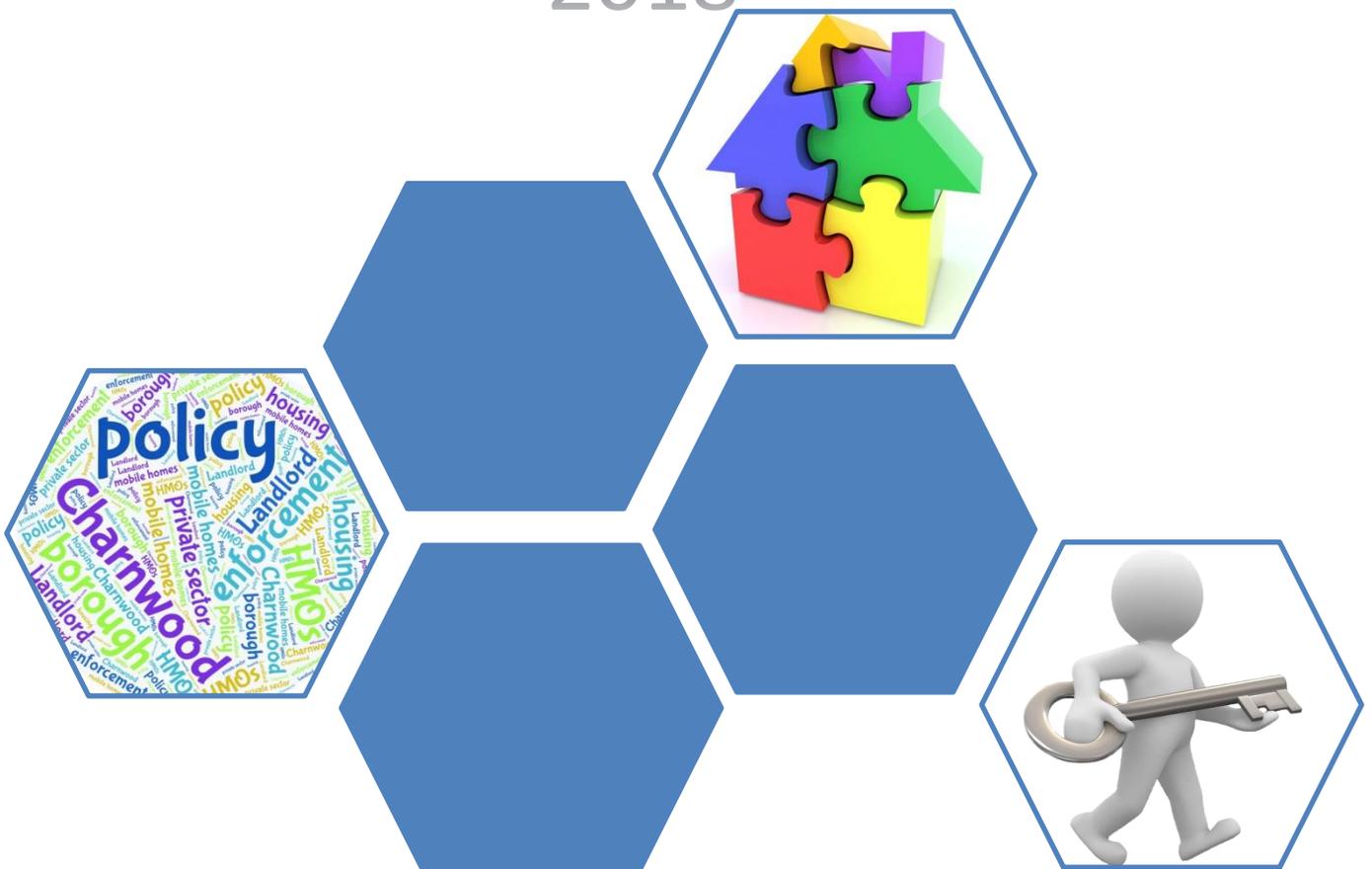




Private Sector Housing Enforcement Policy

2018



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This Policy seeks to ensure that all properties let as residential properties throughout the Borough, including those in Private Ownership, are of good quality and are well managed

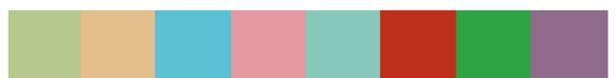
The Policy sets out the way in which the Council intends to secure effective compliance with the relevant legislation whilst minimising the burden to the Council, individuals, organisations and business, which includes:

- Housing conditions in the Private Rented Sector and Private Ownership
- Landlord's obligations in the Private Rented Sector
- Houses in Multiple Occupation (HMOs)
- Empty Homes
- Mobile Home Sites

The Policy aims to ensure:

- Good quality, healthy housing for households renting in the Private Sector and to prioritise action to those which present the greatest risks to the Health and Safety of the occupants or their visitors
- Private Sector Housing is not left empty for an unreasonable amount of time or becomes an eyesore and nuisance to neighbouring homes
- Houses in Multiple Occupation (HMOs) are safe and well managed and all relevant Management Regulations are adhered to
- All Mobile Homes sites are safe and well managed

All enquiries relating to this Policy should be directed to the Private Sector Housing Team on (01509) 634651 or email to Private.housing@charnwood.gov.uk



The Council recognises that each case is unique and will be considered on its own merits. When deciding on the appropriate action, Officers will take into account the Law, Government Guidance, Council Policies and the sufficiency and reliability of the evidence

When deciding on appropriate action, Officers will have regards to the Council's Corporate Enforcement Policy. The Council supports 5 Principles of Good Regulations, as specified under Part 2 of the Legislative and Regulatory Reform Act 2006, and will exercise enforcement activities in a way which reflects these, as outlined below:

Proportionate

Any enforcement action taken will be proportionate to the risks and the seriousness of the breach. This will ensure that the most serious risks are targeted first.

Accountable

Enforcement activities will be open to Public Scrutiny, with clear and accessible policies and a fair and efficient complaints procedure.

Consistent

Enforcement duties will be carried out in a fair and consistent manner. Officers will need to exercise their professional judgement and discretion according to the circumstances of each individual case. However the Council will have regards to current procedures, best practice and advice provided by Regulatory Delivery, other Agencies (such as Leicestershire Fire and Rescue, the Police, Trading Standards and the Health and Safety Executive) and other relevant professional bodies.

