



Housing Standards Team

# **Housing Enforcement Policy**

## **Foreword**

East Staffordshire Borough Council is committed to improving the housing stock in the Borough to have a positive impact on the health, safety and welfare of residents. Private rented housing is an essential part of the housing sector and plays a vital role in flexible housing provision. The majority of the private rented sector is in reasonable condition and is well managed. However there are still issues within the housing stock relating to condition and management that require intervention through enforcement action.

This Enforcement Policy aims to be a flexible document allowing officers to take informal action as a first course of action. We will therefore endeavour to work with landlords, residents and others by helping them achieve compliance with housing and other housing related legislation by giving advice, information and assistance. Where this approach does not achieve the desired results we will use the full force of the law to protect the public and environment. In serious cases we will proceed to prosecution, if appropriate. This policy therefore sets out the principles we will follow when enforcing housing and other housing related legislation.

I am confident this Policy strikes the right balance between the rights and responsibilities of landlords, tenants, and home owners.

Councillor R Hardwick

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## Introduction

This enforcement policy applies to the work and duties of the Housing Standards Team in relation to private sector housing conditions, including the owner-occupied, private rented and social rented sectors of the housing market. It sets out the general principles the Council will follow in relation to regulation and, more particularly, enforcement of the Housing Act 2004 and other housing related legislation. It describes what property owners and tenants can expect if enforcement action is warranted and the circumstances that may lead to prosecution for non-compliance with legislation.

Enforcement is not just limited to serving notices and prosecution; it includes:-

- Inspections and investigations regarding property,
- Investigations into residents (only for purposes of checking compliance with legal requirements under housing law),
- Giving advice to assist people in complying with legal requirements,
- Gathering information,
- Requesting and checking documents,
- Signposting customers to other organisation for advice and assistance.

The policy complies with the principles of the [Enforcement Concordat](#) published in 1998 by the Cabinet Office and the Local Government Association. In addition this policy follows the principles of better regulation described in the [Regulators' Compliance Code](#). The policy therefore should be:-

- transparent
- accountable
- proportionate
- consistent
- targeted

The policy supports all three Corporate Objectives;

- A cleaner, safer, healthier and happy environment in which our population live and work – by working with landlords and owners to improve housing conditions and the energy efficiency of dwellings.
- Encourage and develop local prosperity – by signposting occupiers to heating and insulation grants and ensuring landlords provide a thermally efficient home to reduce the level of fuel poverty in the Borough.
- To become an increasingly well run Council influenced by local people - we are committed to listening to our customers and where possible developing our service to meet their needs and expectations.

The team will enforce legislation in accordance with any guidance, circulars, and codes of practice or other publications by the Government. We will take note of any case law and good practice established in respect of housing legislation when taking enforcement action in order to continuously improve and to develop an excellent service.

Written information provided by the team will:

- Explain any deficiencies identified and the action necessary to comply with the legal requirement.
- Distinguish between legal requirements and good practice.
- Include details of how to request further information or advice.
- Provide details of the regulated person's or body's rights, for example their rights of appeal.

We will minimise the cost of compliance for companies and individuals by ensuring that any action we require is proportional to the risk posed and enforcement action taken will be proportionate to the seriousness of any breach of the law.

The Aims of the policy are to:-

- set out the legal responsibilities, policies, principles and priorities that the Housing Standards Team will follow when enforcing legislation,
- protect public health and safety from housing and housing related activities,
- increase the quality of accommodation available in the private rented sector,
- increase public confidence in the private rented sector,
- ensure license conditions are met,
- prevent or remedy statutory nuisance arising from housing,
- prevent or reduce negative environmental impacts from housing,
- ensure persons are held responsible for their actions which are detrimental to the health safety and welfare of other persons or the local environmental quality,
- ensure we meet our statutory duties as a public authority.

The policy will be monitored by the Housing Standards Manager to ensure it is effectively and fairly implemented.

## **Equalities Statement**

The Housing Team is committed to tackling inequality and complying with the Council's [Single Equalities Scheme](#). We will do this by ensuring all officers of the Housing Team apply this policy consistently and fairly regardless of the individual or collective characteristics of the people involved.

The following qualities are identified as forming the six strands of equalities policies:-

- Age
- Gender
- Sexual Orientation
- Disability
- Race
- Religion

Care has been taken to ensure that application of this policy will not result in discrimination against any of the six strands listed and an [Equalities Impact Assessment](#) (EIA) has been carried out.

## **Legislation**

Below is a list of all the Acts we enforce or comply with. For further information and guidance regarding legislation please refer to the Government's website [www.communities.gov.uk](http://www.communities.gov.uk)

Housing Act 2004

Housing Act 1985

Building Act 1984

Caravan Sites and Control of Development Act 1960

Environmental Protection Act

Law and Property Act 1925

Local Government (Miscellaneous Provisions) Act 1976

Local Government (Miscellaneous Provisions) Act 1982

Police & Criminal Evidence Act 1984

Prevention of Damage by Pests Act 1949

Public Health Act 1936

Regulation of Investigatory Powers Act 2000

Town & Country Planning Act 1990

## **Part One – Housing Conditions under the Housing Act 2004**

The Housing Act 2004 introduced the Housing Health and Safety Rating System (HHSRS). It is a risk assessment tool used to assess potential risks posed by a hazard and the likely effect on the health and safety of occupants in or visitors to residential properties. It focuses on the 29 prescribed hazards that present the greatest risk (see appendix on page 27). Hazards scoring 1000 and above are Category 1 hazards; hazards below 1000 are Category 2 hazards.

The purpose of housing legislation is generally to protect the health, safety and welfare of the public. We recognise that the most satisfactory way to achieve compliance with the law is to provide guidance and advice at the earliest possible stage to those responsible for complying with their legal obligations. Landlords, whether individuals or corporate bodies, are most commonly affected by the enforcement of housing and public health legislation. Advice and guidance will be provided to landlords on a proactive and reactive basis via newsletters, forums and one-to-one communication. However, there are times when enforcement of the law is necessary. Enforcement action includes serving statutory notices, completing works in default of the owner and criminal prosecution.

When the Council receives a complaint about housing conditions we will respond, usually by arranging to visit, in accordance with the following response times:-

- If the matter is urgent, such as blocked surcharging drains and sewers dangerous gas appliances, we will respond within 1 working day.
- In most standard cases, typically problems with inadequate heating, lack of handrails to stairs or issues with security, we will respond within 5 working days.
- If the matter is considered non-urgent, such as filthy and verminous premises or minor disrepair issues we will respond in 15 working days.

At times, it is likely that demand for the services of the Housing Standards Team may exceed the capacity of the team to deliver to these timescales. In those circumstances the requests for assistance will be assessed in terms of severity and prioritised accordingly. Customers will be advised of the likely time they will have to wait for a response but this should not exceed 20 working days.

