

# **Draft Private Sector Housing Policy (Environmental Health: Enforcement and Licensing)**



**South  
Cambridgeshire  
District Council**

Private Sector Housing Policy

Produced by Waste & Environmental Health Services

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## Section 1 - Introduction and Purpose

The aim of this policy document is to set out how the council will deal with sub-standard conditions in the private rented sector. The Private Sector Housing Enforcement Team is part of the Environment – People and Protection team and comes under the Shared Waste and Environment Service. Publication of this policy will enable landlords and letting agents to understand how the council may use its powers.

It should be noted that these powers are “tenure blind”, so if necessary, in extreme cases they could also be used in connection with homes that are owner occupied or have social landlords

Within the council this policy will ensure that decisions are properly made considering relevant factors. It will help enable consistency in the way decisions are made.

The council recognises that the great majority of landlords and letting agents provide satisfactory accommodation.

This policy is part of the council’s corporate priority to be A Modern and Caring Council – to provide our customers with high-quality services, reduce costs, (...) and make decisions in a transparent, open and inclusive way.

Government expects local authorities to use the powers they have been given:

*“The vast majority of landlords are responsible and law-abiding, and many cares deeply about providing the highest standards in the properties that they rent. But, sadly, there remains a small minority of criminal landlords who choose not to comply with the law, and whose tenants suffer unacceptable conditions as a result. The government is committed to clamping down on these rogue landlords and forcing them to improve the condition of their properties or leave the sector completely. This is why we have taken some important steps to strengthen the tools local authorities have to keep driving these improvements. We have introduced civil penalties, rent repayment orders, the rogue landlord’s database, and a mandatory licensing scheme that captures more houses in multiple occupation (HMOs) than ever before.”*

**Mrs Heather Wheeler MP, Parliamentary Under Secretary of State  
Minister for Housing and Homelessness, 2019.**

Government advice on the use of enforcement powers is that –

Local authorities should have clear policies and procedures on enforcement, and these should be reviewed considering intelligence gathered.

These policies and procedures should be made publicly available for landlords and tenants to access, especially if the enforcement action is to hold up in the event of a legal challenge. Under the Regulatory Reform Act 2006, when developing policies and operational guidance local authorities must have regard to the Regulators' Code. Under the Code local authorities should base their regulatory activities on risk and take an evidence-based approach to determining priority risks in their area of responsibility.

Local authorities should allocate resources where they would be most effective in addressing those priority risks. Enforcement policies should follow the principles of enforcement: proportionate, consistent, targeted, transparent and accountable. Clear policies and procedures of enforcement can lead to the following outcomes for local authorities:

- **Successful enforcement and prosecution:** Determining the scale of the penalty applied to a rogue landlord, and supporting this decision with evidence, is the responsibility of the local authority. Having clear and defined policies for how the scale of the offence is determined provides the court with confidence in the authority's approach and is more likely to lead to a successful enforcement or prosecution.
- **Sustainable change:** Developing a transparent policy on enforcement, which outlines consequences for landlords who flout their responsibilities, will make clear to landlords the authority's expectations of them, and should deter non-compliant activity in the future.

Principles to consider when developing policies and procedures<sup>1</sup>:

- **Assess legislation:** Determine the legislation that grants local authorities' powers to act against rogue landlords, and which powers are most relevant.
- **Consult:** Engage with a range of relevant bodies for their advice to produce effective policies.

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<sup>1</sup> *Rogue Landlord Enforcement Guidance for Local Authorities*, April 2019 Ministry of Housing, Communities and Local Government

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- **Clarify:** Clarifying the consequences for types of rogue landlord behaviour will support officers in taking appropriate and proportionate action. Developing a framework to help officers choose the right response to each type of case has been a clear objective for successful local authorities when establishing policies and procedures.
- **Utilise full range of powers:** Local authorities have been most successful when making use of the full range of powers and tools available. The powers are intended to provide options to deal with cases of varying severity. The most effective local authorities have used the full range of powers to adopt an escalating approach with repeat offenders, as well as those who don't engage with initial interventions.

When considering taking enforcement action under the Housing Act 2004 and housing related legislation the Council shall have regard to this policy

The Council's enforcement policy has been developed in line with the principles of the Regulators Code.<sup>2</sup>

This document contains both policy and guidance. Where a section states that it is policy, it should be read as such. Where a section does not state that it is policy, it should be read as guidance.

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<sup>2</sup> [Regulators Code](#), Department for Business Innovation and Skills, 2014

## Section 2

### Summary of Enforcement Policy

The Private Sector Housing Enforcement Team is part of the Environment – People and Protection team and comes under the Shared Waste and Environment Service. The team operates a 5-stage model of enforcement (shown below) which recognises that most issues the Council deals with can be resolved through advice and warnings. As the degree and level of enforcement activity increases, the number of cases reduces.



Breach	Prosecute, apply for banning orders, final management orders and rent-repayment orders, impose civil penalties, and issue simple cautions
Substantive Enforcement	Apply for interim management orders, apply for rent-repayment orders, undertake works in default
Initial Enforcement	Serve legal notices / orders, vary / revoke licences
Warn	Warn about the consequences of failing to comply with responsibilities and duties
Ask	Work to develop understanding of responsibilities and duties

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Where, for example, issues present an immediate risk to health or there is a history of non-compliance, we reserve the option to move directly to the higher stages of the enforcement model.

