



Housing Enforcement Policy

Author:	Rachel Liddle	Date:	April 2017
Version:	1	Review due:	April 2018

Approved by	Deputy Leader- Regulatory Services
-------------	------------------------------------

Document Review			
Version	Amendment	By	Date

Foreword

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

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

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

1. Introduction

- 1.1 This policy document sets out East Staffordshire Borough Council's approach to its housing standards compliance and enforcement activities in relation to private sector housing conditions, including the owner-occupied, private rented and social rented sectors of the housing market.
- 1.2 It sets out the general principles the Council will follow in relation to regulation and, more particularly, enforcement of the Housing Act 2004 and other housing related legislation. It describes what property owners and tenants can expect if enforcement action is warranted and the circumstances that may lead to prosecution for non-compliance with legislation.
- 1.3 Regulators Compliance Code - East Staffordshire Borough Council has had regard to the [Regulators Compliance Code](#) in the preparation of this policy. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.
- 1.4 Enforcement Concordat - East Staffordshire Borough Council has adopted the Enforcement Concordat and the Principles of Good Enforcement: Standards; Openness; Helpfulness; Complaints; Proportionality and Consistency.
- 1.5 Human Rights Act 1998 -East Staffordshire Borough Council is a public authority for the purposes of the Human Rights Act 1998. We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.
- 1.6 Data Protection Act 1998 - Where there is a need for us to share enforcement information with other agencies, we will comply with the provisions of the Data Protection Act 1998.
- 1.7 Code for Crown Prosecutors - When deciding whether to prosecute, East Staffordshire Borough Council has regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions. The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Code sets out two tests that must be satisfied, commonly referred to as the 'Evidential Test' and the 'Public Interest Test':

Evidential Test - is there enough evidence against the defendant?

When deciding whether there is enough evidence to prosecute, East Staffordshire Borough Council will consider what evidence can be used in court and is reliable. We must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each alleged offender.

Public Interest Test - is it in the public interest for the case to be brought to court?

East Staffordshire Borough Council will balance factors for and against prosecution carefully and fairly, considering each case on its merits through the consistent use of the Public Interest Matrix.

- 1.8 Regulatory Enforcement and Sanctions Act 2008 - The Regulatory Enforcement and Sanctions Act 2008, as amended, established the Primary Authority scheme. We will comply with the requirements of the Act when we are considering taking enforcement action against any business or organisation that has a registered Primary Authority Partnership. The Act also provides for the publication of a list of enforcement priorities for local authorities. We will have regard to any list of enforcement priorities published by Regulatory Delivery.

2. Background

- 2.1 The Enforcement Policy is at the core of our commitment to delivering our corporate priorities.
- 2.2 The Aims of the policy are to:-
- Set out the legal responsibilities, policies, principles and priorities that the Environmental Health Team will follow when enforcing legislation,
 - Protect public health and safety from housing and housing related activities,
 - Increase the quality of accommodation available in the private rented sector,
 - Increase public confidence in the private rented sector,
 - Ensure license conditions are met,
 - Prevent or remedy statutory nuisance arising from housing,
 - Prevent or reduce negative environmental impacts from housing,
 - Ensure persons are held responsible for their actions which are detrimental to the health safety and welfare of other persons or the local environmental quality,
 - Ensure we meet our statutory duties as a public authority.
- 2.3 The Council has a key role to play in protecting public health and safety and promoting community health and well-being. Fair and effective enforcement underpins this and ensures that we protect health, safety and quality of life for all those who live, visit and work in the Borough as well as ensuring that businesses are legally compliant.
- 2.4 This Policy commits the Council to good enforcement practice and establishes the framework by which we will ensure a fair and consistent approach to the way that housing standards enforcement activities are undertaken by or on behalf of the Council.
- 2.5 It sets out what landlords, agents, registered providers and tenants can expect from the Council and its enforcement officers. It also provides a clear standard that Council officers are expected to abide by when undertaking Housing Standards Enforcement activities on behalf of the Council.
- 2.6 Often a decision about enforcement action has implications for many people, either directly or indirectly. We want our stakeholders to fully understand the actions that we take and see that we are consistent, transparent, accountable, proportionate and targeted in our approach.
- 2.7 The Council will work closely with those that it regulates, and will seek to promote compliance through a range of measures including advisory activities; risk-based and intelligence-led checks on compliance and, proportionate responses to regulatory breaches.
- 2.8 The team will enforce legislation in accordance with any guidance, circulars, and codes of practice or other publications by the Government. We will take note of any case law and good practice established in respect of housing legislation when taking enforcement action in order to continuously improve and to develop an excellent service.