The Housing Standards Team's first response will be to ensure that the person responsible (normally the landlord) has been made aware of the problem. Where this has resulted in no action an informal visit will be made to the property to discuss any issues with the occupier. If hazards exist at the property that may require enforcement action then a formal inspection will be arranged and the owner/manager of the property will be given 24 hour notice of the inspection under section 239 of the Housing Act 2004. For urgent issues a formal visit with notice under section 239 will be the first course of action.

In cases where emergency action may be required it may not be possible to give 24 hours notice but every effort will be made to contact the landlord as soon as possible.



## **Enforcement Options under HHSRS**

The Housing Standards Team has a range of enforcement options available to protect the health and welfare of residents. The Council cannot take more than one of the actions available at any one time with respect to the same hazard (unless one is an emergency action). However, the action required can be varied or repeated if an action taken has proved unsuccessful.

### **Improvement Notices**

Improvement Notices require the person responsible to carry out a described set of works to reduce the hazard(s) deemed unacceptable in the property.

### **Prohibition Orders**

Prohibition Orders may prevent the use of all or part of a property from some or all purposes, or occupation by particular numbers or descriptions of person.

### **Hazard Awareness Notices**

This Notice does not require any action on the person responsible but it sets out the hazards of concern and remedial action we believe would reduce the hazards.

### **Emergency Remedial Action**

Where there is imminent risk of serious harm to health or safety, we may take any remedial action necessary to remove this imminent risk of serious harm.

### **Emergency Prohibition Orders**

Where the hazard involves an imminent risk of serious harm to the health or safety of anyone occupying the property an Emergency Prohibition Order may be served.

### **Demolition Orders**

Demolition Orders are orders requiring the demolition of a property and are used where the property condition is such that hazards are present and remedial works are not possible or reasonable because of excessive cost or other reason.

### **Clearance Areas**

A Clearance Area can be declared on a single or group of properties as a result of Category 1 hazards and can be served due to the poor arrangement of the street or area to be cleared.

### **Dealing with Category 1 and Category 2 Hazards**

There are 29 defined hazards under the Housing Act 2004. Each hazard can be scored for a dwelling depending on the likelihood of that hazard occurring and the severity of injury if the hazard occurs. Each hazard will then receive a score and can be put into bands A-J as follows:-

Hazard Band	Hazard Score	Hazard Category and Duty to take action	ESBC response
A	5,000 or more	Category 1 Hazard  Local Authority has a mandatory duty to take action	Formal action in all cases if the matters is not resolved promptly
B	2,000 to 4,999		
C	1,000 to 1,999		
D	500 to 999	Category 2 hazard  Local Authority has a power to take action but does not have to	Formal action will only be taken when there are significant reasons to justify enforcement action (table 2 gives more detail)
E	200 to 499		ESBC will generally take no formal action in response to hazards scoring less than 499 unless numerous hazards indicate the property is run down and poorly managed.
F	100 to 199		
G	50 to 99		
H	20 to 49		
I	10 to 19		
J	9 or less		

In the first instance officers will seek the desired improvements or protection of the public's health and safety in relation to private housing by working informally with those involved. In exceptional circumstances officers will take a formal enforcement approach immediately, for example where:-

- There is a serious and immediate risk to health and safety (exposure to damaged asbestos insulation board, exposed live electrical wiring, raw sewerage surcharging in someone's home).
- A person refuses to carry out the works
- There is a recent history of failure to meet requests to carry out legally required works
- There is a recent history of a failure to manage a property in line with legal requirements

The reasons for taking enforcement action will be given in the statement of reasons attached to formal notices.

The Housing Standards Team will consider each case on its own merits when deciding what action to take. Flowcharts 1, 2 and 3 (see appendices on pages 28-31) provide a guide to how officers will decide the most appropriate course of action. Table 2 below, sets out what factors should be taken into account when considering the appropriate action to take in relation to a hazard.

Whilst HHSRS is tenure neutral we will take the occupiers views into consideration when deciding on the most appropriate action; this consideration may lead to a difference in the action taken in different tenures. For example, we may serve an Improvement Notice where the property is tenanted because the tenant has no control over remedying the defect but we may serve a Hazard awareness notice where the occupier is also the owner who may choose not to take remedial action.

Where Prohibition Orders are served a minimum of 6 weeks will be given from the date of service to the date the Order becomes operative. This is to give both the landlord and tenant the time needed to comply with the Order. Any affected landlords will be given information on the process they need to take to legally evict any tenant. All affected occupiers will be given information on the Council's homelessness duty and where to obtain assistance in finding accommodation.

Table 2. Enforcement Action Considerations from Enforcement Guidance

Hazard Awareness Notices: any hazard
<ul style="list-style-type: none"> <li>• 'Less serious hazard' than would justify an Improvement Notice.</li> <li>• Works are not practical or reasonable.</li> <li>• Views of occupant and current occupancy.</li> <li>• Landlord's willingness to remedy defect/deficiency.</li> </ul>
Improvement Notice: Category 1 and 2 hazards
<ul style="list-style-type: none"> <li>• Current occupancy (Vulnerable group for any hazards identified? Empty property)</li> <li>• Likelihood of vulnerable group visiting.</li> <li>• Other vulnerable group (hostel for alcohol/drug dependency etc.)</li> <li>• Risk of social exclusion.</li> <li>• Views of occupant and other agencies.</li> <li>• Combination of Category 2 hazards.</li> <li>• Staggered compliance times may help landlord to organise works.</li> <li>• Financial assistance available (eg. DFG).</li> </ul>
Prohibition Order: Category 1 or 2 hazards
<ul style="list-style-type: none"> <li>• Presence of a serious threat to health or safety.</li> <li>• Overcrowding or insufficient facilities.</li> <li>• Alternative uses of building. Listed building status.</li> <li>• Availability of alternative accommodation for rehousing.</li> <li>• Time scale for action (eg. Prohibition order operative after 28 days).</li> </ul>
Emergency Remedial Action: Category 1 hazards only
<ul style="list-style-type: none"> <li>• Must be Category 1 hazard with imminent risk of serious harm to the health or safety of any occupier of those or any other residential premises.</li> <li>• No management order in force.</li> <li>• Is action immediately necessary to remove imminent risk?</li> </ul>
Suspending Improvement Notice/Prohibition Order
<ul style="list-style-type: none"> <li>• What event will trigger the end of suspension?</li> <li>• Suspension may not be appropriate if there is a fast turnover of tenants.</li> <li>• Is property covered by wider strategic action?</li> <li>• Is vulnerable group likely to move into property?</li> <li>• How will change in circumstances be monitored?</li> <li>• Views of occupant.</li> </ul>
Demolition Order: Category 1 hazards only
<ul style="list-style-type: none"> <li>• Availability for re-housing occupants. Prospective use of the cleared site.</li> <li>• Demand for and sustainability of the accommodation if the hazard was remedied.</li> <li>• The impact of a cleared site on the appearance and character of the neighbourhood.</li> </ul>
Clearance Area: Category 1 hazards only
<ul style="list-style-type: none"> <li>• The residential buildings in the area contain one or more Category 1 hazards.</li> <li>• Are the buildings dangerous/harmful to the health and safety of the occupants as a result of bad arrangements?</li> <li>• Are other buildings in the area dangerous or harmful to the health of the inhabitants?</li> </ul>

## **Action Following Improvement Notice or Prohibition Order**

If the level or risk associated with a hazard has been sufficiently reduced, even if the terms of the order/notice have not been fully complied with the Council must revoke a notice served or order made to address that hazard. All Category 1 hazards must be reduced to at least a Category 2 hazard, where practicable.

