

# Housing Standards Financial Assistance and Enforcement Policy 2021-2026

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## Introduction

Chichester District Council's Housing Strategy 2020-2025 focusses on eight key objectives for action including maintaining and improving the condition of housing in the Chichester District. This is vitally important as poor housing has a direct impact on health and mental wellbeing, and all households should have access to housing that is fit for purpose.

The other issue facing residents are the district's high property prices which have seen first time buyers priced out of the market resulting in a higher reliance on private rented accommodation. This demand is expected to continue as a result of increased unemployment and reduced incomes following the Coronavirus pandemic. Homeowners will also be affected as home repairs and property improvements may no longer be affordable.

The ability to use enforcement action combined with the provision of financial assistance will provide inspecting officers with the tools they require to ensure those living in unsatisfactory conditions, along with the number of empty properties, are kept to a minimum. For those with disabilities and on low income requiring a suitable home where they can live safely and independently, adaptations will be available thereby reducing the need for social care.

This document outlines the Council's policy with regard to the financial assistance it can offer owner occupiers and private sector landlords to encourage and assist them with property improvement. The policy also details the enforcement tools available to our inspecting officers to help improve housing standards.

## Statutory Duty

The Council has a duty under section 3 in Chapter 1 of Part 1 of the Housing Act 2004 to review housing conditions in its district. Where housing conditions are found to require improvement financial assistance can be provided under the terms of Article 3 of the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002.

## Housing Stock Modelling 2020

Following a successful joint bid to the Ministry of Housing, Communities and Local Government at the end of 2019, the Council was awarded just over £32,000 to undertake a stock modelling exercise to evaluate the overall condition of the district's housing stock. This work would then enable the appropriate targeting of resources.

The Building Research Establishment (BRE) was commissioned to undertake the stock review involving a desktop housing stock modelling exercise which was completed in March 2020.

The headline findings are summarised below:

- 1. There are 57,685 dwellings in Chichester, 67% are owner occupied, 19% private rented and 14% social rented.*
- 2. 6,768 dwellings in the private sector have category 1 Housing Health and Safety Rating System (HHSRS) hazards. This equates to 14% of properties. 1,281 dwellings in the private rented sector have category 1 HHSRS hazards. This equates to 12% of properties in the private rented sector.*
- 3. The highest concentrations of all Housing Health and Safety Rating System (HHSRS) hazards in the private rented sector are found in the wards of Boxgrove, Funtington and Stedham.*
- 4. The highest concentrations of fuel poverty (Low Income High Costs definition) in the private rented sector are found in the wards of Wisborough Green, Stedham and Bury and for excess cold the highest concentrations are in Boxgrove, Funtington and Stedham.*
- 5. The average Simple SAP rating for all private sector dwellings in Chichester is 56, which is worse than both England (60) and the South East (61). For owner occupied stock the figure is 55 and for private rented stock it is 60.*
- 6. The total cost of mitigating category 1 hazards in Chichester's private sector stock is estimated to be £23.2 million – with £18.8 million in the owner occupied sector and £4.4 million in the private rented sector.*
- 7. There are an estimated 1,108 Houses in multiple occupation (HMO)s in Chichester, of which approximately 272 come under the mandatory licensing scheme.*
- 8. 13.2% (6,535) of private sector dwellings and 9.9% (1,063) of private rented dwellings in Chichester are estimated to have an Energy Performance Certificate (EPC) rating below band E.*
- 9. In the private sector stock, there are an estimated 12,107 dwellings with uninsulated cavity walls and 7,232 dwellings with less than 100 mm of loft insulation.*

10. *Analysis of the energy efficiency variables indicates that the owner occupied stock has the highest average figures for the majority of variables (Simple CO2, energy and heat demand, energy and heat cost).*

## Housing Condition Improvements since 2015

The results of the 2020 survey illustrate some stark parallels with the outcomes of the previous survey in 2015. The main challenges remain around the level of Category 1 hazards and the proportion of cold homes resulting in increased levels of fuel poverty, particularly in owner occupied properties.

However there is some good news particularly for the private rented sector where Category 1 hazards have fallen from 22% of the stock in 2015 (1844) to 12% of the stock (1281) in 2020. Furthermore the number of properties with an EPC rating of F or G (lowest rating) has fallen from 2192 (26.4%) to 1063 (9.9%).

There have also been improvements seen with regard to Simple SAP specifically in the private rented sector. Simple SAP is a simplified version of the standard assessment procedure for assessing the energy efficiency of a dwelling. It provides a numerical score for energy efficiency with 0 being the worst and 100 the best.

In 2015 the average Simple SAP rating for the private rented sector was 49, which was worse than England (55). However in 2020 the average Simple SAP rating for the private rented stock is 60, which equals that of England, but marginally worse than the South East (61). Unfortunately for the owner occupied stock the Simple SAP rating is still below the average for England. This result is likely to be down to the age and location of Chichester's stock with many properties having solid walls and located in areas off the gas network making them more expensive to run and challenging to insulate.

