect of fire safety

standards based on judgement of risk and be justifiable, both from a compliance and an enforcement perspective.

In relation to the matter in dispute, the recommendation in the fire safety guides is that a door across an escape route should be fitted with a fastening which is readily operated without a key, from the side approached by people making their escape.

Additionally, the Licensing of Houses in Multiple Occupation 'Statutory Guidance for Scottish Local Authorities' August 2011, updated January 2012 paragraph 4.10.24 requires that all locks must be capable of being opened from inside without recourse to a key, so that residents can escape in case of fire.

The property, which is the subject of this determination, is on the top floor and attic of a four storey tenement building. The property is accessed via a common close and stair. The property is entered from the top floor (3<sup>rd</sup> floor) and there is an internal staircase leading to attic rooms. There is a communal kitchen, bathroom, shower room and lounge, along with a number of bedrooms. The doors to the bedrooms are fitted with mortice locks as described above.

The property has a fire warning system comprising automatic fire detection, break glass call points and sounders, emergency escape lighting, portable fire fighting equipment and an automatic water mist fire suppression system. The bedroom doors are fitted with self-closing devices, intumescent strips and smoke seals, and have been intumescent treated.

Spare keys for the property are held on site within a key safe, the access number for which can be obtained from the property management office. The property is predominantly occupied by mature students who attend university. The bedrooms can be used for double occupancy. Outwith university term, the property can be let for holiday type use.

On one occasion an individual had become locked within a room in one of the owner's properties when one occupant went out and accidentally locked the other in. This did not involve a fire situation and the person was released using the spare keys held on site in the key safe.

## **Case Facts**

Facts accepted by both parties are:

- The properties in question are HMOs and subject to fire safety law.
- The Scottish Government guidance on fire safety in HMOs has been in existence since 2007 and that this guidance covers the risk assessment process and door locking.

- The Fire Service has inspected some of the premises intermittently for a considerable period of time.
- The antecedent service, Lothian and Borders Fire and Rescue Service, had accepted these door locks as meeting the requirements of fire safety law.
- The SFRS has, since its formation as a single service, inspected some of the owner's premises where these door lock arrangements were in place and had not challenged their provision at that time.
- The SFRS has subsequently written to the owner recommending that all door locks of this type be changed in all owned premises and giving a timeframe for this to happen.
- The SFRS has not served enforcement or prohibition notices in respect of any of the premises.
- That there is a disagreement on the need for these locks to be changed.

The main contested areas with regards to the properties are:

- The owner contends that a quantitative risk calculation shows the probability of someone being locked in a room at the time of a fire occurring is so low that the door locks do not need to be changed. The contents of the Scottish Government fire safety guidance are identified as benchmarks rather than prescriptive standards.
- The SFRS contends that it has to apply a common standard to all properties of this type throughout Scotland and that a numerical (quantitative) risk assessment should not be used to argue against what is an agreed industry standard and good practice.

## **Determination**

I visited a single property: my determination applies to the visited property only.

I am of the view that:

1. A quantitative probability calculation, whilst giving a general indication of the likelihood of fire at the time someone might be locked in a room, does not consider the consequences of such an occurrence. And since there is no management presence on the premises, the incidence of misuse of locks may well be unknown to the property owner.

2. The SFRS, as the enforcing authority, needs to apply a common process to all properties of this type in Scotland rather than common standards. The guidance sets out a process for assessing risk and provides benchmarks for fire safety. By examining individual buildings and fire risk assessments, the SFRS determines if fire safety measures are as may be reasonably required, bearing in mind the specific circumstances of the property. The safety of occupants is the Service's prime consideration, not the standardisation of solutions. Standardisation is achieved via the process. The reason for SFRS's decisions and recommendations should be transparent in all communications.
3. My determination powers relate to technical fire safety matters only, not legal ones and so I do not offer a view on the legality or the appropriateness of the SFRS recommending changes in respect of fire safety measures that it, or the antecedent Fire and Rescue Service, has already accepted.
4. It would seem reasonable to me that the recommendation suggested by the SFRS, with regards to the door locks, is appropriate for the following reasons:
  - The probability of fire occurring in the property is low, but fires do occur in this type of property, so the risk is not negligible.
  - The property is fitted with ways of raising the alarm and fighting fires, but the safety of individuals relies upon them being able to take action to ensure their own safety by evacuation. This they will not be able to do if they, for any reason, are locked in a bedroom.
  - Keys to rooms are kept on the premises in a key safe but the number to gain access is not immediately available and in any case keys are not a quick, assured and easy method of gaining access in the event of an emergency. It may also involve others, placing themselves at risk.
  - The potential cost of changing the locks is proportionate to the level of risk.

The overarching requirement is that no person should be put in a position where they can find themselves unable to escape from a fire if it should occur.

**I therefore conclude that the door lock arrangements within this property should be altered so that persons cannot be locked in bedrooms. The new securing arrangement should allow persons occupying bedrooms to readily open their bedroom door from within, without the use of a key.**

My determination only applies to the premises in question and is a determination only in respect of the technical matters under consideration here. It must not be taken as an endorsement of the existing standard of fire safety measures in the premises.