We deal with a range of activity under the Housing Act 2004 and associated legislation, including the licensing of properties within the housing market: the key areas of licensing activity are set out below. This is not a definitive list, but it gives an overview of how the Council will seek to work with landlords. The Council will seek to ensure it recovers appropriate costs from those landlords who are not being proactive in managing their properties or are letting unsafe houses.

For example, the Council may charge for any follow up inspections required where landlords fail to comply with their licence conditions or where the Council has to take other enforcement action.

This policy deals with the practical application of enforcement procedures that will be used to achieve compliance with housing and environmental standards. The range of legislation enforced by Environment (People and Protection) can be found in Appendix 1

## How will the Council carry out investigations?

The main objective of enforcement action is to ensure that non-compliance in the local housing market is addressed in the most effective way to ensure that compliance is achieved for the benefit of all. We will target our proactive and reactive inspections and compliance work on those premises, nuisances and other public health issues through an intelligence led risk-based approach.

The three key principles we will apply to our enforcement activity are;

- Consistency
- Proportionality
- Openness

**Consistency:** this means taking a similar approach in similar circumstances to achieve similar ends. It does not mean uniformity, as officers will use their professional curiosity to take into account many factors such as the level of risk, culpability, any history of non-compliance and the attitude and actions of those involved. However, whilst enforcement decisions will be individually tailored to the circumstances in making these decisions officers will be guided by current procedures and best practice.

**Proportionality:** this means that enforcement action taken will be proportional to the risks and the severity of the breach of the law involved. This will ensure that the most serious risks are targeted first. Where there is a history of multiple low / medium risk issues affecting residents and / or neighbourhoods these may also be prioritised.

**Openness:** this means explaining our actions clearly in plain language and discussing compliance failures or problems with anyone experiencing difficulties. A clear distinction will be made between legal requirements and advice or guidance.

We will endeavour to provide general information, advice and guidance to make it easier for landlords to understand and meet their regulatory obligations. Such information will be provided via the Council's website.

Where appropriate, landlords will be consulted on the works required to remove health and safety hazards and a reasonable time will be given to complete the works depending on the risk. However, where this is not achieved, and a formal notice is served these time periods will be contained within the notice. We will also take action

to deal with, pest infestations, accumulations of rubbish, ASB and crime relating to poor tenancy management where it is appropriate to do so.

Serious hazards, nuisances and other public health matters which are not dealt with by the responsible person will result in a statutory notice or other enforcement action. Service of a notice will incur a cost to the recipient where legislation allows.

## **Working in Partnership**

The service supports the delivery of safer neighbourhoods. It works in partnership and will share data with organisations in accordance with data protection legislation for the purpose of the protection of safety, prevention and detection of crime and ASB, problem solving and preventing harm to health. Where it is appropriate and the right thing to do the service shall share and receive information from organisations including, but not limited to:

- Police;
- Social care;
- Health service;
- HMRC;
- Revenue benefits;
- Universities and student unions;
- Fire Service.

Regard will always be had to the requirements of the Data Protection legislation; appendix 2 gives details of the Data Protection Statement currently in place.

## **Safeguarding**

Where the Council is carrying out its compliance and enforcement work and we become aware of issues relating to the safeguarding of children and vulnerable adults we have a duty to make the appropriate referrals to ensure the welfare of those persons at risk are protected.

The Council policy on safeguarding can be found at: [Safeguarding policy](#)

A similar approach will be taken will be taken with other statutory responsibilities of the council such as prevent or crime and disorder.

## **What types of enforcement action will the Council use?**

In ensuring that the main objective of enforcement action is achieved, the Council will consider all appropriate enforcement actions available to it. Appropriate enforcement action that can be taken includes but is not limited to:

- Written warnings;
- Statutory notices or orders under part 1 of the Housing Act 2004 and other relevant legislation;
- Works in default;
- Revoking or varying licences;
- Rent repayment orders;
- Simple cautions;
- Civil penalty notice;
- Criminal proceedings (e.g. prosecution);
- Interim or final management orders;
- Banning Orders.

One or more of the above actions may be taken simultaneously depending on the circumstances of the case.

### **Notice of entry**

Where a complaint of housing disrepair is received and an inspection is required, a notice of entry is required to be served under section 239 of the Housing Act 2004. This informs all relevant interested parties of the Council 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 such notice would defeat the object of entry the Council are able to make application to the Magistrates Court for a warrant to enter.

It may also be necessary for notice of entry to be served under other associated legislation and these pieces of legislation also provide for an application to magistrate's court for a warrant of entry.

### **Statutory notices or orders under part 1 of the Housing Act 2004**

The Council must keep the housing conditions in their area under review with a view to identifying any action that may need to be taken by them under any of the provisions in Part 1 of the Housing Act 2004. When Council officers inspect a dwelling, they will look for any risk of harm to an actual or potential occupier of a dwelling, which results from any deficiency that can give rise to a hazard. Officers will use the formal scoring system within Housing Health and Safety Rating System (HHSRS) to demonstrate the seriousness of hazards that can cause harm in dwellings.