In 2015 the total cost of mitigating the category 1 hazards in Chichester's private sector stock was estimated to be £27.1 million, whilst in 2020 despite inflation the estimated cost has fallen to £23.2 million with £18.8 million in the owner occupied sector, and £4.4 million in the private rented sector.

## Financial Assistance Policy for Private Sector Housing 2020-25

The Regulatory Reform (Housing Assistance) (England and Wales) Order 2002 empowers local housing authorities to provide a wide range of assistance for housing renewal, providing they adopt a policy to outline how they will focus their resources.

This Policy sets out how the Council will assist owner occupiers and landlords to improve living conditions, with the main focus being on reducing cold homes and fuel poverty, and also assisting those owners who require essential home improvements but are unable to afford to do so.

The conditions relating to all financial assistances offered by Chichester District Council (CDC) can be found in Appendix 1.

# 1. Reduce Fuel Poverty and Excess Cold

Fuel poverty occurs when households cannot afford to keep adequately warm because the costs of heating their home are higher than average and paying for those costs leave them below the poverty line. This affects around 12% of private sector households in Chichester, compared to 9% in the South East region, and 11% in the rest of England.

The Council aims to ensure the condition of properties are improved and residents are provided with affordable warmth and healthy homes, with a long-term vision of tackling fuel-poverty with low carbon, sustainable solutions where possible, acknowledging the targets of Chichester District's Climate Emergency Initial Action Plan 2020 – 2025.

This policy aims to tackle Excess Cold and Fuel Poverty in four key ways:

- Improve the condition and energy efficiency of homes
- Reduce energy bills wherever possible
- Maximise household income for those who are eligible for benefits
- Support and harness the able to pay market by providing advice and information and top-up funding as necessary
- Reduce carbon emissions

To co-ordinate this work a Fuel Poverty and Sustainability Project Group will be established to deliver targeted action to tackle those parishes with the highest levels of Excess Cold and Fuel Poverty, reducing EPC F and G rated homes occupied by fuel poor households wherever possible. This work will be delivered ensuring a whole-house and resident-centered approach.

## Policy Tools

As a Council we provide financial assistance to those in fuel poverty, as well as supporting services to advise all residents of the help available to them, including government funding.

### - **The Home Energy Advising Service**

The service, funded by West Sussex Public Health and delivered by the Council's Wellbeing Team offers a tailor-made home energy support for vulnerable residents in Chichester. The service supports residents to save money, improve energy efficiency and stay warm and well at home. Advice is provided in relation to heating grants, tariff comparisons, crisis support, income maximisation guidance and support.

### - **Chichester Warm Homes Initiative**

This initiative has been running since 2016 and is a unique offer across West Sussex. The scheme was introduced with a soft launch to ensure it did not become oversubscribed, and relied on self-referrals by residents. Unfortunately this approach has not provided enough interest and applications have remained low.

Working in conjunction with the Energy Visiting Advisor and the Climate Change Officer the scheme will be relaunched with a fresh ambitious new strategy targeting parishes that are

primarily off-gas where it is known there are properties with high levels of Excess Cold hazards and Fuel Poverty. Gas alternatives including air source heat pumps, batteries and solar photovoltaic panels will be explored and prioritised wherever possible along with full insulation measures to reduce carbon dioxide emissions and energy costs wherever possible.

Financial assistance will be available to homeowners who have low income and only a modest amount of savings, and also landlords with a tenant who meets the eligibility criteria. In the case of tenants, landlords must consider the work as a 'tenant improvement' and must not implement a rent increase as a result of this work. The assistance provided is to fund or top-up the cost of necessary works to eradicate a Category 1 Excess Cold hazard, to increase the EPC rating above F or G, or to lift the occupants out of Fuel Poverty.

The amount of funding available will be dependent on whether the property is on the gas network. See the Financial Assistance and Conditions summary table on page 9 for more details.

- **Discretionary Disabled Facilities Grant (DFG) - Safe, Suitable and Warm Homes Grant**

This offering is part of the West Sussex DFG Policy and is a means tested grant available to disabled residents requiring repairs or a replacement heating system in order to remain safe and independent at home.

- **Partnership working**

Chichester is part of the West Sussex Affordable Warmth Partnership. The partnership includes all West Sussex District and Borough Councils and sets the aims and objectives for tackling fuel poverty across the County under the West Sussex Affordable Warmth Framework for Action 2020 – 2025.

The role of the partnership also involves jointly bidding for funding, outlining local plans of action, intervention and governance structures that contribute to positive partnership working across West Sussex.

- **Increasing Public Awareness of all Energy Efficiency Grants:**

The Council will ensure residents are fully informed and kept up to date with regards to all the central government and Energy Company funding available, which is a regularly changing landscape. In order to deliver this, a new streamlined user-friendly, county-wide webpage will be developed containing all the funding options available, as well as signposting residents to other useful services with a clear link from CDC's website and appropriate social media coverage.