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

3. Legislation & Enforcement

3.1 Housing Act 2004- Housing Health and Safety Rating System

- 3.1.1 The Housing Act 2004, together with regulations made under it, prescribes the Housing Health and Safety Rating System as the means by which Local Authorities assess housing conditions and decide on action to deal with poor housing. It is a risk assessment system of the effect of housing conditions on the health of occupiers. 29 potential hazards are assessed and scored for their severity. The scores for each hazard are ranked in Bands. Hazards falling into Bands A to C are more serious, and are classed as Category 1. Less serious hazards fall into Bands D to J, and are classed a Category 2. The council must take appropriate action in respect of a Category 1 hazard, and may do so in relation to Category 2 hazards.
- 3.1.2 A 'category 1 hazard' arises when a hazard reaches a score of 1000 or more under the Housing Health and Safety Rating System. A 'category 2 hazard' arises when a hazard reaches a score of 999 or less under the Housing Health and Safety Rating System.
- 3.1.3 The score is based on the risk to the potential occupant who is the most vulnerable to that hazard. However, in determining what action to take, the Council will not only take account of the score, nut also whether the Council has a duty or distraction to act, the views of the occupiers, the risk to the current and likely future occupiers and visitors and the presence of other significant hazards in the property.
- 3.1.4 The Housing Act 2004 is the principal Act covering statutory action. If a category 1 hazard is identified the Council has a duty to require the owner to remedy the defect. The Council has discretionary powers to deal with category 2 hazards, and the most appropriate course of action will be decided on a case-by-case basis.
- 3.1.5 It is for the Council to determine the most appropriate course of action in relation to the hazard in all circumstances. Consideration is to be given to all relevant factors and also published guidance from the Office of the Deputy Prime Minister, and to the views of owners and tenants before formal action is taken.
- 3.1.6 The purpose of housing legislation is generally to protect the health, safety and welfare of the public. We recognise that the most satisfactory way to achieve compliance with the law is to provide guidance and advice at the earliest possible stage to those responsible for complying with their legal obligations. Landlords, whether individuals or corporate bodies, are most commonly affected by the enforcement of housing and public health legislation. Advice and guidance will be provided to landlords on a proactive and reactive basis via newsletters, forums and one-to-one communication. However, there are times when enforcement of the law is necessary. Enforcement action includes serving statutory notices, completing works in default of the owner and criminal prosecution.
- 3.1.7 The Housing Standards Team has a range of enforcement options available to protect the health and welfare of residents. The Council cannot take more than one of the actions available at any one time with respect to the same hazard (unless one

is an emergency action). However, the action required can be varied or repeated if an action taken has proved unsuccessful.

3.2 Houses in Multiple Occupation (HMO)

3.2.1 The Housing Act 2004 defines a HMO as a property which is of one of the following types:

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

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

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

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

3.2.5 Where these regulations are breached we will initially work informally with landlords to secure compliance as soon as possible. Where failures to comply with these regulations can be dealt with under HHSRS we will consider action initially under Part 1 of the Housing Act 2004.

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

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

4. Mandatory & Discretionary Licensing

4.1 Mandatory HMO Licensing Duties

4.1.1 All HMOs that are 3 storey and above and occupied by at least 5 people who form more than one household must be licensed. All applications for HMO licenses will be determined in accordance with the HMO Enforcement Policy and are subject to a fee.

4.1.2 Should the licence application be refused the reasons for the refusal and appeal details will be given.

4.1.3 Licensed HMOs will be inspected by the Environmental Health Team within 12 months of the licence being granted to ensure compliance with Part 1 of the Housing Act 2004.

4.1.4 Where the Council has identified non-compliance of the legislation during an inspection, there are several enforcement options that the Council can utilise to ensure the risks to the health and safety of the occupants are reduced to an acceptable level.

4.2 Additional Licensing

4.2.1 Section 56 of the Housing Act 2004 permits the Council to extend the licensing of HMOs beyond the scope of the mandatory licensing regime. The Council may extend HMO licensing to part or all of its area to include other specified HMOs if poor management of HMOs is causing problems in that area. Additional Licensing is not currently in force in East Staffordshire.

4.3 Selective Licensing

4.3.1 Selective licensing is a regulatory tool under Part 3 of the Housing Act 2004 which provides a discretionary power for local authorities to introduce selective licensing of privately rented homes in order to tackle problems in their areas.

4.3.2 The aim of selective licensing is to improve property conditions in an area, as well as their management and occupation, and provide a positive contribution to the community they are in. The scheme came into effect on **insert date** and will last for 5 years.

4.3.3 The scheme requires all landlords who privately rent out properties in the designated area to obtain a licence from the council. They need to show basic safety checks have been carried out and that they have appropriate management arrangements in place. The licence holder and any manager must be a fit and proper person and must declare certain convictions or breaches of certain laws.

4.3.4 It is a criminal offence to let a privately rented property in a designated area without a licence and failure to apply for one could lead to an unlimited fine or a civil penalty of up to £30,000. Failure to comply with any of the conditions of the licence could lead to an unlimited fine or a civil penalty of up to £30,000. It is also a criminal offence to make a false statement in an application for a licence or fail to comply with any condition of a licence.

