**Ashfield District**

**Council**

**Environmental Health Residential**

**Intervention**

**and**

**Enforcement Policy 2024**

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1. **Introduction**

This policy sets out the rationale and standards of enforcement that can be expected from the Environmental Health Residential Team.

It also sets out our decision-making process, from the receipt of the initial referral, or complaint to conclusion of the case, which may involve court proceedings.

**The responsibilities of the service include but are not limited to:**

* To improve the standards of homes in the private sector, predominately private rented accommodation.
* To assess local housing conditions.
* To reduce the number of properties with serious risks to health and safety (reduce Category 1 hazards).
* To reduce the number of vulnerable households living in sub-standard homes.
* To improve the energy efficiency and warmth of homes and to help reduce fuel poverty.
* To improve the standards in Houses in Multiple Occupation (HMOs) through the implementation of the Mandatory Licensing Scheme and enforcement provisions.
* To work in partnership with private sector landlords to improve conditions and the standard of management of private rented housing.
* To provide a service that is accessible to anyone living in rented housing that may be subject to poor living conditions.
* To help bring empty homes back into use.
* Licensing of Caravan sites.
* Hoarding and filthy and verminous properties.
* Residential statutory nuisance and
* Unauthorised Encampments.

**Reactively the service may respond to:**

* Tenants who contact the Council with complaints about disrepair or poor living conditions and complete and return a referral form.
* Referrals received by email or telephone.
* Referrals from other agencies/professionals
* The Council normally expects tenants to have contacted their landlord with proper details about their complaint and then allow a reasonable time period for the issues to be resolved prior to contacting the Environmental Health Residential Team.
* Complaints about properties that may be causing problems for neighbouring properties.
* Enquiries from owner occupiers or private tenants and landlords who would like advice about housing conditions.
* Enquiries for advice about the legal minimum housing standards, particularly HMO’s.
* Enquiries about empty homes.

**Proactively the service may:**

* Identify the general types and conditions of the private sector housing stock by carrying out surveys of the district.
* Operate a risk assessment process to identify the risks in HMO’s.
* Operate a programme of inspections of higher risk HMO’s.
* Take part in landlord forums.
* Contribute to regeneration initiatives.
* Review portfolios of landlords who we have had cause to be involved with and where that involvement has led to informal or formal action, to improve property conditions.

1. **Our Approach**

We recognise that most people want to comply with the law, therefore we will provide an explanation of our duties and powers, so that there is an understanding of the Council’s role.

We will give owners, landlords, agents, and tenants the opportunity to co-operate with us in the first instance, unless the circumstances of the case merit immediate enforcement.

We want residents of Ashfield to understand the rights and obligations of living in and owning a property, so we will promote this as a key aim of this policy.

We will intervene and take enforcement action when voluntary or co-operative working is not succeeding to ensure that matters of health, safety and wellbeing are dealt with promptly and efficiently.

We will comply fully with the legislation that effects our work, and we will ensure that we provide information about what to do if you do not agree with our action, including any rights of appeal.

We want landlords and owners to meet their legal obligations, any enforcement action we take will always be proportionate.

Where we ask for repair or remedial work to be done to a property, we will fully consider the costs of works to try and avoid unnecessary expense.

We will always make sure any costs or inconvenience of works are proportionate to the risks that they are intended to reduce or remove.

We will deal with each case on an individual basis and on its own merits.

Officers will exercise their professional judgement in individual cases, having regard to relevant guidance and will follow internal procedures to ensure a fair and consistent approach to regulation. Performance reporting and assessments are in place to ensure consistency in our approach to enforcement.

1. **Principles of Good Enforcement**

The Council has signed up to the Government’s 1998 Enforcement Concordat – Principles of Good Enforcement. The Concordat sets out what business and others being regulated can expect from enforcement officers.

The aim of the Concordat is to ensure that all enforcement actions comply with the following principles:

* Openness
* Helpfulness
* Proportionality
* Consistency

**Openness** 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 (what must be done) and advice or guidance (what is desirable).

**Helpfulness.** We believe that prevention is better than cure and that our role therefore involves actively working with business, especially small and medium sized businesses, to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us, and we will encourage business to seek advice /information from us. Applications for approval of establishments, licenses, registrations, etc, will be dealt with efficiently and promptly. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

**Proportionality** means relating enforcement action to the risks and severity of the breach of the law involved. This will ensure that the most serious risks are targeted first.

**Consistency** means taking a similar approach in similar circumstances to achieve similar ends. It does not mean uniformity, as officers will take into account many factors such as the level of risk, the history of compliance and actions of those involved.

Enforcement, in the context of this policy is not limited to formal enforcement action such as prosecution, but includes for example, the inspection of premises for the purpose of checking compliance with legislation and the provision of advice.

1. **What We Want to Achieve**

We want housing and communities to be safe and well managed. We understand that this includes making sure that everyone involved knows their rights, obligations and what it is to be a good neighbour.

We want residents to understand that if you own, rent, or live in Ashfield, you can come to us for advice and assistance.

It is important to us that all private housing in Ashfield meets the legislative minimum standards and does not cause a physical hazard or nuisance to other people, or cause damage to someone else's property.

We want to be known as a service that is fair and proportionate. We want to continue to improve the good working relationships we have with those landlords who consistently deliver good properties and management. Whilst in parallel, we want to be known for dealing firmly with landlords who persistently fail to abide by their obligations. We shall target the worst landlords for enhanced enforcement action as multiple failures to properly manage, are likely to be repeated across their Portfolios.

1. **Enforcement Options**

In responding to a service request, the choices available for action are:

* Take no action.
* Take informal action.
* Take formal action through one or more of the following routes:
  + Serve statutory notices.
  + Undertake works in default.
  + Make management orders.
  + Issue a formal caution.
  + Prosecution
  + Issue a fixed penalty notice, civil penalty, or financial penalty.

The list of options is not exhaustive as changes in legislation and guidance may affect the sanctions available.

Whatever action is deemed to be appropriate, the decision to take it will need to stand up to a test of consistency and must demonstrate both a balanced and fair approach to enforcement.

A summary of the relevant legislation governing enforcement powers relating to housing conditions is set out in the Appendix. This is not exhaustive and is intended as a guide only.

1. **Help and Advice**

The Environmental Health Residential Team will provide clear information and advice, in plain language, about the legislation we use to enforce standards.

We strongly believe that prevention is better than cure and we will give advice on complying with the law. However, this is not intended to be a substitute for landlords seeking their own independent legal or professional advice where that is more appropriate, e.g., from a solicitor or a surveyor.

Applications for any part of our service will be dealt with efficiently and promptly as possible in line with service targets and/or statutory requirements.

We are committed to building our range of self–help materials on our website. We know that many people are able to manage their properties effectively providing they have some guidance. This also allows us to focus our resources on those situations where more serious interventions are needed.

Where possible, we will provide training sessions and updates about new legislation and policies to keep landlords up to date.

Where a person contacts us about a matter that is not our responsibility, we will direct them to the relevant Council Department or external agency.

Our resources will be targeted to ensure the most serious cases are tackled as a priority. Our speed of response will take account of the potential risks to health and well-being.

1. **Tough and Targeted Enforcement**

Our approach will be to ensure that the regulation of private housing is targeted where the risk is greatest. We recognise that most landlords are committed to working with us to maintain or bring their properties up to reasonable standards. We will continue to work positively with those landlords.

We also recognise that there is a minority of landlords and owners who fail to comply with their responsibilities and can appear to have little regard to their statutory duties to their tenants and/or neighbours. We feel it is right to target these types of landlords.

Where we are aware that a landlord has repeatedly failed to comply with housing regulations, we will actively focus the use of our investigatory powers on that landlord.