Where the rating shows that the hazard falls within Category 1, the Council is under a duty to take appropriate enforcement action. Where the rating shows the hazard falls within Category 2, whilst the Council is not under a duty to take action it may still do so where it is deemed necessary and proportionate to the hazard. The forms of appropriate enforcement action that can be taken as follows:

For Category 1 Hazards Only:

- Emergency remedial action under (Housing Act 2004, Section 40)
- Emergency prohibition order (Housing Act 2004, Section 43)

For Category 1 or Category 2 Hazards:

- Improvement notice (Housing Act 2004, Section 11 & Section 12)
- Prohibition order (Housing Act 2004, Section 20 & Section 21)
- Hazard awareness notice (Housing Act 2004, Section 28 & Section 29)
- Demolition order (Housing Act 1985, Section 265(1) & Section 265(2))
- Declaring the area in which the premises concerned are situated to be a clearance area (Housing Act 1985, Section 289(2))

### **Statutory notices served under other associated legislation**

Although housing issues will primarily be dealt with under the Housing Act 2004 as detailed above there may be circumstances that other legislation is more appropriate.

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A few examples are detailed below:

- Environmental Protection Act 1990: we will use this where a property defect is considered prejudicial to health or causing a nuisance
- Building Act 1984: we will use this to tackle drainage issues and dangerous buildings or building elements
- Public Health Acts 1936 and 1961: we will use this to tackle drainage issues and filthy and verminous premises
- Prevention of Damage by Pests Act 1949: we will use this to require works necessary where there is a potential for an infestation
- Smoke and Carbon Monoxide Alarm (England) Regulations 2015: we will use this where there is a lack of smoke alarm or where there is no carbon monoxide detector in a room with a solid fuel burning appliance.
- Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020: we use these regulations if necessary, to ensure that electrical installations are safe
- Community Protection Notices: we will use these where ASB is associated with the property.

The main list of other legislation the Council may use is detailed in Appendix 1.

### **Works in Default**

Where landlords fail to comply with a notice which requires works to be completed, the Council may carry out those works instead; these are known as 'works in default'.

### **Revoking / Varying a Licence**

Where a property is licensed under Part 2 or Part 3 of the Housing Act 2004, the Council has the power to revoke or vary the licence.

Licences can be revoked where any term of the licence has been breached or where other offences have been committed which mean that the persons involved are no longer fit and proper persons for the purposes of housing licensing.

Licence can also be revoked by the agreement of the licence holder for example where the property is sold or where the licence holder wishes to relinquish the licence.

Licences can be varied where there has been a change of circumstances at the property and this includes the discovery of breaches or offences committed by persons involved with the licence or management of the property.

Where a licence holder is made the subject of a Banning Order under Section 16 of the Housing and Planning Act 2016, the Council is under a duty to revoke any licences they hold. This part of the Housing and Planning Act is not yet in force.

### **Civil Penalties**

The following section on civil penalties is policy and was written in accordance with Section 3.3 of the 'Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities' ("the DCLG Guidance"), published by the Department for Communities and Local Government.

The power to impose civil penalties as an alternative to prosecution, for specific offences under the Housing Act 2004, was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016. The offences for which a civil penalty can be imposed are as follows:

- 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 under Part 3 of the Act (section 95);
- Offences of contravention of an overcrowding notice (section 139);
- Failure to comply with management regulations in respect of HMOs (section 234).
- Failure to comply with a remedial action notice issued under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

The same criminal standard of proof is required for a civil penalty as for a criminal prosecution. Prosecution may be the most appropriate option where an offender has committed similar offences in the past. However, that does not mean that the council will not use civil penalties in cases where serious offences have been committed.

A Civil penalty can be imposed for up to £30,000 per offence and each individual breach of the management regulations (section 234) is treated as a separate offence. The exact amount of any civil penalty will be calculated in accordance with the Council's 'Civil Penalties Enforcement Guidance' document.

The council will consider its enforcement options on a case by case basis and may decide that a significant financial penalty (or penalties if there have been several breaches), rather than prosecution is the most appropriate and effective sanction.

Where the Council is satisfied that there is sufficient evidence to provide a realistic prospect of conviction in respect of the serious offence/s but that it is not considered in the public interest to seek to remove the landlord from the market by way of a banning order, the Council will consider imposing a civil penalty as an alternative to prosecution.

Prior to imposing a civil penalty, the Council will serve a notice of intent and this will give the recipient an opportunity to make representations against the proposed civil penalty.

### **Rent Repayment Orders**

Where housing benefit has been paid to a landlord and the Council is satisfied that the landlord has committed one or more specific offences, the Council can apply for a Rent Repayment Order. Where the landlord is convicted of one of the relevant offences, the Council is under a duty to consider applying for a Rent Repayment Order. The specific offences for which an order can be sought are as follows:

- Failure to comply with an Improvement Notice (Housing Act 2004, Section 30)
- Failure to comply with a Prohibition Order (Housing Act 2004, Section 32)
- Offences in relation to licensing of HMO's (Housing Act 2004, Section 72)
- Offences in relation to licensing of houses under Part 3 of the Act (Housing Act 2004, Section 95)
- Breach of a Banning Order (Housing and Planning Act 2016, Section 21)
- Using violence to secure entry to a property (Criminal Law Act 1977, Section 6)
- Illegal eviction or harassment of the occupiers (Protection from Eviction Act 1977, Section 1)

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The Council will usually apply for the full amount that can be recovered and lesser amounts will only be sought in exceptional circumstances.