Transparent

Advice will be clear, reliable and concise. It will aim to help those that are being regulated to understand their legal obligations, what is expected of them, and what they can expect from the Council. Advice from Officers will be confirmed in writing, where appropriate. Explanations of what is a legal requirement and what is good practice will be given.

Targeted

Enforcement will be primarily directed towards those activities that are likely to give rise to the greatest risks and most serious breaches of legislation, reflecting local need, and national and corporate priorities.



The Council will consider the use of the following relevant legislation to meet the aims of this Policy:

The Housing Act 2004

Part 1 of The Act deals with housing conditions. Parts 2 and 3 of the Act deal with Licensing of Houses in Multiple Occupation (HMOs). Part 4 includes provisions for dealing with Empty Homes

Prevention of Damage by Pests Act 1949

Allows the Council to serve a Notice requiring an owner to clear any land of vermin, remove waste, deposits and accumulations likely to attract vermin.

Local Government Miscellaneous Provisions Act 1982

Allows the Council to undertake any works necessary to prevent unauthorised entry or to prevent a building from becoming a danger to public health.

Building Act 1984

Sections 77 and 79 may be used to require the Owner to make a ruinous or dilapidated property safe or to enable the Council to board the property up. Section 59 enables the Council to serve Notice on the Owner to make satisfactory provisions for drainage where not currently in place.

Caravan Sites and Control of Development Act 1960 and Caravan Sites Act 1968

Allows the Council to deal with breaches of Licence Conditions for Caravan Parks, Mobile Home sites and Residential Park Home sites and gives basic protection from eviction to mobile home occupiers with residential contracts, other than by the obtaining of a Court Order

Environmental Protection Act 1990

Used where a property defect is considered prejudicial to health or causing a nuisance

Other Relevant Legislation

Anti-social Behaviour Crime and Policing Act 2014	Deregulation Act 2015
Energy Act 2011, 2013	Enterprise and Regulatory Reform Act 2013
Local Government Miscellaneous Provisions Act 1976	Mobile Homes Act 1983 and 2013
Housing Act 1985 and 1996	Protection from Eviction Act 1977
Housing and Planning Act 2016	Public Health Acts 1875, 1932, 1936, 1961, 1984

The legislation detailed is not exclusive but gives a list of the main pieces of legislation used



The Private Sector Housing team have investigation and enforcement powers relating to all Private Sector Housing regardless of tenure; however, the approach taken will vary depending on the tenure of the household

Private Tenants

Tenants within rented accommodation are reliant on their Landlord, or their Landlord's Agent, to maintain their homes in accordance with legal requirements. Where Landlords or Landlord's Agents are putting the Health or Safety of their Tenants or those occupying a neighbouring property at risk, or are failing to meet their statutory obligations, the Council will take formal action as required.

Owner Occupiers

Owner occupiers are responsible for the maintenance and safety issues of their own home. Therefore formal enforcement action against Owner Occupiers will be limited, except for situations where neighbouring properties are being affected in some way, for example a defect leading to water penetration into a neighbouring property or where there is an 'Imminent Risk' to the Occupier or any visitors to their property.

Registered Providers

Registered Providers (RPs) (formerly known as Housing Associations) are regulated by Homes England. RPs have their own procedures in place for reporting problems and making complaints and usually have clear response times for addressing any issues.

The Private Sector Housing Team will not normally take action against an RP unless the problem in question has been properly reported to the RP who has then failed to take appropriate action. The Council will consider enforcement action against an RP where there are significant risks to the Health and Safety of Tenants and or the wider Public.



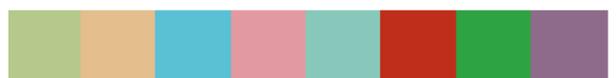
Private Sector Landlords and Decent and Safe Homes Accreditation

Landlord Accreditation Schemes aim to address issues and raise standards in the Private Rented Sector, whilst supporting and providing benefits for Landlords. Landlords are encouraged to become accredited and to take advantage of training opportunities, both through their accrediting organisation and other training available regionally.

The Council works in partnership with DASH (Decent and Safe Homes) Services and encourages Landlords to seek accreditation through the DASH scheme to demonstrate their commitment to developing as a Landlord. In return the Council offer reductions in House in Multiple Occupation (HMO) Licensing fees to DASH Accredited Landlords

In the spirit of self-regulation, any complaints or referrals made about conditions in properties owned by a DASH Accredited Landlord will be referred to the Scheme body for the matters to be addressed in accordance with the Scheme rules.

As well as utilising social media and the local press to inform Landlords, the Council produce an E-Newsletter for Landlords, providing information and advice on Private Rented Sector matters and Legislative changes.



The Private Sector Housing team will respond to enquiries about substandard, unsafe and problematic housing and adopt an escalating approach to enforcement.

Before considering any action in respect of a tenanted property, the Tenant(s) will be encouraged to contact their Landlord about the problems in order to give the Landlord an opportunity to respond.

In some cases, where the Tenant is considered vulnerable or the nature of the concern requires immediate investigation, this will not be required.

Deciding on the Course of Action

The course of action will be decided having regard to the circumstances of each case, including the:

- Amount of disrepair
- Vulnerability of the Occupant, if any (e.g. elderly Occupants, young children).
- Effect the problem has on the Occupants, neighbours or the surrounding area.
- Relevant legislation
- Relevant history of the Owners, Neighbours or Tenant, particularly the Owner's history of carrying out repairs at a pre-formal stage or following service of notice

No Action

In the case of occupied homes, in some circumstances, it may be appropriate to take no action, for example;

- When the Health and Safety risk is sufficiently low, or when action would be disproportionate, or inappropriate in the circumstances of the case
- When a Tenant does not want action to be taken and the Council is not under a Statutory Duty to do so
- Where allegations or complaints are unsubstantiated and unwitnessed

In such cases, occupiers may be directed to other sources of advice and support, for example The Bridge Housing Support Service or Citizens Advice Bureau. In some cases, the Council will cease to provide a service, for example, where the Tenant unreasonably refuses access to the Property Owner or a Contractor to carry out works; or where a Tenant continually fails to engage with Council Officers.



Advice and Guidance

Council Officers will offer the following:

- Advice as to how the complainant can request repairs or improvements without the need for intervention from the Council
- A letter or telephone call to the Property Owner (without a visit), advising them of the information that the Council has received and allowing them a reasonable period of time to address the issues

Pre-formal Action

Pre-formal action involves:

- A visit to the property to further investigate the complaint
- Once completed, the Council will write to the Property Owner identifying the Hazards and advise on the repairs or improvements that are required
- In the case of an Empty Homes complaint – the Council will write to the Property Owner requesting information about their intentions for the property and offering advice and assistance on returning the home to use

When taking pre-formal action of any nature, Officers will clearly differentiate what is legally required and what is recommended as Good Practice.