4.3.5 Formal enforcement action for failure to comply with the selective licensing requirements can be undertaken by the Council in accordance with the selective licensing policy and the enforcement provisions detailed within this policy

5. Enforcement Options

5.1 The following enforcement options are available:

- Improvement Notices- require the person responsible to carry out a described set of works to reduce the hazard(s) deemed unacceptable in the property.
- Prohibition Orders- may prevent the use of all or part of a property from some or all purposes, or occupation by particular numbers or descriptions of person.
- Hazard Awareness Notices- This Notice does not require any action on the person responsible but it sets out the hazards of concern and remedial action we believe would reduce the hazards.
- Emergency Remedial Action- Where there is imminent risk of serious harm to health or safety, we may take any remedial action necessary to remove this imminent risk of serious harm.
- Emergency Prohibition Orders- Where the hazard involves an imminent risk of serious harm to the health or safety of anyone occupying the property an Emergency Prohibition Order may be served.
- Demolition Orders- require the demolition of a property and are used where the property condition is such that hazards are present and remedial works are not possible or reasonable because of excessive cost or other reason.
- Clearance Areas- can be declared on a single or group of properties as a result of Category 1 hazards and can be served due to the poor arrangement of the street or area to be cleared.

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

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

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

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

Hazard Awareness Notices: any hazard
'Less serious hazard' than would justify an Improvement Notice.

<p>Works are not practical or reasonable. Views of occupant and current occupancy. Landlord's willingness to remedy defect/deficiency.</p>
<p>Improvement Notice: Category 1 and 2 hazards</p>
<p>Current occupancy (Vulnerable group for any hazards identified? Empty property) Likelihood of vulnerable group visiting. Other vulnerable group (hostel for alcohol/drug dependency etc.) Risk of social exclusion. Views of occupant and other agencies. Combination of Category 2 hazards. Staggered compliance times may help landlord to organise works. Financial assistance available (eg. DFG).</p>
<p>Prohibition Order: Category 1 or 2 hazards</p>
<p>Presence of a serious threat to health or safety. Overcrowding or insufficient facilities. Alternative uses of building. Listed building status. Availability of alternative accommodation for rehousing. Time scale for action (eg. Prohibition order operative after 28 days).</p>
<p>Emergency Remedial Action: Category 1 hazards only</p>
<p>Must be Category 1 hazard with imminent risk of serious harm to the health or safety of any occupier of those or any other residential premises. No management order in force. Is action immediately necessary to remove imminent risk?</p>
<p>Suspending Improvement Notice/Prohibition Order</p>
<p>What event will trigger the end of suspension? Suspension may not be appropriate if there is a fast turnover of tenants. Is property covered by wider strategic action? Is vulnerable group likely to move into property? How will change in circumstances be monitored? Views of occupant.</p>
<p>Demolition Order: Category 1 hazards only</p>
<p>Availability for re-housing occupants. Prospective use of the cleared site. Demand for and sustainability of the accommodation if the hazard was remedied. The impact of a cleared site on the appearance and character of the neighbourhood.</p>
<p>Clearance Area: Category 1 hazards only</p>
<p>The residential buildings in the area contain one or more Category 1 hazards. Are the buildings dangerous/harmful to the health and safety of the occupants as a result of bad arrangements? Are other buildings in the area dangerous or harmful to the health of the inhabitants?</p>

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

- 5.6 Where Prohibition Orders are served a minimum of 6 weeks will be given from the date of service to the date the Order becomes operative. This is to give both the landlord and tenant the time needed to comply with the Order. Any affected landlords will be given information on the process they need to take to legally evict any tenant. All affected occupiers will be given information on the Council's homelessness duty and where to obtain assistance in finding accommodation.
- 5.7 If the level or risk associated with a hazard has been sufficiently reduced, even if the terms of the order/notice have not been fully complied with the Council must revoke a notice served or order made to address that hazard. All Category 1 hazards must be reduced to at least a Category 2 hazard, where practicable.
- 5.8 Where improvement notices are served remedial works will be required even if the tenant vacates the property or is evicted unless there are exceptional circumstances that require an alternative course of action.
- 5.9 Where a notice or order is not satisfactorily complied with we will consider the following options: -
- Take no action
 - Suspend or revoke the Notice/Order
 - Take an alternative form of action
 - Carry out the works in default
 - Carry out the works in default and prosecute
 - Prosecution or formal caution
 - Ask the magistrate's court to make an order allowing action to be taken
- 5.10 The appropriate response to non-compliance will be determined on a case-by-case basis having regard to the individual circumstances involved and any relevant guidance.
- 5.11 When the person responsible fails to carry out necessary works on a notice the Housing Standards Team may arrange for the works to be carried out in default. We will, except in emergency situations give the relevant person notice of its intention to carry out the works, giving the owner a final opportunity to do the works themselves. Each case will be considered on merit taking into account the owners' financial situation, the occupancy details, the nature of the works and the impact of completing works on the property value. The Council will charge the appropriate person for the cost of the works together with the costs involved in arranging for the work to be carried out. In emergency situations powers under section 76 of the Building Act 1984 or section 40 of the Housing Act 2004 will be considered where action is necessary to protect public health and safety.
- 5.12 Prosecution
- 5.12.1 The potential for taking a prosecution is an important part of enforcement. The purpose is to punish wrong doing, to avoid a recurrence and to act as a deterrent to others. Where the matter is of a serious nature, there have been persistent breaches by the same offender or where the suspect does not accept his guilt for offences a prosecution may be commenced.