Any applications for Rent Repayment Orders will be made in accordance with the Council's 'Rent Repayment Orders Guidance' document, available on our website.

### **Simple Cautions**

A simple caution may be offered as an alternative to prosecution where the Council is satisfied that there is sufficient evidence to provide a realistic prospect of conviction in respect of the offence/s and that the public interest would be satisfied by offering a simple caution in respect of the breaches of licence conditions rather than prosecute.

A simple caution must not be offered to a person who has not made a clear and reliable admission to committing the offence/s. Before the simple caution is administered officers shall ensure the Landlord has made an admission of guilt, understands the implications of accepting a simple caution and consents to accept it.

### **Prosecutions**

Prosecution will be considered where the Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction and where a prosecution is required in the public interest. When deciding whether to prosecute the Council has regard to its Enforcement Policy and the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

### **Interim or Final Management Orders**

The Council is under a duty to apply for an interim management order where a property requires a licence, or will after the current one is revoked, but there is no reasonable prospect of it becoming licensed or there are significant health and safety concerns at the property. An interim management order can be made for up to 12 months.

Where an interim management order is coming to an end and the criteria for applying for the order still apply, the Council can apply for a final management order, which can be made for up to 5 years.

Whilst a management order is in place, the Council, or an agent appointed by the Council, will be responsible for managing the property and carrying out any works that are required. The Council will receive the rental income and deduct any relevant expenditure from this amount before transferring the excess, if any remains, to the landlord.

### **Banning Orders**

Where a landlord has been successfully prosecuted for a banning order offence, the Council can apply to the First-Tier Tribunal (Property Chamber) for a banning order against the landlord. A banning order will last for at least 12 months and means that the subject of the order cannot:

- Let housing in England;
- Engage in English letting agency work;
- Engage in English property management work;
- Hold a licence under Part 2 or Part 3 of the Housing Act 2004.

“Banning order offence” refers to an offence of a description specified in regulations made by the Secretary of State.

### **Other powers available to the Council**

It is also recognised that there may be circumstances where shared or complimentary enforcement action may be taken. This may include, but is not limited to:

- Harassment and illegal / retaliatory eviction
- Redress scheme
- Fraud
- Tenancy law
- Anti-social behaviour
- Proceeds of crime
- Planning breaches

## **How will the Council choose which type of enforcement action to take?**

In accordance with the '5 Stage Model', the Council will normally try to address offences or hazards by first 'asking' the landlord to comply with their duties and responsibilities and 'warning' them about the consequences of failing to comply. This would usually be done by a formal warning letter laying out legal requirements in a schedule of works. This would allow a responsible landlord to work with the Council to resolve any issues.

### **Initial Enforcement**

The Council will use initial enforcement where 'ask and warn' has failed or there is a history of noncompliance can choose instead to move straight to 'initial enforcement' where there is an imminent risk to the health, safety and welfare of the tenants or where the council believes something is prejudicial to health or dangerous. This may take account of:

- Number and nature of hazards
- Nature of management regulation breaches
- Nature of licensing contraventions
- Presence of imminent risk
- Are works to remove or reduce works practical
- Are costs to remove or reduce the hazards reasonable
- Compliance history
- Views of all parties (landlord, managing agent, tenant and any other relevant agencies)
- Impact on neighbourhood
- Impact of homelessness where necessary

The council may move straight to enforcement in certain circumstances, those being:

- Two investigations/complaints which result in an inspection and warning letter
- One investigations/complaints which result in formal enforcement action
- One substantiated complaint to the department of illegal eviction
- Three complaints where notice to quit is served on the tenants after our involvement
- Additionally, in other circumstances that we deem appropriate and individually justified.

Where one of the above criteria are met, the council will no longer approach that landlords' properties by making an attempt to resolve the matter using ask and warn, and following the inspection of the property, where works are identified, the council will move straight to initial enforcement action under the appropriate legislation.

### **Substantive Enforcement**

Where a landlord has failed to comply with their legal duties and responsibilities, after initial enforcement action has been taken or where the circumstances warrant it the Council will consider the most appropriate type of action from those listed on page 7. Circumstances that may warrant 'substantive enforcement' action may include:

- the landlord has not complied with initial enforcement;
- has a history of failing to comply with their legal duties and responsibilities;
- there are imminent risks to health and safety in relation to the property, or;
- the offence or hazard is deemed serious enough to warrant a substantive action as a first response.

The Council may take into consideration aggravating factors, but is not limited to, the following when determining which course of substantive action to take:

- the seriousness of the failing;
- the culpability of the offender;
- the harm caused or risked being caused by the failing;
- the vulnerability and number of victims;
- the number of properties;

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- the length of time the offender has been a landlord;
- the tenant's behaviour;
- the landlord's willingness to engage and rectify the issue;
- the landlord's previous history of compliance or non-compliance;
- our confidence in management of the property;
- whether there was any financial gain as a result of the non-compliance.