Where it is deemed appropriate to deal with issues through pre-formal action, in the first instance, the Council will work with the Property Owner to help them comply with their regulatory requirements. Clear and concise information will be provided along with the Council's contact details.

In cases where the Property Owner refuses or fails to carry out satisfactory works as a result of pre-formal action, the case will progress to formal action.

Formal Action

Examples of circumstances in which formal action would be taken include where:

- A pre-formal action has had no effect
- There is a lack of confidence, due to a history of non-compliance from the Property Owner
- The risk to Health, Safety and Wellbeing is such that formal action is necessary immediately



Notice of Entry

Where a complaint of housing disrepair has been received and an inspection is required, a Notice of Entry is to be served under Section 239 of the Housing Act 2004. This informs all relevant parties of the Councils intended inspection.

If the complaint is of an urgent nature and the Council intend to use its emergency powers, this will negate the need for the service of a Section 239 Notice.

Where the Council are unable to gain access using a Notice of Entry or where such Notice will defeat the object of entry, the Council are able to make an application to the Magistrates Court for a Warrant to enter.

Serving of a Statutory Notice or Order

A Statutory Notice is a Notice or Order requiring repairs or improvements to be completed within a specified timescale or requiring a specific action.

These can include:

- Improvement Notice
- Prohibition Order
- Emergency Prohibition Order
- Hazard Awareness Notice
- Abatement Notice
- Community Protection Notice

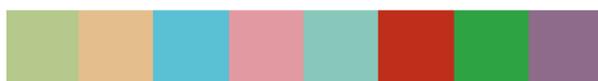
Failure to comply with the Notice or Order may result in works being carried out in default, a Civil Penalty or Prosecution.

Details of the Notice will be recorded on the Council's Local Land Register against the property to which it relates until the Notice is withdrawn or complied with.

This Register is available to the Public and anyone may search for entries upon payment of a fee (details of which can be found on the Council's Website). Potential purchasers of a property will normally search this Register.

In some cases charges will be made for Enforcement Action.

See Appendix 1 'Charges and Fees for Formal Action'.



Emergency Remedial Action

Where there is serious disrepair which poses an imminent risk of harm to the occupiers or others, remedial action may be taken immediately to mitigate or remove the risk. Examples may include a sewage leak, collapsed flooring, dangerous electrics, risk of structural collapse or where a property cannot be secured. Further action will be taken to recover the full costs incurred by the Council and subsequent action may be taken.

Works in Default

Where the Property Owner has failed to undertake legally required works within the permitted time, the Council may carry out the Works in Default. This will only be considered to remove serious Hazards.

Once the Council has started works, it is an offence to obstruct Council Officers, or any Contractors to carry out the Works.

The cost of the Works and all other associated relevant costs will be recovered in accordance with the relevant Statutory Provisions. All outstanding debts will be registered as a Local Land Charge against the property and where interest can be charged, this will be added to the debt. The Council may consider using the Enforced Sale Procedures to recover the charges owed, where appropriate.

Carrying out Works in Default is a Discretionary Power and the Council reserves the right not to do so where the costs of the Works is likely to be high, or there may be difficulties recovering the costs.

See Appendix 1 'Charges and Fees for Formal Action' for further information.

A Simple Caution

A Simple Caution will be considered by the Council for less serious offences, where the person who committed the offence has admitted doing so, is over the 18 and agrees to being given a Caution.

Prosecution

The Council may prosecute where there has been a serious or recurrent breach, or where there has been a failure to comply with a formal Caution or Statutory Notice.



When considering Prosecution, the Council will take into account:

- The seriousness of the offence
- Culpability
- Any harm caused to the victim
- The impact on the Community
- Whether there is sufficient, admissible and reliable evidence that an offence has been committed by an identifiable individual or individuals or company
- Whether It would be in the Public interest
- If there is a realistic prospect of conviction, applied objectively, given the evidence available

Any decision to Prosecute will initially be considered at a Case Conference attended by the Investigating Officers, the Private Sector Housing Manager and a representative from Legal Services.

Civil Penalties

These were introduced under The Housing and Planning Act 2016 as an alternative to Prosecutions. See Appendix 2 'Civil Penalties' for further details.

Banning Orders

Where a Property Owner has been successfully prosecuted for certain offences the Council can apply for a Banning Order. See Appendix 3 'Other Aspects of Enforcement undertaken by the Private Sector Housing Team' for information.

Refusal, Suspension, Revocation or Variation of Licences

Part 2 of the Housing Act 2004 regulates Houses of Multiple Occupation (HMOs) by licensing certain higher risk properties and applying conditions to the Licence (see page 14 for further details). Breach of these conditions will lead to a review of the Licence which could result in its revocation or amendment. When considering future Licence Applications the Council will take previous Breaches and Enforcement Action into account.

Rent Repayment Orders

Where Housing Benefit has been paid to a Landlord and the Council are satisfied that the Landlord has committed one or more specific offences, the Council, or in some cases the Tenant, can apply for a Rent Repayment Order. See Appendix 4 'Rent Repayment Orders' for information.



The Housing Act 2004 places a duty on the Council to keep housing conditions in the area under review and to take appropriate action where necessary.

The Health and Safety Rating System (HHSRS)

Part 1 of the Act contains a system for assessing housing conditions, known as the Housing Health and Safety Rating System (HHSRS), which is used in the enforcement of housing standards in all types of residential accommodation.

Where Officers have reason to enter a home, they will inspect the whole property (including associated paths, yards, gardens and outbuildings etc.) using the HHSRS.

A Hazard is defined as any risk of harm to the Health or Safety of an actual or potential occupier, or visitor to the property, that arises from a deficiency such as the failure of an element; for example, the heating system or the roof does not meet the ideal. The failure could be as a result of the original design or as a result of disrepair or deterioration. There are 29 potential Hazards including; 'Damp and Mould Growth', 'Excess Cold', 'Falls (on level surfaces, stairs or between levels)', 'Electrical Hazards' and 'Fire'.