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

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

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

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

5.13 Civil Penalties

5.13.1 The Housing & Planning Act 2016 introduced civil penalties as an alternative to prosecution for certain offences under the Housing Act 2004. Local authorities will be able to impose a civil penalty for the following offences:

- Failure to comply with an Improvement Notice;
- Offences in relation to licensing of Houses in Multiple Occupation;
- Offences in relation to licensing of houses under Part 3 of the Act;
- Offences of contravention of an overcrowding notice;
- Failure to comply with management regulations in respect of Houses in Multiple Occupation.

5.13.2 The maximum penalty that can be imposed is £30,000; a matrix has been developed that takes into account the guidance when setting a civil penalty, which can be found in appendix 5.

5.13.3 Prior to issuing a civil penalty the local authority must serve a notice of intention on the person committing the offence, inviting them to make representation before a final notice is issued.

5.13.4 The person in receipt of a civil penalty has a right of appeal through the First-tier Tribunal against;

- the decision to impose a penalty, or
- the amount specified in a notice of intent or a final notice.

The final notice is suspended until an appeal is determined or withdrawn.

5.14 Determining whether to prosecute or issue a civil penalty.

5.14.1 Where the legislation allows a civil penalty to be issued this will normally be the first choice rather than prosecution unless the landlord has breached housing legislation in the past and continues to be considered such a poor landlord that a banning order is considered necessary. In this case a prosecution will be the first choice with an aim to proceed for a banning order.

5.14.2 When issuing a civil penalty the procedure set out in **enter procedure** will be followed and the matrix for determining the level of a civil penalty found in appendix 5 will be used.

5.14.3 When determining whether to prosecute for an offence the corporate enforcement policy will be followed.

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

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

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

6. Other Housing Enforcement Activity

6.1 The Housing Standards Team also deals with complaints in relation to drainage, filthy & verminous properties and caravan sites. In these circumstances officers will have regard for the principles of risk assessment and will consider the following elements when deciding the action that will be taken:

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

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

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

6.3 The Council investigates complaints about the foul drainage system throughout the borough. Residents reporting blockages affecting a public sewer system will be advised to refer the matter to Severn Trent Water PLC via their 0800 783 444 call centre number. With respect to private systems, in the first instance, we will provide advice to owners and occupiers to enable them to resolve any residential drainage or sewer problems for themselves without the need for formal enforcement action. The Council may take enforcement action to resolve a drain or sewer problem if there is a risk to public health and, if responsible parties are uncooperative. Where appropriate all reasonable expenses incurred in the clearing or repair of drains/sewers will be recovered from all liable parties (please see section on works in default, page 22). Liable parties are those with shared or sole responsibility for the drain, sewer, septic tank etc. and who have received appropriate notice from the Council of drainage works required. Where repeat blockages are brought to our attention we will assist liable parties to identify the problem and refer to their insurer or to organisations dedicated to resolving these problems on behalf of insurers. Failure to act may result in enforcement action using public health legislation.

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

6.5 Where notice has been served under section 83 of the Public Health Act 1936 and not complied with, works will be undertaken in default if those works are deemed

necessary to protect the health of the occupier or other persons. The costs of works in default will be re-charged to the owner/occupier of the premises. Where the property is tenanted, the landlord will be informed of the conditions so that they can take appropriate action. If the landlord seeks to evict the tenant we will provide the tenant with information and advice to assist with re-housing and any other support needs they may have.

- 6.6 The use of land as a caravan site usually requires a Caravan Site Licence under the Caravan Sites and Control of Development Act 1960. All applications for licences will be determined within 8 weeks of receipt provided planning permission has been sought and granted. The Council will impose site licence conditions on the person holding the licence and these conditions will be based on the [Model Standards](#). Licence conditions relating to fire safety are no longer enforceable by Local Authorities and all matters of concern will be passed to Staffordshire Fire & Rescue for action. Where a site licence application is refused the reasons for refusal and any appeal process will be clearly documented with the refusal letter. Caravan sites will be inspected upon the receipt of a complaint and in accordance with the mobile home fee policy.
- 6.7 Formal action will be considered where there have been serious and or persistent breaches of licence conditions or for operating a caravan site without a licence. If a non-licensed site can be licensed, the Council will work with the site owner to ensure a licence application is submitted within 28 days. Informal action will also be taken to resolve any breach of the licence conditions. Formal action will be taken where an informal approach does not achieve the desired result and the breach has a negative impact on the health and safety of residents or is seriously affecting their enjoyment of the site. The appropriate response to non-compliance will be determined on a case by case basis having regard to the individual circumstances.
- 6.8 If the licence holder is successfully prosecuted three times for breaching the licence conditions, then the Council will apply to the Court to have the licence revoked.