## **2. Continual improvement of the standard of accommodation in the private rented sector**

Throughout the past 5 years significant improvements have been seen in the private rented sector in Chichester with the number of properties with Category 1 hazards and poor energy

performance notably reducing from 22% in 2015 to 12% in 2020. Nevertheless it is important the focus on this sector remains to ensure standards continue to rise and properties are maintained appropriately.

The improvements that have been seen have been achieved through a variety of means including:

- Changes in legislation requiring a larger cohort of multiply occupied properties to require a licence
- Landlords have been required to ensure their properties achieve a certain energy performance.
- Properties that have been accredited as part of the Chichester and Arun Landlord Accreditation Scheme.
- Housing Standards Team intervention through complaint work.

The Council has always had a proud ethos of engaging with landlords and working with them to ensure they improve their properties without the need for formal enforcement action. This strategy has proved highly successful in the case of the Chichester and Arun Landlord Accreditation Scheme. The scheme requires landlords to improve their properties to a standard above the minimum required by legislation, and financial assistance has been made available to assist landlords with this work. Developing robust relationships with our landlords is more important than ever given the need for private rented sector properties to be made available for homeless clients currently being accommodated in temporary accommodation.

## Policy Tools

### - **Landlord Accreditation Assistance**

In order to continue to incentivise landlords to join this successful scheme we will continue to offer a financial award. The financial assistance given supports landlords to improve and maintain their properties to meet the Council's Landlord Accreditation Assistance Scheme standards, which exceeds the legislative minimum standards.

The assistance will be 50% of the cost of the works up to a maximum of £4,000 throughout a five-year period. Should the landlord for any reason be refused membership of the accreditation scheme or have their membership revoked within five years, for example if they fail to accredit their remaining properties, then the total amount of assistance must be repaid.

### - **Empty Property Assistance**

To engage landlords of empty properties, a more attractive financial package will be available. In this instance landlords will receive 100% of the cost of works to bring the property up to accreditation standards and bring it back into use. Funding provided is up to a maximum of £10,000 throughout a five-year period. The property must be let through the Homefinder Scheme for a minimum of five years.

### - **Homefinder Assistance**

One of the key priorities of the Council's Covid Recovery Plan is to tackle homelessness and rough sleeping, and to provide a robust pathway from temporary accommodation into more permanent accommodation.

Homefinder is the Council's own property management scheme which aims to increase the amount of private rented accommodation available to those on housing benefits in the district. To ensure Homefinder poses an attractive proposition to landlords, financial assistance at a rate of 100% of the costs of the works required to meet the accreditation standard, up to a maximum of £4000 is available to assist with repairs and property improvements.

### **3. Reduce the level of Category 1 hazards in the owner occupied stock**

In the current climate and with budgets under increasing pressure it is necessary for the Council to evaluate the financial help it offers homeowners, who are essentially responsible for the maintenance of their own homes but are unable to afford to undertake works. The financial help given must be targeted at those in most need and where a Category 1 health and safety hazard exists.

The maximum amount of funding offered will be £40,000 and will be available to remedy category 1 hazards only. Homeowners requiring extensive home repairs will therefore be encouraged to reconsider whether they can feasibly remain in their property, or whether it would be sensible to move to a more suitable, manageable home.

#### **Policy Tool**

##### **- Home Repair Assistance**

Financial assistance is available to owner-occupiers including those of park homes and long leaseholders who are in financial hardship to remedy Category 1 hazards in their property.

Home Repair Assistance consists of a 0% interest free loan placed as a local land charge on the property, which is repayable on sale. The assistance is up to a maximum of £40,000 for owner-occupiers (excluding park homes).

In the case of park homes help will be available but will be limited to a maximum of £5,000, which will be awarded as a grant.

The decision to offer financial assistance in relation to a park home will be made on a case by case basis and be reliant on whether a Housing Standards Officer confirms whether it is viable to repair the unit to a good standard given the funding limit. Works eligible for help would include roof and boiler repairs/replacement grant.

### **4. Disabled Facilities Grants (DFG)**

Mandatory Disabled Facilities Grants will be administered in accordance with existing legislation and will be available to the current legally specified grant maximum subject to the

statutory terms and conditions. Discretionary grants will be administered in accordance with the West Sussex Disabled Facilities Grant Policy 2020-2024: ([www.chichester.gov.uk/warmhomes#disabled](http://www.chichester.gov.uk/warmhomes#disabled))

The Extensions Adaptations Fund is available to meet the needs of overcrowded households in social housing requiring an adaptation to meet their medical needs and an extension to their property where all other housing options have been exhausted.

