



Colchester Borough Council

Private Sector Housing Enforcement Policy

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This Policy is available on the Council's Website: www.colchester.gov.uk.

On request, this Policy will also be available on audio tape or in large print.

Executive Summary:

This policy is designed to help our members and officers, landlords, their managers and the general public understand the Private Sector Housing (PSH) enforcement objectives. It also details the methods for achieving compliance with housing legislation, including the criteria we consider when deciding what the most appropriate course of action for a breach of legislation.

1.0 Introduction

1.1 Introduction to the policy

1.1.1 This policy is an integral part of the group of Private Sector Housing Policies.

1.1.2 Enforcement in the context of this policy includes informal action (such as contacting appropriate persons by telephone or letter) as well as by formal notice (such as a notice or order, caution or prosecution actions). It is distinct from civil claims for compensation and it is not generally taken in circumstances where civil claims may be pursued or to assist such claims.

1.1.3 The Council regards prevention as better than cure. Where appropriate, it offers information and advice to those it regulates and seeks to secure co-operation avoiding bureaucracy or excessive cost. We will ensure that individual property owners and businesses protect the health and safety of their tenants and visitors to the property by making sure that they carry out their legal responsibilities in respect of their property. General public health and the protection of the environment are also required and encourage the integration of good practices into normal working procedures.

1.1.4 This Policy aims to ensure that a consistent approach is achieved. Regard is also given to the guidance on fair and effective prosecution that is set out in “The Code for Crown Prosecutors” (for further details please use this link:

<http://www.cps.gov.uk/victimswitnesses/code.html>

This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the “Regulators’ Compliance Code”. In certain circumstances, we may conclude that a provision in the code is either not relevant or is outweighed by another provision. We will ensure that a decision to depart from the Code will be properly reasoned, based on material evidence and properly documented. For further details on this code, please use this link:

<http://www.berr.gov.uk/bre/inspection-enforcement/implementing-principles/regulatory-compliance-code/page44055.html>)

1.1.5 The Council has signed up to the “Enforcement Concordat” that has been issued by the Home Office to encourage more consistent enforcement by national and local government regulators. This enforcement policy also reflects its principles.

1.2 Context of the policy

- 1.2.1 Poor and unsafe housing increases the risk of ill-health and injury. Certain groups are more vulnerable because they spend more time at home and may be more susceptible to health problems. These groups will include older and disabled people and families with young children (particularly those under 5 years of age). The poor condition of housing contributes to reducing the life expectancy of their residents by up to 6 years (figure from Life Chances document 2007)
- 1.2.2 The Council has developed its enforcement policy to support the objectives of its strategic plan, housing and private sector housing strategies*. It will enable us to deal with local issues, priorities and circumstances whilst working towards the national targets of tackling poverty, social exclusion, health inequalities and neighbourhood decline. (if you would like to see a copy of these strategies, please ring 01206 282580 or see our website ... www.colchester.gov.uk) Copies of these policies can be supplied by post upon prior payment of a reasonable charge.

* the Private Sector Housing Strategy is being drafted now and after general consultation, it is anticipated to be available from end 2009/10.

- 1.2.3 We are committed to working with home owners, landlords and tenants to tackle the worst housing conditions and give advice on preventative work. This means that we will continue to develop a range of services to encourage home owners and landlords to improve their properties.

1.3 Future Review of the Policy

- 1.3.1 The Council will monitor the implementation and effectiveness of the Policy on a yearly basis. It will also amend this policy as and when necessary by new legislative requirements.

1.4 Cases Falling Outside the Policy

- 1.4.1 The policy details the circumstances in which enforcement action will normally be taken. However, each case will be dealt with on its own merits, even where it appears to fall outside of the normal enforcement action for that issue. In such cases, other suitable action may be considered at the discretion of the Home Improvement Team Manager.
- 1.4.2 Anyone who feels that their appeal against the enforcement action taken has been refused unfairly by the Home Improvement Team Manager is entitled to request a review. Where appropriate, the matter will be referred to the Council's Portfolio Holder (Neighbourhoods) for the final decision.
- 1.4.3 These rights are in addition to the normal statutory rights of appeal.

2.0 Aims and Objectives of Enforcement Action

2.1 Aims:

One of Colchester Borough Council's main aims is to provide a better environment for the Borough, both for the present and for the future. It will achieve much of this through education, by providing advice and by regulating the activities of others. Securing compliance with legal regulatory requirements, using enforcement powers including prosecution, is also an important part of achieving this aim.

This policy sets out standards of enforcement that businesses, individuals and the community as a whole can expect from the Private Sector Housing Team. The main purpose of this enforcement policy is to ensure that a fair, reasonable and consistent approach, in accordance with all appropriate legislation, statutory and other relevant guidance, is adopted by the Private Sector Housing Team.

It is applicable to housing disrepair and House in Multiple Occupation (HMO) complaints and enquiries, statutory nuisances, neighbourhood renewal assessments, master planning strategies and empty property work. It requires the Private Sector Housing Team officers to follow the relevant legislation and statutory guidance, and sets out good enforcement practices and procedures. It follows best practice and it sets out the decision making process that officers will follow regarding intervention, from an initial request or receipt of information to the conclusion of a matter.

Equitable and consistent enforcement will ensure there is no disadvantage to local businesses.

We recognise that the effectiveness of legislation depends upon the compliance of those regulated and that most businesses and individuals want to comply with the law. We will assist and advise wherever possible, whilst taking firm action where necessary against those who flout the law or act irresponsibly.

Each case will be dealt with on an individual basis and on its own merits.

2.2 Objectives:

The Private Sector Housing Team (PSH) aims to protect and promote the health of people living in the private sector within the Borough of Colchester.

In order to do this, its main objectives are:

- a) to provide and then help keep a safe and sound environment for private rented sector tenants and owner-occupiers,
- b) to help reduce the numbers of homeless/potentially homeless people by taking early intervention when necessary
- c) to bring more of the private sector properties up to the 'decent homes' standard
- d) to generally improve housing conditions within the Borough
- e) to bring empty properties back into productive residential use.

It will do this by:

- Providing appropriate advice and guidance to all parties on home maintenance, legal repairing obligations, overcrowding etc.
- Signposting all parties to relevant statutory and voluntary services, especially where PSH is not the appropriate enforcement agency
- Improving living conditions in the private rented sector, by negotiation with landlords and when necessary through the use of formal enforcement notices or orders (as appropriate)
- Improving conditions in the owner-occupied and private rented sector by the use of financial incentives (such as grants and loans) where cases meet the criteria detailed in our financial assistance policy.
- Inspecting HMO properties on a planned work programme. This programme is based upon the Housing, Health and Safety Rating System (HHSRS) risk assessment, a quality of management assessment and lead to inspections at pre-determined intervals. There is an annual target for the number of HMO inspections to be made.
- Carrying out risk assessments on all types of property, including those occupied by asylum seekers or workers who hold work permits. Most of these programmes are based upon the risk while others require inspections at pre-determined intervals, or set annual targets for the number of inspections to be made.

3.0 Principles of Enforcement:

3.1 Enforcement decisions will be fair, independent and objective and will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source.

3.2 The Council believes in firm but fair regulation. Underlying the policy of firm but fair regulation are the principles of **proportionality** in the application of the law and in securing compliance; **consistency** of approach, **transparency** about how the Council operates and what those regulated may expect from the Council, and **targeting** of enforcement action.

See Appendix 1 for an explanation of these terms.

3.3 Working with other Regulators

Where the Council and another enforcement body both have the power to prosecute, we will liaise with them to ensure effective coordination, to avoid inconsistencies and to ensure that any proceedings instituted relate to the most appropriate offence.

For example, we work with the Essex County Fire and Rescue Service for the common parts of HMOs – we will use the national protocol and the local agreement to determine the best way of dealing with such HMOs (and this may involve a joint visit). We also work with the Health and Safety Executive over gas safety issue and construction site safety in particular. Other agencies may include Essex County Council departments (such as Social

Services), other Council departments, Essex Police, the HM Immigration Service and other relevant Government Departments.

4.0 ENFORCEMENT OPTIONS

4.1 The purposes of enforcement are to ensure that preventative or remedial action is taken to protect the living conditions of residents, their environment and to secure compliance with legislation.