7. Miscellaneous

7.1 Targeted enforcement action- from time to time we may want to take enforcement action on a targeted basis. Where this is done it will be as a response to a particular problem or there will be a valid reason that led to the need for pro-active work. The types of issues that may trigger targeted action are:-

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

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

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

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

7.4 Most of the legislation enforced by the Housing Standards Team includes the power for authorised officers to gain entry onto property for the purpose of carrying out the authority's duties under that legislation. Officers will give the required written notice under the appropriate power of entry and will clearly state which power of entry is being used and why. If access is not secured by informal means or using formal notice then the Council will consider applying for a warrant to obtain entry. If prior warning is likely to defeat the purpose of the entry then a warrant may be the most

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

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

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

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

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

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

Invoice - invoice for the applicable amount and County Court action if the invoice is not settled in full	For debts less than £500 Where debtor has sufficient resources to settle the debt Where other forms of debt recovery are not possible
Charge placed on property (accruing compound interest at a rate of 8% *in exceptional circumstances the interest rate may be reduced)	Where owner occupiers are unable to settle the debt Where landlords are unable to settle the debt and mortgage repayments make sequestering the rent unviable Where responsible person cannot be traced
Sequestering the rent - by serving notice on the tenant requiring them to pay rent direct to the Council until the costs are recovered	Where property is tenanted and there are no or low mortgage repayments
Enforced sale - under the Law and Property Act 1925 the Council can force the sale of the property through the Courts and recover the costs from the proceeds of the sale	Where the property is empty Where the property is tenanted but there are multiple debts on the property and the landlord is not maintaining the property

8. Equalities Statement

- 8.1 We believe in equality of opportunity for all people. When conducting compliance checks or making enforcement decisions we will ensure that there is no discrimination against any individual(s) on the grounds of age, race, colour, ethnic or national origin, nationality, religion and belief, gender, marital status, employment status, disability, sexual orientation, social class, responsibility for children or dependents, trade union membership, unrelated criminal convictions or any ground that cannot be justified.
- 8.2 The Council will ensure that all its services, facilities and resources are accessible and responsive to the people and communities of the Borough.
- 8.3 We understand that some members of the community may have specific difficulties, which will need extra advice and assistance. Careful explanation will be given and if necessary the services of an interpreter may be used. We will work in accordance with the Council's Single Equality Scheme.
- 8.4 If requested, we will arrange for appropriate documents to be translated into alternative formats or languages and we will provide practical help for people with impaired hearing, vision or other impairment.

9. Comments and Complaints

- 9.1 We encourage comments on the content and application of this Policy; any such comments will be used to assist in improving how we deliver our Food Law Enforcement activities.
- 9.2 Where a person is concerned that any enforcement action taken by us is not in accordance with this Policy they can complain. Any complaint will be dealt with in line with the Council's Complaint Procedures. In the first instance the complaint will be passed to the Manager of the service for investigation.
- 9.3 Where the Council's Complaints Procedure has been exhausted and the person remains aggrieved they may ask the Local Government Ombudsman to look into the matter.

10. Monitoring and Review

- 10.1 We will monitor our performance against the requirements of this Policy and publish our findings on an annual basis.
- 10.2 We will use these findings, along with any changes in law and practice, to assist in the periodic review of the Policy.