## Financial Assistance and Conditions Summary

Assistance Type		Value	Condition Period from Certified Completion Date	Interest Applied
Chichester Warm Homes Initiative	Owners	Maximum of £10,000 or £25,000 if off-gas	Repaid on sale of property	No
	Landlords	50% of the cost of the works up to a maximum of £8,000 or £12,500 if off-gas	5 years for landlords	
Home Repairs Assistance		£40,000	Repaid on sale	No
		£5000 for Park Homes	No repayment	N/A
Landlord Accreditation Assistance		Maximum of £4,000 (must be match-funded by landlord)	5 years	No
		Empty Properties Maximum of £10,000		
		Maximum of £4000 for Homefinder Gold Properties		
Mandatory DFG		Amount of Grant over £5,000 up to a max of £30,000	10 years	No
Discretionary Top- up DFG		Maximum of £30,000	10 years	No
Extensions Adaptations Fund (social housing only)		Maximum of £40,000	Grant	No

## 6. Commencement and Transitional Arrangements

- This Financial Assistance Policy 2021-2026 shall take effect from 1<sup>st</sup> January 2021.
- Financial assistance approved before this Policy comes into force is covered by the terms of the Private Sector Housing Renewal Strategy 2016-2021.



## Housing Standards Enforcement Policy

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Private housing plays a significant part in the housing provision within Chichester and whilst it is recognised that the majority of landlords and letting agents operate well-managed accommodation of a good standard, the Council has a vital role to play in tackling criminal, rogue and irresponsible landlords, preventing them from profiting from non-compliance with the law.

The Housing Standards Team is committed to ensuring all privately rented accommodation is well managed, properly maintained, safe and habitable. This directly supports the Council's Housing Strategy objective to maintain and improve the condition of housing.

This Policy outlines the Council's enforcement approach and the available powers inspecting officers have to regulate and manage non-compliance in relation to Housing Standards. The policy is designed to be fair but robust.

This policy is intended to be read in conjunction with the overarching Housing and Environment Services Enforcement Policy (renewed every 5 years) which provides a summary of the Council's enforcement powers, the principles of their application and what residents, businesses or visitors can expect from enforcement officers.

### Human Rights and Equality Issues

Investigations and any enforcement action will be conducted in a manner which does not conflict with or undermine the fundamental principles of the Human Rights Act 1998.

Enforcement decisions will be fair, impartial and objective and will not be influenced by issues such as the ethnicity or national origin, gender, religious beliefs, political views or sexual orientation of the suspect, victim, witness or offender.

For a copy of Chichester District Council's full equalities policy please visit:

[www.chichester.gov.uk/article/24769/Equality-strategy](http://www.chichester.gov.uk/article/24769/Equality-strategy)

### Delegation and Decision Making

In accordance with the Council's Scheme of Delegation in the Constitution the Director of Housing and Communities (or the person with the equivalent designation at the relevant time) has the delegated authority to authorise officers to take certain action under a range of legislation. The Director of Housing and Communities appropriately delegates these powers to officers who are duly authorised to undertake enforcement duties.

Officers will only be authorised where they have the appropriate level of qualification, training, experience and competence. This applies equally to those who are directly employed, to temporary staff and to those employed as contractors.

Decisions about the most appropriate enforcement action to be taken will be made in line with this policy and based on professional judgment, legal guidelines and advice, statutory

codes of practice and priorities set by the Council and/or central government. Each case will be assessed on its own merits.

A recommendation to instigate a prosecution will be made by the Housing Standards Manager (or the person with the equivalent designation at the relevant time), as delegated by the Director of Housing and Communities. The decision to prosecute lies constitutionally with the Divisional Manager for Legal and Democratic Services (or the person with the equivalent designation at the material time.)

The Council will monitor and review the quality and nature of the enforcement activities undertaken in the Housing Standards Team and recommend changes and improvements as necessary taking into account the resources available. All staff will be fully conversant with this Policy.

## Enforcement Approach and Principles

The Council expects full compliance with the law. We will help landlords and homeowners meet their legal obligations by providing clear and concise information about what they need to do to comply. However, we will not hesitate to use our enforcement powers where necessary where property owners fail to comply. Enforcement action will be undertaken in a firm but fair manner, requiring individuals to meet their legal obligations without unnecessary expense.

When discharging its duties in relation to private sector housing, the Council will follow the principles of good enforcement as set out in the following:

- Regulators Compliance Code
- Criminal Procedure and Investigations Act 1996 (CPIA) and associated Code
- Police and Criminal Evidence Act 1984 (PACE) and associated Codes
- The Enforcement Concordat
- Housing Act 2004
- Regulation of Investigatory Powers Act 2000
- Housing and Planning Act 2016
- Chichester Housing and Environment Services Enforcement Policy
- Legislation and statutory guidance relating to the service area

In accordance with section 21 of the Legislative and Regulatory Reform Act 2006 the principles of the Council's enforcement policy are:

**Transparent** - Enforcement action will be undertaken in accordance with our Policy and procedures. All communications will be easy to understand with clear reasons being given for any enforcement action taken.

**Accountable** - We recognise that we are accountable to those being regulated and the public for our actions. Enforcement action will be undertaken in a responsible manner that has clear purpose. The Council's Corporate Complaints Policy with further details on complaints and appeals can be found here: [www.chichester.gov.uk/complaints](http://www.chichester.gov.uk/complaints)

**Proportionate** – Enforcement action will be proportionate and reflect the nature, scale, seriousness including the history of any breaches or non-compliance.