The need for enforcement may stem from failure to maintain properties in good repair or with the appropriate fire precautions, amenities etc., the operation of an unlicensed HMO, failure to comply with a notice/order or an action in contravention of a statute enforceable by the Council.

Although the Council expects full voluntary compliance with relevant legislative requirements and licence provisions, when it is necessary, the Council will use its full legal powers, including prosecution.

4.2 The PSH Legislative Framework:

4.2.1 The PSH Team deal with several pieces of legislation and will use the most appropriate one for the defects or issues.

Type of work	Act/Order
Statutory Nuisance	Environmental Protection Act 1990
Housing defects, management orders & HMO Licensing	Housing Act 2004 Parts 2-5 (HHSRS in Part 1 is enforced through Part 2)
Overcrowding	Housing Acts 1985 (as amended) & 2004
Drainage defects	Public Health Acts 1936 & 1961(as amended) and Building Act 1984
Boarding up empty properties	Local Government (Miscellaneous Provisions) Act 1982
Pest Infestations	Prevention of Damage by Pests Act 1949
Filthy and verminous Properties	Public Health Act 1936
Area Improvement and Slum Clearance	Housing Act 1985 Parts 8 & 9
Grants and Loan provision	Regulatory Reform (Housing Assistance)(England and Wales) Order 2002

See Appendix 3 for an explanation of this legislation

4.3 The Enforcement Procedure:

4.3.1 Initial Request for Service: When an enquiry or request for service is received, we decide on whether we need to take action by asking some relevant questions – these will always include:

- Details of the complaint, the address of the properties concerned, and wherever possible, contact details for the complainant

- The effect that the problem has on the occupants, neighbours or the neighbourhood (as appropriate)
- What the occupier has done to resolve the complaint with their landlord/the land owner – and how successful this has been
- Any relevant history of the owners, neighbours, tenancy or landlord, particularly the owners/landlords history of carrying out repairs either informally or following service of notice.
- The vulnerability of the occupier

Except in emergency situations, we will normally ask the tenant to contact their landlord to report defects if they have not already done so and if they have, we will normally ask to see proof of that contact. The Council will use its discretion to decide whether to notify the landlord at this stage – for example, if the tenant has asked for advice about items in disrepair in order to explain them to their landlord, then the Council may choose to provide that advice and not contact the landlord. On the other hand, if the Council feels that the landlord has not been given the opportunity by the tenant to deal with the items of disrepair, it may inform the landlord at this stage.

If there is no duty to investigate imposed by legislation, we will decide whether we ought to use our discretion to investigate, give advice or whether it is something with which we can not help. In the case of the latter, we will advise the complainant that we can not help and endeavour to signpost to another agency that may be able to help.

4.3.1 Often an inspection of the property is required and a the investigating officer, usually a Private Sector Housing Officer (PSHO) will make a mutually convenient appointment with the complainant to consider whether the issue being complained about is a serious health and safety risk or not.

4.3.2 **What to expect when a Private Sector Housing Officer (PSHO) visits a premises:**

Identity: All PSHOs carry ID cards which show their photo, list their job title and the fact that they work for the Council. They will also carry a separate authorisation detailing the legislation they are authorised to enforce with them at all times.

They will normally show their ID card to residents at the start of the inspection. If the PSHO does not show it, the resident should ask to see it. The card holds a unique reference number which may be used to identify the officer upon contacting the Council's main telephone number

Inspection: A PSHO will need access to all parts of the property in order to carry out a full risk assessment inspection. This may involve access to any loft areas, cellars and cupboards on the fire escape route.

The PSHO may also ask to see a copy of any relevant documents such as:

- Current Landlords' Gas Safety Certificates issued by a GASSAFE registered contractor
- Current electrical periodic inspection and test certificates, minor works certificates or completion certificates
- Current fire alarm commissioning certificates or inspection and test certificates

- Current emergency lighting commissioning certificates or inspection and test certificates
- Log of fire alarm checks
- Evidence of Portable Appliance Testing
- Evidence of furniture and fitting compliance with Furniture Fire Safety regulations
- Current Tenancy agreement(s)
- Proof of ownership/leasehold

4.3.3 Follow-up informal liaison with the landlord, manager and/or landowner

Normally, we will contact the landlord, manager and/or land owner by letter. This letter will detail:

- what is wrong
- why it is wrong
- the appropriate remedial action, and
- whether it is a requirement of the legislation or a recommendation

It will ask for a reply from the landlord within 28 days. Unless it is emergency action, the letter will not normally require the recipient to carry out any works immediately. It is an opportunity for the landlord, manager and/or land owner to engage in meaningful discussion with the Council and advise whether there is a reason for the defect or issue, how they plan to deal with it (including a timescale for action) and to discuss any works they consider to be an acceptable alternative to those given in the letter.

Providing that the landlord co-operates with the Council and carries out the agreed work in a reasonable timeframe, formal enforcement action will not be necessary.

4.3.4 Formal enforcement action

We will normally serve an appropriate notice or order in the following cases:

- If the landlord, manager and/or owner fail to respond to any contact from the PSHO
- If the landlord, manager and/or owner fails to deal with the issues raised in the informal letter(s) within a reasonable timeframe
- If the landlord, manager and/or owner are uncooperative
- In certain circumstances, if landlord, manager and/or owner has been negligent
- if the offences have been committed deliberately, negligently or involve (or are thought to involve) deception or are engaged in deliberate or organised crime

Failure to comply with a notice or order will normally result in prosecution and the Council may also carry out the works in default of the owner.

5.0 Decision rules for what level of enforcement action is appropriate

5.1 What are the factors to be considered?

A number of factors are considered when determining what enforcement action should be taken. These will include:

- The risk being controlled

- The seriousness of the failure to comply with the law
- The reason the individual or business has given for non-compliance
- The individual or business' past performance and current practice (this is particularly important in connection with the management of properties)
- Statutory guidance from Government
- Other relevant guidance from LACORS, case law or other legal and professional guidance
- The Council's own policies and local priorities as set out in the strategic action plan and departmental service action plans
- Any other relevant issues

Where there has been non-compliance with the law, there is a range of enforcement options available to seek compliance with the law. Generally, a process of escalation will be used until compliance is reached. However, if there is an imminent risk to the health of the occupier (i.e. in emergency cases) or if the offences have been committed deliberately, negligently or involve (or are thought to involve) deception then immediate formal enforcement will be triggered

5.2 The powers available to the Council include:

- taking no action
- Informal Action and/or Advice
- Service of a Notice or Order (possibly emergency action) – used where a contravention can be prevented or needs to be remedied)
- Obtaining an Injunction
- Issue, refusal, suspension or revocation of an HMO licence or the variation of licence conditions
- Issue of a formal caution
- Prosecution, and
- The carrying out of remedial works in default of the owner.

These courses of action are not necessarily mutually exclusive – and appropriate enforcement may include several of these options.

Where the Council has carried out any remedial works, it will seek to recover the full costs incurred from those responsible or to place the outstanding bill on the local Land Charges Register against the property, as appropriate.

5.2.1 Taking No Action

In certain circumstances, contraventions of the law may not warrant any action.

This can be where:

- the cost of compliance to the landlord, manager and/or owner outweighs the detrimental impact of the contravention
- the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community
- formal enforcement is inappropriate in the circumstances (for example, where a landlord or manager has ceased to let properties (under any name or names), or the tenant is elderly and frail and formal action would seriously damage their wellbeing).

In such cases, we will advise the landlord, manager and/or owner of the reasons for taking no action. We may also serve a Hazard Awareness Notice.

5.2.2 Informal Action and/or Advice

For minor breaches of the law, the Council may give verbal or written advice. We will clearly identify any contraventions of the law and give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance.

Sometimes we will advise the landlord, manager and/or owner about 'good practice', but we will clearly distinguish between what they *must do* to comply with the law and what is advice only.

Failure to comply with this advice and guidance could result in an escalation of enforcement action.

The Council also provides other housing advice:

- **PSH advice and guidance (including leaflets)**

For the first time, we are introducing a home maintenance guide for owners. This will give readers a basic checklist of the items to look for when maintaining their home.