Where improvement notices are served remedial works will be required even if the tenant vacates the property or is evicted unless there are exceptional circumstances that require an alternative course of action.

Where a notice or order is not satisfactorily complied with we will consider the following options: -

- Take no action
- Suspend or revoke the Notice/Order
- Take an alternative form of action
- Carry out the works in default
- Carry out the works in default and prosecute
- Prosecution or formal caution
- Ask the magistrate's court to make an order allowing action to be taken

The appropriate response to non-compliance will be determined on a case-by-case basis having regard to the individual circumstances involved and any relevant guidance. Please refer to the section on prosecution on page 23.

## **Powers to Require Documents**

Currently authorised officers have the power to require:

- documents to enable them to carry out their powers and duties under the Housing Act 2004,
- electrical and gas safety certificates in relation to Houses in Multiple Occupation,
- any person with an interest in a property to provide details about its ownership or occupation (power also available under section 16 of the Local Government (Miscellaneous Provisions) Act 1976).

It is an offence not to produce the required information, where information is not provided formal action will be considered (see page 23 – prosecution).

## Part Two – Houses in Multiple Occupation (HMO)

The Housing Act 2004 introduced a new definition of an HMO. One of the main changes was that the new definition brought a property let to a group of tenants on a shared basis into the definition of an HMO.

### Definition of an HMO

A property which is of one of the following types is a House in Multiple Occupation:

- an entire house or flat which is let to **three or more** individuals who form **two or more** households and who share a kitchen, bathroom or toilet.
- a house which has been converted entirely into bedsits or other non-self-contained accommodation and which is let to **three or more** individuals who form **two or more** households and who share kitchen, bathroom or toilet facilities
- a converted house which contains one or more flats which are not wholly self contained (i.e. the flat does not contain within it a kitchen, bathroom and toilet) and which is occupied by **three or more** tenants who form **two or more** households
- a building which is converted entirely into self-contained flats if the conversion did not meet the standards of the 1991 Building Regulations and more than one-third of the flats are let on short-term tenancies.

In order to be an HMO the property must be used as the tenants' only or main residence, rent should be payable and it should be used solely or mainly to house tenants. Properties let to students and migrant workers will be treated as their only or main residence and the same will apply to properties which are used as domestic refuges.

A single household is one family living together where family members are related by birth, cohabitation or a legal relationship such as foster children.

In addition to the HHSRS there are also specific regulations applied to HMOs. [The Management of Houses in Multiple Occupation \(England\) Regulations 2006](#) impose standards of management required in HMOs by the person having responsibility for the day-to-day management of the HMO. [The Licensing and Management of Houses in Multiple Occupation and Other Houses \(Miscellaneous Provisions\) \(England\) Regulations 2006](#) prescribe standards for deciding the suitability for occupation of an HMO by a particular number of households or persons. Failure to comply with these regulations is an offence.

Where these regulations are breached we will initially work informally with landlords to secure compliance as soon as possible. Where failures to comply with these

regulations can be dealt with under HHSRS we will consider action initially under Part 1 of the Housing Act 2004. However we will consider prosecution under the regulations in certain circumstances, for example:-

- where there has been a significant threat to health and safety of the occupants,
- where the landlord has previous history of non-compliance or has deliberately flouted the law,
- where informal action does not secure compliance within a reasonable timescale,
- where landlords take retaliatory eviction action against the tenants.

We will consult with Staffordshire Fire & Rescue when assessing fire safety in any HMO, and must where enforcement action is contemplated (unless the situation is considered an emergency and consultation is impractical). Any works required to improve fire safety will be consistent with the guidance set out in the LACORS guide "[Housing – Fire Safety](#)" published in August 2008. We will also refer to the "[Protocol between Local Housing Authorities and Fire and Rescue Authorities to improve fire safety](#)" published by CIEH when working with the Fire Authority.

If an enforcement notice is served on an HMO and it reverts to a single household the council will consider whether the impact of the hazard has diminished and take appropriate action.

## **Part Three – Mandatory HMO Licensing and other Licensing**

### **Licensing Duties**

All HMOs that are 3 storey and above and occupied by at least 5 people who form more than one household must be licensed. All applications for HMO licenses will be determined within 8 weeks of receipt of a complete application. The current cost of a licence is £300; we charge a further £80 if the information in the application is incomplete or requires further work (fee correct as of March 2010). The fee will be subject to review according to our financial regulations.

We will grant the licence if:-

- the house is reasonably suitable for occupation by not more than the maximum number of households or persons either specified in the application or for the number decided by the Council.
- the proposed licence holder is a fit and proper person and is the most appropriate person to be the licence holder out of all people who are reasonably available,
- the proposed manager of the house is the person in control or their agent/employee,
- the proposed manager of the house is a fit and proper person,
- the proposed management arrangements are satisfactory.

Otherwise the licence application will be refused; we will give the reasons for refusal and appeal details. Licensed HMOs will be inspected by the Housing Standards Team within 12 months of the licence being granted to ensure compliance with Part 1 of the Housing Act 2004.

It is an offence for a person to be a manager of or have control of an unlicensed HMO. If an unlicensed HMO, which should be licensed, is found but it represents no serious risk to the health and safety of the occupants, is well managed and has sufficient facilities we will initially take an informal approach and work with the landlord to get an application for a licence or temporary exemption (TEN) submitted within 21 days.

Where the HMO presents a danger to occupants or has very poor standards formal action will be taken immediately and prosecution proceedings will be commenced. Where the landlord fails to submit their application for a licence or TEN within 21 days prosecution proceedings will commence subject to our policy on page 27. Where there may be exceptional circumstances that have resulted in an application not being made, these will be considered.

Where landlords have been prosecuted for operating an unlicensed HMO the Council will use Rent Repayment Orders to claim back any Housing Benefit/Local Housing Allowance paid whilst the HMO was unlicensed. We will also provide tenants with information and advice on how they can claim back the rent they paid whilst the HMO was unlicensed.

## **Temporary Exemption**

Any applications for temporary exemption will be assessed as soon as possible and no longer than 15 working days of receipt of an application. The Council will serve a temporary exemption notice on the person in control or manager only if we are confident that steps are being taken to ensure the property will not require a licence in future. If we refuse to grant a temporary exemption notice we will advise the applicant by a notice, as soon as possible, and give the reasons for refusal and appeal details. TENs will be extended only in exceptional cases to be considered on individual merit.

## **Licence Conditions**

All licences issued by us will contain the standard conditions set out by schedule 4 of the Act. In addition we may impose further conditions, as follows;-

- restrict or prohibit the use of parts of the house by occupants,
- require reasonable steps to be taken to reduce or prevent antisocial behaviour,
- require the provision of facilities or equipment to meet standards in the HMO and require that they are kept in repair and proper working order,
- require the provision of facilities/equipment or works needed to meet standards be undertaken within a set time,
- require the licence holder or manager to attend training courses on any applicable Code of Practice for HMO produced under section 233.

We will impose further conditions where necessary and appropriate to address health and safety issues or to prevent the HMO from detracting from the local area. Conditions relating to training may be imposed where it is felt necessary to ensure reasonable standards of management are met.

## **Variation and Revocation of Licenses**

If there is a change of circumstances the Council will vary or revoke the licence if this is considered appropriate. Where requests to vary or revoke a licence are refused the reasons for refusal will be clearly stated and the grounds for appeal will be set out in the refusal notice.

If a licensed HMO has a change of circumstances such that it no longer needs a licence the licence will normally be revoked within 6 weeks of the Council becoming aware of the change in circumstances. If further investigations are required to ensure a licence is not required this time may be longer but investigations will normally be concluded within 8 weeks.

Informal action will be taken in relation to minor breaches of the licence conditions, for example not producing certificates on time as long as the breaches have not significantly affected a person's health safety or welfare. Formal action will be considered where there have been serious and or persistent breaches of licence conditions. The appropriate response to non-compliance will be determined on a case by case basis having regard to the individual circumstances.



## **Management Orders**

If an exemption notice is not served and the HMO cannot be licensed due to the conditions of the property, management arrangements not being satisfactory or the manager or licence holder is not considered a fit and proper person, then the Council may apply for a Management Order. This allows the Council to take over the management of the property. In determining whether the making of an interim or final management order is the most appropriate course of action the Council will have regard to the provisions of the 2004 Act and associated guidance issued by the Department for Communities and Local Government.

## **Additional and Selective Licensing**

Section 56 of the Housing Act 2004 permits the Council to extend the licensing of HMOs beyond the scope of the mandatory licensing regime. The Council may extend HMO licensing to part or all of its area to include other specified HMOs if poor management of HMOs is causing problems in that area,

Under section 80 of the Housing Act 2004, the Council may designate part of their district for selective licensing. In that area all privately rented accommodation will have to be licensed. The aim of selective licensing is to target housing problems including:-

- Low demand
- Anti-social behaviour
- Other challenges in the private rented sector

## **ESBCs approach to additional and selective licensing**

There are currently no significant problems in any area of our district that are attributable to poor management of HMOs or other rented properties so additional and selective licensing powers have not been adopted. The use of these powers will be reviewed regularly. We intend to complete our first review in 2010/2011 by:-

- Liaising with the Police Authority regarding anti-social behaviour,
- Monitoring housing conditions in the area,
- Monitoring the level and concentration of rented and empty properties causing problems in an area,
- Liaising with other departments, partner and agencies on problems specific to rented properties.

The Council may in the future license other categories of HMO's designated by them under an additional licensing scheme or all private rented properties under a selective licensing regime. A clear policy will be produced and put out to consultation prior to introducing a scheme under our powers for additional and selective licensing.

## **Part Four – Empty Properties**

The proportion of long term empty properties in East Staffordshire is comparatively low and there is no evidence of whole-sale abandonment in any areas.

Our current response to empty properties is to assess whether the property is causing a risk to the public, a nuisance to adjacent properties or a risk of unlawful entry leading to arson or other criminal behaviour. Any serious risks posed by an empty property will be dealt with under Part 1 of the Housing Act 2004, the Environmental Protection Act 1990 or the Local Government (Miscellaneous Provisions) Act 1982 respectively.

The current enforcement response to empty properties is consistent with the [Housing Strategy 2009-2014](#). However the strategic response will be kept under review and where necessary other powers available to us may be utilised in the future.

The Housing Act 2004 introduced a new power to deal with empty properties – the compulsory leasing of long-term empty properties via the use of an Empty Dwelling Management Order (EDMO). An EDMO can be used where it is appropriate to intervene to ensure the future use of the empty property. The procedure for operating the EDMO and subsequent leasing/renting of the empty property are set out in the Housing Act 2004 Chapter 2 and Schedule 7.

A clear policy will be produced on the use of EDMOs or other powers prior to utilising those powers.

## **Part Five – Other Housing Enforcement Activity**

- Drainage
- Filthy & Verminous Properties
- Caravan Sites

The Housing Standards Team also deals with the above types of complaint. In these circumstances officers will have regard for the principles of risk assessment and will consider the following elements when deciding the action that will be taken:

- Nature of the hazard (including hazards not defined under HHSRS)
- Hazard severity
- Likelihood of occurrence
- Number of people who are/will be affected and their vulnerability to the hazard

In determining the most appropriate course of action the following will also be considered:

- Available enforcement options
- Likely time period within which the matter will be resolved
- Any other financial, legal and risk implications for the Council
- Ability to do work in default of enforcement action and to recover costs

### **Drainage**

The Council investigates complaints about the foul drainage system throughout the Borough. More details are available on our website [here](#). Residents reporting blockages affecting a public sewer system will be advised to refer the matter to Severn Trent Water PLC via their 0800 783 444 call centre number.

With respect to private systems, in the first instance, we will provide advice to owners and occupiers to enable them to resolve any residential drainage or sewer problems for themselves without the need for formal enforcement action.

The Council may take enforcement action to resolve a drain or sewer problem if there is a risk to public health and, if responsible parties are uncooperative. Where appropriate all reasonable expenses incurred in the clearing or repair of drains/sewers will be recovered from all liable parties (please see section on works in default, page 22). Liable parties are those with shared or sole responsibility for the drain, sewer, septic tank etc and who have received appropriate notice from the Council of drainage works required.

Where repeat blockages are brought to our attention we will assist liable parties to identify the problem and refer to their insurer or to organisations dedicated to resolving these problems on behalf of insurers. Failure to act may result in enforcement action using public health legislation.

## **Filthy & verminous Premises**

We have powers under the Public Health Act 1936 to deal with filthy and verminous premises. All complaints regarding potentially filthy and verminous premises will be responded to within 15 days. When assessing the property we will initially give advice and assistance to occupiers so they can remedy any problems informally. The Council's Pest Control Team will provide advice and treatment for premises where there is evidence of an infestation; there may be a charge for this service. Formal action may be taken where the occupier of the premises is not willing or able to cooperate on an informal basis and where the condition is causing a nuisance to adjoining premises.

Where notice has been served under section 83 of the Public Health Act 1936 and not complied with, works will be undertaken in default if those works are deemed necessary to protect the health of the occupier or other persons. The costs of works in default will be re-charged to the owner/occupier of the premises. Where the property is tenanted, the landlord will be informed of the conditions so that they can take appropriate action. If the landlord seeks to evict the tenant we will provide the tenant with information and advice to assist with re-housing and any other support needs they may have.

## **Caravan Sites**

The use of land as a caravan site usually requires a Caravan Site Licence under the Caravan Sites and Control of Development Act 1960. All applications for licences will be determined within 8 weeks of receipt provided planning permission has been sought and granted. The Council will impose site licence conditions on the person holding the licence and these conditions will be based on the [Model Standards](#). Licence conditions relating to fire safety are no longer enforceable by Local Authorities and all matters of concern will be passed to Staffordshire Fire & Rescue for action. Where a site licence application is refused the reasons for refusal and any appeal process will be clearly documented with the refusal letter.

Caravan sites will be inspected upon the receipt of a complaint. There is currently no obligation on the Council to undertake pro-active inspections; however we will consider pro-active inspections when appropriate. Any pro-active work will be done on a risk based approach.

Formal action will be considered where there have been serious and or persistent breaches of licence conditions or for operating a caravan site without a licence. If a non-licensed site can be licensed, the Council will work with the site owner to ensure a licence application is submitted within 28 days. Informal action will also be taken to resolve any breach of the licence conditions. Formal action will be taken where an informal approach does not achieve the desired result and the breach has a negative impact on the health and safety of residents or is seriously affecting their enjoyment of the site. The appropriate response to non-compliance will be determined on a case by case basis having regard to the individual circumstances.

If the licence holder is successfully prosecuted three times for breaching the licence conditions, then the Council will apply to the Court to have the licence revoked.

## **Part Six – Miscellaneous**

- Targeted enforcement action
- Working with other Regulatory Bodies
- Authorisation of officers
- Power of Entry
- Charging for enforcement action
- Works in Default
- Prosecution
- Complaints

### **Targeted enforcement action**

From time to time we may want to take enforcement action on a targeted basis. Where this is done it will be as a response to a particular problem or there will be a valid reason that led to the need for pro-active work.

The types of issues that may trigger targeted action are:-

- Concerns about unlicensed HMOs in an area
- Concerns about concentrations or increases in numbers of empty properties
- Concerns about concentration of HMOs in an area
- Low quality housing in an area predominantly in the private rented sector
- Checking HMO license conditions
- Checking caravan site license conditions
- Concerns about properties owned by a portfolio landlord where some properties have fallen significantly below legal standards or have Category 1 hazards present
- Investigating whether or not to introduce selective or additional licensing.

### **Working with Other Regulatory Bodies**

Where other regulatory bodies have enforcement powers to investigate housing related matters referrals will be made to those bodies. Officers will liaise with that other body to ensure effective co-ordination, avoid inconsistencies, and ensure that contraventions of legal requirements are investigated by the most appropriate agency. These agencies include:

- Health and Safety Executive.
- Transco
- Staffordshire Fire & Rescue.
- Police
- UK Border Agency
- Staffordshire Social Care and Health

## **Authorisation of officers**

Decisions on enforcement action are a matter of professional judgement and officers will need to exercise discretion. However officers will be properly trained to ensure consistency in the decisions made. The Delegated Officer under the Council's Scheme of Delegations will only authorise officers under the Housing Act 2004 that have been adequately trained and have suitable experience of HHSRS; officers must pass the HHSRS Practitioners' course accredited by Warwick University, or equivalent course, prior to being authorised. Other authorisations will be determined by other qualifications or relevant experience. Officers will carry this authorisation when inspecting premises and will produce the document when asked.

## **Power of Entry**

Most of the legislation enforced by the Housing Standards Team includes the power for authorised officers to gain entry onto property for the purpose of carrying out the authority's duties under that legislation. Officers will give the required written notice under the appropriate power of entry and will clearly state which power of entry is being used and why.

If access is not secured by informal means or using formal notice then the Council will consider applying for a warrant to obtain entry. If prior warning is likely to defeat the purpose of the entry then a warrant may be the most appropriate method in the first instance.

If a warrant has been authorised then entry can be secured by force if necessary in association with the Police.

Officers will, upon request, produce their identification and written authorisation for inspection.

## **Charging for Enforcement Action**

Local authorities have the power to charge for enforcement action under section 49 of the Housing Act 2004. The Council will charge for the time spent by officers in determining whether to serve the notice, identifying any action to be specified in the notice, and serving the notice.

We will make a charge to recover expenses when we:-

- Serve an improvement notice
- Make a prohibition order
- Take emergency remedial action
- Make an emergency prohibition order, and
- Make a demolition order

We will not make a charge when we serve a hazard awareness notice. The Council reserves the right not to invoice or to waive a charge for enforcement action in exceptional circumstances with each case being considered on its own merits. This decision will be made by the Head of Service.

## Works in default and Emergency Remedial Action

When the person responsible fails to carry out necessary works on a notice the Housing Standards Team may arrange for the works to be carried out in default. We will, except in emergency situations give the relevant person notice of its intention to carry out the works, giving the owner a final opportunity to do the works themselves. Each case will be considered on merit taking into account the owners' financial situation, the occupancy details, the nature of the works and the impact of completing works on the property value. The Council will charge the appropriate person for the cost of the works together with the costs involved in arranging for the work to be carried out. In emergency situations powers under section 76 of the Building Act 1984 or section 40 of the Housing Act 2004 will be considered where action is necessary to protect public health and safety.