**Consistent** - Enforcement action will be undertaken and monitored within the Housing Standards Team to ensure consistency in the interpretation and enforcement of legislation. The Housing Standards Team will also work with other regulatory agencies to share and develop good practice.

**Targeted** - Regulatory effort is directed primarily towards those who place residents at risk of serious harm. Action will be primarily focused on lawbreakers or those directly responsible for the risk and who are best placed to control it.

In addition, all enforcement action will be carried out having regard to the seven principles specified in the Statutory Code of Practice for Regulators made under section 23 of the Legislative and Regulatory Reform Act 2006.

## Powers of entry

The Housing Standards Team will require entry to a property in order to carry out its statutory functions. Inspecting officers will carry official identification and will normally make an appointment and give 24 hours' notice to the occupants, and owners of their intention to enter a property to inspect.

Powers of entry allows an officer, at any reasonable time, to enter a property to carry out an inspection and gather evidence, take someone with them, take appropriate equipment or materials and take any measurements, photographs, recordings and samples as necessary. In some cases, powers of entry will be used to carry out works.

The Housing Standards Team will exercise its statutory powers to gain entry without giving prior notice to investigate non-compliance with housing-related law or to carry out a statutory duty where it is necessary to do so.

Reasons for the use of these powers include:

- Protection of the health and safety of any person or to protect the environment without avoidable delay
- Prevent the obstruction of officers where this is anticipated
- To determine if a property is an unlicensed HMO

The Housing Standards Team will apply to the Magistrates Court for a Warrant to Enter Premises if entry has been consistently refused or refusal is reasonably anticipated.

## Enforcement Options

The principal legislation used by the Housing Standards Team is the Housing Act 2004 and the Housing and Planning Act 2016. Enforcement officers will assess the need to take formal action through programmed inspections of multiply occupied dwellings, or in other cases in response to a complaint or request for assistance.

There may be circumstances where other pieces of legislation may be more appropriate in dealing with an identified problem. Officers are expected to use professional judgment in order to determine the most appropriate course of action.

Action considered will include, but is not limited to the following:

- **Informal Action** (including oral or written warnings or referral to another agency for further action)

Informal action will be considered where there is no legislative requirement to serve a formal notice or an order and the circumstances are not serious enough to warrant formal action i.e. past history suggests informal action will achieve compliance; there is confidence in the management or the individual; the consequences of non-compliance will not pose a significant risk to occupiers or others.

- **Service of a Statutory Notice or Order**

The Council may serve a statutory notice requiring works to be carried out within a specify timeframe to remedy a hazard(s) which has been assessed using the Housing Health Safety Rating System contained within Part 1 of the Housing Act 2004. Hazards are categorised as either a Category 1 or Category 2 hazard. The Council has a legal duty to take the most appropriate enforcement action available in relation to Category 1 hazards. This is where the risk to health and/or safety is high. In relation to Category 2 hazards where the risk to health and/or safety is not so significant, the Council may take action.

The Housing Standards Team will serve a statutory notice in the following circumstances:

- Where there are Category 1 hazard(s) present at the residential unit of accommodation
- Where the Category 2 hazard is progressive and will likely become a Category 1 hazard unless preventative action is taken
- Where there are a number of Category 2 hazards which would present a hazard to occupiers as they moved room to room
- In other exceptional circumstances and at the discretion of the Housing Standards Manager (or the person with the equivalent designation at the relevant time)

A statutory notice will clearly set out actions which must be taken to rectify and/or prevent a breach and prevent it recurring. Notices will also include reasonable timescales for compliance, having regard to the seriousness of the defects and/or contraventions. If a statutory notice is to be served all interested parties will be notified e.g. tenants, mortgagees, leaseholders and freeholders.

The types of notice or order that can be served under the Housing Act 2004 include:

- **Hazard Awareness Notice**

A notice advising the person on whom it is served of Category 1 and/or Category 2 hazard(s) at a property. This is used where a hazard has been identified but the circumstances are not necessarily serious enough to require an improvement notice or prohibition order. The notice is a way of drawing attention to the need for remedial action. This notice is not registered as a local land charge and has no appeal procedure.

- **Improvement Notice**

A notice requiring the person on whom it is served to take remedial action as specified in the notice relating to Category 1 and/or Category 2 hazards. The notice is used where

reasonable remedial works can be carried out sufficiently to reduce the hazard. This notice is registered as a local land charge.

- **Prohibition Order**

An order imposing restrictions on the use of the whole or part of a property that is so deficient or hazardous that access must be prohibited for habitation purposes. Orders may be suspended for a certain period of time to allow compliance or until a certain event in the future. This notice is registered as a local land charge.

- **Suspended Improvement Notices or Prohibition Orders**

These notices may be suspended where enforcement action can be safely postponed until a specified event or time. This notice is registered as a local land charge.