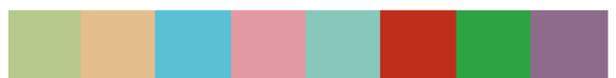
The HHSRS contains 2 categories of possible Hazards:

- **Category 1 Hazards** represent a serious danger to health or safety and the Council has a duty to take appropriate action to deal with these
- **Category 2 Hazards** represent a lesser danger and the Council will exercise its discretionary power to reduce these where appropriate

Formal actions (where there is no Interim Management Order in force) that can be considered under Part 1 of the Act are:

- Improvement Notice (Housing Act 2004, Section 11&12)
- Emergency Remedial Action (Housing Act 2004, Section 43 Category 1 Hazards only)
- Prohibition Order (Housing Act 2004, Section 20 & 21)
- Emergency Prohibition Order ((Housing Act 2004, section 43, Category 1 Hazards only)
- Hazard Awareness Notice (Housing Act 2004 , Section 28 & 29)
- Demolition Order (only available where there is a Category 1 Hazard)
- Clearance area (all properties must have a Category 1 Hazard)

When taking formal action under Part 1 of the Housing Act 2004, the Council will prepare a statement of reasons, under Section 8, which will indicate why that course of action has



been taken. The statement of reasons will accompany all Notices and Orders served, including copies.

The recipient of a Notice or Order may appeal against it (other than the Hazard Awareness Notice) to the Property Chamber of the First-tier Tribunal. Details of how to appeal will be provided with the Notice or Order where applicable.

Under Section 49 of the Housing Act 2004, the Council will make a reasonable charge for taking enforcement action. See Appendix 1 'Charges and Fees for Formal Action' for information.

Environmental Protection Act 1990

Under the Environmental Protection Act 1990, property in such a state as to be prejudicial to Health or a nuisance constitutes a 'Statutory Nuisance'.

The Council has a duty to serve an Abatement Notice, where it is satisfied that a Statutory Nuisance:

- Exists
- Is likely to occur
- Is likely to recur

The Abatement Notice will:

- Require the abatement of the nuisance or prohibiting or restricting its occurrence.
- Require the execution of such works or steps (where necessary) for these purposes
- Specify the time or times within which the Notice is to be complied within.
- Indicate the rights of the recipient and time limits for appeal

Energy Efficiency

The Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015 are designed to improve the least energy efficient properties. From April 2018, Landlords of Private Sector Rented domestic and non-domestic property in England or Wales must ensure that their properties reach at least an Energy Performance Certificate (EPC) rating of E before granting a new tenancy to new or existing tenants.

The Council will check for non-compliance with the Regulations and if necessary serve a Compliance Notice requiring information from the Landlord to help them decide whether the Landlord has breached the Regulations. Infringements may result in a Penalty Notice. See Appendix 5 'Minimum Energy Efficiency Standards' for further information.



The Private Sector Housing Team are responsible for ensuring that all HMOs comply with necessary Management Regulations and Mandatory Licensing Schemes

A property is classed as a House in Multiple Occupation (HMO) where:

An entire house or flat is let to 3 or more Tenants who form 2 or more households and who share a kitchen, bathroom or toilet. For a property to be classed as an HMO, it must be used as the Tenants' only or main residence and it should be used solely or mainly to house Tenants. Properties let to Students and Migrant Workers will be treated as their only or main residence and the same will apply to properties which are used as domestic refuges.

Schedule 14 of the Housing Act 2004 exempts certain buildings from the HMO definition

Mandatory HMO Licensing

Mandatory HMO Licensing (up until September 2018) covers HMOs of:

- 3 or more storeys, and
- 5 or more occupiers living in 2 or more households, and
- Sharing amenities (either a kitchen, living room or bathroom and toilet facilities)

From 1st October 2018, Mandatory HMO Licensing will be extended to include:

- All HMOs with 5 or more occupiers living in 2 or more households regardless of the number of storeys
- Purpose built flats where there are up to 2 flats in the block and 1 or both of the flats are occupied by 5 or more persons in 2 or more households, regardless of whether the block is above or below commercial property.

Each individual HMO covered by Mandatory Licensing is required to be licensed, for example in the case of a building which has 2 flats and each is occupied by 5 persons living in 2 or more households, each flat will require a separate HMO Licence.

Where the Council considers that a property needs to be entered to ascertain whether an offence has been committed, an Authorised Officer may enter the property at any reasonable time without giving prior Notice.

The Council may refuse to issue a HMO Licence, for example in circumstances where the accommodation is not capable of being operated as a Licensable HMO.



Conditions listed on a Licence cover the provision of amenities and property management standards and may include specific timescales for compliance and include the number of persons or households that are permitted to occupy a property. Failure to comply with the Conditions of a HMO Licence without reasonable excuse, will lead to the Council considering formal action.



The Management of Houses in Multiple Occupation (England) Regulations 2006

The Regulations impose duties on a person managing a HMO as per the following:

Duties	Requirements
Providing and clearly displaying information to all occupiers	The Manager should provide his or her name, address, and telephone contact number to all occupiers
Taking safety measures	Maintain means of escape and ensure that they are free from obstruction. Ensure fire safety measures including fire equipment, alarms and signage are correctly positioned and in good working order (the requirement to display appropriate signage, indicating the location of the means of escape from fire does not apply where the HMO has 4 or fewer occupiers). The Manager must make all reasonable efforts to protect occupiers from injury having regard to design, structural condition and occupancy numbers, paying particular attention to roof and balcony safety and protection from low sill heights.
Maintaining the water supply and drainage	Ensuring supply is in good, clean and working condition whilst avoiding unreasonable interruption including all tanks, cisterns and water fittings (pipes, baths, water closets etc.)
Supplying and maintaining gas and electricity	Having it regularly inspected and not causing it to be unreasonably interrupted. The Manager must supply the Council with the annual Gas Certificate or 5 yearly fixed electrical installation report within 7 days of such a request being made by the Council and issued by recognised Gas (an engineer approved under Regulation 3 of the Gas Safety (installation and Use) Regulations 1998) and electrical engineers respectively
Maintaining common parts in good repair, safe working condition and kept free from obstruction	This includes handrails and banisters, stair carpeting, window openings and communal area light fittings; the duty extends to outbuildings, gardens, boundary walls and fences in addition to shared communal areas, fixtures, fittings and appliances
Maintaining living accommodation and any furniture	Ensure the living accommodation and furniture is in a clean condition at the beginning of a person's occupation of it. The Manager's duty does not extend to maintenance of fixtures, fittings or appliances that require repair due to irresponsible Tenant behaviour, or to furniture outside the control of the Manager
Providing suitable and sufficient waste disposal facilities	Ensure compliance with the Council's household waste storage and disposal scheme at the HMO pending collection.