### **Breach**

Where an offence is serious enough or where the landlord has a history of non-compliance, or has failed to respond to initial and/or substantive enforcement action the Council may determine that there is a public interest to take the highest level of enforcement action available which can include; civil penalties, prosecution, simple caution, banning orders (when they come into force) and interim/final management orders.

To reduce the likelihood of retaliatory eviction, initial enforcement action will continue until the property is brought up to a satisfactory condition, whether or not the original tenant remains in the property.

### **Charging for Enforcement Activity**

There will be a charge for Notices served and Orders made under Part 1 of the Housing Act 2004, The Council will charge up to £250 if a notice or order is served/made under Part 1. A charging notice will be served on the responsible party; this is served under section 49 of the Housing Act 2004.

If there is an appeal against the notice, then the charge will not be applied until the appeal is resolved and subject to the notice being confirmed by the tribunal.

There is no right of appeal against a charging notice; only to the notice or order to which the charge relates.

Where works in default are carried out, an administrative charge of either 25% of works cost or £25, whichever is the greater amount, will be added to the total amount to be recovered.

These charging systems are currently under review and may change in the future.

## **Land Charges**

Certain legal notices served will be registered as a part 1 land charge which will not be removed from the register until it is complied with.

Where works are completed by the Council (as emergency or in default) or a charge is made for the service of notice these notices will be registered as a part 2 land charge, which will not be removed from the register until payment is received.

Land charges will show up on a general land search (for example when searches are made by a purchaser's solicitor if a property is being sold).

## **Housing Disrepair Procedure**

When the council receives general housing complaints and referrals from other agencies the information received about the property will be used to determine the level of risk posed to the occupant and cases will then be categorised on a risk-based assessment. Residents can expect a call within two working days so this information can be gathered.

In designating categories, consideration will be given to the amount of disrepair, the ownership of the property (history of non-compliance), the occupation of the property (presence of vulnerable persons) and any other relevant factors that may highlight additional risk.

### **Low risk cases**

A standard 'low risk' advice letter will be sent to the tenants and landlord within 10 working days. This letter will advise residents that the council will be dealing with their case in writing. The sort of cases that will be designated low risk are those where:

- there is little or no health risk posed to the occupants
- there are no vulnerable occupants present
- we would be unlikely to be able to take enforcement action
- both parties are likely to be able to resolve the issue informally

Examples of cases that might be classed as low risk are where the occupants are outside of vulnerable ages and where there are no health problems or disabilities.

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Examples of disrepair that would be classified as low risk would include low level mould due to condensation or complaints that the kitchen or bathroom facilities are outdated rather than insufficient.

Complaints against responsible RSL's will be referred back to them as they would be expected to have their own effective procedures for dealing with disrepair.

In these cases, the tenants will be offered advice generally involving how to write to their landlord detailing their complaint. Standard letters templates may be provided as required.

An advice leaflet on how to tackle condensation may be provided. A letter will be sent to the landlord advising them that the council has received a complaint, it will remind them about their legal responsibilities, and asking them to inspect their property and carry out any necessary repairs.

Residents will receive a call back after 3 months to establish if problems are resolved. Where a low risk situation deteriorates it will be re-assessed and if it is determined that it has got worse then it may be re-designated as medium risk.

### **Medium risk cases**

A standard 'medium risk' advice letter will be sent to tenants and the landlord within 10 working days. This letter will advise residents that the council will be dealing with their case in writing.

The sort of cases that will be designated medium risk are those where:

- there is not an unreasonable level of health risk posed to the occupants
- there are no vulnerable occupants present
- the council would be likely to follow an 'advise and warn' route initially

Examples of cases that might be classed as medium risk are cases where the occupants are outside of vulnerable ages and where there are no health problems or disabilities.

Examples of disrepair that would be classified as medium risk would include water leaks, wear and tear to carpets/flooring in low risk locations, intermittent heating in summer, missing CO detectors.

Complaints against responsible RSL's will be referred back to them as they would be expected to have their own effective procedures for dealing with disrepair.

The council may offer advice to tenants on other organisations that may be able to offer them support; for example, Shelter who can detail their rights as tenants.

The letter sent to the landlord will set out their legal responsibilities, urging them to carry out the repairs, and advising them of our intent to follow the matter up in 3 months.

These complaints will receive a follow up after 3 months. Cases that are completely unresolved with no action will be elevated to high risk at this point. Cases where repairs are underway will be marked for follow up in another 3 months. Where a medium risk situation deteriorates it will be re-assessed and if it is determined that it has got worse than it may be re-designated as high risk.

### **High risk cases**

High risk case will be sent a notice of entry under section 239 with a covering letter to the tenant and landlord within 10 working days. These properties will be inspected and rated under Housing Health and Safety Rating System.

The sort of cases that will be designated high risk are those where:

- there is a high level of health risk posed to the occupants
- there are vulnerable occupants present
- there are multiple deficiencies in multiple locations
- there is prior history of non-compliance with the landlord

Examples of cases that might be designated as high risk are cases where the occupants are of vulnerable ages and where there are health problems or disabilities.