- **Emergency Prohibition Order**

This order will take effect immediately and is served when there is an imminent risk of serious harm from a Category 1 rated hazard, and it is not practicable to carry out remedial works.

- **Demolition Order**

An order requiring the demolition of a property can be used in response to Category 1 hazards only. This order is not applicable to listed buildings.

- **Declaration of a Clearance Area**

A Clearance area may be declared where all the residential buildings in the proposed area have at least one Category 1 hazard. The area is then cleared of all buildings.

- **Emergency Remedial Action**

This will be considered where there is an imminent risk of serious harm and the hazard is rated as Category 1. The Housing Standards Team will facilitate the necessary action to reduce the imminent risk and formal action will be taken by the Housing Standards Team to recover the full costs incurred.

- **Suspend, Revoke or Refuse to Renew or Grant a Licence or Authorisation**

This relates to Parts 2 and 3 of the Housing Act 2004 and The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018. Where the relevant person does not comply with the prescribed conditions and or is not deemed to be a fit a proper person to hold a licence, this course of action may be considered.

Prospective applicants for a licence will be vetted to determine whether they are a 'Fit and Proper' person to hold a licence. Where a person is found not to be a 'Fit and Proper' person to hold a licence, this information will be stored within the Council's records. The data will be kept and processed in line with the Council's data protection and data retention policy. For further information please see

[www.chichester.gov.uk/dataprotectionandfreedomofinformation](http://www.chichester.gov.uk/dataprotectionandfreedomofinformation)

Where there is either evidence of non-compliance with a statutory notice or order served under Part 1 of the Housing Act 2004, a failure to appropriately licence a property under Parts 2 and 3 of the Act, or non-compliance with any other legislation enforced by the Housing Standards Team, the following enforcement options will be considered:

- **Formal (Simple) Caution**

Used to deal quickly and simply with less serious offences. There must be sufficient evidence of guilt to give a realistic prospect of conviction and the offender must formally admit to the offence. Simple cautions will be administered by in accordance with the Ministry of Justice – Simple Cautions for Adult Offenders (April 2015).

- **Penalty Charge Notice**

A number of Acts and Regulations provide for the issuing of a penalty charge notice for non-compliance. These include:

- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015
- The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015
- The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014
- The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

Where the Council decides to issue a Penalty Charge Notice it will follow the same principles as the issuing of Civil Penalties (see below and Appendix 2).

The amount of penalty will be capped at the maximum provided for the offence. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 require that the Council has a statement of principles for its application of penalty charge notices in relation to offences under those regulations (please see Appendix 4). The Civil Penalty process is described in Appendix 2.

- **Civil Penalty**

In accordance with section 249A of the Housing Act 2004 as introduced by the Housing and Planning Act 2016, the Council may decide to impose a financial penalty as an alternative to prosecution for certain housing offences. The Council must be satisfied beyond reasonable doubt that the person's conduct amounts to a relevant housing offence.

The offences under the Housing Act 2004 for which the Council can impose a financial penalty as an alternative to prosecution are:

- 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)

Under the Housing and Planning Act 2016 the offence of breach of a banning order can also be dealt with by a financial penalty (section 21 (1)). The amount of financial penalty is determined by the Council but must not exceed £30,000.

The Housing Standards Team in consultation with Legal Services will determine on a case by case basis whether to issue a civil penalty or instigate a prosecution in respect of the offences listed above.

Examples of situations where a decision to prosecute may be made are:

- Offences of a particularly serious nature
- Where the offender has committed similar offences in the past

In circumstances where it has been deemed appropriate to issue a civil penalty as an alternative to prosecution, the level of penalty will be calculated having regard to the matrix set out in Appendix 2.

- **Prosecution**

The Council may decide to prosecute in respect of serious or recurrent breaches or where other enforcement action such as a statutory notice has failed to ensure compliance. When deciding whether to prosecute we will have regard to the provisions in The Code for Crown Prosecutors - [www.cps.gov.uk/publications/code\\_for\\_crown\\_prosecutors](http://www.cps.gov.uk/publications/code_for_crown_prosecutors) as issued by the Director of Public Prosecutions. Prosecution will only be considered where we are satisfied that we have sufficient evidence to provide a realistic prospect of conviction. This will include consulting any criminal landlord database available to us. In certain cases we will consider the use of civil penalties as an alternative to prosecution where it is felt appropriate to do so. Similarly consideration will be given to the use of rent repayment orders in addition to prosecution and/or civil penalties for Housing Act offences where justified or a duty. We have the power to issue simple cautions as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined, we are likely to consider prosecution.

## Proceeds of Crime

The Proceeds of Crime Act 2002 allows the courts to deprive perpetrators of criminal offences of any proceeds they have accrued as a result of their criminal activity. The Housing Standards Team will use this legislation where appropriate and in consultation with Legal Services.