Appendix 1

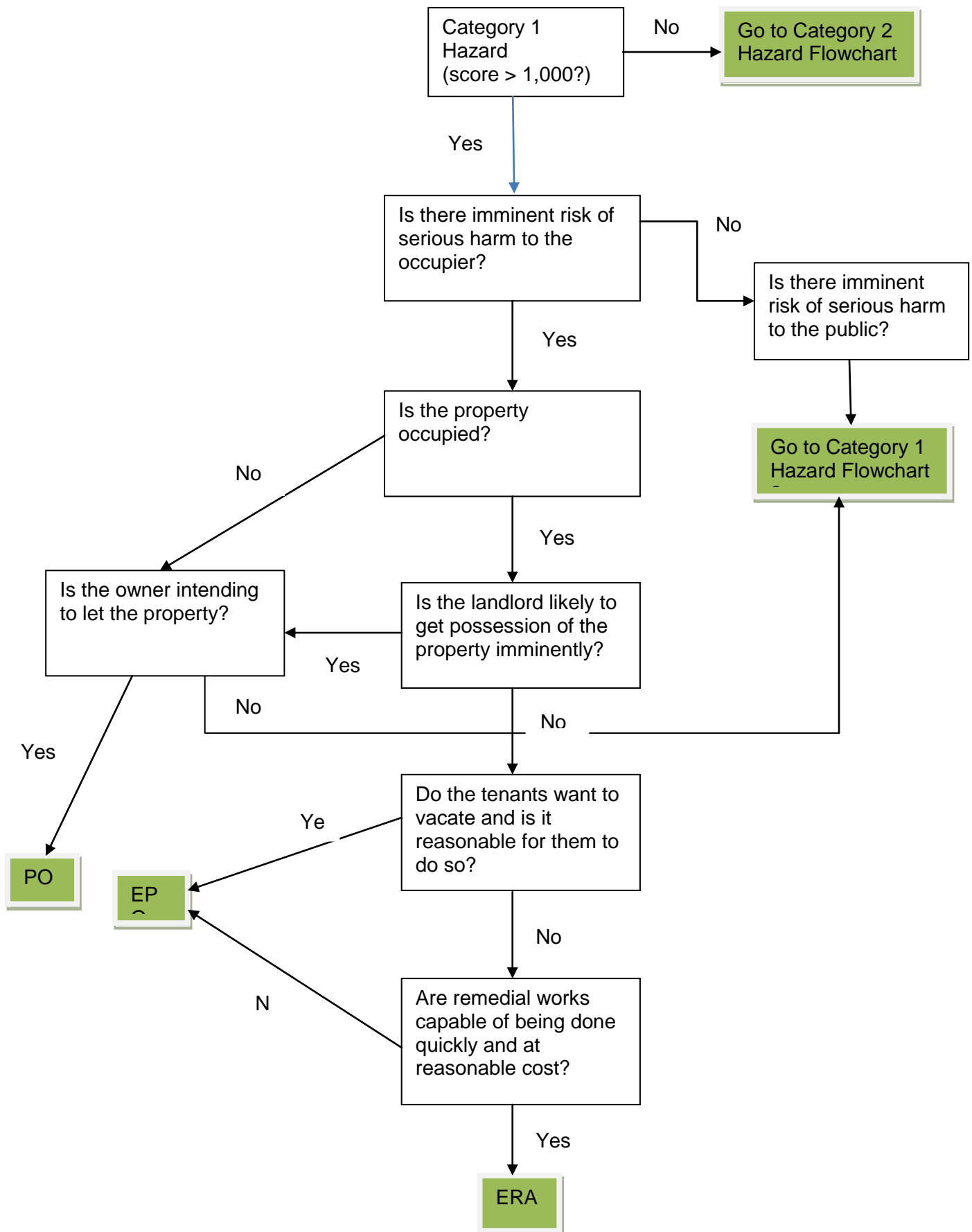
Prescribed hazards under HHSRS

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

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

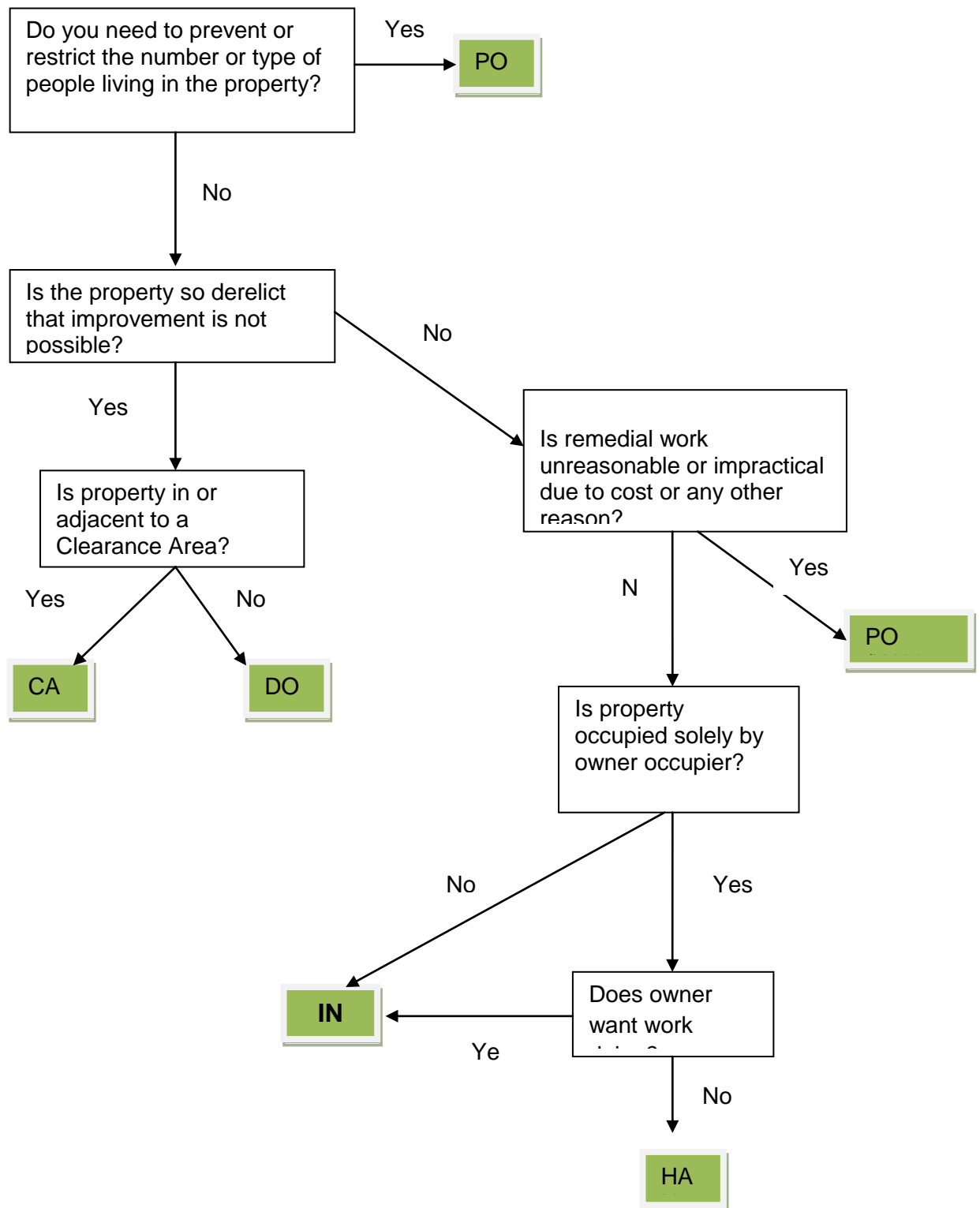
Appendix 2