Long term Empty Homes are a waste of valuable housing resource and can sometimes be a source of nuisance to those who live nearby. The Council aims to return long term Empty Homes into use to endeavour to meet the growing housing demand.

The Empty Homes Officer will focus on long term Empty Homes (empty for 6 months or more) and will work with the home owners to identify their plans to bring the home back into use. The Council's initial approach will be to offer support, advice and assistance with regards to selling, renovating or finding Tenants to make use of the Empty Home.

Where Owners do not engage and homes remain empty despite the Council's efforts, formal action will be considered to secure that the home is bought back into use.

Empty Dwelling Management Order

Part 4 of the Housing Act 2004 introduced 2 types of Empty Dwelling Management Order (EDMO), an interim EDMO and a final EDMO. An interim EDMO allows the Council to take steps to secure occupation of an Empty Home. A final EDMO is made in succession to an interim EDMO for the purpose of securing that a home becomes and remains occupied.

The Council will seek partner arrangements with Registered Providers or Private Sector Managing Agents to facilitate a Leasing Scheme for the management of properties under EDMOs.

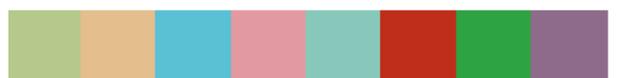
Actions and Process

An EDMO will be used where::

- An Owner leaves a home empty for at least 2 years and has no intention of bringing it back into use
- The Empty Home is causing a nuisance and blighting the local Community

Homes which are exempt from EDMOs include the following:

- Second homes
- Holiday lets
- Flats and houses normally occupied by Students
- Owner is in Prison
- Owner is receiving or giving care
- Owner is in the armed forces
- Relevant proprietor is temporarily residing elsewhere
- Property is genuinely on the market for sale or to let



The Council will consider the rights of the Owner under Article 8 of The Human Rights Act 1998 as well as the interests of the wider neighbourhood.

Where appropriate, the Council will conduct surveys consulting with local residents on the Council's intention to bring the property back into use to gauge support. Responses will be gathered to support the potential application for authorisation to the First-Tier Tribunal (Property Chamber).

The Council will give the Owner at least 3 months warning before an application for an Interim EDMO is made.

The Council will give at least 24 hours' Notice to the Owner of their intention to entry. If entry to the property cannot be made, a warrant to enter the property will be sought.

The interim EDMO becomes operative when it is made and a copy of the Order and Notice will be served on every person having an estate or interest in the property concerned, within 7 days of the commencement of the Order. Interim EDMOs will be registered as a Local Land Charge. Details of how to appeal the Order and the appeal period for doing so will be included.

An Interim EDMO will expire after a maximum of 12 months. At this point the Council can make a final EDMO to continue to manage the property if it remains unoccupied or is likely to become unoccupied again.

The final EDMO process and the making of an Order do not require the consent of an Owner. Once authorised, the Council has the right to possession of the property and can do anything an Owner can do other than dispose of the property.

Under the Housing Act 2004, the Council is under a duty to keep a Public Register of the Interim or Final Empty Property Management Orders.

Compulsory Purchase Orders

Compulsory Purchase Orders (CPOs) can be made under several pieces of legislation for a number of reasons including the clearance of unfit housing or the acquisition of individual Empty Homes for continued housing use under the provisions of the Housing Act 1985, Development or Regeneration under the Town and Country Planning Act 1990 and for local road schemes under the Highways Act 1980.

CPOs will be considered where the Council is able to make a compelling case for a home to be compulsorily purchased to facilitate the renovation and reoccupation of an Empty Home. The purchase would have to be in the interest of the Public and where pre-formal attempts to work with the Owner to bring the home into use have been unsuccessful.



The Council will have to show that all other options have been exhausted before a CPO can be granted.

Enforced Sale

Enforced Sale allows the Council to sell properties to release money tied up in the value to recover a debt owed to them. In addition, this can serve indirectly as a way of bringing an Empty Home back into use.

This action entails the service of a Section 103 Law of Property Act 1925 Notice on the Owner, the property sold at Auction, and the cost of the statutory works, administration and the Land Registry fees are recovered from the sale.

This option may be used if a charge has been placed against a property, for example as a result of Works in Default by the Council, such as boarding up or clearance of rubbish or even for the non-payment of Council Tax.



Local Authorities are responsible for safeguarding the interests of Mobile Home Residents living on Residential Mobile Home sites through the Licensing regime under the Caravan Sites and Control of Development Act 1960 as amended by the Mobile Homes Act 2013.

Caravan Sites and Control of Development Act 1960 as amended by The Mobile Homes Act 2013

All site Owners are required to obtain a Site Licence before any land may be used as a Caravan Site.

The Council has powers to attach Licence Conditions to a Site Licence that are necessary or desirable for the interests of people living on the site or the Public at large, for example the number of units, the size of the units, the positioning of the units, sanitary provisions etc.

In formulating Site Licence Conditions, the Council must have regard to the Model Standards 2008 for Caravan Sites in England: Caravan Sites and Control of Development Act 1960, Section 5.

Section 8 of the 1960 Act allows the Council to change Licence Conditions at any time following consultation with the site owner.

Enforcement

Section 9A of the Caravan Sites and Control of Development Act 1960 allows the Council to serve Compliance Notices on the Site Owner, where a Breach of a Site Licence Condition has occurred.

Where possible, an informal approach will be taken in the first instance, working to an agreed schedule of works provided to the site owner in writing.

A Compliance Notice can only be used in relation to Breaches of the Site Licence Conditions and will:

- Set out the Condition which has been breached and the details of the failure
- Detail the steps the Site Owner must take to remedy the Breach of the site Licence Condition(s)
- Specify a timescale for completion



-
- Explain the Right of Appeal against the Notice to the First-tier Tribunal See Appendix 1 'Charges and fees for Formal Action' for further information on charges in respect of Compliance Notices.

Failure to comply with a Compliance Notice within the given timescale is an offence which on conviction carries a fine. Where the Site Owner is convicted of an offence the Council may carry out Works in Default. Where the Licence Holder has been convicted on 2 or more previous occasions of failing to comply with a Compliance Notice, the Council will apply to the Court for revocation of the Site Licence.

The Council will take emergency action where the Site Owner has failed or is failing to comply with a Site Licence Condition and where, as a result of such failure, there is an imminent risk of serious harm to the Health or Safety of any person who is or may be on the land.

The Council may prosecute a Site Owner for:

- Causing or permitting any land to be used as a Mobile Home Site without a Site Licence
- Wilfully obstructing of an Officer from carrying out their duties or from entering land by authorisation of a Warrant
- Failure to take the steps specified in a Compliance Notice within the given timescale
- On the third (or more) conviction of the site operator for failure to comply with Site Licence Conditions



In Order to deliver the Private Sector Housing Enforcement Policy, the Council will utilise all available resources across its own Services and its external Partners. The Policy will be monitored and reviewed on an annual basis or more frequently as changes in Legislation occur.

Resources

The key resources required to deliver this Policy include:

- Housing Specialist Environmental Health Officers and Housing Standards Officers
- A close working relationship with The Bridge, Leicestershire Fire and Rescue, Trading Standards, Police, Development Control, Enviro-Crime, Environmental Protection, Community Safety, Electoral Registration, Local Councillors and Residents Groups and Associations
- A close working relationship with Legal Services. It is imperative and essential that legal action is taken promptly and in accordance with the law in problematic cases
- Funds to resource the team and implement enforcement action where required.
- All Civil Penalties will be used to finance further enforcement of standards in the Private Rented Sector in line with the Rent Repayment Orders and Financial Penalties (Amounts Recovered)(England) Regulations 2017

Monitoring

The Policy will be monitored and reviewed on an annual basis or more frequently as changes in legislation occur.

Minor changes which make no significant difference to service provision will be made to the document under delegated authority by the Head of Strategic and Private Sector Housing in consultation with the Lead Member for Housing.

Should the Policy be impacted by significant changes or financial implications, it will be taken to Cabinet for consideration.



Charges and Fees for Formal Action

Housing Act 2004

Under Section 49 of the Housing Act 2004, the Council will make a reasonable charge for taking enforcement action in the following circumstances:

- Serving an Improvement Notice under Section 11 or 12
- Making a Prohibition Order under Section 20 or 21
- Taking emergency remedial action under Section 40
- Making an Emergency Prohibition Order under Section 43 or
- Making a Demolition Order under Section 265 of the Housing Act 1985
- Carrying out a review under section 17 (review of Suspended Improvement Notices) or Section 26 (review of Suspended Prohibition Orders) or
- Serving copies of the Council's decision on such a review

Where expenses are to be charged they will be made relating to all stages of enforcement as detailed in Section 49 of the Housing Act 2004 and will be charged at the current hourly Officer rate (with on-costs).

In exceptional circumstances, the Council may exercise its discretion and decide not to charge for the cost of enforcement. An example may be in the case of a Landlord wishing to complete the necessary works at the pre-formal stage, but the Tenant requesting that the works be completed after they have moved out, leading to the service of a Suspended Improvement Notice. Such decisions will be made by the Private Sector Housing Manager.

Caravan Sites and Control of Development Act 1960

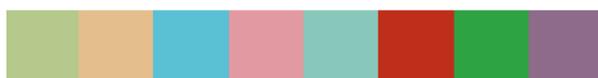
Charges will be made for the serving of a Compliance Notice under Section 9A of the Caravan Sites and Control of Development 1960 relating to all stages of enforcement at the current Officer hourly rate (with on costs). A demand for expenses which is served in conjunction with a compliance Notice will be registered as a Local Land Charge, which will be removed once the full amount has been recovered.



Works in Default

Where the Council undertakes Work in Default, or exercises its power to take emergency remedial action, it will seek to recover expenses reasonably incurred in doing so, in line with relevant statutory provisions, from the relevant person i.e. the full cost of the works carried out and the full cost of the Officer time taken (current Officer hourly rate including on-costs).

Expenses will be recovered via a demand for payment of the charge. As from the time that the demand becomes operative, the sum recoverable will be registered as a Local Land Charge on the property concerned until recovered and the debt will be pursued. If interest can be charged while the debt remains unpaid, this will be added to the debt.



Civil Penalties

Civil Penalties were introduced under the Housing and Planning Act 2016 from the 6th April 2017 as an alternative to Prosecution for the following offences under the Housing Act 2004:

- Failure to comply with an Improvement Notice – Section 30
- Offences in relation to Licensing of HMOs - Section 72
- Offences in relation to Licensing of houses - Section 95
- Failure to comply with an overcrowding Notice – Section 139
- Breach of Management Regulations in respect of a HMO – Section 234

A Civil Penalty can be imposed for a breach of a Banning Order.

The Decision to Prosecute or issue a Civil Penalty

Where the Council considers that an offence detailed above has been committed, it will decide whether to Prosecute or to issue a Civil Penalty as an alternative..

The same criminal standard of proof is required for a Civil Penalty as for Prosecution, to demonstrate beyond reasonable doubt that the offence has been committed. If the Council believes that it has a reasonable prospect of conviction in a particular case, it will always consider a Civil Penalty in the first instance.

The following factors, whilst not exhaustive, are examples of where it would be appropriate to consider the issuing of a Civil Penalty rather than Prosecuting:

- No evidence of previous non-compliance with appropriate legislation
- No previous convictions recorded
- Not in the Public Interest to Prosecute
- The offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence)
- Prosecution is likely to have a serious adverse effect upon an individual's well-being e.g. a Landlord's physical or mental health (these factors must be balanced against the seriousness of the offence)

Determining the Level of a Civil Penalty

In accordance with Government recommendations, in Order to ensure that the Civil Penalty is set at an appropriate level the, the Council will consider the following factors:

- Seriousness of the Offence
- Culpability and track record of the Offender



-
- Harm caused to the Tenant
 - Punishment of the offender for the Offence
 - Deterrent value to prevent the offender from repeating the Offence and to prevent others from committing the Offence
 - Removing of any financial benefit obtained from committing the Offence

The Harm Caused

In determining the level of harm the Council will have regard to the

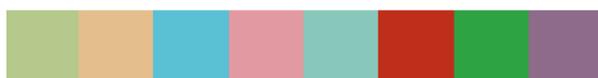
- Person i.e. physical injury, damage to health, psychological distress
- Community i.e. economic loss, harm to Public
- Other types of harm; i.e. Public concerns in regards to the impact of poor housing conditions on the local neighbourhood

The nature of the harm depends on the personal characteristics and circumstances of the victim.

Where no actual harm has resulted from the offence, the Council will consider the relative danger that persons have been exposed to as result of the offender's conduct, the likelihood of harm occurring and the gravity of harm that could have resulted.