- **Making of Orders**

The Council will consider the following options independently or collectively with other enforcement action as particular circumstances permit:

- **Rent Repayment Orders (RRO) (Housing Act 2004/Housing and Planning Act 2016)**

The Council is required to consider an application to the First-tier Tribunal for a rent repayment order in cases where a landlord has been convicted of a qualifying offence. An

RRO is a means by which the Council can seek up to 12 months of rent, housing benefit or Universal Credit to be repaid, in addition to other fines where the Council can prove that the landlord is guilty of one of the qualifying offences in relation to licensing, Houses in Multiple Occupation management and Housing and Planning Act 2016 notices. In applying for an RRO the Council will follow the Ministry of Housing, Communities and Local Government's statutory guidance:

<https://www.gov.uk/government/publications/rent-repayment-orders-under-the-housing-and-planning-act-2016>

- **Works in Default**

The Council may consider works in default as an alternative to or in addition to prosecution or issuing a civil penalty under section 249A of the Housing Act 2004. The Council will carry out the works in default and seek to recover the full and associated costs, where necessary through the courts. This will include where applicable administration costs and officer time. There will be full adherence to the financial rules and financial operating procedures of the Council. Where appropriate the costs will be placed against the property as a charge. The Council may seek to use its powers to enforce the sale of the property in order to recover the costs.

- **Rogue Landlord Database**

The database holds details of landlords and managing agents who have been given a banning order or convicted of certain offences. Application to have landlord/agents details entered on the database is a statutory duty where a banning order has been given and is at the discretion of the local housing authority in other circumstances. We will apply to have the landlord's details entered on the database where there is a duty to do so and in other cases where the law allows discretion will be applied on a case by case basis. When deciding whether to make an entry onto the rogue landlord database the Council considers the severity of the offence, any mitigating factors, culpability and serial offending and when it is in the public interest to do so.

- **Banning Orders under the Housing and Planning Act 2016**

A banning order may be considered in addition to prosecution or issue of a civil penalty and will prohibit the undertaking of landlord or managing agent activities for a specified period of time. These orders may be made against landlords and managing agents where they have been convicted of banning order offences under the Housing and Planning Act 2016. These include, for example, failure to comply with an improvement notice. The Council will apply for banning orders to be made where the evidence justifies this course of action and it is considered to be in the public interest to protect against rogue landlords.

When deciding to apply to the First-tier Tribunal for a banning order, the Council will consider the following:

The seriousness of the offence, previous convictions/rogue landlord database entries, the harm caused to the tenant, punishment of the offender and the deterrent needed to prevent others from committing similar offences.



Once granted a banning order remains in place for at least 12 months. Once in place, the local housing authority can take management of all property owned by the landlord receiving the order.

- **Interim and Final Management Orders under the Housing Act 2004**

To ensure adequate management arrangements are in place in a licensable house in multiple occupation (HMO), we have the power to make an interim management order (IMO) in respect of a licensable HMO where a landlord (or their managing agent) fails to obtain a licence or where it is necessary due to the hazardous condition of the property. Upon the expiry of an IMO we can make an application to the First-tier Tribunal (Property Chamber – Residential Property) to make a final management order and take over the management of the property for a period of up to five years. This disables the landlord's ability to manage the property.

## Costs of Enforcement

Section 49 of the Housing Act 2004 gives the Council the power to charge for enforcement action and recover these costs.

Charging will apply for enforcement action in the following circumstances:

- Serving an improvement notice under sections 11 or 12
- Carrying out a review under section 17 (review of suspended improvement notices)
- Making a prohibition order under sections 20 or 21
- Review of suspended prohibition orders) or serving copies of the Council's decision on such a review under section 26
- Serving a hazard awareness notice under section 28 or 29
- Taking emergency remedial action under section 40
- Making an emergency prohibition order under section 43 or

In addition charges may be recoverable with regard to making a demolition order under section 265 of the Housing Act 1985.

What can be charged for will depend on the type of action taken. However in most instances it will include:

- The expenses incurred in determining whether to serve a notice/order
- Identifying any action to be specified within the notice/order
- Serving the notice/order

Expenses will be recovered in accordance with section 50 of the Housing Act 2004 via a demand for payment of the charge. As from the time the demand becomes operative until recovered, the sum recoverable will be registered as a local land charge on the premises concerned.

Expenses in respect of which a demand is served carry interest, at such reasonable rate as the Council may determine, from the date of service until payment of all sums due under the demand: para 10 of Part 3 of Schedule 3 to the Housing Act 2004.

The charge for enforcement is separate to the charge associated with a penalty charge or civil penalty issued as an enforcement mechanism to address non-compliance.

## Appeals

Any person served with a notice/order has the right to appeal on any grounds set out in the legislation. The main reasons for appeal are likely to be the contents of the notice/order and the schedule of works. Appeals can also be made on the grounds that the notice/order was not served on the correct person or that a different course of action would be more appropriate.

Appeals regarding enforcement action under the Housing Act 2004 are made to the First-tier Tribunal (Property Chamber). Further details on this process are contained in the relevant notice/order.

