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Housing Enforcement Policy	Approved by: Cllr Jude Deakin Cabinet Member for Safer Places

Background

Chelmsford City Council (The Council) is fully committed to being fair, independent and objective. In particular, all officers will serve the community equally and fairly and in accordance with the Council's responsibilities.

The Council shares the view that the primary responsibility for maintaining a property lies with the property owner and it will support landlords and owners who act responsibly to achieve this. This policy, which should be read alongside any Council-wide enforcement policy currently in place, outlines how the Housing Standards Team will satisfy its legal duties and responsibilities in the use of appropriate enforcement powers to ensure that people responsible for a property meet their statutory obligations.

Policy Statement

Chelmsford City Council is committed to improving standards in private sector housing, bringing empty properties back into use and ensuring that all privately rented accommodation is well managed, property maintained, safe and habitable. Although Chelmsford has some excellent landlords and letting agents, the Council has a vital role to play in tackling criminal, rogue and irresponsible landlords and preventing them from profiting from their non-compliance.

The Council will use all available and appropriate legislation to ensure that the housing stock in the District is safe, maintained in good repair and well managed and use appropriate intervention and legislative powers to improve housing standards and reduce the impact of empty homes.

In order to regulate private sector housing, the Council's Housing Standards team will undertake pro-active and re-active property inspections and respond to and investigate complaints of disrepair. The Team will work with other Council Services including Housing Solutions, Benefits, Environmental Protection and Planning Services as well as external agencies such as the fire service and police as necessary. The team will request information, carry out inspections, process licence applications, bring empty properties back into use, encourage and promote good practice, investigate possible offences and, where appropriate take enforcement action and prosecute offenders.

Where the Council takes enforcement action to gain compliance with the law, this action will be proportionate, consistent, targeted and transparent.

1. Aims and Principles of the Enforcement Policy

The overall aim of Chelmsford City Council is that residents have a home that meets their essential needs and does not present a risk to their health or safety.

The principles of the Housing Enforcement Policy are to ensure that:

- Tenants of private landlords and registered providers of social housing live in homes that are free of unacceptable hazards and risks to their health and safety
- All Houses in Multiple Occupation (HMO) are safe, well managed and all relevant management regulations are adhered to
- All licensable HMOs are licensed and licensing conditions are met
- Private housing is not left empty for an unreasonable amount of time and/or become an eyesore, unsafe or a nuisance.
- Privately owned residential property and premises do not present a statutory nuisance, is not detrimental to the amenity of the area and does not present an unacceptable risk to public health, safety or the environment.
- The Council meets its statutory obligations in relation to private housing

2. Statutory Obligations

The Council has a legal duty to take action to resolve Category 1 Hazards and statutory nuisances. The Council must also run a licensing scheme for certain houses in multiple occupation (HMOs). Various acts of Parliament also give the Council discretionary powers to resolve unsatisfactory conditions in dwellings and to reduce the impact of long-term empty properties.

3. Policy Implementation

Enforcement options

In determining a course of enforcement action, the Council will have regard to circumstances including, but not restricted to:

- The statutory obligations of the Council
- The seriousness of the offence
- The general record of the offender
- The consequences of non-compliance
- The frequency of the offence
- Public interest and concern
- The likely effectiveness of the various enforcement options
- Whether the landlord is a member of any accreditation scheme
- Whether financial assistance has been given to provide or repair the item or element concerned
- The views of tenants and occupiers
- The views of other organisations including the police, fire and rescue service, social services etc.
- Whether the property needs to be licensed under a mandatory, additional or selective licensing scheme.
- Local priorities and policies

- Whether the tenant has made a written request to the landlord for works to be completed and the landlord's response.
- The effect on a tenant's security of tenure of serving a hazard awareness notice or improvement notice and the views and wishes of the tenant.

3.1 Informal Action

Informal action may include:

- Providing advice
- Verbal warning and requests for action
- Written correspondence (including 'mentoring letters' – see below)
- The removal of the landlord from an accreditation scheme

The circumstances in which informal action may be appropriate include:

- Where informal action has resulted in compliance in the past
- Where the owner is likely to comply
- Where non-compliance will not result in a significant risk to occupiers or the public, or the violation is of a minor technical nature
- Where The Council considers that informal action will be more effective than formal action

As landlords can only carry out their obligations once they have been made aware of a problem, the tenant/s will normally be expected to have first contacted their landlord or managing agent about the problem in writing before requesting the Council to intervene. This applies to both private and social housing tenants. The Housing Standards team may request copies of correspondence between a tenant and landlord/agent before any action is taken.

The Housing Standards' Team will routinely issue informative 'mentoring' letters to landlords/agents as a first line of action in response to a tenant's complaint. This provides the landlord/agent with details of the nature of the complaint and provides an opportunity for the matter to be resolved without further Council involvement.

Any informal written documents asking owners/agents to comply with legal requirements will provide an opportunity for the owner/agent to respond

Every effort will be made to mutually agree a way forward before formal action is considered. If informal intervention is unsuccessful formal action will be taken where justified by the offence

Where action must be taken to deal with a Category 1 Hazard, or conditions present a statutory nuisance as defined by Section 79(1) of the Environmental Protection Act 1990, the Council will not be limited to informal enforcement methods.

Formal Enforcement Action

It is not always possible to adopt an informal approach, especially where legislation requires formal action to be taken straight away or the owner, agency or other persons/s responsible are not co-operating with the Housing Standards Team. There will be times when officers consider that the risk to the occupant is high enough to warrant formal action without an informal stage. Factors include whether the current occupants are vulnerable or where the property poses an imminent risk to health or safety.