The purpose of this approach is to achieve the following:

* Send a strong message that we will not tolerate uncooperative or repeat offenders.
* Improve the behaviour of the landlord or discourage them from continuing to act as a landlord if they are unable to manage properties to acceptable standards.
* Efficiently reduce any financial gain or benefit from non- compliance
* Deter future non-compliance.

Where the law allows, we will consider action related to including but not restricted to, Banning Orders and Proceeds of Crime Act 2002.

1. **How We Intervene**

The Environmental Health Residential Team usually get involved at the request of a tenant, or someone working with a tenant, for example a care worker.

We also encourage landlords/owners to get in touch with us. For example, a landlord may want some advice about how to manage their tenant if they are causing problems in the property that they are struggling to deal with.

We also undertake proactive inspections of properties, in line with our legal responsibilities, for example where we have observed poor housing standards in certain property types, or where a landlord has several properties and we have taken action against them for other properties in their portfolio.

The way we get involved will depend on various circumstances and this is something we will discuss with the person requesting assistance when they contact us.

**The things we may consider include:**

* The seriousness of the problem and the effect that the problem has on people living there and in neighbouring properties.
* The effect the problem is having on the neighbourhood and surrounding area.
* The relevant legislation, for example, some circumstances require the Council to take immediate enforcement action.
* The vulnerability of any occupant, including their vulnerability to eviction
* Whether the management standards are poor, particularly where there appears to be a lack of awareness of statutory requirements.
* Any relevant history of the landlords, owners, neighbours, or the tenancy, particularly the owner’s/landlord’s history of carrying out repairs either informally or following our previous intervention.

The first thing we advise, where a tenant has a problem with the condition or safety of their home, is that they should inform the landlord/tenant/neighbour of the issue and give them reasonable time to put it right. If, following this opportunity, the problem hasn't been resolved, we will open an investigation into the case.

Sometimes, in the case of an emergency situation, or if the landlord has a history of not responding, we may act straight away.

Where we decide that we do not need to get involved formally at the time of the initial enquiry, we will ask the person requesting assistance to contact us again if the situation doesn't get resolved.

If we open an investigation but cannot substantiate a complaint against a landlord/owner or tenant, we will explain why this is to the complainant and take no further action.

1. **Initial Interventions**

* Giving advice to landlords/owners or tenants on the telephone or by letter or e-mail, unless there are reasons not to, such as where the tenant is vulnerable.
* Where possible we will try to resolve issues without making a visit or resorting to more formal action. Our advice will be about legal responsibilities and what the Council expects.
* If we have set an informal time limit for a problem to be resolved, and it has not been, or the situation has deteriorated, we are likely to schedule a visit to the property which may result in more formal action.
* Formal action could include the service of a legal notice with an imposed timescale for works to be carried out.
* Formal action straight away – where appropriate to the case, for example where emergency works are required.
* Immediate prosecution or the imposition of a civil penalty where we know an offence has already been committed, such as a licensing offence or failure to comply with management regulations.
* Opening an investigation into abandoned private empty properties where it is causing nuisance or annoyance to neighbours or the neighbourhood.

1. **Intervention by Visit or Inspection**

Our regulatory duties and powers enable us to carry out a visit to the property, sometimes resulting in a more formal full inspection.

Usually, we will write to the landlord detailing repairs or improvements that are necessary or advising of the defects that are present. Where we are satisfied that immediate enforcement action is not required, we will usually encourage landlords to remedy the problem to avoid the need for more formal action. When we write to landlords detailing repairs or improvements that are necessary, or advising of defects that are present, we will usually set out:

* Who the investigating officer is and how they can be contacted.
* Any breaches of legislation, codes, or regulations
* The consequences of failure to attend to the matter informally, including what the enforcement action could be, and if it incurs - the likely cost.
* The timescale for a formal inspection to which the landlord will be invited.
* Whether we are considering legal action, such as prosecution or a civil penalty for a particular offence.
* What are legal requirements as distinct from officer opinion or good practice advice?
* Any other appropriate and relevant information.

Sometimes landlords like to speak to us on the telephone. We will provide a clear summary of what is required and will follow this up in writing to ensure the landlord can check the requirements at a later stage.

Where we are investigating potential cases relating to licensing offences or breaches of HMO management regulations, we will usually visit with a Notice of Entry to the occupants, allowing us immediate entry without prior notice.

Where we are refused access by the tenant or landlord when a Notice of Entry has been served, we may then seek a Warrant of Entry from the Court to permit forced entry.

In exceptional circumstances where serving a Notice of Entry would defeat the purpose of the inspection, we may seek a Warrant without serving a prior Notice of Entry

1. **Dealing With Hazards**

Local Authorities have a duty under the Housing Act 2004 to take enforcement action in relation to serious hazards (Category 1 hazards), and our priority is to meet this legal obligation.

We also have a discretionary power to take enforcement action on lower-level hazards (Category 2 hazards).

In deciding whether to exercise this discretionary power officers will always consider the individual circumstances of the case. However, action will not normally be considered on hazards scored below band E as prescribed by the Housing Health and Safety Rating System (HHSRS).

In some circumstances we do not consider it appropriate to deal with landlords informally.

These circumstances include, but are not limited to, where:

* There is a serious hazard in the property which requires emergency action.
* we consider there has been disregard for the law or history of non-compliance.
* There are multiple serious hazards or disrepair issues present in the property, particularly where there is a significant health and safety risk.
* The landlord has a history of previously being uncooperative or we are already investigating the landlord or taking enforcement action in respect of another matter.
* The landlord or agent have a number or properties, have been involved in managing rented properties for some time, or who should otherwise have known of their responsibilities.

1. **Informal Action**

“Informal action” means to secure compliance with legislation without recourse to formal action, including offering advice, issuing verbal warnings, and requesting action, the use of letters, and the issue of informal schedules of works.

The Environmental Health Residential Team is willing to offer help and advice and will explain the reasons for the Council’s involvement and what should be done to improve housing conditions. The Council’s preferred approach is therefore to work with the parties involved to help prevent the need for formal enforcement action.

It should be noted that it is not always possible to adopt an informal approach especially where the legislation requires formal action to be taken.

**When Informal Action May be Appropriate**

Informal action may be appropriate when one, or more, of the following applies:

* The matter does not involve a Category 1 hazard; or failure to apply for an HMO licence.
* It is the first occasion that the Council has been called upon to deal with a particular property or complaint.
* The act or omission is not sufficiently serious to warrant formal action.
* From the individual’s/landlord’s previous history, it can be reasonably expected that informal action will achieve compliance within a reasonable period of time e.g., six weeks and confidence in the landlord/managing agent/other management is high.
* The consequences of non-compliance will not pose a significant risk to occupiers/public health and safety; and
* The relevant person has confirmed in writing their willingness to complete the works on an informal basis with a timescale for completion.

Where some of the above criteria are not met, there may still be circumstances in which informal action will be more effective than a formal approach. This will generally apply to an organisation such as Registered Social Landlords partners in line with joint protocols.

Inspection reports and clear advice about what works are required will be issued to the owner, managing agent, and tenant etc. following the decision to deal with the case on an informal basis.

When an informal approach is used to secure compliance with legislation, written documentation will be issued which will:

* Contain all the information necessary to understand what work is required and why it is necessary; and
* Specify the legislation that covers the contravention, the measures that will enable compliance with the legal requirements and that other means of achieving the same effect may be chosen.

Officers may also make further recommendations of good practice if appropriate, even where these may not be a legal requirement.

1. **Powers of Entry**

The Council would expect landlords/agents to make at least 3 separate attempts to make arrangements and appointments to access the property for an inspection or for works to be carried out.