All other appeals regarding enforcement action taken should be directed to the Magistrates Court or as directed on the notice/order served. The Council will rigorously defend any appeals where the notice/order has been correctly served.

## Complaints

The Council provides an effective and timely complaints procedure. The procedure is accessible on the Council's website at:

[www.chichester.gov.uk](http://www.chichester.gov.uk)

The complaints process is without prejudice to any formal appeal mechanisms. Where a formal appeal mechanism exists, that mechanism must be used. The complaints procedure cannot be used as a substitution for a formal legal appeal.

## Review of the Policy

The Council reserves the right to amend the policy and vary the eligibility criteria specified based on changes to funding, benefits criteria, legislation and national guidance. Minor changes which do not affect the broad scope of the policy may from time to time be made by the Director for Housing and Communities. However for more significant changes Cabinet approval would be sought.

A full review of the Policy will take place in five years.

## Data Protection Statement

Chichester District Council (CDC) manages personal data in accordance with the data protection legislation, in particular the General Data Protection Regulation 2016 (GDPR) and the Data Protection Act 2018, and related codes of practice. It is a public authority for the purposes of the GDPR.

CDC's Housing Standards Team (HST) is responsible for processing applications and awarding financial assistance in relation to housing improvement and disabled adaptations.

Furthermore the HST is responsible for enforcing legislation in relation to housing standards and houses in multiple occupation.

Personal data will be processed for the purpose of determining an application for financial assistance, and also for determining the most appropriate course of action in the instance of a breach of housing legislation. This data will also be used for cross-system and cross-authority working for the prevention and detection of fraud and legal non-compliance.

The HST will where appropriate share information including personal data with other departments in CDC to support the aforementioned purposes. Information may also be shared with partner local authorities and when requests are received by legitimate law enforcement bodies carrying out their own public roles.

For more information, please see the data protection policy section on CDC's website via the following link:

<https://www.chichester.gov.uk/dataprotectionandfreedomofinformation>

or contact the HST on 01243 785166.

## Glossary

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### **Category 1 hazards -**

Hazards with a HHSRS score of > 1,000. A dwelling with a Category 1 hazard is considered to fail the minimum statutory standard for housing. If a property has a category 1 hazard, the local authority has a duty to take action. An example of a Category 1 hazard would be a property with no whole-house controllable heating system.

### **Category 2 hazard –**

A less serious hazard with a HHSRS score of < 1,000. The local authority has a power but not a duty to take action. An example of a Category 2 hazard would be a property with a kitchen in poor repair.

### **DFG (Disabled Facilities Grant) -**

A DFG is a means-tested grant for people with a permanent disability of any sort – including physical and learning disabilities, sensory impairments and mental illness. A DFG will enable applicants to make changes to enable them to continue living at home and remain as independent as possible.

### **EPC (Energy Performance Certificate) -**

An Energy Performance Certificate presents the energy efficiency of domestic properties on a scale of A (most efficient) to G (least efficient)

### **Fuel Poverty -**

The original definition of fuel poverty states that a household is in fuel poverty if it needs to spend more than 10% of their income on fuel to maintain an adequate level of warmth (10% definition). The new definition now adopted by government is that a household is said to be in fuel poverty if they have fuel costs that are above average and were they to spend that amount they would be left with a residual income below the official poverty line (Low Income High Costs definition).

### **HHSRS (Housing Health and Safety Rating System) -**

A risk assessment tool to help local authorities identify and protect against potential risks and hazards to occupants health and safety from deficiencies in a property, covering 29 categories of hazards.

### **HMO (Houses in Multiple Occupation) -**

An entire house or flat which is let to 3 or more tenants who form 2 or more households and who share a kitchen, bathroom or toilet.

OR

A house which has been converted entirely into bedsits or other non self-contained accommodation and which is let to 3 or more tenants who form two or more households and who share kitchen, bathroom or toilet facilities.

OR

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 3 or more tenants who form two or more households.

OR

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 qualify as an HMO the property must be used as the tenants' only or main residence and 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.

### **Housing Stock Modelling -**

A desktop exercise providing local authorities with estimates of key housing and energy variables based on statistical models.

### **Mandatory Licensed House in multiple occupation (HMO) -**

An HMO will require a licence if it is:

- a property occupied by five or more people forming two or more separate households, or
- a purpose-built flat in a block of up to two flats and occupied as an HMO by five or more people

### **Private rented sector –**

Property owned by a landlord and leased to a tenant. The landlord, in this case, could be an individual, a property company or an institutional investor.

### **Private sector housing –**

Housing not owned by the local authority or a housing association

### **SAP (Standard Assessment Procedure) –**

Method system for measurement of energy rating of residential buildings.

### **Simple SAP -**

An estimate of a residential dwelling's likely SAP score, it is not based on the full required range of data for a SAP calculation or a reduced data SAP calculation (RDSAP), it should only ever be considered an estimate of the SAP score, and used as a guide.