## Recovering Costs

The Council will recover all costs incurred in enforcing housing related legislation. When a charge is imposed under section 49 of the Housing Act 2004 or by completing works in default, the sum recoverable becomes a local land charge on the premises concerned. If enforcement action has been taken against a named person or legal entity the Council will seek to recover the charge by invoice. If the debt is not recovered by payment of an invoice or other methods, interest will be added to the debt at a compound interest rate of 8%\* starting from the date the charge became applicable until the debt is settled in full. The Council may recover the costs incurred in carrying out work in default by one of the following methods:-

Invoice - invoice for the applicable amount and County Court action if the invoice is not settled in full	<ul style="list-style-type: none"> <li>• For debts less than £500</li> <li>• Where debtor has sufficient resources to settle the debt</li> <li>• Where other forms of debt recovery are not possible</li> </ul>
Charge placed on property (accruing compound interest at a rate of 8% *in exceptional circumstances the interest rate may be reduced)	<ul style="list-style-type: none"> <li>• Where owner occupiers are unable to settle the debt</li> <li>• Where landlords are unable to settle the debt and mortgage repayments make sequestering the rent unviable</li> <li>• Where responsible person cannot be traced</li> </ul>
Sequestering the rent - by serving notice on the tenant requiring them to pay rent direct to the Council until the costs are recovered	<ul style="list-style-type: none"> <li>• Where property is tenanted and there are no or low mortgage repayments</li> </ul>
Enforced sale - under the Law and Property Act 1925 the Council can force the sale of the property through the Courts and recover the costs from the proceeds of the sale	<ul style="list-style-type: none"> <li>• Where the property is empty</li> <li>• Where the property is tenanted but there are multiple debts on the property and the landlord is not maintaining the property</li> </ul>

## **Prosecution**

The potential for taking a prosecution is an important part of enforcement. The purpose is to punish wrong doing, to avoid a recurrence and to act as a deterrent to others. Where the matter is of a serious nature, there have been persistent breaches by the same offender or where the suspect does not accept his guilt for offences a prosecution may be commenced.

A decision to prosecute will take account of the Code for Crown Prosecutors and other relevant guidance as well as legal advice from the Council's solicitors. Decisions will be taken in accordance with the two principles set out below.

### **Sufficiency of evidence**

As a public prosecutor the Council will only commence a prosecution when satisfied that there is a "realistic prospect of conviction" on the available evidence. If the case does not pass this evidential test it will not go ahead, no matter how important or serious the allegation may be. If the sufficiency of evidence test is met then we shall take account of the public interest in prosecuting.

### **Public Interest factors**

In addition to the personal circumstances of the offender and the circumstances of the offence, we will also consider the following factors in deciding whether or not to prosecute.

These factors include;

- The impact or potential impact of the offence on health and safety of the public, the environment or local amenity.
- The implications of the offence for the enforcement of the regulatory regime e.g. although no tangible harm comes of it a failure to register a registerable activity undermines the integrity and efficiency of a regulatory regime
- Other financial aspects of the offence e.g. the benefit obtained from not seeking the requisite licence and undercutting legitimate operators.
- Whether the offence was committed deliberately or officials obstructed.
- The previous enforcement record of the offender.
- The attitude of the offender, including his behaviour towards officials and whether corrective measures to remedy the offence or prevent any reoccurrence are being put in place.
- If the offence arose from unusual or mitigating circumstances.
- The health of the offender may be considered as a mitigating circumstance.

When determining whether to prosecute for an offence the legal actions forms (see appendix p31) will be completed in all cases. The decision to prosecute will be made jointly by the case officer and the Housing Standards Manager.



## **Civil Remedies**

Where complainants may have a civil redress in respect of the complaint, they will be given advice on what action they may pursue themselves through the civil courts or information as to where to seek further advice on civil remedies. Civil remedies include:-

- Right of repair under section 11 of the Landlord and Tenant Act 1985
- Right to seek compensation if the tenants deposit was not protected
- Rights of leaseholder and freeholders under the terms of their lease.
- Rent repayment orders

## **Alternatives to Prosecution**

A formal caution is the written acceptance by a person that they have committed an offence and may only be used where a prosecution could properly have been brought. For those who have offended for the first time or where there are 'sympathetic considerations' (for example, the defendant is very old or is showing signs of severe emotional distress) then a caution may be appropriate. We will consider each case on merit and will complete the evidence test form for each case. The decision to issue a formal caution will be made jointly by the case officer and the Housing Standards Manager.

The Council will only issue one formal caution. If a person has received a formal caution and subsequently commits a further offence then we will consider prosecution. If we subsequently take a prosecution it will be brought to the Court's attention that the offender has received a formal caution.

Simple cautions are normally not appropriate where there is history of offending within the last 2 years or where the same type of offence has been committed before. In these circumstances prosecution is more appropriate.

The rules covering Simple Cautions are provided on the [Home Office](#) web site or in Home Office Circular 30/2005.

## Complaints

If wish to make a complaint that the Council has not acted in accordance with this policy you should contact:

Housing Standards Manager  
East Staffordshire Borough Council  
Town Hall  
King Edward Place  
Burton upon Trent  
DE14 2EB  
Tel. 01283 508846  
e-mail: [housing@eaststaffsbc.gov.uk](mailto:housing@eaststaffsbc.gov.uk)

If you are dissatisfied with the response you receive and you wish to pursue your complaint through the internal complaints procedure you can do this using one of the following methods:-

- telephoning 01283 508000 and asking for a complaint form
- visiting our reception at the Town Hall and asking for a complaint form
- sending an e-mail to [peter.davies@eaststaffsbc.gov.uk](mailto:peter.davies@eaststaffsbc.gov.uk)
- submitting your complaint on-line at [www.eaststaffsbc.gov.uk](http://www.eaststaffsbc.gov.uk) going into complaints under 'C' on the 'A-Z' and completing the complaint form

Complaint forms should be returned to Democratic Services, East Staffordshire Borough Council, Town Hall, King Edward Place, Burton upon Trent, DE14 2EB.

If you remain dissatisfied after your complaint has been processed through the Council's internal complaints procedure, you have the option of referring the complaint to the Local Government Ombudsman.

Local Government Ombudsman  
The Oaks No 2  
Westwood Way  
Westwood Business Park  
Coventry CV4 8JB  
Phone: 024 7682 0000  
Fax: 024 7682 0001  
[www.lgo.org.uk](http://www.lgo.org.uk)

## Policy Review

This policy will be reviewed before April 2015.