These attempts should be in the tenant’s preferred format of communication. If no single method is preferred by the tenant and access is denied, arrangements for appointments must be attempted in multiple formats (text, email, letter, or phone call etc).

Property Owners will also be expected to apply for a warrant to gain entry to the property if access to the property is continuously and frequently denied.

Evidence of these attempts will be asked for, if the reason given for works being delayed is no access being provided. If this evidence is not provided it may inform the case officers’ decision when it comes to the enforcement process.

In certain circumstances, Powers of Entry into a property are provided to authorised officers in accordance with the legislation under which we operate. In general, the powers will allow an officer at any reasonable time to:

* Enter a property to carry out an inspection and gather evidence.
* Take someone with them.
* Take equipment or materials with them.
* Take measurements, photographs or make recordings.
* Leave recording equipment for later collection.
* Take samples of articles or substances; and •
* In some cases, to carry out works

In most cases prior notice must be given to owners and to the occupiers. The notice given depends on the legislation being enforced and can range from 24 hours to 7 days.

Notice that powers of entry need to be carried out will normally be in writing or by email, but can in some circumstances be given verbally, depending on the relevant statutory provision.

The powers of entry can be enforced with a warrant. The Police will accompany officers where it is appropriate.

It is an offence to obstruct an officer in the course of their duty. Officers exercising their Power of entry will carry identification and details of their authorisation to carry out their action.

In some instances where notice may defeat the purpose of entry or where provisions of the act allow notice will not be given

Where it is judged necessary to exercise a power of entry authorised persons will provide a Notice of Powers and Rights in a standard format to the occupier.

This will include:

* whether the entry will be conducted with or without a warrant.
* the powers of entry and associated powers used.
* the occupier’s rights.
* any compensation or complaints procedures that exist.

1. **Works in Default**

Works in default is a power given to the Council to ensure work is carried out to a property. If the recipient of a Notice does not do the work required by the Notice, the Council may employ a contractor to enter the property and carry out the work. The Council will charge the appropriate person for the cost of the works together with the costs incurred by the Council in arranging for the work to be done.

**Works in default may be carried out where for example (but not limited to this list):**

* There is no prospect of the person responsible carrying out the work e.g., the landlord is absent or infirm.
* There is an imminent risk to an individual’s or public health and safety e.g., overflowing sewer, blocked toilet etc.
* A prosecution is not appropriate.
* A prosecution has been brought (and is successful) and the works have still not been carried out; and
* It is appropriate to get the nuisance abated quickly.

It should be noted that carrying out the work in default does not prevent the Council from either issuing a caution or prosecuting. The Council is entitled to ensure that the work is carried out and to consider if it is appropriate to take further action.

The decision to carry out works in default is made on a case-by-case basis.

The Council will seek to recover all the costs incurred including administration costs and officer time.

1. **Cautions**

The statutory Code of Practice on legal matters advises that local authorities should consider issuing a caution as an alternative to a prosecution.

**The purpose of the caution is:**

* to deal quickly and simply with less serious offences.
* to divert less serious offences away from the Courts; and
* to reduce the chances of repeat offences.

**When the Caution should be used:**

A caution will be considered if the under-mentioned advice indicates that the issue of a caution is a proper, and more appropriate, alternative to the employment of statutory action, when considered in conjunction with the policy detailed elsewhere within this policy document.

A record of the caution is kept by the Council for a period of three years, and it may subsequently influence a decision to instigate proceedings should the offender break the law in the future. It may also be cited if the Council takes legal action for a subsequent offence.

**Advice**

To safeguard the suspected offender’s interests, the following conditions should be fulfilled before a caution is administered:

* there must be evidence of the suspected offender’s guilt sufficient to give realistic prospect of conviction.
* the suspected offender must admit the offence; and
* the suspected offender must understand the significance of a caution and give an informed consent to being cautioned.

If there is insufficient evidence to consider commencing prosecution proceedings, then by implication the conditions are not satisfied for the use of a caution. It will also be inappropriate to use a caution where the suspected offender does not make a clear and reliable admission of the offence. It should be noted that there is no legal obligation for any person to accept the offer of a caution, and no pressure should be applied to the person to accept a caution.

**Cautioning Officer**

The designated cautioning officer is the Executive Director.

1. **Prosecution**

**When to Prosecute**

The circumstances likely to warrant prosecution may be characterised by one or more of the following:

* Where the alleged offence involves a flagrant breach of the law such that occupiers/member of the public, safety or well-being is, or has been, put at risk.
* Where the offence involves a failure to comply in full, or in part, with the requirements of a statutory Notice.
* Failure to licence an HMO, non-compliance with license conditions; and
* If a “warning letter,” notifying the offender that an offence has been committed has been sent within the last two years a prosecution should normally result if a further offence is committed.

Authorised officers will provide a written report relating to the outcome of an inspection or investigation to the Executive Director of the service which the officer considers, in light of relevant guidance warrants enforcement action.

Regard shall be had to the advice of the Council’s legal advisor concerning issues of law and the propriety of prosecution having regard to the Crown Prosecution Service code.

If the legal advice is that a prosecution is unlikely to succeed, this decision will ordinarily be final. Reasons for declining to proceed should be documented and due regard had to any remarks in so far as they may affect future prosecutions. This will be especially the case if the decision is based on failure to comply with statutory requirements.

When circumstances have been identified which may warrant a prosecution, all relevant evidence and information will be considered, to enable a consistent, fair, and objective decision to be made.

This includes whether a Civil Penalty is an appropriate alternative.

The Councils Civil Penalty Policy is available on request or at:

<https://www.ashfield.gov.uk/housing/finding-renting-or-owning-a-home/environmental-health-residential/civil-penalties-policy/>

If a decision has been taken that there is enough evidence for a prosecution and that other action such as a caution (which requires an acceptance of guilt by the person concerned) would be inappropriate, the Investigating Officer prepares a case for consideration by the Council’s legal team. They will be asked to commence a prosecution if they are satisfied that there is a more than realistic prospect of conviction. In certain circumstances further investigations may need to be carried out.

In addition to being satisfied that there is sufficient evidence to provide a realistic prospect of conviction, there must be a positive decision, based on relevant criteria that it is in the public’s interest to prosecute. The Code of Crown Prosecutors, issued by the Crown Prosecution Service, provides guidance which will be considered, including relevant public interest criteria.

In deciding whether or not to prosecute, regard will be made to the guidance contained in the relevant Code of Practice. Factors to be considered will include the following:

(a) The seriousness of the alleged offence:

* The risk of harm to an individual’s or public health and safety.
* Identifiable victims.
* Failure to comply with a statutory Notice served for a significant breach of legislation; and
* Disregard of health or safety for financial reward.

(b) The previous history of the party concerned:

* Offences following a history of similar offences.
* Failure to respond positively to past warnings; and
* Failure to comply with statutory Notices.

(c) The ability of any important witnesses and their willingness to co-operate

(d) The willingness of the party concerned to prevent a recurrence of the problem

(e) The probable public benefit of a prosecution and the importance of the case (e.g., whether it might establish a legal precedent)

As indicated above, advice on the public interest is contained in the Code for Crown Prosecutors. The general advice is “the graver the offence, the less likelihood there will be that the public interest will allow anything other than a prosecution.”

(f) Any explanation offered by the company or the suspected offender

LACORS recommends that suspected offenders are invited to offer an explanation before prosecution decisions.

(g) The defendant is elderly, suffering from mental or physical ill health, etc.