Examples of disrepair that would be classified as high risk would include intermittent heating in winter, no heating in summer, disrepair to door or ground floor windows, lack of basic kitchen or bathroom facilities, major trip hazards, missing stair handrails, no/defective smoke detection in a family house, unstable structures and service cut off.

### **Urgent risk cases**

Urgent risk cases will aim to be contacted and inspected within 24 hours. The sort of cases that will be designated high risk are those where:

- there is an imminent risk posed to the occupants

Examples of disrepair that would be classified as posing an imminent risk would include no heating in winter, no hot water, disrepair to a final exit door that means property can't be secured, no kitchen, sewage leak, collapsed flooring, dangerous electrics no/defective fire detection in an HMO or risk of structural collapse.

Any properties that are licensed under part 2 or part 3 of the Housing Act 2004 will be assessed for compliance of the licence conditions and HMO Management Regulations if applicable.

### **Cross Council working**

It is recognised that sometimes other teams may already be working with either a tenant or a landlord (for example, through the Council's Housing Advice Service). In these cases, all council teams will work collaboratively to help prevent homelessness and reduce the use of temporary accommodation. This may therefore be an additional factor in determining which level of action should be taken.

### **Tenure**

#### **Owner Occupied Properties**

There may be occasions where it is brought to the attention of the council that there is an owner-occupied property in disrepair. We have a duty under the Housing Act 2004 to review housing conditions and inspect residential premises where we have been made aware of the potential for category 1 or 2 hazards exist. In these circumstances we would always seek to work with the owner occupier to reach a mutually agreeable outcome.

## **Council homes**

South Cambridgeshire District Council owns and manages properties and has full landlord responsibilities for these homes. The Council's Housing Services Team has its own procedures for dealing with complaints about housing disrepair in one of its properties.

The Council has no powers of enforcement to take action on properties managed by itself. For these reasons the Environmental health team do not deal with complaints in relation to the council's landlord function. Tenants of these properties are advised to follow South Cambridgeshire Homes' formal complaints procedure.

## **Council owned housing companies**

In addition to its landlord function, the council has set up specialist housing companies (notably South Cambs Ltd trading as Ermine Street Housing and Shire Homes Ltd). These companies are separate entities in their own right, and, in theory, could be subject to enforcement action from the Environmental Health Team. However, in practice it is expected that colleagues would work together to resolve any issues that arise.

## **Housing Associations / Registered Social Landlords**

The council will seek to deal with registered social landlords (RSLs) in a proportionate manner initially classing complaint against RSLs as low risk.

However, where there are vulnerable occupants or history of compliance has indicated that the RSL is not taking a responsible approach to complaints then we will inspect and take enforcement action in line with the 5-stage model of enforcement.

## **Other Aspects of Housing Work**

### **Hoarding**

Hoarding situations may be brought to our attention in both the private rented and owner-occupied sector. The Council's priority would always be to protect the

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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 and we are under duty to take enforcement action.

### **Drainage**

The Council will serve notices under relevant legislation requiring CCTV surveys to be carried out of drains relating to both owners occupied and private rented properties where necessary. This may be in relation to pest control referrals as well as drain disrepair issues.

### **Nuisance**

The council has a duty to investigate complaints of statutory nuisance. This may involve issues such as odours and/or water penetration between neighbouring properties where they are significant and persisting.

### **Overcrowding and Immigration**

Where residents believe their property is overcrowded then the Council will assess the property and the current occupation based on information provided to determine if it is statutorily overcrowded. Where this is found to be the case an inspection will be completed to confirm this.

Where a resident requires the overcrowding inspection because they need it for immigration or UK Visa purposes then an inspection will be completed to determine if the property is suitable for the total number of potential occupants. This is a chargeable service which currently stands at £95. A report will be provided detailing the results of the inspection.

### **Caravan Parks**

Caravan Parks/Mobile home sites/ Residential Park Home sites are required to be licensed and be periodically inspected by the Council. Where breaches of licence conditions are found enforcement action will be taken in line with the five-stage model of enforcement.

## **Section 3 - Housing Licensing**

The Council undertakes HMO licensing (mandatory licensing) under the Housing Act 2004.

### **Licence applications**

The responsible person should ensure they apply in good time and do not delay their application; doing so may lead to investigations into the operation of an unlicensed property. The responsible person is the person having control of or managing the property that is required to be licensed.

We aim to determine if a licence application is duly made within 10 working days. Where an application is missing information that is required for the application to be considered duly made, a single opportunity will be offered to supply the missing information. Where this information is still not supplied, the application will be returned to the applicant.

An application will only be considered to be duly made once all the necessary sections have been properly completed and all the necessary information and documentation has been provided. Failing to submit a duly made application may lead to further investigations and potentially enforcement action for operating an unlicensed property.

The content of the duly made application will be reviewed and where there are any questions or concerns about the suitability of the property or the management arrangements, further investigations will be undertaken. This may include, but is not limited to, an inspection of the property prior to the licence being determined.

The council will aim to determine (grant or refuse) any applications within 2 months of a duly made application.

### **Determining the licence**

The Council will grant a licence where it is satisfied that the statutory requirements of the relevant Part of the Housing Act 2004 have been met.