## Appendices

### List of complementary or useful documents

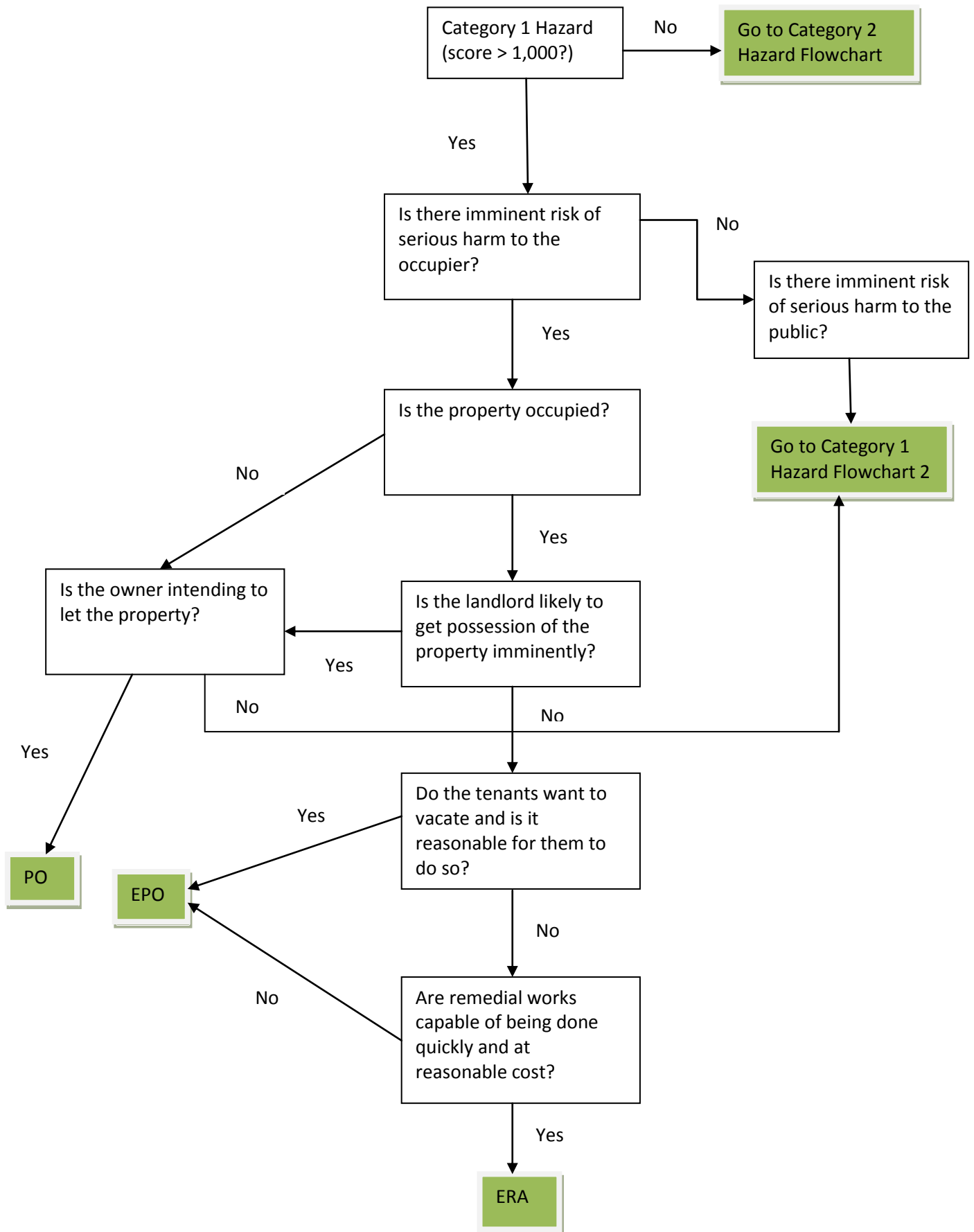
<b>Document</b>	<b>Publisher</b>
Customer Service Standards	ESBC
<a href="#">Drainage Complaints</a>	ESBC
<a href="#">Enforcement Concordat</a>	Cabinet Office and Local Government Association
<a href="#">Fire Safety Guide</a>	LACORS
<a href="#">Fire Safety Protocol</a>	CIEH (Chartered Institute of Environmental Health)
<a href="#">HHSRS Enforcement Guidance</a>	ODPM
<a href="#">HHSRS Operating Guidance</a>	ODPM
<a href="#">HHSRS Guidance for Landlords and Property Related Professionals</a>	CLG
<a href="#">Housing Strategy</a>	ESBC
<a href="#">Licensing of Houses in Multiple Occupation</a>	CLG
<a href="#">Model Standards 2008 for caravan sites in England</a>	CLG
<a href="#">Regulators' Compliance Code</a>	BERR (Department for Business Enterprise & Regulatory Reform)
<a href="#">Single Equalities Scheme</a>	ESBC

## **Prescribed hazards under HHSRS**

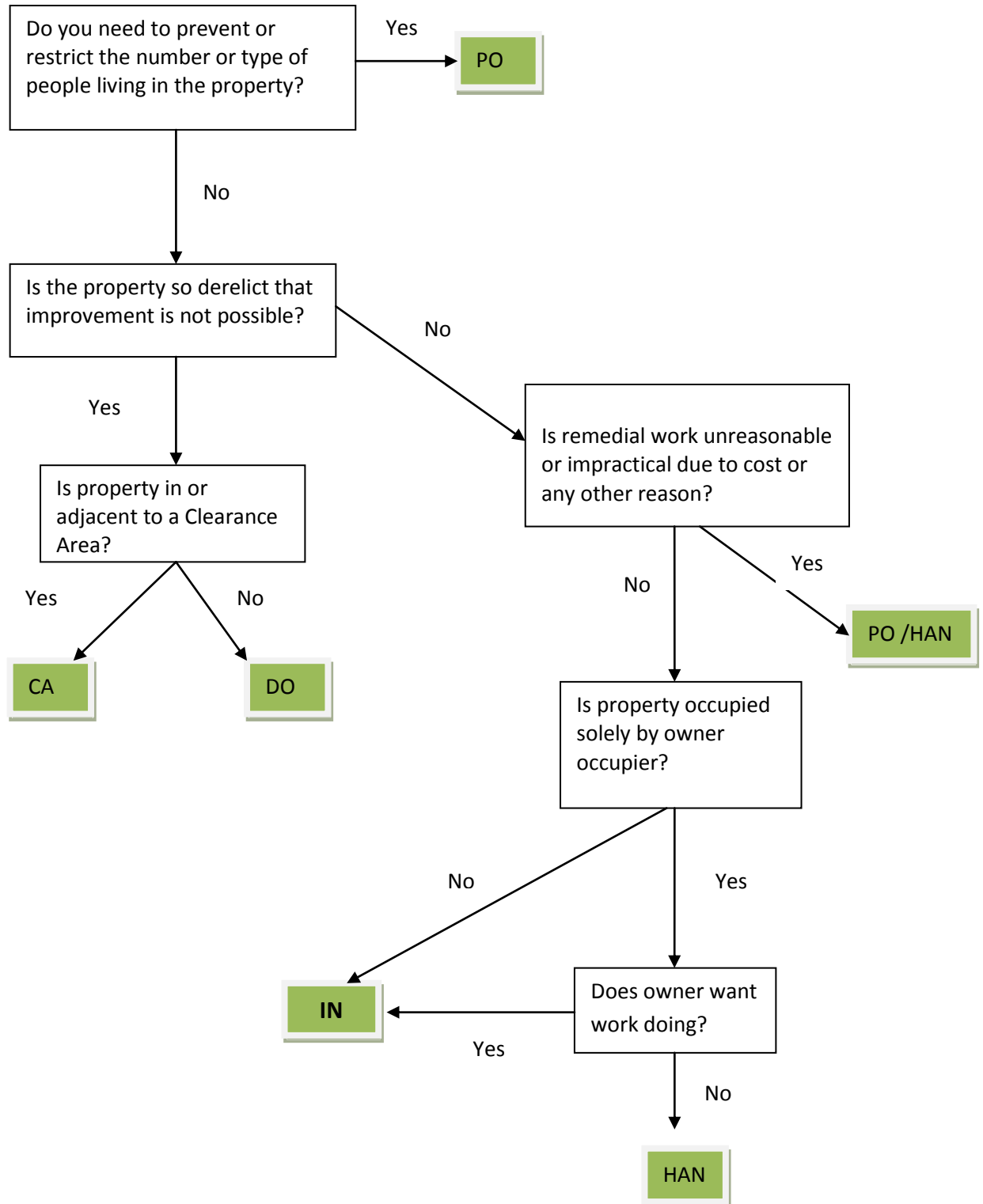
The following 29 hazards are those prescribed under the Housing Health and Safety Rating System:-