Investigations into alleged breaches of legislation will comply with the requirements of relevant legislation including, but not limited to:

* The Human Rights Act 1998
* The Regulation of Investigatory Powers Act 2000
* The Police and Criminal Evidence Act 1984, and Codes of Practice
* The Criminal Procedure and Investigation Act 1996
* The Equalities Act 2010

1. **Management Orders (Housing Act 2004)**

**HMO Management Orders**

The Council’s use of HMO Management Orders will be in line with government guidance. Further information about management orders can be downloaded from <https://www.gov.uk/government/publications/licensing-and-management-provisions-in-the-housing-act-2004-draft-guidance>

**Empty Dwelling Management Orders (EDMOs)**

The Council’s use of EDMOs will be in line with government guidance (this document can be downloaded from  
<https://www.gov.uk/government/publications/empty-dwelling-management-orders-guidance>

1. **Serving Enforcement Notices / Orders**

In circumstances where informal action has failed or is not appropriate to the circumstances, a formal notice or order may be served. This will usually be accompanied by a charge and an imposed timescale for completion of the works stated.

We will clearly state on any notice or order what the problems are. We will give options for remedy (where appropriate) and explain what will happen if the notice or order is not complied with.

Failure to comply with a statutory notice or order, depending on the circumstances of the case, may result in the instigation of legal action, Civil Penalties and/or works in default.

The service of statutory notices and the making of orders may be carried out in parallel with other action, detailed elsewhere in this policy. For example, we may serve an Improvement Notice for works to an HMO whilst investigating non-compliance with mandatory licensing or bad management at the same property.

Landlords or owners, who fail to comply with their obligations, requiring formal action by the Council, may be subject to targeted interventions on other properties they own.

Where requested, when a person is considering an appeal, or where an appeal has been made, the Officer may meet with them to discuss the case to save on potential costs and to try to reach an agreement outside of the appeal process.

1. **Intervention where there is Harassment, Illegal Eviction and Poor Tenancy Management**

Ashfield District Council expect that landlords and agents have good management practices in place. We believe landlords and agents should behave in a professional and respectful way towards their tenants.

Landlords and tenants should expect us to challenge poor tenancy management practices and seek improvements in approach.

The most serious of these types of offences are to do with the harassment and illegal eviction of tenants (Protection from Eviction Act 1977). We take these offences very seriously as we have a strong commitment to:

* Protecting the interests of vulnerable people
* Promoting respect for the individual’s home
* Preventing homelessness
* Promoting the health and well-being of people living in private rented accommodation

The law provides a process for landlords to lawfully regain possession of their properties and these legal requirements must be followed when a landlord wants a tenant (or licensee) to leave.

We will **not** become actively involved in assisting with the preparation of legal Notices or other documents on behalf of landlords. However, we will sign-post landlords to the right information and other services where they can get this information.

If a resident claims that they have been made to leave without the proper legal procedures being followed, this may give reason to suspect that an offence has been committed under the Protection from Eviction Act 1977. In these cases, we will investigate with a view to:

* Informing the landlord and resident of their rights and responsibilities where appropriate
* Prosecuting offences where there is enough evidence for there to be a reasonable prospect of conviction and where it is in the public interest to do so.

We will liaise with our colleagues in the department that deals with homelessness to assess all cases where private rented tenants have been asked to leave. This is to make sure we identify any illegal or poor practice in this area.

1. **Licensing of Properties**

Not all of our interventions come directly from a referral or complaint. We may, in line with the Council’s legal responsibilities, carry out inspections to ensure landlords are complying with the law. For instance, management duties are applicable to all Houses in Multiple Occupation (HMOs).

Breaches of management duties may be investigated with other matters or following identification of other problems at the house.

Landlords or owners must apply to the Council for a licence to operate for some HMOs that fall within the statutory definition. We may initiate visits to HMOs where we consider that they may need to be licensed under this mandatory HMO licensing scheme, but an application has not been received.

Where the Council has designated an area for selective or additional HMO licensing, requiring some or all landlords letting properties in the area to obtain a licence, we will initiate visits and actions to make sure that properties comply with the conditions applying to those schemes.

We will seek to identify all properties that are required to be licensed, and where they are not licensed, we will take the appropriate legal action.

In addition, where we identify that a property fails to meet the relevant property standards, they will be subject to appropriate enforcement action as detailed elsewhere in this policy to ensure that all deficiencies and defects are remedied.

Licences have standards and conditions attached to them, which must be complied with. We may prosecute breaches of licence conditions or issue notice of a financial penalty where there is sufficient evidence, and it is in the public interest to do so.

The Council must consider various factors when processing a licence application. More details about mandatory HMO licensing can be found at [HMO LICENCING](https://www.ashfield.gov.uk/housing/finding-renting-or-owning-a-home/private-housing/houses-in-multiple-occupation/) Details of any scheme of selective licensing the Council administers are detailed at [SELECTIVE LICENSING](https://www.ashfield.gov.uk/housing/finding-renting-or-owning-a-home/private-housing/selective-licensing/selective-licensing-scheme-guide/which-properties-require-a-licence/).

1. **Fit and Proper Persons and Satisfactory Management Arrangements**

Ashfield District Council take a rigorous approach to assessing whether landlords and agents named on a licence are Fit and Proper, and whether their management arrangements are satisfactory.

Under the Housing Act 2004, where a property is required to be licensed under either the mandatory HMO licensing scheme, or a selective licensing scheme, the Council must be satisfied that the Licence Holders and other persons involved in the management of the property, are a fit and proper person to be the licence holder or to be the manager of the property additionally , the Council must be satisfied that the management arrangements are satisfactory, including that persons involved in the management of the property are fit and proper persons to be so involved, and have a sufficient level of competence, and that the management structure and funding arrangements are suitable.

This includes considering factors such as whether managers or Licence Holders have a criminal record or have contravened landlord and tenant law. Other factors would include having been declared bankrupt, and also, any evidence we have about the competence of the individual or company in relation to the role it is proposed they have in managing the property.

Where we are concerned that the management arrangements proposed for a property are not satisfactory, we may make further enquiries including, for example, asking a manager to attend an interview to discuss their role in managing the property to help us decide whether they have the competence to perform that role.

1. **Rent Repayment Orders**

A rent repayment order is an order made by the First Tier Tribunal (Property Division) requiring a landlord to repay a specified amount of rent either to the tenant or the Council.

An application for a rent repayment order can be made by the Council or the tenant, depending on how the rent was paid. If the tenant paid their rent themselves, then the rent must be repaid to the tenant. If rent was paid through Housing Benefit or through the housing element of Universal Credit, then the rent must be paid to the Council.

Rent Repayment orders can be applied for when a range of various offences have been committed relating to the management of properties, whether or not there has been a conviction.

Where we are aware that a landlord has been convicted of any of the offences for which a Rent Repayment Order can be made, and the breach was committed in Ashfield, we will always consider applying for a Rent Repayment Order. In these cases, the tribunal must order the maximum amount in line with the Housing and Planning Act 2016. This is the amount of housing benefit or universal credit paid to the landlord over a 12-month period.

We may apply for a Rent Repayment Order following conviction for an offence where we consider that there is sufficient merit with regard to factors including: -

* Whether the offender could reasonably have been expected to know that they were in breach of their legal responsibilities
* The likelihood of further offending by the offender - the deterrent to others who may commit similar offences,
* The financial circumstances of the offender, -
* The removal of any financial benefit the offender may have obtained as a result of committing the offence.

We may also decide to apply for a Rent Repayment Order where there has not been a conviction, but we are satisfied that an offence, for which a Rent Repayment order can be made, has taken place and there is a reasonable prospect of the Council satisfying the tribunal beyond reasonable doubt that the offence was committed.

In these cases, when deciding whether to apply for a Rent Repayment Order where there has not been a conviction, and when deciding how much rent we should seek to recover, our considerations will include, but not be limited to, factors such as:

* The financial circumstances of the offender,
* Any previous action taken against the offender,
* Whether the offender could reasonably have been expected to know that they were in breach of their legal responsibilities
* The likelihood of further offending by the offender,
* The deterrent of the order to others who may commit similar offences,
* The removal of any financial benefit the offender may have obtained as a result of committing the offence,
* Any other aggravating factors,
* The conduct of the offender and the occupier.

Where there has been a conviction and the tenants have the right to pursue a rent re-payment order, we will consider offering them support in any application made to the Tribunal service where we consider that an application has merit, having regard to such factors as:

* The harm caused to the tenant,
* The deterrent value to the offender,
* Removing any financial value, the offender may have obtained in committing the offence.

We will have regard to the Government’s current Rent Repayment guidance and any other relevant Council policy when deciding whether to apply for a Rent Repayment Order.

1. **Recovery of Costs**

Where there is a legal entitlement, we will seek to recover all costs and charges incurred to us in using our powers to take legal action.

There are various methods by which the Council can recover the costs incurred in carrying out work in default, dependent on the type of notice that has been served:

* Sundry debtor method: the Council will send the appropriate person an invoice requesting payment.
* Charge on the property: where the legislation governing the enforcement action allows the Council can put a charge on a property. The charge remains in place until the Notice is complied with and, in the case of the Council carrying out and paying for works in default, until the debt is cleared. If the property comes up for sale a Local Authority search will show the outstanding Notice and trigger the repayment from the proceeds of the sale.
* Forcing sale of the property: the Council can reclaim its costs by bringing about the sale of the property. The proceeds of the sale will be given to the owner less the amount owed for the work in default and less the amount incurred by the Council in selling the property.

1. **Publicity**

We acknowledge that media reporting of convictions of criminal offences acts as a deterrent to others, and has the potential for reducing offending, deterring rogue landlords and improving the management and safety standards of private rented housing. To this strategic end, where we consider it appropriate, we will inform local, and where relevant national, media, of enforcement action taken within this policy.

We will encourage and assist media representation at court hearings and actively publicise convictions where we consider it may deter similar behaviour or offences from being committed.

1. **Shared Enforcement Responsibility**

In circumstances where enforcement responsibility is shared between enforcement agencies, the Environmental Health Residential Team will have regard to procedures agreed with other enforcement agencies, particularly where memoranda of understanding and agreed protocols exist.

In some cases, enforcement powers will rest with another agency (for example the Health and Safety Executive has responsibility for enforcement of gas safety in private domestic property). In these situations, the Environmental Health Residential Team will act to ensure that the case is transferred to the enforcing agency promptly and in accordance with any agreed procedures.

1. **Vulnerable Persons**

Before taking action that may affect a property occupied by a vulnerable person, officers should ensure that appropriate consultation has been carried out with social services and other relevant support agencies.

1. **Displaced Occupiers**

Officers will inform the Housing Options Manager/Senior at the earliest opportunity when there is likelihood of an occupier being displaced from their property because of informal/formal enforcement action related to the Council’s direct/indirect action. This is to ensure that the occupier of that property receives appropriate housing advice/action.

1. **Owner Occupied Properties**

Enforcement action against owner occupiers will be taken on a case-by-case basis where there is a clear risk to public health or safety. In other circumstances officers may refer owner occupiers to sources of advice and/or funding.

The Council will otherwise only take action in respect of owner-occupied properties where defects are causing a statutory nuisance to vertically adjoining properties (on different curtilages) i.e., not flats which adjoin horizontally, where there would be shared ownership responsibilities to pay for repairs.

1. **Leaseholders**

The Council occasionally receives complaints from leaseholders requesting assistance in taking action against other leaseholders or freeholders.

**Council assistance will be limited to:**

* Category 1 and high Category 2 hazards where the leasehold flat is tenanted. Contraventions of the HMO Management Regulations (this may necessitate action being taken against the leaseholder themselves)
* Statutory nuisances/serious or emergency situations affecting either the common parts of or multiple flats in a leasehold block.
* Any other reason the Council considers appropriate.

**It may be appropriate in other situations to redirect the leaseholder to:**

* The Leasehold Advisory Service - Peel Building, 2 Marsham St, London SW1P 4DF, Telephone 020 7832 2500 <https://www.lease-advice.org/>
* A solicitor who specialises in leasehold law

1. **Social Housing Providers**

The Council expects Social Housing providers to manage their stock professionally and ensure that they properly investigate complaints from tenants about their living conditions. The Environmental Health Residential Team will have minimum input in these complaints unless the case involves a significant Category 1 hazard.

In the majority of cases social housing providers have established procedures for responding to tenant complaints and the Council’s preferred approach is to rely on the provider to respond appropriately. However, if the social housing provider fails to respond to the hazard, the Council will take action in the same way as with a private landlord.

1. **Service Complaints or Compliments**

We are committed to providing quality services and your suggestions and comments about any aspect of our service will help us to do this. We will deal with any complaint you have in strict confidence. The details of the Council’s complaint procedure can be found on the website at  [Complaints and Compliments](https://www.ashfield.gov.uk/your-council/contact-us/complaints-and-compliments/complaints-and-compliments-policy/#:~:text=You%20can%20make%20a%20complaint%20by%3A,Telephoning%20us%20on%2001623%20450000) <https://www.ashfield.gov.uk/your-council/contact-us/complaints-and-compliments/complaints-and-compliments-policy>

1. **Confidentiality**

The Council will at all times maintain the confidentiality of persons requesting our service. However, in the case of prosecution and witness statements, the Council may be required to reveal the names and addresses of the parties involved.

The Environmental Health Residential Team does not investigate complaints made anonymously or those without a completed referral form.

1. **Equalities**

The Council is committed to ensuring that it complies with the requirements of the Equality Act 2010. Part of this commitment requires an understanding of how policies may affect people with ‘protected characteristics’ under the legislation.

It also recognises that people with ‘protected characteristics,’ such as those who are older or younger, who have disabilities or who are from a minority ethnicity or LGBT+ community, may be particularly vulnerable. The Council will work to ensure that any risk assessments or consultation takes this into account and that our response is tailored accordingly.

Behaviour that is malicious in nature, offensive, or targeted towards a particular group of society will be dealt with as a high priority because of the elevated risk.

1. **Policy Review**

This Policy will be reviewed every 2 years to ensure that any changes in legislation or best practice are included and updated. We will consult with service users, staff, internal and external partners in the review.

1. **Sharing Information and Data Protection**

Ashfield District Council is committed to ensuring customer confidentiality and ensuring we are compliant with the Data Protection Act 2018, UK General Data Protection Regulation and the Crime and Disorder Act 1998 around data processing and sharing of information.

Officers investigating is experienced in processing sensitive personal data, and we have robust procedures in place for the gathering and recording of consent for processing this information and disclosure. Although the Council will aim to gain consent prior to any information sharing, there may be instances where we have a statutory duty to share information without consent, e.g., where children or vulnerable adults are considered at risk, or for matters pertaining to the prevention and detection of crime.

The Council’s data protection can be found at: https://www.ashfield.gov.uk/your-council/legal-information-public-data/data-protection/

**36. Contact Us**

We encourage people to get in touch with us. If you have any questions about our work, or about this policy, you can contact us in the following ways.

By post at**: Environmental Health Residential Ashfield District Council, Urban Road Kirkby in Ashfield, Nottinghamshire, NG17 8DA**

By telephone: **01623 457345 (Option1)**

By e-mail: **Ehresidential@ashfield.gov.uk**

**Appendix 1 – Legislation Summary**

This section lists the legislation commonly enforced by the Private Sector Housing service and outlines the provisions. It is not an exhaustive list and is not a full statement of the law – it is simply a summary.