Formal action will usually involve the serving of a statutory notice. The property will be assessed for formal action according to:

- The number and type of category 1 and 2 hazards
- The vulnerability and personal circumstances of the current occupiers
- In the case of an HMOs, whether it is licensable or not, the number of households in residence, overcrowding, poor management and risk from fire.

Formal action includes, but is not necessarily limited to

- Action under the provisions of Part 1 of the Housing Act 2004:
 - improvement notice under section 11
 - suspended improvement notice under section 14
 - prohibition order under section 20
 - suspended prohibition order under section 23
 - hazard awareness notice in accordance with section 28
 - emergency remedial action under section 40 or
 - emergency prohibition order under section 43;
 - Service of an Overcrowding notice
- The refusal to grant, or the revocation of a licence under Parts 2 & 3 of the Housing Act 2004.
- The making of management orders under Part 4 of the Housing Act 2004
- The making of orders under the provisions of the Housing Act 1985, as amended
- The service of an abatement notice under the Environmental Protection Act 1990
- The service of Statutory Notices under the provisions of other legislation,
 - including but not limited to the Prevention of Damage by Pests Act 1949, the Local Government (Miscellaneous Provisions) Act 1982
- Formally dealing with empty properties through
 - The making of a Compulsory Purchase Order
 - The making of an interim or final Empty Property Management Order
 - Action to secure the enforced sale of a property
- Works in default of completion by an owner, agent, person responsible, manager or occupier
- Simple caution
- Prosecution

Statutory Notices and Orders

The Council will normally serve Statutory Notices or Orders where:

- Conditions are present which are a Category 1 Hazard
- Conditions are present which are a Category 2 Hazard of Band D & E
- Conditions are prejudicial to health or a nuisance
- Officers are not confident that the recipient will respond to informal advice
- Where breach of a statutory requirement is evident
- The owner has previously not complied with informal actions
- Standards are poor and managers are not aware of statutory requirements
- Though the council intends to prosecute, it also needs to take effective action quickly to remedy serious or deteriorating conditions
- A property, whether occupied or not, is having a detrimental impact on the neighbourhood
- Conditions are so severe that they justify immediate action.
- Where there is breach of a licence or licence condition

Action that could result in the Demolition or Compulsory Purchase of a property will only be undertaken following a decision of the Council or relevant committee.

Level of Enforcement

In determining the most appropriate course of action, officers will have regard to the Housing Health and Safety Rating System Enforcement Guidance and will adhere to the relevant consultation requirements set out in legislation for taking into account the views of occupiers and owners and other stakeholders.

Hazards are assessed according to the *potential risk* posed to the most vulnerable group for that hazard in accordance with the Housing Health and Safety Rating System.

However, in deciding what action to take, the Council will have regard to the following:

- The current occupiers
- Regular visitors
- How often the tenants or occupants change
- The risk of excluding vulnerable groups of people from the private rented sector or owner occupation.
- The size, type and location of the property

Housing Act 2004 Notices and Orders are accompanied by a statement of reasons explaining why one type of enforcement action was taken rather than another. Not more than one course of action can be taken at a time for the same hazard (unless it is emergency action), but alternative action can follow if one of the actions taken has proved unsuccessful. Emergency procedures cannot be used for category 2 hazards.

Where a suspended order or notice is served, the situation will be reviewed on a regular basis depending on the risk the hazard presents. In all cases the suspended order or notice will be reviewed at least once a year.

The Council will consider all requests to vary or revoke an improvement notice or prohibition order having regard to matters including, but not restricted to, the following:

- The risk that the hazard presents
- The views of the person receiving the notice (the recipient)
- The views of tenants
- The views of Essex Fire and Rescue Service, where appropriate
- Confidence in the recipient that remedial action will be taken
- The amount and complexity of any works needed to deal with deficiencies and hazards specified in the notice or order
- History of compliance or offences (whether the recipient has previously complied with informal and formal actions)
- The cost of works required compared to the benefit that they give
- The impact of unexpected works which become clear during the course of remedial works

Where a notice is served and there is a change in ownership of the property, the notice can be enforced on the new owner or recipient. However, any outstanding liabilities such as fines or costs remain with the original owner or recipient of the notice.

There are statutory rights of appeal against Notices, Order and associated decisions made by the Council. Appeals against enforcement action are made to the First Tier Tribunal (FTT). The FTT may confirm, quash or vary a Notice, Order or decision. Details on these rights and information making an appeal are provided with the Notice or Order.

Charges will be made for certain enforcement action that the Council takes, including for the service of Formal Notices under the Housing Act and other legislation.

Emergency Measures

Where the Council is satisfied that a Category One hazard poses an imminent risk of serious harm to the health or safety of occupants or visitors of a premises, emergency measures can be taken. These include Emergency Remedial Action or service of an Emergency Prohibition Order.

Sanctions for non-compliance with notices

If a Notice or Order is complied with or amendments are required to the Notice as a result of new information, a 'Revocation Notice' will be served confirming that the original Notice or Order has been withdrawn. However, if the Notice is not complied with, the following sanctions will usually be considered:

- Issuing a financial penalty
- Rent repayment order
- Prosecution
- Injunction
- Formal caution
- Carrying out works in default
- Carrying out works in default and issue of a civil penalty, prosecution or formal caution.