Category 1 Hazard Flowchart 1



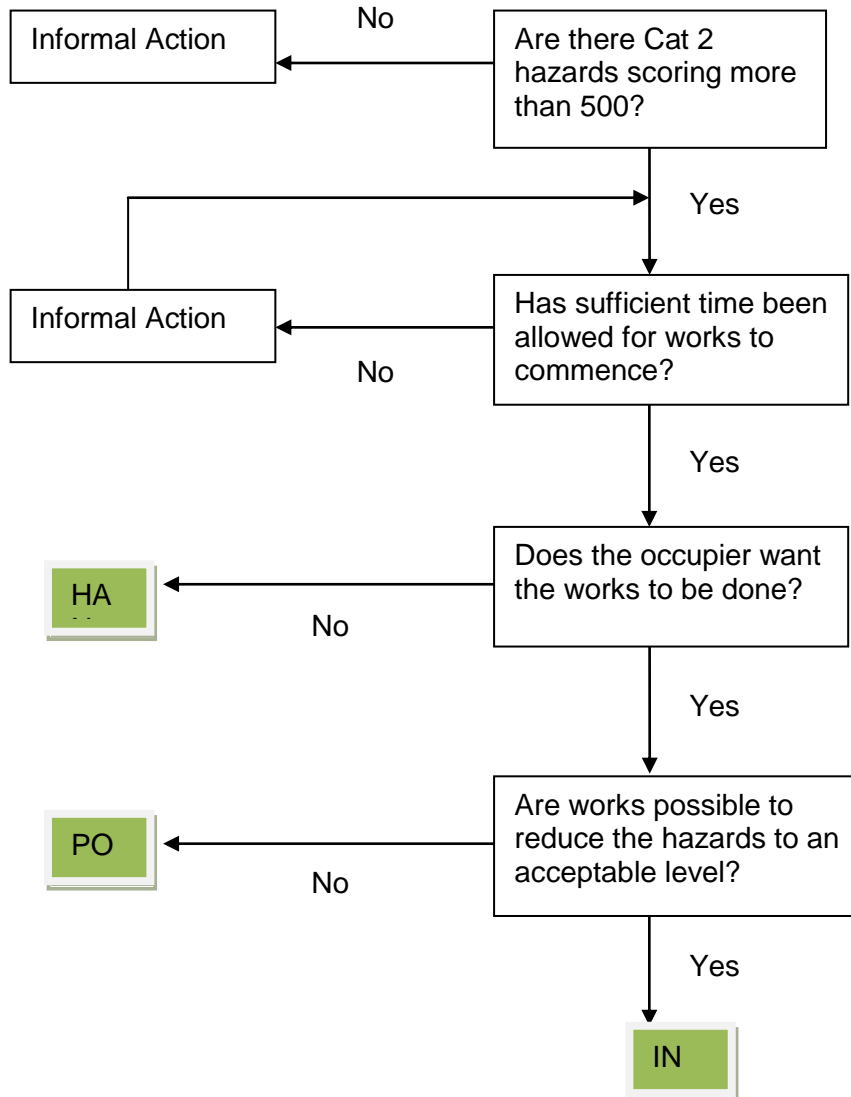
Appendix 3

Category 1 Hazard Flowchart 2



Appendix 4

Category 2 Hazard Flowchart



Appendix 5

Charging table for determining value of Civil Penalties imposed under Housing Act 2004