The Council has a range of enforcement powers to address hazards that exist in residential premises including:

* Chapters 2 and 3 of the Housing Act 2004.
* Improvement Notices – section 11 and 12 Housing Act 2004
* Prohibition Orders – section 20 and 21 Housing Act 2004
* Hazard Awareness Notices – section 28 Housing Act 2004
* Emergency Remedial Action – section 40 Housing Act 2004
* Emergency Prohibition Order – section 43 Housing Act 2004
* Demolition Order – section 265 Housing Act 1985 as amended.
* Clearance Areas – section 289 Housing Act 1985 as amended.

The first four options are available for both Category 1 and Category 2 hazards. The last four are not available for Category 2 hazards:

Category 1 hazards are those which pose the highest risk of injury or harm. Category 2 hazards are those with lower levels of risk, but still can be significant.  
Further information and detailed guidance about the Housing Health and Safety Rating System, including Category 1 and 2 hazards can be downloaded via the following: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/9425/150940.pdf (pdf)](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/9425/150940.pdf)

The action the Council chooses to take will be the most appropriate course of action in relation to the hazard(s) identified at a property.

Officers considering enforcement action under Part 1 of Housing Act 2004 will have due regard to the ‘Housing Health and Safety Rating System: Enforcement Guidance. Housing Act 2004 (ODPM, February 2006)’. This document can be  
downloaded free of charge from [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/9425/150940.pdf (pdf)](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/9425/150940.pdf)

**Improvement Notices – section 11 and 12 Housing Act 2004**

An Improvement Notice under section 11 or 12 Housing Act 2004 can be served in response to a Category 1 or Category 2 hazard. Under section 11, action must as a minimum remove the Category 1 hazard but may extend beyond this.

Should the notice not be complied with, the Council may carry out the works in default and recharge the person upon whom it was served. Not complying with a notice is a criminal offence and the Council may choose to prosecute the person who received the notice if they failed to comply with it.

Normally, an Improvement Notice becomes operative 21 days after service of the notice. However, the Council may suspend the action specified in an improvement notice. The notice may specify an event that triggers the end of the suspension, such as non-compliance with an undertaking given to the authority, or a change of occupancy. Suspension may be appropriate where the hazard is not sufficiently minor to be addressed by a Hazard Awareness Notice, but the current occupiers are not members of a vulnerable group. However, in this kind of circumstance, officers will need to judge whether a risk exists that will warrant a programme of improvement over a more relaxed timescale.

**Prohibition Orders under section 20 or 21 Housing Act 2004**

A prohibition order under section 20 or 21 Housing Act 2004 may be served in response to a Category 1 or Category 2 hazard. It may prohibit the use of part or all of the premises for some or all purposes, or occupation by particular numbers or descriptions of people.

A prohibition order must specify the nature of the hazard, the deficiency giving rise to the hazard, the premises or part of the premises to which prohibitions are imposed and any remedial action that would result in the order being revoked. The order must also contain information about the right to appeal.

Using premises or permitting premises to be used, knowing that a prohibition order has become operative is a criminal offence and the Council is able to prosecute for non-compliance.

Normally a prohibition order becomes operative 28 days after service. However, the Council may suspend the action specified in the order and can specify an event that triggers the end of the suspension.

**Hazard Awareness Notices under section 28 Housing Act 2004**

In certain circumstances, the Council may determine that advisory action only is needed in respect of a hazard and may serve a Hazard Awareness Notice. A Hazard Awareness Notice under section 29 of the Act may be a reasonable response to a less serious hazard, where the Council wishes to draw attention to the desirability of remedial action.

A Hazard Awareness Notice must specify the nature of the hazard, the deficiency giving rise to the hazard and details of any remedial action that the Council considers would be practicable and appropriate to take.

This procedure does not require further action by the person served with the notice and therefore there is no appeal provision.

The service of a Hazard Awareness Notice does not prevent further formal action, should an unacceptable hazard remain. This also provides a way of recording and monitoring the action needed and can provide evidence to support further enforcement action if needed should the remedial works not be carried out or be carried out inadequately.

The Council will use the Hazard Awareness Notice procedure where an owner or landlord has agreed to take remedial action and officers are confident the work will be done in reasonable time.

**Emergency Remedial Action under section 40 Housing Act 2004**

Section 40 of the Housing Act 2004 empowers the Council to take emergency remedial action against Category 1 hazards which present an imminent risk of serious harm to the occupier. The action will consist of whatever remedial action the Council considers necessary to remove an imminent risk or serious harm.

**Emergency Prohibition Orders under section 43 Housing Act 2004**

Section 43 of the Housing Act 2004 empowers the Council to make an Emergency Prohibition Order where Category 1 hazards present an imminent risk of serious harm to the occupiers. The order may prohibit the use of all or any part of a premise with immediate effect.

The Council will serve an Emergency Prohibition Orders only where it is considered essential for the safety of the occupiers.

**Demolition Orders under part 9 of the Housing Act 1985 (as amended)**

Demolition Orders are available under part 9 of the Housing Act 1985 (as amended) as a possible response to a Category 1 hazard. A Demolition Order requires the property to be vacated within a specified time and subsequently demolished. It is a criminal offence to allow a premise to be occupied after a Demolition Order has come into effect. Should the building not be demolished, the Council can demolish it and recharge the person upon whom the notice was served.

**Clearance Areas under section 289 Housing Act 1985 (as amended)**

A clearance area can be declared if the Council is satisfied that each of the residential buildings in the area contains one or more Category 1 hazards (or that the buildings are dangerous or harmful to the health or safety of the occupiers as a result of their bad arrangement or the narrowness or bad arrangement of the streets); and any other buildings in the area are dangerous or harmful to the inhabitants. The Council is required to consult on the declaration of a clearance area and publish its intentions. Full Council approval would also be required.

**Power to Charge for Enforcement Action**

Section 49 of the Housing Act 2004 allows the Council to make a reasonable charge as a means of recovering costs incurred in serving an Improvement Notice, making a Prohibition Order, serving a Hazard Awareness Notice, taking emergency remedial action, making an Emergency Prohibition Order, or making a Demolition Order. The costs recoverable relate to officer time and other expenses incurred in connection with the inspection of the premises, subsequent consideration of any action to be taken, and the service of notices.

The Council will seek to recover the costs of taking enforcement action in all cases were permitted to do so under the relevant legislation. The Council will apply its standard charge for the recovery of costs, which will be reviewed annually.

**Houses in Multiple Occupation (HMOs)**

The Council has a statutory duty and powers to ensure adequate standards in HMOs are met and maintained.

The Housing Act 2004 introduced a mandatory scheme to licence HMOs. The mandatory licensing scheme applies only to larger high-risk HMOs occupied by five or more people, comprising two or more households and there is sharing of a basic amenity (such as kitchen or bathroom).

The HMO licensing regime provides procedures to assess the fitness of a person to be a licence holder, potential management arrangements of the premises and suitability of the property for the number of occupants, including the provision of relevant and adequate equipment and facilities at the property.

It is a criminal offence if a person controlling or managing an HMO does not have the required licence. Breaking any condition of a licence is also an offence.

Where housing benefit has been paid in respect of an unlicensed HMO, the Council may apply to the First Tier Tribunal for an order to recover a sum equivalent to the housing benefit paid.

Licensable HMOs without planning permission will be dealt with according to the HMO licensing/Planning Protocol:

The Housing Act 2004 also provides powers to the Local Authority to take over the management of unlicensed or problem HMOs, with a view to protecting occupiers and those in the vicinity and, where possible getting properties licensed and properly managed. This is achieved by way of Management Orders.