The sanction will normally be determined by the investigating officer in consultation with the Business Compliance Manager or Public Health and Protection Services Manager.

Prosecutions are initiated following consultation between the Public Health and Protection Services Manager and Head of Legal Services.

Prosecution

A prosecution will be considered in respect of any person or organisation that allows, or is responsible for a serious offence; a significant and obvious dereliction a statutory responsibility; for failure to comply with the requirements of a Statutory Notice or Order or who obstructs any officer in the execution of their duties.

In deciding whether to prosecute, the Council will have regard to the weight of evidence and guidance contained in the Code for Crown Prosecutors including public interest.

Chelmsford City Council will decide which option it wishes to pursue on a case-by-case basis. However, If the Council believes that it has a realistic prospect of a conviction, it will, where the offence allows, consider the appropriateness of a civil penalty as an alternative to prosecution.

Prosecutions will be progressed in line with the Council's Constitution which following recommendation from the Head of the Public Health and Protection Service to Legal and Democratic Services.

Examples where prosecution is considered appropriate include where:

- There is obvious disregard for the law or the requirements of a Statutory Notice or Order
- There is a financial advantage to not complying with the law

- There is an apparent lack of regard to the health and safety of persons likely to be affected by the breach
- There is a history of non-compliance by an individual or organisation and/or an apparent culture of lack of regard to the health or safety of persons affected by their business activity
 - Including reference to any database of rogue landlords and property agents
- A particular type of offence is significant or widespread in an area
- A serious incident has resulted from a substantial breach of the law
- A particular failure to comply has serious public harm
- Court action may result in a wider compliance with the law
- Someone has obstructed officers carrying out their lawful duties. Where officers are assaulted, the Council will seek prosecution of the offenders
- False information has been supplied, or there has been an intention to deceive
- Having examined all the circumstances, it is considered reasonable to do so

Where the offence allows for the imposition of a Civil Penalty as an alternative to a prosecution, such a penalty will be considered. A prosecution may be the most appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past. However, that does not mean civil penalties will not be used in even in cases where serious offences have been committed if it is decided that a significant financial penalty (or penalties if there have been several breaches), rather than prosecution, is the most appropriate and effective sanction in a particular case.

Chelmsford City Council will consider working together with other local housing authorities where a landlord has committed breaches in more than one local authority area.

Simple Caution

A simple caution may be considered where the criteria for a prosecution are satisfied, but where the offence is a first-time offence of a less serious nature, having regard to Home Office Circular 18/94.

A simple caution can only be agreed by the Director of Public Places following consultation and approval from the Legal and Democratic Services Manager that the matter meets the legal requirements for issue

If a person turns down the offer of a simple caution, the Council will proceed to prosecution.

Works in default

Where there is a failure to comply with a Statutory Notice the Council may, taking into account any statutory duty to undertake the works in the interests of tenants or others, carry out outstanding works in default.

The Council will recharge the cost of carrying out such works including Council's costs and officer time. If necessary, costs will be placed as a charge against the property or be recovered through the Council's recovery services. This could include enforced sale of the property to recover a Local Land Charge under Law of Property legislation.

Management Orders

The Council may make a Management Order under the provisions of Part 4 of the Housing Act 2004, relating to licensable properties as defined by Parts 2 & 3 or long term empty dwellings. It may apply to the First Tier Tribunal (Property Chamber) for an interim management order in other prescribed circumstances.

When Management Orders are used, the Council effectively takes over management of the HMO, house or flat. They will normally only be used as a last resort.

Civil (Financial) Penalties

Local Housing Authorities have the power to impose civic (financial) penalties of up to £30,000 on individuals and organisations as an alternative to prosecution, to use robustly as a way of clamping down on rogue landlords.

The Government recommends that the actual amount of financial penalty imposed should reflect the severity of the offence and consider the landlords previous record of offending. A civil penalty should be set such that it costs less to comply with the legislation and standards than the cost of not complying and help ensure that the landlord fully complies with all of their legal responsibilities in future.

Chelmsford City Council will set the level of a civil penalty at a high enough level to

- Punish the offender and deter repeat offending and
- Remove any financial benefit the offender may have obtained as a result of committing the offence,

with the objective that it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

Civil penalties are available as an alternative to prosecution under a range of housing-related legislation – eg the Tenant Fess Act 2019 and for the following offences under the Housing Act 2004.

- Failure to comply with an Improvement Notice (section 30);
- Offences in relation to licensing of Houses in Multiple Occupation (section 72);
- Offences in relation to licensing of houses under Part 3 of the Act (section 95);
- Offences of contravention of an overcrowding notice (section 139)
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234).

The maximum penalty (of £30,000) will be considered where a serious offence has been committed and the Council decides that a significant financial penalty (or penalties if there have been several breaches), is the most appropriate and effective sanction in a particular case.

Where both a letting agent and landlord can be prosecuted for an offence, including failing to obtain a licence for a licensable property, Chelmsford City Council will consider the imposition of a civil penalty on either or both parties as an alternative to prosecution. The amount of the civil penalty may differ depending on the individual circumstances of the case.

In determining an appropriate penalty. The Council will use all available powers to, as far as possible, make an assessment of a landlord's assets and any income (not just rental income) they receive.

The maximum amount will be reserved for the very worst offenders.

The actual amount levied in any particular case will reflect the severity of the offence, and take into account the landlord's and/or agent's previous record of offending.