Factors that indicate a higher degree of harm include:

- Multiple victims.
- Serious or psychological effect on the victim
- Victim is particularly vulnerable



Culpability

The Council will have regard to 4 levels of culpability where the offender:

- Has the intention to cause harm, the highest culpability where an offence is planned
- Is reckless as to whether harm is caused, i.e. the offender appreciates at least some harm would be caused but proceeds giving no thought to the consequences, even though the extent of the risk would be obvious to most people
- Has knowledge of the specific risks entailed by his actions even though he does not intend to cause the harm that results
- Is negligent in their actions

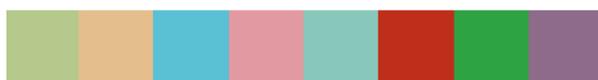
Civil Penalty Amount

The table below sets out the interrelation between harm and culpability to determine the Civil Penalty banding, which Officers will use as a starting point, on a case by case basis, the level of Civil Penalty that could be imposed:

	Low Harm	Medium Harm	High Harm	Very High Harm
Low Culpability	£1,000	£3,000	£4,000	£5,000
Medium Culpability	£3,000	£6,000	£8,000	£10,000
High Culpability	£4,000	£8,000	£12,000	£18,000
Very High Culpability	£5,000	£10,000	£18,000	£27,000

Aggravating and Mitigating Factors

Aggravating factors in the case will increase the initial amount and equally, any mitigating factors will reduce the initial amount.



Actions and Process

The Council will give Notice of its proposal (Notice of Intent) to impose a financial Penalty within 6 months after it has established sufficient evidence of the conduct to which the Penalty relates, or at any time when the conduct is continuing. The Notice will set out the:

- Amount of the proposed financial Penalty
- Reasons for proposing the Penalty
- Information about the right to make representations within 28 days from the date of the Notice

At the end of the period for representations, the Council will decide whether to impose a Civil Penalty and if so, the amount.

Where a decision is made to impose a Civil Penalty, the Council will give Notice (Final Notice) requiring the amount to be paid within 28 days.

The Council may withdraw or reduce the amount specified at any time.

Financial Means to Pay a Civil Penalty

An Offender will be assumed to be able to pay a Civil Penalty up to the maximum amount unless they can demonstrate otherwise. It is for the Offender to disclose to the Council such information relevant to his or her financial position that will enable the Council to assess what he or she can reasonably afford to pay.

The Council will decide whether or not a Civil Penalty is affordable for the Offender based on all evidence available to them. This will include any equity that could be released from properties owned by the offender if refinanced. Consideration will be given to whether any of the properties can be sold.

Income received from Civil Penalties will be retained by the Council and used for further enforcement work covering the Private Rented Sector.

Right of Appeal

A person issued with a Civil Penalty has a Right of Appeal to the First-Tier Tribunal. The Tribunal has the power to confirm, vary (increase or reduce) or cancel the Civil Penalty issued.

The First-Tier Tribunal can dismiss an appeal if it is satisfied the appeal is frivolous, vexatious or an abuse of process, or has no reasonable prospect of success



Other Aspects of Enforcement undertaken by the Private Sector Housing Team

Hoarding or Cleansing of Filthy or Verminous Premises

Hoarding Situations may be brought to the attention of the Council. The Council's priority is always to protect the interests of any vulnerable occupants and work with them, engaging other agencies where appropriate to avoid the need for enforcement action. However, there may be circumstances where nuisance is being caused to neighbouring properties where the Council would be under a duty to take enforcement action.

Drainage

The Council will serve Notices under the relevant legislation where there is disrepair to private drainage, septic tanks or cesspits. This may be in relation to pest control issues as well as disrepair issues.

Banning Orders

In certain circumstances, the Council may apply for a Banning Order. Housing related Banning Order offences include:

- Illegally evicting or harassing a residential occupier in contravention of the Protection from Eviction Act 1977 or the Criminal Law Act 1977
- Any of the following offences under the Housing Act 2004
 - Failure to comply with an Improvement Notice
 - Offences in relation to Licensing of HMOs
 - Allowing a HMO that is not subject to Licensing to become overcrowded
 - Failure to comply with Management Regulations in respect of HMOs
 - Failure to comply with a Prohibition or Emergency Prohibition Order
- An offence under the Health and Safety at Work Act etc. Act 1974 where a person contravenes Section 36 of the Gas Safety (Installation and Use) Regulations 1998
- An offence under Section 32 of the Regulatory Reform (Fire Safety) Order 2005

When someone is convicted of such an offence, a Banning Order would have the effect of banning a person from:

- Letting housing in England
- Engaging in Letting Agency work that relates to housing in England
- Engaging in Property Management work that relates to housing England
- Holding a licence under Part 2 or 3 of the Housing Act 2004



Rent Repayment Orders

A Rent Repayment Order is an Order made by the First-Tier Tribunal requiring a Landlord to repay a specified amount of rent.

The Housing Act 2004 introduced Rent Repayment Orders to cover situations where the Landlord of a Licensable HMO failed to obtain a Licence. Rent Repayment Orders have been extended through the Housing and Planning Act 2016 to cover a wider range of offences, as detailed below:

- Failure to comply with an Improvement Notice - Section 30 of the Housing Act 2004
- Failure to comply with a Prohibition Order – Section 32 of the Housing Act 2004
- Breach of a Banning Order - Section 21 of the Housing and Planning Act 2016
- Using violence to secure entry to a property – Section 6 of the Criminal Law Act 1977
- Illegal Eviction or Harassment of the Occupiers of a property – Section 1 of the Protection from Eviction Act 1977

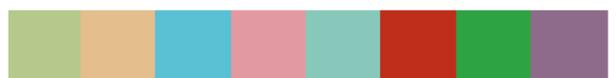
Rent Repayment Orders can be granted to either the Tenant or the Council. If the Tenant paid their rent themselves (or a proportion) then the rent (or equivalent proportion) must be repaid to the Tenant. If the rent (or a proportion) was paid through Housing Benefit or through the housing element of Universal Credit, then the rent (or equivalent proportion) must be repaid to the Council. The maximum amount of rent that can be recovered is capped at 12 months.

A Rent Repayment Order can be applied for when the Landlord has committed an offence, whether or not a Landlord has been convicted. Where an application for Rent Repayment Order is made and the Landlord has not been convicted of the offence for which the Rent Repayment Order application is being made, the First-Tier Tribunal will need to be satisfied beyond reasonable doubt that the Landlord has committed the offence.