**Interim Management Orders (IMO)**

The Council must make an IMO in respect of a licensable HMO which is not licensed if it is satisfied that there is no reasonable prospect of the property being licensed in the near future or it is necessary to protect the health, safety, or welfare of occupiers of the property or properties in the vicinity.

An IMO is in force for a maximum of 12 months and allows the Council to manage the property with all the rights of a landlord and to collect rent and expend it on work to the property.

An IMO ceases to have effect once a licence is granted. There are provisions to vary, evoke and appeal against an IMO.

**Final Management Order (FMO)**

The Council must make a FMO where, on expiry of an IMO, the property requires to be licensed but the Council considers it is still unable to grant a licence.

A FMO is similar to an IMO in that the Council continues to manage the property with all the rights of the landlord, but they must be reviewed from time to time.

As with IMOs, there are provisions for varying, revoking, and appealing the making of an FMO.

**Management Regulations**

Management Regulations made under the Housing Act 2004 impose duties on landlords and managers of HMOs (whether or not subject to licensing). There are no notice serving powers under the Management Regulations, but the Council can prosecute for breach of the regulations.

**Overcrowding Notices**

Overcrowding Notices may apply to HMOs that are not required to be licensed. The effect of an Overcrowding Notice is that the person served must comply with the terms of the notice and if they fail to do so they commit an offence for which the Council can prosecute.

An Overcrowding Notice must either prohibit new residents or limit the number of people sleeping in the HMO.

**Empty Properties**

The Housing Act 2004 introduced Empty Dwelling Management Orders (EDMO) in order to unlock the potential of empty houses and to get them back into use as houses as quickly as possible. EDMOs are designed as a backup to voluntary leasing arrangements with a Registered Provider and an alternative to enforcement action under other legislation.

There are two types or order, Interim EDMO, and Final EDMO. EDMO allow the Council to secure the occupation and proper management of privately owned houses and flats that have been unoccupied for a specified period (at least six months).

**Interim EDMOs**

In order to make an Interim EDMO the Council must apply for authorisation from First Tier Tribunal. The property must have been empty for at least six months and there must be a reasonable prospect that the property will become occupied if an interim EDMO is made.

An Interim EDMO comes into force as soon as it has been authorised and can last for 12 months. Once an Interim EDMO is in force, the Council must take steps to secure occupation and proper management of the property. However, the Council may only grant a tenancy with the consent of the owner.

**Final EDMO**

The Council may make a Final EDMO to replace an Interim EDMO or a previous Final EDMO if the Council considers the property would otherwise remain unoccupied.

The Council does not need to obtain authorisation from the RPT to make a Final EDMO. Once a Final EDMO is in force, the Council must review its operation and take steps to secure occupation of the dwelling.

Subject to any appeal, a Final EDMO comes into force no earlier than the day after the period for appealing has expired and last for the period specified in that order, which can be up to seven years.

**Other Legislative Provisions**

The Environmental Health Residential Team is also responsible for enforcing the provision of other legislation including but not limited to:

* Public Health Acts 1936
* Building Act 1984
* Environmental Protection Act 1990 Statutory Nuisance related to domestic premises.
* Prevention of Damage by Pests Act 1949
* Redress Schemes for Lettings Agency work and Property Management Work (Requirement to Belong to a Scheme) (England) Regulations 2014
* Smoke and Carbon Monoxide Alarm (England) Regulations 2015
* The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
* The Town and Country Planning Act 1990
* The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

**Standard Charge for Notices**

A standard charge of £500 be adopted to recover administrative and other costs incurred in connection with enforcement action under Part 1 of the Housing Act 2004. This will be reviewed periodically.

Please note where additional expenses are incurred as part of the inspection, these may be included and will be itemised in any notice served.

**Useful Links**

Regulators’ Code: Regulators' Code - GOV.UK (<http://www.gov.uk/>)

HHSRS: [Housing health and safety rating system (HHSRS): guidance for landlords and property-related professionals - GOV.UK](https://www.gov.uk/government/publications/housing-health-and-safety-rating-system-guidance-for-landlords-and-property-related-professionals)

Civil Penalty Notices: Civil penalties<https://www.gov.uk/government/publications/civil-penalties-under-the-housing-and-planning-act-2016> under the Housing and Planning Act 2016 - GOV.UK ([www.gov.uk](http://www.gov.uk))

[Rent Repayment Orders: Rent repayment orders under the Housing and Planning Act 2016 - GOV.UK (www.gov.uk)](https://www.gov.uk/government/publications/rent-repayment-orders-under-the-housing-and-planning-act-2016)

<https://www.gov.uk/government/publications/simple-cautions-guidance-for-police-and-prosecutors>

[Prosecution: The Code for Crown Prosecutors | The Crown Prosecution Service (cps.gov.uk)](https://www.cps.gov.uk/publication/code-crown-prosecutors)

<https://www.gov.uk/government/publications/banning-orders-for-landlords-and-property-agents-under-the-housing-and-planning-act-2016>

**Fit and Proper (Housing Act 2004)**

* 1. **Why is there a test.**

Under the Housing Act 2004, if the Council is to issue a selective licence, an additional HMO licence or a mandatory HMO licence it must be satisfied that the proposed licence holder is a fit and proper person and the most appropriate person to hold the licence. It must also be satisfied that the proposed manager of the house is a fit and proper person to be the manager of the house. If not, the licence must be refused unless other arrangements can be agreed.

The licence may be revoked where the Council no longer considers that the licence holder is a fit and proper person to be the licence holder and where the Council no longer considers that the management of the house is being carried out by persons who are not in each case fit and proper persons to be involved in its management.

These requirements are to ensure that those responsible for operating the licence and managing the property are of sufficient integrity and good character to be involved in the management of the particular residential property, and as such they do not pose a risk to the welfare of safety of persons occupying the property.

* 1. **What properties does this policy affect?**

This policy affects any property that requires a licence by the Council under the licensing of HMOs (Part 2 of the Housing Act 2004) and the licensing of other residential accommodation (Part 3) known as Selective Licensing.

* 1. **What is meant by ‘involved in the management’?**

This means the Council must consider licence holders, managers and others involved in the management of the property. This will not extend to, for example, all members of staff at a managing agent who have limited access to a property, but it will be necessary to find out how repairs to the property are carried out. It is a licence condition for licence holders and managers to ensure their staff are fit and proper. Licence holders and anyone else who is involved in the management of a licensable property are in a position of trust. The nature of their role means they will enter the property on occasion.

The licence holder and the manager can be two different people. Where this is the case, a decision must be made for each individual about whether they are a fit and proper person.

**4. What will The Council do?  
The Council will consider a person ‘fit and proper’ if it is satisfied that:**

* They do not have any unspent convictions that may be relevant to their role as either licence holder or manager and, in particular, any conviction involving fraud or other dishonesty, or violence or drugs or any offence listed in Schedule 3 to the Sexual Offences Act 2003.
* They have not been found by a court or tribunal to have practised unlawful discrimination on grounds of a protected characteristic as defined within the Equality Act 2010 such as: sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business.
* They do not have any unspent conviction in relation to any housing, public health, environmental health or landlord and tenant law; including any civil proceedings in which judgment was made against them.
* They have not been in control of a property, which has been subject to a control order under section 379 of the Housing Act 1985 in the last 5 years.
* They have not had a licence refused, been convicted of breaching the conditions of a licence under Parts 2 or 3 of the Housing act 2004; or have acted otherwise than in accordance with a Code of Practice approved under section 233 of the Act that concerns a property in their ownership (whether or not in the Council’s district).
* They do not own or have not previously owned property that has been the subject of an interim or final management order or a special interim management order under the Housing Act 2004.
* They have not been served with a Banning Order in accordance with part 2, chapter 2 of the Housing and Planning Act 2016.
* In addition, the Council may also take in to account whether any person associated or formerly associated with the applicant or manager has done any of these things, if it considers this information relevant.
  1. **How will the Council make their decision?**

Where a person has relevant unspent convictions and or has contravened provisions of relevant legislation or codes of practice then the Council may decide that that person is not fit and proper. Each case must be considered on its own merits. Evidence of any specified misconduct does not necessarily lead to the conclusion that the person is not fit and proper. The Council will adopt a common-sense approach, exercising its discretion reasonably and proportionately, taking into account relevant factors and disregarding irrelevant factors.