Chelmsford City Council will consider the following to help ensure that the civil penalty is set at an appropriate level:

- a. Severity of the offence. The more serious the offence, the higher the penalty will be.

- b. Culpability and track record of the offender. A higher penalty will be applied where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities.
 - Note: The Council considers that Landlords are running a business and as such are expected to be aware of their legal obligations.
- c. The harm or potential harm caused to the tenant. The greater the harm or the potential for harm (taking into account, amongst other things, the perception of the tenant) the higher the amount will be.
- d. Punishment of the offender. The penalty will be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending. However, The Council will in all cases set the penalty at a high enough level to help ensure that it has a real economic impact on the offender and demonstrates the consequences of not complying with their responsibilities.
- e. Whether it will deter the offender from repeating the offence. The level of the penalty will be set at a high enough level such that it is likely to deter the offender from repeating the offence.
- f. Whether it will deter others from committing similar offences.
- g. Whether it will remove any financial benefit the offender may have obtained as a result of committing the offence.

In considering imposing a civil penalty the Council will have regard to the relevant statutory guidance eg:

- *Civil penalties under the Housing and Planning Act 2016 Guidance for Local Housing Authorities.*
- *Tenant Fees Act 2019 – Statutory Guidance for Enforcement Authorities*

Income from Civil Penalties will be used for private sector housing enforcement purposes

If a landlord/agent receives civil penalties, the Council will review the relevant guidance and where appropriate, add that person's details into the relevant database of rogue landlords and property agents with a view to making other local housing authorities aware that formal action has been taken.

If a landlord has received a civil penalty, it will be taken into account in considering whether the landlord is a fit and proper person to be the licence holder for a House in Multiple Occupation or any other property subject to licensing.

The application for a civil penalty will not preclude the Council from applying for a rent repayment order, where a relevant offence has been committed.

Civil Penalties will be calculated using a matrix established under a specific policy. Penalties up to £5,000 will be approved by the Public Health and Protection Services Manager. Penalties in excess of £5,000 will be approved by the Public Health and Protection Services Manager following consultation with the Head of Legal Services.

Rent repayment Orders

A rent repayment order is an order made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent, capped at 12 months.

The Housing Act 2004 introduced rent repayment orders to cover situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed, specifically offences in relation to licensing HMOs

Rent Repayment Orders were extended under the Housing and Planning Act 2016 to cover a much wider range of offences:

- Offences in relation to failure to obtain a licence in respect of a House in Multiple Occupation under Housing Act 2004, section 72(1)
- Offences in relation to licensing of houses under Housing Act 2004 Part 3, section 95(1)
- *Rent repayment orders in respect of the following can only apply to the parts of a property that are rented out to a tenant and not common parts:*
 - Failure to comply with an Improvement Notice under section 30 of the Housing Act 2004;
 - Failure to comply with a Prohibition Order under section 32 of the Housing Act 2004;
- Breach of a banning order made under section 21 of the Housing and Planning Act 2016;
- Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977; and
- Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977.

A rent repayment order may be considered by the Council whenever the landlord has committed one of these offences, whether or not s/he has been convicted.

A rent repayment order can only be applied for against the landlord of a property. It cannot be sought against a managing agent or other person unless they are the landlord of the property, entitled to keep the rent.

Rent repayment orders will be applied for by the Council where appropriate to penalise landlords in connection with a range of offences including the management or letting of unlicensed properties, the illegal evictions or harassment of the occupiers of a property, the use of violence to secure entry and the breach of a banning order.

Rent repayment orders are imposed by the First-tier Tribunal and can be applied for by tenants or local housing authorities. An important objective of rent repayment orders is that by forcing the landlord to repay rent, they lose much, if not all, of the benefit that accrued to them by not complying with their responsibilities.

- 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 repaid to the local housing authority. If the rent was paid partially by the tenant with the remainder paid through Housing Benefit/Universal Credit, then the rent should be repaid on an equivalent basis
- As the Council does not have access to Universal Credit data. It will work with affected tenants to source key information from benefit statements to determine the amount to be claimed. Council officers will also request further information as needed from the Department for Work and Pensions, if available.

In exercising its functions in respect of rent repayment orders, the Council will have regard to the statutory guidance issued under section 41 of the Housing and Planning Act 2016: *Rent repayment orders under the Housing and Planning Act 2016 Guidance for Local Housing Authorities*. This includes the transitional arrangements relating to rent repayment orders in connection with offences under Housing Act 2004, section 72(1) and part 3 (section 95(1)) where offences started before 6th April 2017.

Although the Council will decide each case (including the offence and the rent repayment order) independently, it will consider a rent repayment order when a landlord has been convicted of any of the relevant offences. The Council will also consider an application for a rent repayment order where the landlord has not been convicted of the offence if all or part

of the rent would be repayable to the Council as the local housing authority and there would be a reasonable prospect of conviction.