1. Damp and mould
2. Excess cold
3. Excess heat
4. Asbestos (and MMF)
5. Biocides
6. Carbon Monoxide and fuel combustion products
7. Lead
8. Radiation
9. Uncombusted fuel gas
10. Volatile Organic Compounds
11. Crowding and space
12. Entry by intruders
13. Lighting
14. Noise
15. Domestic hygiene, Pests and Refuse
16. Food safety
17. Personal hygiene, Sanitation and Drainage
18. Water supply
19. Falls associated with bath etc
20. Falling on level surfaces etc
21. Falling on stairs etc
22. Falling between levels
23. Electrical hazards
24. Fire
25. Flames, hot surfaces etc
26. Collision and entrapment
27. Explosions
28. Position and operability of amenities
29. Structural collapse and falling elements

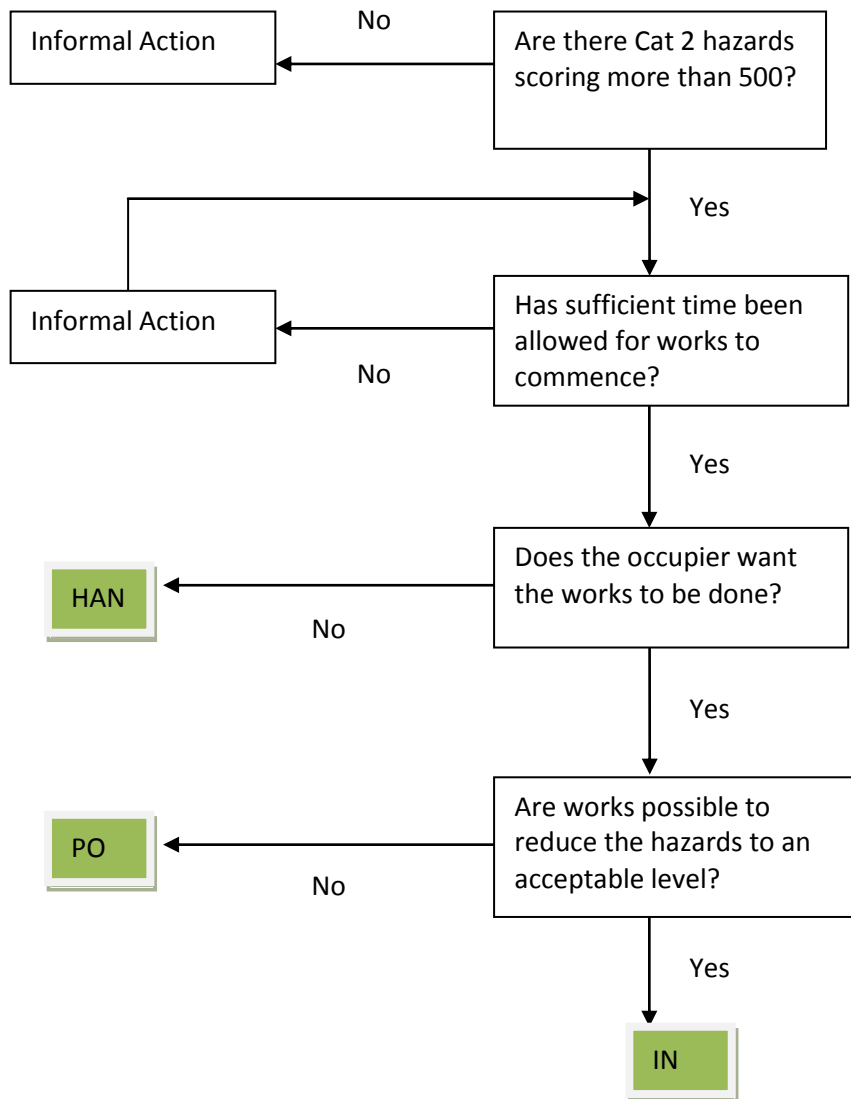
Category 1 Hazard Flowchart 1



Category 1 Hazard Flowchart 2



## Category 2 Hazard Flowchart



### Decision to prosecute form

	Relevant Legislation	Details of Offence
<b>Offences</b>		

<b>Evidential Stage</b>	
What evidence is available to support the case?	
Are there any problems with the evidence/witnesses?	
Are there any statutory defences?	
What is the defence case likely to be?	
Is there a realistic prospect of conviction	

**Is the evidential stage passed      Yes / No**

**Investigating Officer:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Authorising Officer:** \_\_\_\_\_ **Date:** \_\_\_\_\_



<b>Public Interest Stage</b>	
<b>Factors Considered</b>	<b>Comments</b>
Seriousness of offences – is a significant sentence/ fine likely to result?	
Is conviction likely to result in a confiscation or other order	
Was the offence premeditated	
Was the victim vulnerable, put in fear, suffered attack, damage or disturbance	
Was the offence motivated by any form of discrimination	
Will prosecution adversely affect the victim	
Are there relevant previous convictions/ cautions	
Are there grounds to suspect that offences will continue or be repeated	
Will a prosecution have a significant positive impact on community confidence	
What explanation was offered by the offender	
Was the offence a genuine mistake/ misunderstanding	
Was there a victim/ someone who suffered loss	
Is the offence widespread across the area	
Has there been a long delay between the offence and the decision to pursue it	

**Proposed Course of action:** \_\_\_\_\_

**Investigating Officer:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Authorising Officer:** \_\_\_\_\_ **Date:** \_\_\_\_\_