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Where the Council has concerns and is not fully satisfied that the licence holder, manager or any other relevant person meet the necessary provisions within the legislation, the Council may choose to:

- Propose to grant a licence for a shorter term.
- Propose to refuse the licence.
- Carry out an initial inspection. The inspecting officer will carry out a thorough inspection of the property and will not be limited to only assessing it against any relevant licensing requirements. Other aspects of the inspection will include, but are not limited to, assessing hazards under Part 1 of the Housing Act 2004 and breaches of the HMO Management Regulations under section 234 of the Housing Act 2004.

Licences may be considered for refusal or issued for a shorter term in the following circumstances:

<b>Not fit and Proper</b>	The applicant is not deemed fit and proper, based on information contained within the application or otherwise known about the applicant.
<b>Enforcement &amp; Prosecutions</b>	Proposed licence holder or manager has been prosecuted, accepted a simple caution or had a civil penalty imposed on them, in the past 5 years for a housing related offence.
<b>Non-compliant Notices</b>	Proposed licence holder or manager has failed to comply with a relevant notice in the past 3 years. This includes notices which may have been served under the Housing Act 2004, Building Act 1984, Environmental Protection Act 1990, Prevention of Damage by Pests Act 1949 and other relevant legal notices.
<b>Absent or 'unsatisfactory' certificates</b>	No or unsatisfactory gas or electric certificates supplied. No Energy Performance Certificate supplied.
<b>Refused licences</b>	Applications for Licences have been refused in the last 2 years.
<b>No Plans</b>	Absent or inadequate floor plans (e.g. insufficient information provided on the plans such as: no measurements, no kitchen / bathroom facilities information, smoke alarms not labelled, rooms not labelled etc.)
<b>Non-compliance previous licence conditions</b>	Failed to comply with previous licence conditions.

<p><b>Licence revoked</b></p>	<p>Previous licences revoked, within last 2 years, due to non-compliance with conditions or because one or more of the persons involved was no longer fit and proper.</p>
<p><b>Other significant issues</b></p>	<p>Any other significant issue identified and evidenced that is of such concern that it would not be appropriate to issue a licence to a proposed licence holder (within legislative requirements). These people, companies etc. will be reviewed on a regular basis.</p> <p>It may include the following:</p> <ul style="list-style-type: none"> <li>• Not fit and proper (identified from another source) Evidence of associates not being fit and proper</li> <li>• Person / company under investigation for contraventions under relevant legislation.</li> <li>• Consistent / repetitive interventions by the Council or other partners. E.g. ASB / police intervention</li> <li>• Planning permission not applied for Planning permission refused</li> <li>• Evidence of insufficient funds to maintain property Managing Agent not part of a redress scheme</li> <li>• Proposed licence holder based abroad and insufficient ability to manage the property</li> </ul> <p>Landlords / companies 'of interest' to be drawn from Planning, Building Control, Council Tax, Revenue and Benefits, Debtors, Trading Standards, Office of Fair Trading, other Councils, accreditation partners, Gangmaster and Labour Abuse Authority, Police, Fire and Rescue Service, Housing Aid, Law Centre and any other partners</p>

### During the Term of the Licence

It is expected that licence holders will ensure properties are well managed, safe and comply with all relevant conditions. The licence fee covers an inspection of a proportion of licensed properties to check on compliance during the scheme. The number checked will partly be dependent on the application content and the outcome of any initial inspection. If a licence holder has failed to comply with any conditions and further work is required, the Council may charge for a re-inspection.

Where the Council is made aware of any issues related to the property, licence holder or manager; any potential breaches of licence conditions; or any other issues that may arise, the Council may investigate to determine the facts and what enforcement action, if any, should be taken.

The Council will notify the tenant when a licence is issued and during the term of the licence to ask them to contact the Council if there are any problems at the property. The Council may develop further opportunities for tenant engagement and monitoring satisfaction.

## **Querying a Licence Decision**

The licensing process includes a period of time for relevant persons to make representations to the Council against any of the following:

- proposed licence conditions;
- a proposal to refuse to grant a licence;
- a proposal to revoke a licence, or;
- a proposal to vary a licence.

Where representations are made to the Council, the content of those representations, as well as the basis for the original decision, will be reviewed by an appropriate officer other than the officer who made the original decision. Any representations will be considered on a case by case basis but further guidance on what may be appropriate to include in representations is shown below and organised by decision type.

### **Proposed Refusal – Proposed licence holder or manager are not fit & proper**

The relevant person(s) will need to provide evidence showing that they or their associates are fit and proper person(s). Guidance on fit and proper persons will be issued by the Council.

### **Proposed Refusal - The application is unsatisfactory**

The relevant person(s) will need to provide the missing information or documentation and outline how they will improve the way they manage their properties and/or respond to requests for information from the Council. Any information or documentation that is provided should be given promptly and must be of an acceptable standard and quality to enable the Council to make a final decision without any further information.

### **Proposed Refusal - Not the most appropriate person to hold the licence**

The proposed licence holder will need to demonstrate that they are in receipt of the rack rent and can exercise sufficient control over the property. Where multiple persons meet this description, the proposed licence holder will need to demonstrate why they are the most appropriate person, of those available, to hold the licence.