Rent repayment orders are a punishment and the intent of the Council is that they have a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities. It is the Council's aim that they also operate as a deterrent for both the offending landlord from committing further offences and to other landlords. Therefore, in considering the amount of rent to recover through in applying for a repayment order, the Council will take account of the following:

- Where a landlord has been convicted of the offence to which the rent repayment order relates, the Council will request the maximum amount of rent is repaid (the maximum being determined by any cap currently in place)
- Where a landlord has not been convicted of the offence to which the rent repayment order application relates, the main considerations will be:
 - The conduct of the landlord and tenant,
 - The financial circumstances of the landlord
 - Whether the landlord has previously been convicted of similar offences;
 - If a landlord has been convicted in respect of the same offence for which a rent repayment order is being made, the First-tier Tribunal must award the maximum amount of rent possible (capped at 12 months). They only have discretion on the amount where there has not been a prior conviction
 - In addition, the following will be taken into account:
 - Is the level of the penalty set at a high enough level such that it is likely to deter the offender from repeating the offence;
 - Is the repayment order robust enough to dissuade other landlords from neglecting their responsibilities.
 - The financial benefit the offender may have obtained as a result of committing the offence

Circumstances when the Council will apply for a rent repayment order:

A repayment order will be primarily considered:

- in circumstances where a landlord has been prosecuted
- Where serious hazards existed at a property such that the Council had to employ emergency powers to achieve the necessary improvements or repairs
- When serious hazards have persisted at the property with the likely knowledge of the landlord or his/her agent
- If an unsafe or substandard property is knowingly let
- As a form of robust punishment for dealing with Rogue Landlords (as allowed for by extended rent repayment orders)

In all other circumstances where formal action has been taken, a rent repayment order may be applied for (taking into account the matters listed above) if all or a proportion of the rent has been made through housing benefit or universal credit..

There is no statutory obligation on local housing authorities to support a claim by a tenant for a rent repayment order however Chelmsford City Council will take into account the vulnerability of the tenant and the nature of the offence in deciding the level of support that it will provide where the rent has not been paid with public funds. The Council may choose to offer advice or guidance to tenants to apply for a rent repayment order if the tenant has paid the rent themselves.

Where the landlord fails to pay a rent repayment order, the Council will refer the case to the county court for an Order of that Court. The Council will, if necessary, use county court bailiffs to enforce the order and recover the debt.

Charges for enforcement action and the Recovery of Costs and Expenses

Local authorities have the power to make a reasonable charge as a means of recovering expenses incurred in serving of Statutory notices under the Housing Act 2004 and other legislation

If is the Council's policy to charge for the time spent by officers where a Notice or Order is to be served. Charges are based on the cost to the council of taking the enforcement action, which includes the officer-hours spent in investigating, consulting, drafting and serving the Notice or Order. This is intended to cover the reasonable expenses of the Council in visiting the premises, assessing the Hazards, drafting and issuing the formal Notice or Order.

In exceptional cases, this charge can be varied or withdrawn at the direction of the Public Health and Protection manager where the circumstances of the recipient would result in the payment of the charge causing exceptional hardship.

The council will if necessary recover charges against the property or through the Council's recovery services.

A fee may be waived where a Hazard Awareness Notice only is served.

Empty dwellings

Chelmsford City Council considers long term empty properties to be unacceptable in an area of high housing demand. The Council therefore has a separate documented policy relating to dealing with empty dwellings and particularly to take action to bring them back into use. The Housing Standards team works with other Council Services to identify and monitor such properties and determine the most effective resolution.

Where appropriate, and in particular where informal routes and other options either fail to have effect or are ruled out, the Service will request authorisation to proceed with Compulsory Purchase.

HMO licensing

Chelmsford City Council does not currently have any additional or selective licensing schemes for HMOs.

Licences for mandatorily licensed HMOs are issued for a period of 5 years. An inspection will normally take place as part of the application process, but may take place at any time during the period of the licence.

Supporting documentation may be required as part of the application process.

A licence is issued with a maximum permitted occupancy based on facilities and room sizes based on statutory and locally adopted standards.

Time-bound conditions may be included on a licence where the occupancy at the time of application is deemed to be in excess of the maximum assessed as appropriate for the property. Such conditions will require the remedy of the deficiency either by the reduction in occupancy and/or appropriate increase in facilities.

The Housing Standards Team may consult with the Fire Authority in determining the most appropriate form of enforcement action for an HMO.

Rogue Landlords

A small number of rogue or criminal landlords knowingly rent out unsafe and substandard accommodation. The Government is determined to crack down on these landlords and disrupt their business model.

The Housing & Planning Act 2016 introduced a range of measures to crack down on rogue landlords including:

- Civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences (came into force on 6 April 2017);
- Extension of rent repayment orders to cover illegal eviction, breach of a banning order and certain other specified offences (came into force on 6 April 2017);
- Database of rogue landlords and property agents who have been convicted of certain offences or received multiple civil penalties (came into force on 1 October 2017)
- Banning orders for the most serious and prolific offenders (scheduled to come into force on 1 October 2017).

When extended rent repayment orders were introduced through the Housing and Planning Act 2016, Ministers made clear that they expected this power to be used robustly as a way of clamping down on rogue landlords. In the House of Commons,

It is the policy of the Council to make full use of all enforcement tools available including civil penalties and rent repayment orders to deter and effectively punish rogue landlords.

Tenants

Under Regulation 10 of the Management of Houses in Multiple Occupation (England) regulations, 2006, every occupier of an HMOs has a duty to co-operate with the person managing the HMO such that he or she can carry out their responsibilities. Specifically an occupier must:

- conduct himself in a way that will not hinder or frustrate the manager in the performance of his duties;
- allow the manager, for any purpose connected with the carrying out of any duty imposed on him by these Regulations, at all reasonable times to enter any living accommodation or other place occupied by that person;
- provide the manager, at his request, with any such information as he may reasonably require for the purpose of carrying out any such duty;
- take reasonable care to avoid causing damage to anything which the manager is under a duty to supply, maintain or repair under these Regulations;
- store and dispose of litter in accordance with the arrangements made by the manager under regulation and
- comply with the reasonable instructions of the manager in respect of any means of escape from fire, the prevention of fire and the use of fire equipment.