Failure to comply with an Improvement Notice (Section 30) (note 1)	£
1st offence	5000
2nd subsequent offence by same person/company	15000
Subsequent offences by same person/company	25000
Premiums (use all that apply)	
Large housing portfolio (10+ properties)	+2500
Multiple Category 1 or high Category 2 Hazards	+2500
Vulnerable occupant and/or significant harm occurred as result of housing conditions (note 5)	+2500
Perpetrator demonstrates Income to be less than £440/week (note 6)	-50%

Offences in relation to licensing of HMOs under Part 2 of the Act (Section 72) (note 1)	£
Failure to obtain property Licence (section 72(1))	10000
2nd subsequent offence by same person/company	20000
Perpetrator demonstrates Income to be less than £440/week	-50%
Breach of Licence conditions (Section 72(2) and (3)) - Per licence breach	5000
Perpetrator demonstrates Income to be less than £440/week	-50%
Offences in relation to licensing of HMOs under Part 3 of the Act (Section 95) (note 1)	£
Failure to Licence (section 95(1))	10000
2nd subsequent offence by same person/company	20000
Perpetrator demonstrates Income to be less than £440/week	-50%
Breach of Licence conditions (Section 95(2)) - Per licence breach	5000
Perpetrator demonstrates Income to be less than £440/week	-50%
Offences of contravention of an overcrowding notice (section 139) (note 1)	£
1st relevant offences	2500
2nd subsequent offence by same person/company	10000
Premiums (use all that apply)	
Knowingly breach of notice	+2500
Vulnerable occupant and/or significant harm occurred as result of overcrowding (note 3)	+2500
Perpetrator demonstrates Income to be less than £440/week	-50%
Failure to comply with management regulations in respect of HMOs (Section 234) (note 1)	£

relevant offences	1,000/regulation
Premiums (use all that apply)	
Previous history of non-compliance with these provisions (not	+2500/regulation
Large housing portfolio (10+ properties) (not	+2500
Vulnerable occupant and/or significant harm occurred as result of housing conditions (not	+2500
Perpetrator demonstrates Income to be less than £440/week(not	-50%

NOTES

Note 1 – Offences that may be dealt with by way of imposing a civil penalty

The starting point for a civil penalty is based on the number of previous convictions or imposition of a civil penalties for the same type of offence in the previous four years.

After the starting point has been determined, relevant Premiums are added to the starting amount to determine the full civil penalty to be imposed

No single civil penalty may be over £30,000. Where the addition of all relevant premiums would put the penalty above the maximum, it shall be capped at £30,000

Note 1 - 2nd subsequent offence by same person/company

The Council will take into account any such convictions or civil penalties irrespective of the locality to which the offence relates.

Note 2 - Large housing portfolio (10+ properties)

The premium is applied where the perpetrator has control or manages of 10 or more residential properties.

For the purposes of this premium, the definition of a person having control and person managing are as defined by Housing Act 2004 Section 263.

Note 3 - Multiple Category 1 or high Category 2 Hazards

This premium will apply where the failure to comply with the Improvement Notice relates to three or more Category 1 or high scoring Category 2 hazards associated with different building deficiencies. For the avoidance of doubt this means that where two hazards are present but relate to the same property defect, they are counted as one hazard for purposes of this calculation.

For the purpose of this premium, a high scoring category 2 hazard is defined as one scored following the Housing Health and Safety Rating System as “D” or “E”.

Note 4 - Vulnerable occupant and/or significant harm occurred as result of housing conditions

This premium will be applied once if either the property is occupied by a vulnerable person or if significant harm has occurred as a result of the housing conditions.

For purposes of this premium a vulnerable person is defined as someone who forms part of a vulnerable group under Housing Health and Safety Rating System relating to hazards present in the property or an occupant or group of occupants considered by the Council to be at particular risk of harm that the perpetrator ought to have had regard.

For purposes of this premium, significant harm is defined as physical or mental illness or injury that corresponds to one of the four classes of harm under the Housing Health and Safety Rating System Operating Guidance.

Note 5 - Perpetrator demonstrates Income to be less than £440/week

This premium will be applied after all other relevant premiums have been included and if applicable will reduce the overall civil penalty by 50%.

To be applicable, the person served by the Notice of Intent must provide sufficient documented evidence of income.

The figure of £440/week is to be calculated after omission of income tax and national insurance.

The Council reserves the right to request further information to support any civil claim, and where this is incomplete or not sufficiently evidenced may determine that the premium should not be applied.

Note 6 - Previous history of non-compliance with these provisions

This premium is applied where there has been a conviction or imposition of a civil penalty for the same type of offence in the previous four years.

The Council will take into account any such convictions or civil penalties irrespective of the locality to which the offence relates.

Note 7 – Knowingly breach of notice

This premium will be applied where, the person to which the civil penalty applies, acted in a reckless manner in not complying with the overcrowding notice.