Where there is evidence of specified misconduct then the Council, when deciding whether that misconduct means that the person is not fit and proper, will take into account the following factors:

* The relevance of the conviction/contravention in relation to the person’s character and integrity to manage a licensable property.
* The severity of the conviction/contravention in terms of impact, upon residents and the wider community
* When the conviction/contravention took place
* Any mitigating circumstances
* Any other relevant factors

This list of factors is not intended to be exhaustive, and the Council will take into account any other relevant factors in so far as they are relevant to the fitness of the relevant person. In other words, the misconduct has to be relevant to the person’s fitness to hold a licence and/or manage the particular residential property.

The Council would not normally consider a landlord with a criminal record for unlawful evictions and harassment of tenants to be fit and proper person. In contrast, evidence of minor contraventions of housing or landlord and tenant law need not result in the Council deciding that a person is not fit and proper.

If an offence is isolated and/or there are mitigating circumstances this may not result in the Council deciding that the person is not fit and proper. Multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour which should be taken into account. A particularly serious view may be taken where the victim of any offence is vulnerable.

* 1. **Consideration of ‘persons associated or formerly associated’ with the proposed licence holder or manager.**

If there is evidence that a person associated, or formerly associated, with the person proposed to be the licence holder or manager of the property has committed any wrongdoings, that evidence may be taken into account in determining the fitness of the proposed licence holder, manager or other persons involved in the management of a property (even if that person has himself or herself an unblemished record). It would not be appropriate for a licence to be granted to someone, or for someone to be the manager of a property if that person were merely acting as a ‘front’ for someone else who would not be a fit and proper person. It would also not be appropriate if someone’s ability to manage a property satisfactorily would be unduly influenced by an associate who was not or would not be considered fit and proper.

**Examples**

A husband and wife, where the husband is the landlord (or indeed both he and his partner are joint landlords), but only the wife has applied for the licence. There is evidence that the husband has committed wrongdoings, and those wrongdoings are relevant to the management of the property and his fitness to be a manager or licence holder. Since the husband is joint owner and an associate of the wife it would be reasonable to assess whether the husband is fit and proper given that he is an associate of the proposed licence holder. If the husband is found not to be fit and proper, then the Council may refuse to grant the wife a licence.

The director of company, A, has been prosecuted previously and convicted a number of times for failing to manage a property. A then starts to work for another managing agent, B, as an employee. Depending on A’s duties B may need to satisfy the Council that he or she is fit and proper if employee A is involved in the management of a property. If A is required to satisfy the fit and proper test and fails it, B, i.e. the employer, could be found not to be fit and proper to manage or be a licence holder by association.

A decision that someone is not fit and proper or a refusal to grant a licence in these circumstances will normally only be made if:

* there is actual evidence of relevant misconduct by the associated person and
* the associate’s fitness is directly relevant to the applicant or proposed licence holder’s fitness to manage the property or hold the licence.

**7. Duration**

If someone is found not to be fit and proper this will normally remain the case for 5 years. If a subsequent licence application is submitted within that period, the Council will reconsider a person’s fit and proper status on the merits of that application. The applicant will be expected to provide evidence which demonstrates why she or he is a fit and proper person.

**8. Offences / evidence of contraventions**

The following examples give a general guide to the action which might be taken where convictions are disclosed or where there is evidence of contraventions proved to the satisfaction of the Council.

***Have they contravened housing law or landlord and tenant law?***

* Careful consideration should be given to an application where a person making a fit and proper person declaration has contravened housing law or landlord and tenant law, for example evidence of poor management, previous history, prosecutions, simple cautions. In particular, consideration should be given to contraventions under:
* The Public Health Acts of 1936 and 1961
* The Building Act 1984
* The Environmental Protection Act 1990
* The Town and Country Planning Act 1990
* The Prevention of Damage by Pests Act 1949
* The Protection from Eviction Act 1977
* The Local Government (Miscellaneous Provisions) Acts of 1982 and 1976
* The Housing Grants, Construction and Regeneration Act 1996
* The Local Government and Housing Act 1989
* The Housing Act 2004

Contravention of one of the above Acts could result in informal action where a person is asked to complete works, formal action where a legal notice is served, remedial action or work in default, or a prosecution. The nature of the contravention, its relevance to the management of a house and the potential harm caused must all be considered. It may also be relevant to consider the circumstances of the contravention, the number of contraventions and evidence to show good character since the date of the contravention. Each case will be considered on its own merit.

***Have they committed any offences involving fraud?***

Licence holders and anyone else who is involved in the management of a licensable property are in a position of trust. The nature of their role means they will enter the property on occasion and will be engaged in financial dealings taking personal data from their tenants, so there may be opportunities for fraud.

In particular a person will normally be found not to be fit and proper where the person has a conviction for an offence in which the victim has been deprived of money, property, or other benefit by misrepresentation/deception on the part of the offender including:

* Theft
* Burglary
* Fraud
* Benefit fraud (particularly where tenants are in receipt Housing Benefit)
* Conspiracy to defraud.
* Obtaining money or property by deception
* People trafficking
* Being struck off as the company director

***Have they committed any offences involving violence?***

A person will not normally be considered to be fit and proper where the person making a fit and proper person declaration has a conviction for the offence of:

* Murder
* Manslaughter
* Arson
* Malicious wounding or grievous bodily harm
* Grievous bodily harm with intent
* Actual bodily harm
* Grievous bodily harm
* Robbery
* Racially aggravated criminal damage
* Common assault
* Common assault which is racially aggravated
* Assault occasioning actual bodily harm.
* Possession of an offensive weapon
* Possession of a firearm

***Have they committed any offences involving drugs?***

Careful consideration should be given to an application where a person making a fit and proper person declaration has committed a drug related offence. Consideration should be given to the nature of the offence and what bearing it could have on the management of a licensable property. The nature, quantity and class of drugs will be taken into account.

***Have they committed any offences involving sexual offences?***

As licence holders, managers, and anyone else who is involved in the management of a licensable property will on occasion visit tenants in their homes, convictions for sexual offences will be treated particularly seriously.

A person will not normally be considered fit and proper where the person making a fit and proper person declaration has a current conviction for an offence contained in schedule 3 of the Sexual Offences Act 2003.

***Have they practiced unlawful discrimination?***

Careful consideration should be given to an application where a person making a fit and proper person declaration has practiced unlawful discrimination. Unlawful discrimination can include findings of an Industrial Tribunal on unlawful employment practice such as discrimination under the Disability Discrimination Act. Consideration should be given to the nature of the unlawful discrimination and what bearing it could have on the management of a licensable property.

**9. Data sharing**

Information used and ascertained for the purpose of deciding whether a proposed licence holder or manager is fit and proper is shared with other statutory bodies on the basis of preventing and detecting crime and disorder, particularly other local authorities, and the police. Property licence applicants agree to this when they sign the property licence application form.