The Council will always consider the acts of an occupier in determining the most appropriate form of action to remedy a deficiency at a property and will issue informal warning to or consider formal action against an occupier or tenant if appropriate.

Anti-Social behaviour, Crime and Policing Act 2014

This legislation may be used in situations where the conduct of an individual or body is unreasonable and persistent and has a detrimental effect on the quality of life of those in the locality. The Act can be applied to conduct on or affecting premises and The Council may issue a Community Protection Notice on a person who owns, leases, occupies, controls operates or maintains that property.

Creation Date	Version No	Changes Made	Changes made by	Date of Change
1 st February, 2020	1	Approved by Cabinet Member for Safer Places, Cllr Deakin 16/02/2020	Draft status removed	18/2/2020

References:

- 1. Chelmsford City Council Policy on Rent Repayment Orders and determining Civil Penalties**

Appendices:

- 1. Houses in Multiple Occupation**
- 2. Other Housing-related regulatory areas enforced by Public Health and Protection Services (Housing Standards)**
- 3. Standards**
- 4. Terms and Definitions**

Appendix 1: Houses in Multiple Occupation

A House in Multiple Occupation (HMO) can be an affordable housing option for people in our community including students, single people and couples. They also provide some emergency temporary housing solutions for vulnerable people and families. The intensity of use of a property can however sometimes provide challenges to Council or other services where a property or manner of occupation is not effectively managed. The owner of an HMO has additional regulatory responsibilities with regard to matters such as detection and prevention of spread of fire within the property.

A House in Multiple Occupation (HMO), is defined in the Housing Act 2004.

In essence, an HMO is a property occupied by at least 3 people who are not from a single 'household' (eg a family) who share or lack facilities such as the bathroom or kitchen.

The building must be occupied by more than one household:

- as their only or main residence
- as a refuge for people escaping domestic violence
- by students during term time, or
- For other purposes prescribed by the government.

A household includes:

- A family (including single people, couples and same sex couples)
- Other relationships, such as fostering, carers and domestic staff.

3.2 Licensed HMOs

Part 2 of The Housing Act 2004 requires the following types of HMO to be licensed:

- occupied by five or more people in more than one household, who
- share amenities such as bathrooms, toilets and cooking facilities, and
- rent or other consideration is payable

An application for a HMO licence under Part 2 of the Housing Act 2004 must be made in writing online on the Council's website or the form provided by the Council. Certain documents will be requested in order to process the application.

Where a person having control of, or managing, a licensable HMO notifies the council of their intention to take steps to make the property no longer a licensable HMO, the Council can issue a Temporary Exemption Notice.

3.3 Standards for Licenced HMOs.

Prior to licensing a house in multiple occupation, a housing authority must be satisfied that:

- The house is reasonably suitable for occupation by the number of persons and households specified in the application or the licence
- The licence holder is a fit and proper person and is the most appropriate person to hold the licence, which will usually be the person having control
- The manager of the house is the person having control of the house or their agent or employee, and is a fit and proper person
- The management arrangements for the house are satisfactory.

When deciding whether to grant or refuse a licence, the Council will have regard to the requirements of the Housing Act 2004 Part 2 and any statutory Instruments made under it, including

- any prescribed standards for the provision of bathrooms, WCs, kitchens and laundry amenities.
- Any contravention of the law by the applicant, proposed licence holder or manager.
- Whether any persons involved in the management of the HMO are competent, fit and proper, and whether the management structures and financial arrangements are adequate

Chelmsford City Council will also assess an HMOs against its own adopted standards. The Council require a higher standard of amenity, particularly in assessing bedroom sizes which are higher than the statutory minimum if there if the property lacks or has insufficient communal space. An HMO Licence may not be granted, or will be granted with time-bound conditions if the Council's adopted standards are not satisfied at the time an application is received.

The Council may use its discretion in applying the locally adopted standards if the deficiencies at a particular property are deemed to be off-set by one or more particular mitigating features. Conditions may be applied to a licence to ensure that such mitigating features or means of occupation are maintained during the life of the licence.

The Council will impose licence conditions:

- Where they are mandatory under Schedule 4 of the Housing Act 2004
- To control the use or occupation of the HMO or certain parts of it
- To secure the provision and maintenance of amenities to ensure that the HMO is reasonably suitable for the numbers of households and persons in the licence
- To ensure satisfactory management of the HMO and management of antisocial behaviour.

An HMO licence will usually be granted for a period of five years, however a shorter duration may be granted, having regard to the matters above and any concerns that a Category 1 or Category 2 hazard may be present under the Housing Health and Safety Rating System. An inspection and assessment of the HMO will be made under the Housing Health and Safety Rating System during the licence term, and the council will use its enforcement powers under Part 1 of the Housing Act 2004 to deal with any deficiencies or hazards found.

An HMO licence may be varied or revoked:

- with the agreement of the licence holder,
- where there has been a breach of the licence conditions
- where the licence holder or manager is no longer considered to be a fit and proper person
- where the building ceases to be an HMO, or
- where the council would not then issue a licence for the HMO if an application were made at that time, due to structural reasons

**Appendix 2:
Other Housing-related regulatory areas enforced by Public Health and Protection
Services (Housing Standards)**

Management Regulations

All identified hazards and breaches of the relevant HMO management Regulations in any HMO, whether licensable or not, will be dealt with in accordance with the enforcement approach set out in the main body of the policy

The Mobile Homes Act 2013

The Caravan Sites and Control of Development Act 1960, as amended by the Mobile Homes Act 2013, covers the licensing and regulation of residential caravan sites.