We also have a range of other leaflets on housing related topics. A copy of the guide and most of our leaflets are available on our website – www.colchester.gov.uk as well as being available via our normal points of contact.

Please note: Home owners should not tackle specialist work such as electrical or gas work and should employ specialists to do so:

- For electrical work, the main trade bodies for electricians are the National Institution of Electrical Installation Contracting (NICEIC) and the Electrical Contractors Association (ECA). To find a suitable contractor, please see "electrical work" in the trade telephone directory or visit the website of one of the trade bodies:
- the NICEIC website is www.niceic.org.uk and the ECA website is www.eca.co.uk
- For gas work, the use of a contractor registered with the GAS Safe is a legal requirement. Their website is www.gassaferegister.co.uk
- **Empty Homes Line**

The **Empty Homes Officer** can be contacted on (01206) 507870. Advice and guidance is available on:-

- Repairs / improvements to bring your empty home back into residential use, where possible.
- If an empty home is causing a nuisance, requires boarding up for public safety or to stop unauthorized entry.
- If you would like to use one of the private sector letting schemes to bring your empty home back in to residential use.

This service is not available to find out who owns an empty property.

- **Other Council advice is available from:**
- **The Homechoice Team** provides advice on housing rights, needs and options, welfare benefits, tenancy rights and operates the Housing Register. Please visit Homechoice based in Angel Court, no appointment is necessary.
- **The Warm Homes Team** provides advice on insulation, heating improvements and referrals to appropriate funding sources. Their telephone number (answer phone) is Colchester (01206) 282541. Please leave a message and they will get back to you.
- **The Planning Team** provides advice on what works may require planning permission and what work requires listed building consent. For initial enquiries, please contact the Customer Service Centre on telephone number Colchester (01206) 282222.
- **The Building Control Team** provides advice about what works may require Building Regulation Approval or the submission of a Building Notice. For initial enquiries, please contact the Customer Service Centre on telephone number Colchester (01206) 282222.

5.2.3 Service of a Notice or Order (possibly emergency action)

Most of our legislation allows notices or orders to be served requiring the landlord, manager and/or owner to take specific actions or cease certain activities. Notices or orders may require the occupation of the property or some residential activities to cease immediately where there is an emergency situation or a statutory nuisance exists. Examples include where there is an imminent risk to the health and safety of any occupiers through dangerous gas or electrical installations, the building is in imminent danger of collapse or is otherwise a danger to health.

Except in emergency situations, the time allowed to complete the remedial work will be reasonable. When deciding on the time to be allowed, the PSH team will take into account:

- the type and amount of remedial works required
- alternative works that the owner or landlord wishes to carry out
- how long this work will take to organise, carry out and
- the seriousness of the contravention, and
- the implications of the non-compliance.

All notices and orders issued will include details of any applicable Appeals Procedures.

For legislation specific decision rules, please see [section 7](#)

Notice and Order Costs:

For any notices and orders made under the Housing Act 2004 (except hazard awareness notices):

We will normally charge a notice fee (currently £400). In exceptional circumstances (such as individual severe hardship or illness) this fee may be waived, in whole or in part, at the discretion of the Home Improvement Team Manager.

A fee of £150 will be normally be charged for reviewing suspended Improvement and Prohibition notices annually. In exceptional circumstances (such as individual severe hardship or illness) at the discretion of the Home Improvement Team Manager, this fee may be waived in whole or in part.

Any charges for enforcement action will generally be recovered through normal civil debt recovery processes. However, the charge will be placed on the Local Land Charges register as a debt against the property at the same time – and will not be removed until the debt is paid off.

In the case of works in default: We will charge an administration fee for organising the work. This fee will normally be 15% of the cost of the remedial works plus relevant professional fees to reflect the number of hours we have spent organising the work, the cost of producing any paperwork, the cost of any relevant professional fees (such as structural engineer, architect, Building Regulation or Planning application fees) and the cost of the appropriate remedial works.

Once the work has been completed, the recipient of the Notice will be invoiced for the full costs including the administration fee and any debt will be pursued through the Court system until it is paid. In certain circumstances, the Home Improvement Team Manager will be able to waive the administration fee – this will normally be the case where an owner-occupier has been served with a notice and he/she is able to demonstrate that severe financial hardship would result. (For example, where the owner-occupier is in receipt of an income related benefit and there is minimal or no equity in the property)

5.2.4 Obtaining an Injunction

In certain circumstances, it may be considered that an injunction is the most appropriate course of enforcement. In such cases, the Council may apply to the Court for an injunction. It is likely to be used to deal with repeat offenders.

5.2.5 Issue, refusal, suspension or revocation of an HMO licence or the variation of licence conditions

Where an HMO must be licensed by the local authority, the licence will normally be granted unless either the applicant is not a 'fit and proper person to hold a licence' or there have been representations or objections to the application for an HMO licence.

If there has been a representation or objection and it is likely to result in the refusal of the application, the Portfolio Holder for Neighbourhoods will determine the application (i.e. decide to grant, grant with conditions, or refuse the licence application). The PSH team will provide a report to the Portfolio Holder with all the relevant data, documents and legal guidance. The applicant will be given the opportunity to provide written details to confirm or deny the representations or objections and to support their application. The applicant may be required to attend a meeting with the Portfolio Holder to put forward their case for issue of the licence. Once the decision has been made by the Portfolio Holder, there will be a 'call-in' period and assuming that there is not one, the decision can be implemented about

a week later. All applicants will be kept fully informed of any 'call-in' and approximate timescales before their application can be determined by the Council.

See also [section 7](#) for further information on HMO licensing rules.

5.2.6 Issue of a 'simple' (or 'formal') caution

A simple Caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction.

The Council can issue a simple Caution when all of the following criteria have been satisfied:

- Sufficient evidence must be available to prove the case
- The offender must admit the offence;
- It must be in the public interest to use a simple Caution;
- The offender must be 18 years or over.

If the offender has received a simple caution for a similar offence within the last 2 years, then a further simple caution will not be offered.

A record of the Caution will be sent to the Office of Fair Trading and the Local Authority Coordinating Body for Regulatory Services (LACORS) if appropriate, and will be kept on file for 2 years.

If the offender commits a further offence, the issue of a simple Caution may influence our decision to take a prosecution. If during the time the simple Caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the simple Caution may be cited in court, and this may influence the severity of the sentence that the court imposes.

We will follow the Home Office guidance (Circular 30/2005) regarding the implementation of a caution. For further details, please follow this link:

<http://www.homeoffice.gov.uk/police/powers/cautioning/>

5.2.7 Prosecution

The use of the criminal process to institute a prosecution is an important part of enforcement. It aims to punish wrongdoing, to avoid a recurrence and to act as a deterrent to others. A prosecution may be used in conjunction with other enforcement tools such as a prohibition notice requiring the operation to stop until certain requirements are met or the carrying out of works in default. In exceptional circumstances, prosecution without prior warning or the choice of alternative sanctions will be pursued. An example of an exceptional circumstance might be an emergency situation, where there has been deliberate damage to the main part of the structure.

A prosecution will normally be instituted where the individual or business meets one or more of the following criteria:

- Deliberately, negligently or persistently breached legal obligations, which were likely to cause material loss or harm to others;

- Deliberately or persistently ignored written warnings or formal notices;
- Endangered, to a serious degree, the health, safety or well being of people, animals or the environment;
- Assaulted or obstructed an Officer in the course of their duties.

5.3.8 How do we determine whether a Prosecution or Simple Caution is the right course of action?

We apply two 'tests' to determine whether a Prosecution or Caution is suitable and appropriate. We follow guidance set by the Crown Prosecution Service when applying the tests:

A simple Caution or Prosecution proceedings will only be progressed when the case has passed both the evidential test and the public interest test. The principles outlined apply equally to the other types of formal enforcement action that are available.

- **The Evidential Test:**

We must be satisfied that there is sufficient, admissible and reliable evidence that the offence has been committed and that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge.

A realistic prospect of conviction is an objective test that means that a Residential Property Tribunal, a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply. A jury or Magistrates' Court should only convict if it is sure of a defendant's guilt.