### **Proposed Refusal - Unsatisfactory management arrangements**

The following factors may be considered:

- Are the proposed licence holder or manager active members of a landlord organisation or in the process of becoming so?
- Have the proposed licence holder or manager completed relevant training or are they willing to attend such training?
- Have there been any further contraventions over period of the licence?
- Is there evidence of improved management at the property?
- Have certificates been provided promptly (within 7 days of request)?
- Have supporting documents been provided promptly (within 7 days of request)?
- Have the relevant Council arrangements been complied with (e.g. planning permission, the Article 4 Direction, HMO amenity guidance)?
- Have the proposed licence holder and manager met all legal requirements and not just those under the Housing Act 2004 (e.g. redress scheme, deposit protection, EPC, right to rent)?
- Does the licence holder have detailed written policy plans for dealing with complaints, anti-social behaviour and repairs and maintenance?
- Does the licence holder or manager have written records of their past inspections, including notes of any issues found and the action taken to address them, and details of their planned inspection program?
- Has the licence holder or manager provided the tenants with the necessary information packs?

## **Unlicensed properties**

It is expected that landlords will apply to licence those properties which require a licence.

Where applications are not made, the Council will carry out investigations into those properties which it believes should be licensed but are not.

Failing to licence a property is an offence and can lead to prosecutions, civil penalties, and other substantive enforcement actions. It may also affect any decision regarding existing or future licences.

## Media Publicity

Action taken to ensure compliance with legal requirements will be published on the council's website.

- Media coverage will normally be sought in the following cases:
- The offence is widespread in the area and coverage will assist in securing compliance by others;
- To draw attention to particular issue or set of hazards;
- The offence is serious and/or was committed wilfully and the Council wishes to draw attention to their willingness to take a hard line in such cases;
- Coverage is otherwise in the public interest;
- A press release will be issued about convictions where it is considered that publicity will bring in benefits by promoting compliance with those statutory requirements designed to protect the health, safety and welfare of customers, residents, workers and visitors, as well as the wider environment.

## Complaints

In the event that an individual or company is not satisfied with the service or does not agree with the action taken by the investigating officer, they should first contact the Principal Environmental Health Officer. A response to the complaint would be expected within 10 working days; if we are unable to respond within 10 working days we will respond and let you know when you can expect a response.

If this does not resolve the complaint the Council also has a [formal complaints](#) system.

NB This does not have any bearing on any right of appeal that may exist in relation to the various legal enforcement actions taken by the Council.

This policy will be monitored and reviewed by a suitable management team. This guide will be reviewed annually to take into consideration relevant changes to legislation or other guidance that may affect it.

## Appendix 1

Antisocial Behaviour Act 2003

Antisocial Behaviour, Crime and Policing Act 2014 Building Act 1984

Caravan Sites Act 1968

Caravan Sites and Control of Development Act 1960

Clean Neighbourhoods and Environment Act 2005 Crime Justice and Public Order Act 1994

Environmental Protection Act 1990

Housing Act 1957, 1985 and 1996

Housing Act 2004

Housing and Planning Act 2016

Housing (Grants, Construction and Regeneration) Act 1969

Local Government (Miscellaneous Provisions) Act 1976 and 1982

Prevention of Damage by Pests Act 1949 Protection from Eviction Act 1977

Public Health Act 1936 and 1961

Smoke Alarm and Carbon Monoxide Alarm Regulations 2015

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

The Enterprise and Regulatory Reform Act 2013, s83,84 and 85

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to belong to a scheme etc.) (England) Order 2014

Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

**This list is not exclusive but gives a list of the main pieces of legislation used at the time this policy has been prepared.**

## Appendix 2 - Data Protection Statement

South Cambridgeshire Council (the Council) as the data controller takes its responsibilities seriously under the General Data Protection Regulation (GDPR) and Data Protection Act 2018 to ensure that any personal data it collects and uses is done so fairly, lawfully, proportionately, correctly and safely.

For information about what is personal data please see the Information Commissioner's Office website: <https://ico.org.uk/>

Processing includes the collection, use, sharing and retention of personal data. The personal data you provide will be processed in connection with the administration of housing licensing, compliance, reactive and proactive safer housing activities or in pursuance of any other legitimate interest held by the Council including (but not limited to) Benefits and Council Tax, to verify data accuracy, and social care services.

The Council will share your personal data with other public bodies, agencies and organisations e.g. the Department for Work and Pensions, other Councils, HM Revenues and Customs, the Police, as well as utility companies, credit reference agencies and service providers/ contractors and/or partner bodies, where the disclosure of such information is either:

necessary for the purposes of the prevention and/or detection of crime; and/or is otherwise necessary to comply with any legal obligation.

necessary for the purposes of confirming accreditation status.

Information processed by the Council for the purposes of obtaining a licence will form part of the full Register of Licences, which is open to public inspection by appointment, terms and conditions apply. The organisation or department requesting this information will be required to submit a formal written request for this information.

The Council undertakes Data Matching to ensure data quality and integrity and to comply with legal requirements placed upon the Council.

The Council publishes HMO data on an open register [HMO register](#)

The personal data provided will not be retained for longer than necessary.

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The Council's Privacy Notice is available to view at [Privacy Notice](#)