The Council can serve enforcement notices and to carry out works in default to remedy breaches of site licence conditions.

Where a notice is not complied with, the Council can choose to prosecute the owner. If the prosecution is successful the council may choose to complete works in default.

The Council will also seek to recover expenses incurred in carrying out enforcement action including:

- taking action following conviction of the site owner for failure to carry out actions required by a compliance notice; or
- In taking emergency remedial action where there is an imminent risk of serious harm to any person
- the site as a result of the site owner's failure to comply with licence conditions
- charging for costs associated with issuing compliance notices

The Redress Scheme

Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014.

There is a legal requirement for all lettings agents and property managers in England to join a Government-approved redress scheme. The schemes are currently:

Ombudsman Services Property (www.ombudsman-services.org/property.html)

Property Redress Scheme (www.theprs.co.uk)

The Property Ombudsman (www.tpos.co.uk)

(For failure to publish prices on a website, the enforcement authority will be the local authority in whose area the head office of the lettings agent or property manager who has not complied with the requirement)

Where the Council is satisfied, on the balance of probabilities, that a person is involved in letting and management as a business and is not registered with a scheme, the Council will issue a fine.

The expectation in Governments Guidance is that the maximum £5,000 fine should be considered the norm. It may not be exceeded, but a lower fine may be charged if the Council is satisfied of extenuating circumstances. In determining such circumstances, The Council will take into account any representations the lettings agent or property manager makes during the 28 day period following the authority's notice of intention to issue a fine.

Circumstances that may be considered include:

- whether a £5,000 fine would be disproportionate to the turnover/scale of the business or would lead to an organisation going out of business.

There is no limit to the number of penalties that may be imposed on an individual lettings agent or property manager. The Council will therefore impose further penalties if a lettings agent or property manager continues to fail to join a redress scheme despite having previously had a penalty imposed.

Where it is our intention to impose a penalty the Council will follow the steps in the prescribed process (outlined below):

- **Step 1: Notice of Intent**
within 6 months of the date on which Council officers have gathered sufficient evidence and satisfied any internal requirements that a fine is appropriate, give written notice of our intention to impose a penalty, setting out:
 - i) the reasons for the penalty;
 - ii) the amount of the penalty; and
 - iii) that there is a 28 day period to make written representations or objections, starting from the day after the date on which the notice of intent was sent.

The enforcement authority may withdraw the notice of intent or reduce the amount specified in the notice at any time by giving notice in writing.

- **Step 2: Representations and Objections**
The person in receipt of the notice of intent has 28 days starting from the day after the date the notice of intent was sent to make written representations and objections to the enforcement authority in relation to the proposed fine.
- **Step 3: Final Notice**
At the end of the 28 day period the Council will decide, having taken into account any representations received, whether to impose the fine and, if so, will give at least 28 days for payment to be made.

If confirming a fine, the Council will issue a final written notice explaining

- i) why the fine is being imposed;
- ii) the amount to be paid;
- iii) how payment may be made;
- iv) the consequences of failing to pay;
- v) that there is a right to appeal against the penalty to the First-tier Tribunal and that any appeal must be made within 28 days after the imposition of the fine. It is up to each local authority to decide who should serve the notice.

The enforcement authority may withdraw the final notice or reduce the amount specified in the notice at any time by giving notice in writing.

- **Step 4: Appeals**
If an appeal is lodged the fine cannot be enforced until the appeal is disposed of.

Appeals can be made on the grounds that

- i) the decision to impose a fine was based on a factual error or was wrong in law;
- ii) the amount of the fine is unreasonable; or
- iii) that the decision was unreasonable for any other reason.

The First-tier Tribunal may agree with the Council's notice to issue a penalty or may quash or vary the notice and fine.

Appeals are heard by the General Regulatory Chamber, further details on the appeals procedure can be found at the following link:
<http://hmctsformfinder.justice.gov.uk/courtfinder/forms/policy-makers-guidance-eng.pdf>

- Step 5: Recovery of the penalty

If the lettings agent or property manager does not pay the fine within the period specified the Council will recover the fine with the permission of the court as if payable under a court order. Where proceedings are necessary for the recovery of the fine, a certificate signed by the Chelmsford City Council's chief finance officer stating that the amount due has not been received by a date stated on the certificate will be taken as conclusive evidence that the fine has not been paid.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Private sector landlords are required to ensure that at least one smoke alarm is installed on every storey of their rented property and that a carbon monoxide alarm is installed in any room containing a solid fuel burning appliance.

Chelmsford City Council will accept the following evidence of a lack of relevant alarms as reasonable grounds of a breach:

- Inspection by a Council Officer
- Confirmation from a relevant professional
- Provision of photographic evidence provided by a tenant or confirmed representative of the tenant

Where the landlord has no previous history of non-compliance, officers may consider the use of informal negotiation with the landlord to ensure that their obligations are met.

In all other cases, the Council will issue a remedial notice giving the landlord 28 days to comply. If the notice is not complied with, the Council will carry out the remedial action (where the occupier consents) to ensure the requirements in the regulations are met.