If the case does not pass this evidential test, it will not go ahead, no matter how important or serious it may be. Where there is sufficient evidence, a prosecution will not be commenced or continued by the Council unless it is in the public interest to do so. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the offender.

- **The Public Interest Test:**

The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. We will balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute include (but are not restricted to):

- **the seriousness/environmental effect** of the offence
- **the impact** on the occupier's health and safety
- **the foreseeability** of the offence or the circumstances leading to it;
- **the intent** of the offender, individually and/or corporately;
- **the history** of offending;
- **the attitude** of the offender;
- **the deterrent effect** of a prosecution, on the offender and others;

- **the personal circumstances** of the offender;
- **the alternative options**, where available.

The factors are not exhaustive and those that apply will depend on the particular circumstances of each case. Deciding on the public interest is not simply a matter of adding up the number of factors on each side. The Council will decide how important each factor is in the circumstances of each case and go on to make an over all judgement on the facts of each case.

The Council undertakes enforcement on behalf of the public at large and not in the interest of any particular individual or group. However, when considering the public interest test, the consequences for those affected by the offence, and any views expressed by those affected will, where appropriate, be taken into account when making enforcement decision.

Presumption of Prosecution

Where there is sufficient evidence, the Council will normally prosecute in any of the following circumstances: -

- **Incidents or breaches which have significant consequences for public health, safety or the environment or which have the potential for such consequences.** The Council takes very seriously such incidents or breaches.
- **Carrying out operations without a relevant licence or authorisation.** It is a pre-requisite to successful regulation that those required to be regulated come within the appropriate licensing system.
- **Excessive or persistent breaches of regulatory requirements** in relation to the same licence or premises.
- **Failure to comply or to comply adequately with formal remedial requirements.** It is unacceptable to ignore remedial requirements and unfair to those who do take action to comply.
- **Reckless disregard for management or quality standards.** It is in the interests of all that irresponsible operators are brought into compliance or cease operations.
- **Failure to supply information without reasonable excuse or knowingly or recklessly supplying false or misleading information.** It is essential that lawful requests for information by the Council are complied with and that accurate information is always supplied to enable informed regulation to be exercised.
- **Obstruction of Council staff** in carrying out their powers. The Council regards the obstruction of, or assaults on, its staff while lawfully carrying out their duties as an extremely serious matter.
- **Impersonating Council officers:** The Council regards impersonation of staff, for example, in order to gain access to premises wrongfully, as a very serious matter.
- **Protection of Human Rights:** This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the following:

- Right to a fair trial;
- Right to respect for private and family life, home, financial information and correspondence.

Choice of Court: In cases of sufficient gravity, for example, serious risks to health consideration will be given to requesting the magistrates to refer the case to the Crown Court.

Penalties: The existing law gives the courts considerable scope to punish offenders and to deter others. Unlimited fines and, in some cases, imprisonment may be imposed by the higher courts. The Council will continue to raise the awareness of the courts to the gravity of these housing offences and will encourage them to make full use of their powers.

The Council will seek to recover the costs of investigation and Court proceedings.

5.3.9 Works in Default:

Most types of notice or order allow the Council to use a 'works in default' procedure when the recipient is unable to carry out the works within the time specified on the notice or order.

This means that if a notice or order is not complied with [this is called a breach of the notice or order], the Council may (and in some cases, must) carry out any necessary works to satisfy the requirements of the notice. If this is the case, the recipient of the notice or order will be given written warning that works in default will be carried out and that we will then charge the recipient an administration fee for organising the work.

In exceptional cases, if the recipient of the notice is unable to carry out the work and asks the Council to carry them out on its behalf, the Council may do so but the charges and costs to be applied will be the same type as works in default costs.

Discretionary decision rule: We will normally prosecute for failure to comply with a Notice or Order. In cases where there is a significant danger, risk or prejudice to the health to the occupier of the property, then works in default will be carried out as well. Examples include where there are dangerous electrical or gas installations, significant risk of parts of the structure collapsing or where there is inadequate heating at the property.

6.0 Who decides what enforcement action is taken

Decisions about the most appropriate enforcement action to be taken are based upon professional judgment, legal guidelines, statutory codes of practice and priorities set by the Council and/or the Government.

6.1 Most decisions will be taken by the Home Improvement Team Manager, the Private Sector Housing Co-ordinator or the case officer (PSHO). All officers will be authorised in writing to the appropriate enforcement level by the Head of Housing and Environmental Policy or its successor post, the Head of Life Opportunities.

6.2 Where appropriate, decisions about enforcement will involve consultation between some or all of the following:

- Landlords, managers and/or owners
- PSHOs
- Private Sector Housing Co-ordinator
- Home Improvement Team Manager
- Senior Managers from Service Manager level to Chief Executive
- Council legal services team
- Council financial services team

6.3 Wherever possible, officers will seek to find solutions which are arrived at by agreement and co-operation and will keep in mind the maxim that prevention is better than cure.

6.4 Officers are required to regulate activities across a wide range of domestic premises such as privately rented, owner-occupied and unoccupied. In their professional dealings with every type of individual full regard will be had to the different abilities which are encountered and to the importance of the education and help which they themselves are able to give to achieve compliance.

7.0 Legislation specific decision rules:

7.1 Housing Act 2004 specific decision rules:

7.1.1 Decision Rules for the use of Part 1 of the Housing Act 2004 (HHSRS provisions and enforcement)

Mandatory decision rules:

The Council has a duty to inspect the residential properties in its district for Category 1 hazards.

Section 8 of the Housing Act 2004 gives the Government the power to issue statutory guidance on HHSRS enforcement and this has the status of a code of practice. The operating guidance issued in 2006 gives advice to local authorities about how they should use their discretionary powers and we will normally abide by this guidance. For fire safety issues, the Local Authority Co-ordination of Regulatory Services (LACORS) have issued nationwide guidance to Local Authorities and we will normally abide by this guidance.

While the HHSRS hazard rating is based on the most vulnerable potential occupant, authorities must take into account the circumstances of the current occupant when deciding the most satisfactory course of action. (See Appendix 2 for details of HHSRS and hazard categories). We will normally follow the guidance but if we do not, we will explain the reasons why.

Once a Category 1 hazard has been found, the Council has a duty to choose the most appropriate course of action for the property in respect of that hazard. The Council also has a discretionary power to act in respect of a Category 2 hazard.

If the Council decides to take a particular course of action to remedy a Category 1 or 2 hazard, we must choose the most appropriate one. The options are:

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- Service of a Hazard Awareness Notice – this advises the owner of the existence of a hazard but does not require any works to be completed
- Service of an Improvement Notice - this requires remedial works to be done within a given timescale (effective after the appeal period of 1 month)
- Service of a Suspended Improvement Notice* - this requires remedial works to be done when some condition in the future occurs (effective after the appeal period of 1 month)
- Service of a Prohibition Order – this stops the whole or part of a dwelling from being used for residential purposes or restricts the number of permitted occupants (effective after the appeal period of 1 month)
- Service of a Suspended Prohibition Order* - this stops the whole or part of a dwelling from being used for residential purposes or restricts the number of permitted occupants when some condition in the future occurs (effective after the appeal period of 1 month)
- Service of an Emergency Prohibition Order – to stop the premises from being used for residential purposes with immediate effect
- Taking of Emergency Remedial Action - to remedy a defect or remove someone from the premises in an emergency situation
- Service of a Demolition Order – this requires the owner to demolish the building
- Declaration of a Clearance Area – the authority declares its intention to buy by compulsory purchase the dwelling and usually many others, to clear and rebuild (usually in conjunction with a Registered Social Landlord).

* Improvement and Prohibition Orders can be suspended until a period of time has elapsed or an event has happened.

Please note that Emergency Remedial Action may be used with an Improvement Notice for a Category 1 hazard as a single course of enforcement action. Emergency Prohibition orders may be used with a Prohibition Order for a Category 1 hazard as a single course of action.

(See Appendix 3 for an explanation of the types of Housing Act Notices and Orders.)

However, if any course of action proves unsatisfactory, then an alternative option may be considered.

We will always issue a statement of reasons with any Housing Act 2004 Notice or Order.

We will review all notices (except hazard awareness notices) and orders on an annual basis to see if they are still valid or require amendment.

The Council will consult with Essex County Fire and Rescue Service regarding any HMO which has been assessed to need any fire precaution work before the enforcement action (including emergency action) is undertaken.

All appropriate persons will be sent copies of notices or orders that relate to a property in which they have a relevant legal interest.

Category 1 hazards specific rules: a Category 1 hazard is one that has a hazard band of A, B or C and therefore a hazard score in excess of 1000

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The courses of action available to authorities when a Category 1 hazard has been found are:

- Take no action - Service of a Hazard Awareness Notice
- Informal action – e.g. letter to owner, negotiation
- Service of an Improvement Notice or a Suspended Improvement Notice
- Service of a Prohibition Order or a Suspended Prohibition Order
- Taking of Emergency Remedial Action
- Service of an Emergency Prohibition Order
- Service of a Demolition Order
- Declaration of a Clearance Area

Emergency Remedial Action, Emergency Prohibition Orders, Demolition Orders and Clearance Orders can only be exercised in respect of Category 1 hazards, while the other three options are available for both Categories of Hazard.

Mandatory Action Rule: The Council will always take action on a **Category 1** hazard, unless there are exceptional circumstances (for example, the poor health of the current occupier of the dwelling – in which case, it may be appropriate to suspend action or serve a hazard awareness notice)

Category 2 hazard specific rules:

A Category 2 hazard is one that has a hazard band of D to J and therefore a hazard score between 1 and 999

‘A high Category 2 hazard’ is for the purposes of this policy one that has a hazard band of D, E or F and therefore a hazard score between 100 and 999

‘A low Category 2 hazard’ is for the purposes of this policy one that has a hazard band of G to J and therefore a hazard score between 1 and 99.

The courses of action available to authorities when a Category 2 hazard has been found are:

- Take no action - Service of a Hazard Awareness Notice
- Informal action – e.g. letter to owner, negotiation
- Service of an Improvement Notice or a Suspended Improvement Notice
- Service of a Prohibition Order or a Suspended Prohibition Order
- Service of a Demolition Order
- Declaration of a Clearance Area

Discretionary Action Rule:

The Council will normally only take action on a **high Category 2** hazard. The only exceptions to this rule are where there are defects that can seriously affect the comfort of the occupier or where the defects relate to items that can not be seen – for example electrical, gas or plumbing defects. In these cases, the Council may choose alternative action under different acts to deal with these items.

Notice and Order Fees:

For any original notices (except Hazard Awareness Notices) and orders made under the Housing Act 2004 and for Demolition Orders under section 265 Housing Act 1985 (as amended), we will normally charge a notice fee. For 2009/10, this is £400 plus the cost of any relevant professional fees (e.g. structural engineer's fees). From 2010/11 onwards, the fee will be determined every April.

In exceptional circumstances (such as individual severe hardship or illness) at the discretion of the Home Improvement Team Manager, this fee may be waived, in whole or in part.

7.1.2 Decision Rules for the use of Part 2 of the Housing Act 2004 (HMO Licensing provisions and enforcement)

An HMO landlord requires a licence if his property is 3 or more storeys high and contains at least 5 persons who form at least two households. For the purpose of the Housing Act 2004, a household means a family, a couple or single person. (Students are classed as a single household in their own right. Therefore in this example, a house occupied solely by students will be an HMO).

- Those HMOs in the poorest condition will be targeted for enforcement action by the PSH team.
- We will endeavour to ensure that all licensable Houses in Multiple Occupation (HMOs) hold an HMO licence and meet acceptable living standards. The PSH team carry out street surveys and there is a planned HMO work programme which enables HMOs to be inspected on a risk assessment basis.
- Providing that a valid application is made, and that the landlord is a fit and proper person, a draft licence will be issued to the applicant. This will include both mandatory and discretionary conditions. The discretionary conditions may relate to remedial work, restrictions or prohibitions relating to hazards found upon inspection under HHSRS, anti-social behaviour issues, general amenity, landlord training and management issues.
- Assuming there are no objections to the draft licence, a full licence will be issued as quickly as reasonably practicable. All new licences except those from the transition scheme will last for up to 5 years. The majority are expected to last the full 5 years but in exceptional circumstances a lesser period may be licensed – for example, if it is known that the HMO will be sold in 6 months' time.
- If there are objections, then these will be considered by the Home Improvement Team Manager. If they are not valid, a licence will be issued. If they are valid and would lead to a possible refusal of the licence, the Portfolio Holder for Neighbourhoods (or any successor post) will make the final decision after receiving representations from all relevant parties.
- All HMO licences issued after 01 January 2010 will be issued within 3 months of receipt of all the relevant documents and forms (i.e. a valid application has been submitted) and a satisfactory HHSRS inspection. If there are issues that need to be resolved after the HHSRS inspection and before the licence can be issued, the landlord will be given a reasonable time to complete the work or take alternative

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action such as returning the house to single occupation or reducing the number of tenancies.

- All landlords registered with the Council under the defunct control provision Colchester (Registration of Houses in Multiple Occupation) Scheme 2002 as at 06 April 2006 will be passported through and receive a licence as soon as practicable after the Public Notice for this enforcement policy has been issued. There will be no extra charge for the issue of a licence to these registered landlords. The maximum licence that can be issued by law is 3 years under this transition scheme. Landlords will receive licenses for the following time spans:

(a) Registration expiry would have been pre 06 April 2006 = no licence

(b) Registration expiry would have been 06 April 2006 – 05 April 2007 = 1 year licence

(c) Registration expiry would have been 06 April 2007 – 05 April 2008 = 2 year licence

(d) Registration expiry would have been 06 April 2009 onwards = 3 year licence

After this licence period expires, only landlords with an HMO for which they will need an HMO licence will be invited to re-apply.

- HMO licence fees will be set as follows:

(a) Until 31 March 2010, the application fee for new applications is £400 for HMOs with up to 10 persons resident. For HMOs with more than 10 persons resident there is an extra charge of £60 per let above the 10 lets (e.g. for 12 lets the fee will be £400 plus 2 x £60 = £520)

(b) After 01 April 2010, the application fee for new applications will be £600 for HMOs with up to 10 persons resident. For HMOs with more than 10 persons resident there will be an extra charge of £60 per let above the 10 lets (e.g. for 12 lets the fee will be £600 plus 2 x £60 = £720). This is to reflect the extra work involved in dealing with unlicensed HMOs.

(c) The following discounts will apply to applications:

- The provision of detailed scale 1:50 floor plans - £20
- Proof of current membership of a recognised Landlord Association - such as the National Federation of Residential Landlords (NFRL), the Colchester Landlords Association - £50.
- Membership of the University of Essex Accreditation Scheme - £50

After 2010/11, the fees will be set annually in April each year.

- The mandatory provisions for the variation and revocation of licences or the provision of a Temporary Exemption Notice will be completed within 1 month of the receipt of such a request.

Discretionary decision rule: It is anticipated that there will be a 3 month HMO amnesty from 01 December to 31 March 2010 inclusive to enable applicants to come forward voluntarily without fear of prosecution for not holding an HMO licence. They will be able to apply at the lower application fee rate.

From 01 April 2010 onwards, there will be rigorous enforcement against landlords who have an HMO for which they should hold a licence - but for which they do not hold one. They will also be penalised by a higher HMO application fee rate.

In order to make sure those unlicensed HMO landlords who have properties that require a licence are found, there will be targeted use of publicity, street surveys and other enforcement tools. If these HMOs are also in poor condition, then once they have been identified, use may also be made of interim management orders, rent repayment orders and of course prosecution for not holding an HMO licence.

The Council are required to publicise the HMO licensing fees etc. Upon adoption of this policy, we will place a Public Notice in appropriate local newspapers. It is anticipated that this will happen in November/early December 2009.

7.1.3 Decision Rules for the use of Part 3 of the Housing Act 2004 (Selective Licensing of other residential accommodation)

These are HMO licensing schemes that a local authority can choose to implement, with the agreement of Central Government for one of two purposes:

- Areas of low housing demand
- Areas with significant antisocial behaviour problems that numbers of landlords in the area are not tackling effectively

The Borough has no significant areas of either type and so...

Discretionary Action Rule We will not be adopting any selective licensing requirements for the foreseeable future.

Instead, we are considering a voluntary accreditation scheme for landlords and will be consulting all interested parties over the forthcoming year. It is anticipated that an accreditation scheme will be in place within the 2010/11 financial year.

7.1.4 Decision Rules for the use of Part 4 of the Housing Act 2004 (Additional control provisions relating to residential accommodation)

Interim and Final HMO Management Orders: For Further Information see sections 101 – 131 Housing Act 2004.

Interim and Final Management Orders are orders which are served on the landlord of an HMO to state that the Council will be taking over the management of the property under certain conditions.

- **Interim Management Orders (IMOs):**

These are mandatory orders if the conditions relating to immediate action, and there is no reasonable prospect of an HMO licence being applied for or that the health and safety condition are fulfilled.

They can also be discretionary for unlicensed HMOs, particularly where they are not of licensable size, but where the health and safety condition applies – the Council must approach the local Residential Property Tribunal (currently based in Cambridge) to allow the Order.

Discretionary decision rules: We will normally only apply to the Residential Property Tribunal for an Interim Management Order if the property is unlicensed and there is a significant health and safety issue (usually a Category 1 hazard) that the landlord is not dealing with effectively or at all. The landlord will have been informed of the decision to apply for an IMO and will be given the opportunity to present his view beforehand.

The implementation of the management part of an IMO will be operated under contract by a third party. A service level agreement will be available and the landlord will be advised of the practical arrangements for the management of the HMO. All correspondence about the management and repairs of the HMO will be between the Council and the landlord.

- **Final Management Orders (FMOs):**

These are mandatory orders where an IMO has expired and the HMO ought to be licensed but the Council are unable to grant a licence to anyone for it.

They can also be discretionary for unlicensed HMOs, particularly if they are not of licensable size and that the Council consider that it is necessary to protect the health and safety of the occupiers or anyone having a legal interest in any premises in the vicinity.

Discretionary decision rule: We will normally only issue a Final Management Order after the expiry of the IMO if the property is unlicensed and it is considered necessary to protect the health and safety of the occupiers or neighbours on a long-term basis or to deal with an anti-social behaviour problem caused by the occupiers or a tenancy issue caused by the landlord.

The implementation of the management part of a FMO will be operated under contract by a third party. A service level agreement will be available and the landlord will be advised of the practical arrangements for the management of the HMO. All correspondence about the management and repairs of the HMO will be between the Council and the landlord.

Interim and Final Empty Dwelling Management Orders (EDMOs):

- **Interim Empty Dwelling Management Orders:**

Interim and Final EDMOs are orders which are served on the owner of an empty property to state that the Council will be taking over the management of the property with the sole purpose of making sure that it is occupied. They will also enable the Council to carry out repairs (and charge the owner for the cost plus an administration fees) and once the work has been completed, to nominate tenants to occupy it.

Interim EDMOs:

The Council may make an application for an Interim EDMO to the Residential Property Tribunal who will authorise an EDMO in appropriate circumstances.

There are mandatory cases that are exceptions to this rule - for example, where the owner is in residential care with reasonable prospects for a return to the property, or the owner is caring for an elderly or disabled relative in another part of the UK, the Council can not apply to the Residential Property Tribunal for an EDMO.

Discretionary decision rules:

We will not normally apply for an EDMO unless:

- all discussions with the owner about bringing the property back into productive residential use have failed and
- all appropriate legal recourse has been made but the property has yet to be occupied, or
- where the owner can not be traced after all reasonable enquiries have been made.

If the property is for sale, it will not normally be considered for application for an EDMO until:

- (a) the property has been for sale for 1 year, and
- (b) it has not been sold or have reasonable prospects for sale (i.e. contracts for sale have not been exchanged), and
- (c) it is still unoccupied.

This is because after this time it will not normally be considered as being "genuinely" for sale - but each case will be assessed on its own merits and the prevailing market conditions.

The implementation of the management part of an interim EDMO will be operated under contract by a third party. A service level agreement will be available and the owner will be advised of the practical arrangements for the management of the property. All correspondence about the management and repairs of the property will be between the Council and the owner.

Final EDMOs:

The Council may make a Final EDMO when it is considered that without it the dwelling would remain empty or they have take all such steps to secure occupation of the property subject to an interim EDMO without success (For example, it has not been let because the owner has not agreed to the nominations made or it is in a hard-to-let area).

Discretionary decision rules: We will always consult with the property owner, where known and consider the impact and best interests of the local community before making a final EDMO.

The implementation of the management part of a final EDMO will be operated under contract by a third party. A service level agreement will be available and the owner will be advised of the practical arrangements for the management of the property. All correspondence about the management and repairs of the property will be between the Council and the owner.

- **Overcrowding Notices:**

These are notices to regulate numbers of people occupying non-licensable HMOs to ensure that there is sufficient space for the number of persons living in the HMO. They prescribe which rooms may be occupied and by how many people or alternatively, if it considers any rooms unsuitable for accommodation.

Discretionary decision rules: We will consult the landlord and/or owner and/or manager (as appropriate) regarding the possible service of an overcrowding notice and give him the opportunity to provide his point of view before the decision is made. When considering the service of a notice, natural wastage and/or the possibility of introducing a new residents' restriction will be taken into account.

7.1.5 Decision Rules for the use of Part 7 of the Housing Act 2004 (Supplementary and Final Provisions)

- **Register of current licences and management orders**

Mandatory decision rule: The Council is required to keep a register of all current licences and management orders (of whatever type) issued.

The register is available for public inspection at Angel Court by members of the public during normal office hours. If a copy is required, the person requesting the copy will be required to pay a reasonable fee covering the cost of production of a paper copy.

- **Enforcement of the Management of HMOs (England) Regulations 2006 and Licensing and Management of HMOs (Additional Provisions) (England) Regulations 2007:**

These relate to the management of HMOs and converted blocks of flats.

Discretionary decision rules: When an issue covered by the management regulations defined above is found by a member of the PSH team, the landlord will be informed in writing of the breach of the regulations and given the opportunity to carry out remedial action or explain when the work will be carried out.

In the case where serious breaches of management regulations are seen upon a third inspection of the same property with the same landlord and/or manager, the Council will normally consider prosecution as the most appropriate action.

7.2 Local Government (Miscellaneous Provisions) Act 1982:

Boarding up empty properties under section 29:

This legislation is used to board up his empty property to prevent unauthorised entry or when it presents a danger to health (for example, where it has been deemed a "dangerous structure" by the Council's Building Control Manager).

Discretionary decision rules: We will contact the owner of the empty property to notify him that the property is unsecured and give him an opportunity to board the property up himself before we consider service of a notice.

If we are unable to contact the owner or he refuses to carry out any work within a reasonable timeframe, we will normally serve notice on him requiring him to board it up. Upon expiry of the notice and assuming that the work is still outstanding, we will also normally carry out the works in default and charge the owner for the cost of the works plus an administration fee. Each case will be considered on its own merits.

In emergency situations – such as dangerous structures – we will contact the owner as soon as possible and are likely to carry out the remedial work immediately but may not serve a notice under this section.

7.3 Prevention of Damage by Pests Act 1949:

This Act covers the prevention of entry to and remedial action when rodent pests are present in properties.

Discretionary decision rule: We will normally serve a notice to remove existing pests by chemical treatment, their harbourage (this may include long grass, rubbish, infested furniture etc) and to carry out pest proofing work. This is because this work will often be required before a full structural survey or remedial action can be undertaken and may be the only way of obtaining a clear view of the structure of the property to specify the remedial work.

7.4 Public Health Act 1936: Filthy and Verminous Premises

This Act covers the prevention of entry to properties by pests, specifically insect pests of public health significance such as bedbugs, flies, cockroaches, fleas etc. It also covers premises which are in such a poor unhygienic state as to be classed as 'filthy' rather than dirty.

Discretionary decision rule: In conjunction with the Environmental Protection unit, we will normally serve a notice to remove existing pests by chemical treatment, their harbourage (this may include long grass, rubbish, infested furniture etc) and to carry out pest proofing work. This is because this work will often be required before a full structural survey or remedial action can be undertaken and may be the only way of obtaining a clear view of the structure of the property to specify the remedial work.

8.0 Access to, and Quality of, the PSH Enforcement service

8.1. Accessibility of the PSH service:

Access to all of these services will be open to all eligible applicants.

The council operates an equal opportunities policy and seeks to make all of its services accessible to all members of the community. To help us achieve this aim, we can provide the following services:

- a minicom service and a 'loop' service for personal callers
- with some advance notice, a Braille service

- some written information for non-English speaking people from the main minority ethnic groups. Otherwise, with advance notice, the Language line service.

8.2 How to contact the PSH Team:

The Private Sector Housing Team can be contacted by:

- telephone: 01206 282580
- fax: 01206 500569
- e-mail: housing.private@colchester.gov.uk
- in writing to: Rowan House, 33 Sheepen Road, Colchester, Essex
- CO3 3WG

- visiting us at Angel Court – please make an appointment to ensure that the Officer you wish to speak with is in our office. This is because we do not normally work at Angel Court anymore.

- If you are elderly and/or disabled and unable to come to us, we may also be able to visit you in your home. Please let our officer know how you would like us to contact you.

8.3 Quality of the PSH service:

The Private Sector Housing team aims to provide all service users with a professional prompt, efficient and responsive service of the highest quality. Our standards of service are listed in Appendix 3.

For several years now, the council has an established Customer Feedback system which deals with compliments, comments and complaints. All departments are able to receive feedback and respond appropriately.

Complaints about the PSH service are examined and will be thoroughly investigated by the Home Improvement Team Manager. If further complaint is made, the formal complaint process will include an assessment by an independent senior manager and subsequently by an Appeal Panel of elected Councillors. If your complaint cannot be resolved, then you can contact the Local Government Ombudsman Service.

Details of how to make a complaint are available at our Reception and on our website: www.colchester.gov.uk.

9.0 Feedback details:

The Council welcomes feedback from all its residents and clients to help it improve our PSH service. If you would like offer any constructive comments or suggestions about this policy or the PSH service, please contact the Home Improvement Team Manager, Jo Tawell:

- By telephone: Colchester (01206) 282585

- By fax: Colchester (01206) 500569
- By e-mail: joanna.tawell@colchester.gov.uk
- By post: Miss Joanna Tawell, Home Improvement Team Manager, Colchester Borough Council, Rowan House, 33 Sheepen Road, Colchester, Essex
- CO3 3WG

APPENDICES:

Appendix 1 – Principles of Enforcement terms

Proportionality

Essentially, this means that we will relate enforcement actions to the risks and the seriousness of any breach of legislation.

This concept is included in much of the UK regulatory system. It is there to balance action to protect the public and the environment against risks and costs to the person against whom any enforcement action is taken.

Some incidents or breaches of regulatory requirements cause, or have the potential to cause, serious damage to health. Others may interfere with people's enjoyment or rights, or the Council's ability to carry out its activities. We will aim to prevent harm to the occupiers, public or the environment from occurring or continuing.

If we receive information [for example from a complainant] that may lead to enforcement action against a business or individual we will notify that business or individual as soon as is practicable of any intended enforcement action, unless emergency action is required in which case notification will follow shortly afterwards.

During the progression of enforcement investigations/actions, business proprietors or individuals and witnesses will be kept informed of progress. Confidentiality will be maintained and personal information about individuals will only be released to a Court when required and/or in accordance with the Data Protection Act 1998.

The enforcement action taken by the Council will be proportionate to the risks posed and to the seriousness of any breach of the law. Therefore in exercising such power, we will consider (in no particular order):

- (a) The evidence available
- (b) The risk to the occupier or the public caused by the breach of relevant legislation
- (c) The need to penalise the offender to discourage future breaches through the publicity arising from formal action
- (d) The resource implications to the Council in taking formal legal proceedings
- (e) The need to ensure a timely resolution to the problem

- (f) As far as the law allows and where co-operation is given, work with the owner and/or landlord or manager so that they can meet their legal obligations without unnecessary expense.
- (g) Also, we will take into account the costs of compliance by ensuring that any enforcement action we take, or remedial action we require is proportional to the risks. In relation to small businesses, voluntary and community organisations, we will take particular care to help them meet legal obligations without incurring unnecessary costs.
- (h) We will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, and its significance, in making the decision to take formal action

Consistency

Consistency means taking a similar approach in similar circumstances to achieve similar ends – but it does not necessarily mean uniformity of action because each individual property and its circumstances are different. Officers need to take account of many variables including, but not restricted to:

- the type and condition of the property
- the assessed HHSRS based risks
- the views of the owner and tenant(s)
- the scale of impact
- the attitude and actions of management, and
- the history of previous incidents or breaches of legislation.

We aim to achieve consistency in all advice given, the response to the risks from poor housing conditions of whatever type, the use of powers and decisions on whether to prosecute.

Decisions on enforcement action are a matter of professional judgement and the Council, through its officers, needs to exercise discretion. We will continue to develop arrangements to promote consistency including effective arrangements for liaison with other enforcing authorities.

Transparency

Transparency is important in maintaining public confidence in the Council's ability to regulate. It means helping those regulated, and others, to understand what is expected of them and what they should expect from the Council. It also means making clear why an officer intends to take, or has taken, enforcement action – and whether that action is required or recommended.

Transparency is an integral part of the role of Council Officers and the Council will continue to properly train its staff and to develop its procedures to ensure that:

- Where remedial action is required, it is clearly explained –in writing - why the action is necessary and when it must be carried out. A distinction will be made between what is best practice, good advice and/or a legal requirement.

- Opportunity will be provided to discuss what is required to comply with the law with the officer concerned before formal enforcement action is taken **unless** emergency action is required (for example, where there is imminent risk to the health of the occupier or the property). . The issue of alternative works may also be discussed.
- Where emergency action is required, a written explanation of the reasons will be provided as soon as practicable after the event.
- Written explanation of any rights of appeal against formal enforcement action will be given at the time that the action is taken.

As far as the law allows we will provide accessible information and advice, in plain language, on the legislation that we enforce. We will be open about how we set about our work, consulting local businesses and other interested parties as appropriate.

Targeting:

Targeting means making sure that regulatory effort is directed primarily towards those whose activities give rise to or risk of serious offences, where housing conditions are poor and the risks least well controlled. It will also be directed towards deliberate or organised crime. Action will be primarily focused on lawbreakers or those directly responsible for the risk and who are best placed to control it.

The Council has systems for prioritising regulatory effort. They include the response to complaints from the public about regulated activities, the assessment of the risks posed by operations and the gathering of, and acting on, intelligence about illegal activity.

In the case of regulated businesses such as licensed HMOs, management actions or inactions are important indicators of risk. Repeated incidents or breaches of regulatory requirements that are related may be an indication of an unwillingness to change behaviour, or an inability to achieve sufficient control over the property. A relatively low hazard property that is poorly managed has potential for greater risk than a higher hazard site or activity where proper control measures are in place. The former would therefore attract more attention from the PSH team.

Appendix 2 - The Housing, Health and Safety Rating system (HHSRS)

This is a means of identifying faults in dwellings and evaluating their potential effect on the health and safety of occupants, visitors, neighbours and passers-by.

The Housing, Health and Safety Rating system defines 29 hazards that may affect the health and safety of residents and visitors to any dwelling over a 12 month period. These are:-

- Damp & Mould Growth
- Excess Cold
- Excess Heat
- Asbestos (and Manufactured Mineral Fibres)

- Biocides
- Carbon Monoxide & fuel combustion products
- Lead
- Radiation
- Uncombusted fuel gas
- Volatile Organic Compounds
- Crowding and Space
- Entry by Intruders
- Lighting
- Noise
- Domestic Hygiene, Pests & Refuse
- Food Safety
- Personal Hygiene, Sanitation & Drainage
- Water Supply
- Falls associated with baths etc.
- Falling on level surfaces etc.
- Falling on stairs etc.
- Falling between levels
- Electrical hazards
- Fire
- Flames, Hot surfaces etc.
- Collision & Entrapment
- Explosions
- Position and operability of amenities etc.
- Structural collapse & falling elements

More detailed information can be found on the DCLG website. www.dclg.gov.uk

All hazards are risk assessed by reviewing the deficiencies which contribute to the hazard, scoring the likelihood of the deficiency causing an occurrence of the hazard within the next 12 months and then scoring the outcome for each class of harm (this range from life-threatening to minor harm requiring medical attention such as moderate cuts). This will give a numerical score which is used to decide on the hazard band.

Meaning of Category 1 and Category 2 hazards:

Once the hazard has been scored and given a hazard band, the hazard is then classed as either a category 1 or category 2 hazard. The reason that this is important is because all local authorities have a duty to take the appropriate enforcement action to eliminate or reduce category 1 hazards. They have discretionary powers to take the appropriate enforcement action to eliminate or reduce category 2 hazards.

Appendix 3: Legal Provisions

Type of work	Act/Order
Statutory Nuisance	Environmental Protection Act 1990
Housing defects, management orders & HMO Licensing	Housing Act 2004 Parts 2-5 (HHSRS in Part 1 is enforced through Part 2)

Colchester Borough Council Private Sector Housing Enforcement Policy

Overcrowding	Housing Acts 1985 (as amended) & 2004
Drainage defects	Public Health Acts 1936 & 1961(as amended) and Building Act 1984
Boarding up empty properties	Local Government (Miscellaneous Provisions) Act 1982
Pest Infestations	Prevention of Damage by Pests Act 1949
Filthy and verminous Properties	Public Health Act 1936
Area Improvement and Slum Clearance	Housing Act 1985 Parts 8 & 9
Grants and Loan provision	Regulatory Reform (Housing Assistance)(England and Wales) Order 2002
Housing defects, management orders & HMO Licensing	Housing Act 2004 Parts 2-5 (HHSRS in Part 1 is enforced through Part 2)
Overcrowding	Housing Acts 1985 (as amended) & 2004
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Filthy and verminous Properties	Public Health Act 1936
Area Improvement and Slum Clearance	Housing Act 1985 Parts 8 & 9
Grants and Loan provision	Regulatory Reform (Housing Assistance)(England and Wales) Order 2002

Environmental Protection Act 1990 Part 1:

This Act allows any property that is causing a statutory nuisance to be dealt with. Examples of its use include: a leaking shower from a first floor flat into a ground floor flat causing the ceiling to collapse; or defective rainwater drainage causing damp and mould within the adjacent property.

Building Act 1984 and Public Health Act 1936 (as amended by Public Health Act 1961):

These Acts are used to deal with defective drainage problems. They are used to deal with blocked and/or repairable foul, waste and surface water drainage and kitchen/sanitary fittings.

Local Government (Miscellaneous Provisions) Act 1982:

This Act is used when empty properties have been broken into or have become otherwise unsecured. It can also be used to deal with empty properties that are dangerous. In both cases, the Council may board up or otherwise secure the property against intruders.

Prevention of Damage by Pests Act 1949:

This Act is used to deal with various situations where there is harbourage, food and/or access to dwellings for rodent pests. The remedial work varies but can range from cutting down overgrowth in gardens, removal of food sources to boarding up holes in the building structure.

Public Health Act 1936 (as amended):

This Act is used to deal with properties that are in a very unhygienic state such that they require statutory clearance and cleansing or the eradication of insect pests. The remedial work will vary from the removal of rubbish to the provision of pest control treatment.

Housing Act 1985 (as amended) – Parts 8 & 9: Area Improvement and Slum Clearance

This Act has largely been repealed but the sections relating to Area Improvement and Slum clearance are still in force. They relate to large scale area treatment and demolition works to ensure improvement in housing standards of designated areas.

The Regulatory Reform (Housing Assistance)(England and Wales) Order 2002:

This order allows local authorities the discretion to provide financial assistance for the repair, improvement and adaptation of residential properties. Please see our Financial Assistance Policy for details of the grants and loans we offer.

Part 2 Housing Act 2004: This is the main Act that the PSH team use to secure repairs and improvements to properties. It has a number of enforcement options:

An **Improvement Notice** is a legal notice that advises the recipient that one or more category 1 hazards exist and/or one or more category 2 hazards exist. It also details what is wrong, why it is wrong, what the remedial works are and the timescales for action required. It may be suspended until a specified time or a specified event occurs.

A **Hazard Awareness Notice** is a legal notice that advises the recipient that one or more category 1 hazards exist and/or one or more category 2 hazards exist. There is no legal sanction for not carrying out the works detailed in the notice.

A **Prohibition Order** is a legal notice that advises the recipient that one or more category 1 hazards exist and/or one or more category 2 hazards exist. It also prohibits:

- (a) the use of all or part of the premises for a particular purpose (such as human habitation), or
- (b) occupation by more than a specific number of households or persons, or
- (c) occupation by a particular description of persons (e.g. a property with large numbers of stairs and changes in level may be unsuitable for elderly persons).

It can only take effect after 28 days from the date of service of the Order.

It may be suspended until a specified time or a specified event occurs.

A **Demolition Order** is a legal order that advises the recipient that one or more category 1 hazards exist and/or one or more category 2 hazards exist and that the best way of dealing with the hazards is by demolishing the property.

An **Emergency Prohibition Order** is a legal notice that advises the recipient that one or more category 1 hazards exist and that these hazards pose an imminent risk of serious harm to occupiers. It also prohibits:

- (a) the use of all or part of the premises for a particular purpose (such as human habitation), or
- (b) occupation by more than a specific number of households or persons, or
- (c) occupation by a particular description of persons (e.g. a property with large numbers of stairs and changes in level may be unsuitable for elderly persons)

This order is effective immediately.

Emergency remedial action is a legal notice that advises the recipient that one or more category 1 hazards exist and that these hazards pose an imminent risk of serious harm to occupiers and details what emergency remedial action was taken. It also explains what expenses were incurred and the cost will be sought from the recipient.

Declaration of a **Clearance Area**: Where there are several residential buildings within an area which contain a category 1 hazard (and in some cases a Category 2 hazard), and the Council are satisfied that they are dangerous or harmful to the health and safety of the inhabitants of the area, a clearance area may be declared to ensure that they are all demolished.

Appendix 4: Service Standards

- We aim to contact the person requesting the service within 2 working days of the receipt of the request. Advice will be given straightaway in most cases. Some service requests will require an inspection of the property and, if this is the case, a mutually convenient appointment will be made.
- Within 10 working days of the PSHO's inspection, the landlord/manager/owner will be informed in writing of the remedial work required and a suggested timescale for submission of a work programme for their completion. If a grant or loan is available, an application pack will be sent to the applicant (or their agent). This will include a schedule of repairs, improvements and adaptations for which the Council is prepared to offer financial assistance. (See our financial assistance policy for further details)
- If a reply has not been received, a reminder letter will be sent within 10 working days of the date when the information was due. This will normally be accompanied by a Requisition for Information.
- If no further reply is forthcoming, a notice or order will be drafted, checked and signed and sent out within 5 working days.

- Checks on what remedial work (if any) has been done will be made at regular times within the notice or order period - and within 2 working days of the expiry of the notice or order, a final check visit will be made to see what work has been completed (if any)
- Within 2 working days of the final checking visit, a letter will be sent to the landlord/manager/owner (as appropriate) either advising that the work has been completed to the Council's satisfaction, there are some minor works outstanding or that no work has been completed. If it is the latter, the letter recipient will be invited to explain why they have not completed the work.
- The decision to prosecute or carry out works in default will be made within 6 weeks of the final checking visit. The landlord/manager/owner (as appropriate) will be informed of the decision.
- In emergency cases, for example - Emergency Remedial action or Emergency Prohibition Orders – we will try to contact the landlord/manager/owner (as appropriate) by telephone but will follow up the action in writing as soon as practicable afterwards.

Appendix 5: Performance Indicators

To assess how effectively local councils are tackling housing problems in the private sector, we have a number of performance indicators. The two key ones are:

- (a) The number of homes in the private sector made 'decent' as a direct result of our action, and
- (b) The number of homes vacant for six months (or more) that are returned to use as a result of our action.

For further information on these indicators, please contact the Home Improvement Team Manager.