The Council will consider a Rent Repayment Order after a person is the subject of a successful Civil Penalty for the following offences;

- Failure to comply with an Improvement Notice - Section 30
- Offences in relation to Licensing of HMOs - Section 72(1)
- Offences in relation to Licensing of HMOs under Part 3 of the Act - Section 95(1)

In most cases the Council will subsequently make an application for a Rent Repayment Order to recover monies paid through Housing Benefit or through the housing element of Universal Credit. The Council will offer advice and guidance to assist Tenants to apply for a Rent Repayment Order in cases where the Tenant paid the rent themselves.



Minimum Energy Efficiency Standards

The Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015 are designed to improve the least energy efficient properties those with Energy Efficiency Performance Certificates (EPC) rated F or G.

Unless an exemption applies, a domestic Private Rented Sector property must not be let to a new Tenant after the 1st April 2018 unless it has a minimum Energy Performance Certificate (EPC) rating of E.

Exclusions and exemptions are detailed in Regulations and the Domestic Private Rented Property Minimum Standard Guidance (or any subsequent Government Guidance), and include:

- Where all 'relevant Energy Efficiency Improvements'* for the property have been made (or there are none that can be made) and the property remains sub-standard
- Where a recommended measure is not a 'relevant Energy Efficiency Improvement' because the cost of purchasing and installing it cannot be wholly financed at no cost to the Landlord
- The relevant Energy Efficiency Improvement is wall insulation and it cannot or should not be installed on the property in question, where the Landlord has obtained written expert advice which indicates that the measure is not appropriate for the property due to its potential negative impact
- The relevant Energy Efficiency Improvements require third party consent, e.g. planning permission and consent has not been given
- The relevant Energy Efficiency Improvements would devalue the market value of the property by more than 5%
- Where the Landlord is exempt due to recently becoming a Landlord

All exclusions and exemptions must be registered by the Landlord on the National Private Rented Sector Exemptions Register and will last for 5 years.

Landlords of a domestic property for which an EPC is not a legal requirement (for example a property which has Listed Building status) are not bound by the prohibition on letting sub-standard property.

**Relevant Energy Efficiency Improvements are improvements for which funding is available from third party finance to cover the full cost of purchasing and installing the improvements, for example a Green Deal Plan, Energy Company Obligation or a central Government Grant.*



The Council will check for different forms of non-compliance with the Regulations including:

- For new Tenancies agreed after the 1st April 2018 whether the property is sub-standard (rated F or G); and to any property after April 2020 that does not have a registered exemption
- Where the Landlord has registered any false or misleading information on the Private Rented Sector Exemptions Register or has failed to comply with a compliance Notice

Buildings that are not legally required to have an EPC are not required to provide an entry on the Exemptions Register.

The Council will serve a Compliance Notice requiring information from the Landlord to help them decide whether the Landlord has breached the Regulations, this may be served up to 12 months after the suspected Breach. The information requested can include:

- The EPC that was valid for the time when the property was let
- Any other EPC for the property in the Landlord's possession
- The current tenancy agreement used for letting the property
- Any Green Deal Advice Report in relation to the property.
- Any other relevant document that the enforcement authority requires in Order to carry out its compliance and enforcement functions

Infringements and Penalties

Infringements which may result in a Penalty Notice:

- Failure to comply with a Compliance Notice
- The letting of a non-compliant property in breach of the Regulations or
- The uploading of false or misleading information to the Exemptions Register

A Penalty Notice may relate to a financial Penalty, a publication Penalty, or both and may be served on a Landlord (a person or entity that lets, or proposes to let, a domestic Private rented property) up to 18 months after the Breach.



Infringement	Penalty (less than 3 months in breach)	Penalty (3 months or more in breach)
Renting out a non-compliant property	£2,000 Publication Penalty	£4,000 Publication Penalty
Providing false or misleading information on the Private Rented Sector Exemptions Register	£1,000 Publication Penalty	
Failing to comply with a compliance Notice	£1,000 Publication Penalty	

The financial Penalty amounts apply per property and per infringement up to a maximum of £5,000.

A Publication Penalty will include the publishing of:

- The Landlords name (except where the Landlord is an individual)
- Details of the Infringement
- The address of the property in relation to which the infringement occurred
- The amount of the financial Penalty imposed

The details will be published on a publicly accessible part of the Private Rented Sector Exemptions Register which will be available for view by the Public through the 'gov.uk' website.

The Council recognises that each case is unique and will be considered on its own merits. When deciding on the appropriate action, Officers will take into account the Law, Government Guidance, Council Policies and the sufficiency and reliability of the evidence.

Right of Appeal

A Landlord has the right to ask the Council to review its decision to serve a Penalty Notice. This request must be in writing and the Council will consider everything detailed in the request in deciding whether or not to withdraw the Penalty Notice. Details of the right to make a request and the associated timescales will be included with the Notice.

A Landlord has 28 days to submit an appeal in respect of a Penalty Notice to the General Regulatory Chamber (GRC) of the First-Tier Tribunal. A Landlord may appeal if a request to review the Council's decision results in the Penalty Notice being upheld.



Person having control	<p>The person who receives the rack rent of the property (whether on their own account or as an agent or trustee of another person). Rack rent means rent which is not less than two thirds of the full market value of the property. If the property are unlet or let at less than a rack rent (e.g. at a ground rent) it is the person who would receive it if the property were let at a rack rent.</p> <p>Therefore, a Managing Agent who collects rent will be the person having control as well as the Landlord (more than one person can be the person having control at the same time).</p>
Pre-formal approach	Any action or contact made by the Council prior to formal action
Valid application and appropriate fee	<p>A fully completed application form. If an incomplete application is received, the whole application will be returned to the applicant instructing him or her to amend and return.</p> <p>Subsequent payment of the associated monetary Licence fee as invoiced.</p>
Ideal	<p>The perceived optimum standard, at the time of the assessment, intended to prevent, avoid or minimise the hazard.</p> <p>Note: as it is the perceived optimum prevailing at the time of assessment, this will change, and it is the responsibility of those using the HHSRS to keep up to date on what is the Ideal.</p>
Authorised Officer	Enforcement will only be undertaken by authorised officers. Only competent, suitably qualified and experienced officers will be so authorised.
Property Owner	The Property Owner may be a Landlord who is not resident at the property. They may request that the Council liaise with the Managing Agent of the Property in the first instance, but any action needed to be taken will be against the Landlord themselves rather than the Managing Agent.