The Council will issue a civil penalty of up to £5,000 where a remedial notice is served in line with its statement of principles for its Penalty Charge Notice,

Protection from Evection Act 1977

Under section 1 (2) of the Protection from Eviction Act, it is an offence for any person to unlawfully deprive a residential occupier of their premises (or any part of it) that they occupy. The law makes it an offence to either of the following things intending, knowing or having reasonable cause to believe that they would cause the tenant to leave their home, or stop using part of it, or stop doing the things a tenant should normally expect to be able to do :

- Commit acts likely to interfere with the peace or comfort of a tenant or anyone living with him or her, or
- Persistently withdraw services for which the tenant has a reasonable need to live in the premises as a home

it is also an offence to take someone's home away from them unlawfully.

Protection from Harassment Act 1997

This Act creates four criminal offences: Harassment, putting another person in fear of violence, breach of restraining order and breach of an injunction. The Council's Housing Standards Team will enforce the provisions of the Act in consultation with the Council's Legal Services and others as necessary.

Environmental Protection Act 1990

The Environmental Protection Act gives the Council power to serve an Abatement Notice requiring the owner to remedy a building that is so far defective as to be prejudicial to health of its occupier or a nuisance. The notice is served on the person by whose act or omission is deemed responsible for the nuisance.

Prevention of Damage by Pests Act 1949

Notices can be served on the owner or occupier requiring steps to be taken for the destruction of rats or mice on land or to keep the land free from rats or mice.

Appendix 3: Standards

In implementing this policy the Council will have regard to current national guidelines and local circumstances.

Enforcement will be undertaken by appropriate and authorised officers in line with the Council's constitution and schemes of delegation.

Statutory rights of appeal exist where notices are served or charges levied. These are set out in the relevant legislation and rights and means of appeal will be included when a notice is served.

Service requests:

In matters relating to housing enforcement, officers will:

- Respond to requests for service within 3 working days
- Prioritise Service Requests where necessary to action those of highest priority
- Apply a 'mentoring' procedure to non urgent requests to enable a landlord or agent to respond to matters of concern raised by a tenant.
- Provide tenants and occupiers clear advice about the extent of any action which the Council is able to take, and provide copies of any notices sent to the landlords
- Advise landlords and property owners of their legal responsibilities and, if the Council is taking enforcement action, advise exactly what is expected of them and any right of appeal
- Provide a courteous and helpful service
- Deal with any complaints in accordance with the Council's complaints procedure available from the council's website and direct people to this process if necessary.
- Chelmsford City Council is committed to equal opportunities and undertakes to deal with all sections of the community with fairness and equity

Openness and transparency

Chelmsford City Council will provide information in plain language on the legislation that officers are acting under and relevant procedures and processes

Professionalism

Officers will identify themselves by name and will show proof of identity; maintain the highest standards of professional integrity and carry out their duties with honesty and respect for all sections of the community.

Complaints about the service

Chelmsford City Council provides an effective and timely complaints procedure which is easily accessible to tenants, the public, landlords and agents. This is available on the Council's website and any complaint however received, will be referred to and dealt with in line this complaints procedure.

Desirable Outcome

The purpose of the Housing Enforcement Policy is to ensure the effective compliance with housing and public health legislation having regard, where appropriate, to risk, while at the same time assisting owner occupiers, landlords, managing agents and tenants to meet their obligations.

Links with Other Policies

This policy should be read in conjunction with the Council's
Housing Assistance Policy
Equality Policy

If anyone is dissatisfied with the service they receive from any part of the Council, including Housing Standards, the Council has a Complaints Policy which can be viewed on line at www.chelmsford.gov.uk.

Evaluation

This policy will be reviewed every 2 years and at the time of any significant change of circumstances, changes to legislation or local needs or priorities.

Where appropriate, the Council will consult with residents, owners, agents and other interested parties affected by our service, so it can draw up clear standards regarding the level of service, performance to be provided and the development of this policy. If anyone has any matters to raise in relation to this policy, they can be made in writing for the attention of the Public Health and Protection Services Manager and sent to:

Chelmsford City Council
Civic Centre
Duke Street
Chelmsford
CM1 1JE

Or by email to safe.support@chelmsford.gov.uk for the attention of the Public Health and Protection Services Manager,

Appendix 4

Terms and definitions used within this document

Term	Meaning
Proportionality	Relating enforcement action to the risks posed by the condition or situation and the likely benefits achieved by compliance
Consistency	Taking a similar approach in similar circumstances to achieve similar ends. Enforcement action will be similar regardless of the tenure and location
Targeting	While ensuring that the Council responds to any unsafe housing and nuisance, officers will pro-actively use enforcement action in high risk modes of occupation, and areas or situations that present the highest level of risk either by way of potentially unsafe properties, risks to vulnerable persons or groups or to increase available housing by taking action to bring empty properties back into use.
Transparency	Helping people affected by our actions to understand their rights and responsibilities
Hazard, category 1	Defined in Section 2 of the Housing Act 2004. A deficiency which has been calculated under the Housing Health and Safety Rating System to be highly likely to cause serious harm
Hazard, category 2	Defined in Section 2 of the Housing Act 2004. A deficiency which has been calculated under the Housing Health and Safety Rating System to be likely to cause harm
Statutory Nuisance	Defined in Section 79 of the Environmental Protection Act 1990. A certain type of defect which is prejudicial to health or a nuisance
“landlord”	May include “property agent”, “letting agent” and “managing agent”
Rent Repayment Order	A rent repayment order is an order made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent