

Cabinet Member for Housing and Planning Agenda

Date:	Tuesday 1st August 2017
Time:	2.30 pm
Venue:	Room G1 - Ground Floor, Westfields, Middlewich Road, Sandbach CW11 1HZ

The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the foot of each report.

It should be noted that Part 1 items of Cheshire East Council decision making and Overview and Scrutiny meetings are audio recorded and the recordings will be uploaded to the Council's website.

PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT

1. Apologies for Absence

2. Declarations of Interest

To provide an opportunity for Members and Officers to declare any disclosable pecuniary and non-pecuniary interests in any item on the agenda.

3. Public Speaking Time/Open Session

In accordance with Procedure Rules Nos.11 and 35 a period of 10 minutes is allocated for members of the public to address the meeting on any matter relevant to the work of the body in question. Individual members of the public may speak for up to 5 minutes but the Chairman or person presiding will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers. Members of the public are not required to give notice to use this facility. However, as a matter of courtesy, a period of 24 hours' notice is encouraged.

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Members of the public wishing to ask a question at the meeting should provide at least three clear working days' notice in writing and should include the question with that notice. This will enable an informed answer to be given.

4. **Housing Enforcement Policy** (Pages 3 - 46)

To consider a report which outlines the changes to the service specific enforcement policy appended to the Cheshire East Enforcement Policy in relation to Housing functions

5. **ECO Flexible Eligibility Statement of Intent** (Pages 47 - 64)

To consider a report on the ECO Flexible Eligibility Statement of Intent, which sets out how residents can qualify for discretionary help with keeping warm at home

Cheshire East Council

Cabinet Holder for Housing and Planning

Date of Meeting: 1st August 2017

Report of: Executive Director, Place

Subject/Title: Housing Enforcement Policy

Portfolio Holder: Councillor Ainsley Arnold, Housing and Planning

1. Report Summary

- 1.1. Cheshire East Council is committed to being a proactive and enforcing Council to create the right conditions for the private rented sector to thrive. We want to, encourage and support good landlords, demonstrating through our actions that poor standards of property management and letting out substandard accommodation will not be tolerated.
- 1.2. Changes brought into effect by the Housing and Planning Act 2016 have provided an opportunity for the Council to strengthen its message to poor landlords by introducing financial penalties and rent repayment orders for certain housing offences, including fire safety offences.
- 1.3. The Cheshire East Enforcement Policy and service specific enforcement policies were approved by Cabinet in July 2016, including a Housing Enforcement Policy. To be able to utilise the new powers conferred on it through the Housing and Planning Act 2016, the Council must amend its existing policy to set out how civil penalties and rent repayment orders will be used.
- 1.4. This report outlines the changes in the legislation and seeks to amend the service specific enforcement policy appended to the Cheshire East Enforcement Policy in relation to Housing functions.

2. Recommendation

- 2.1. It is recommended that the Portfolio Holder:
 - Approve the Service Specific Housing Enforcement Policy that is appended to the Cheshire East Enforcement Policy, and
 - Authorise the Executive Director, Place to put all necessary steps in place to implement the Policy.

3. Other Options Considered

- 3.1. There is the option to continue to carry out enforcement activity in line with the Service Specific Housing Enforcement Policy approved in 2016. However, this would not afford us the option of applying civil penalties and rent repayment orders which will act as a deterrent to poor practice in the private rented sector.
- 3.2. The Council could utilise prosecution through the courts as its preferred method of dealing with certain housing offences; this is a slow process and uses considerable legal resources. Civil penalties provide an option that reduces the amount of resource needed to bring a case to a successful conclusion.

4. Reasons for Recommendation

- 4.1. There is a statutory requirement for Cheshire East Council to have an appropriate enforcement policy in respect of the regulatory services that it provides.
- 4.2. The private rented sector is an important part of the housing offer in Cheshire East, with the sector now overtaking social housing in size. It is important that the quality of housing in this sector is regulated to protect residents' health, safety and wellbeing and prevent exploitation of vulnerable people.
- 4.3. Fire safety must be at the forefront of our minds; these additional powers can be used to reinforce the message to landlords that lack of attention to the safety of their tenants will not be tolerated.

5. Background/Chronology

- 5.1. The Cheshire East Enforcement Policy was approved by Cabinet in July 2016 and applies to all regulatory areas delivered by the Council including Environmental Health, Trading Standards, Planning, Building Control, Licensing, Housing, Antisocial Behaviour, Waste and Littering, Parking, the Blue Badge Scheme and Public Rights of Way.
- 5.2. The Enforcement Policy provides guidance to businesses, residents and officers on the range of options that are available to achieve compliance with legislation enforced by each of the services. It is designed to help businesses and individuals understand our objectives and methods for achieving compliance as well as the criteria we consider when deciding the most appropriate response to a breach of legislation.
- 5.3. The Enforcement Policy comprises of an overarching policy of enforcement which is supplemented by appendices for each of the specific regulatory service areas. This arrangement allows for clearer detail on statutory guidance and code of practice that may be specific to individual service areas and which must be considered as part of their regulatory effort. The

service specific Housing Enforcement Policy which is appended to the main Enforcement Policy details the proportionate approach that the Council takes to enforcement of housing standards, and details the sanctions available to the Council.

- 5.4. The Housing and Planning Act 2016 introduced a range of measures to tackle poor landlords, including civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences, and the extension of rent repayment orders to cover additional offences. Both changes came into effect on 6 April 2017.
- 5.5. Statutory guidance issued on 6 April 2017 detailed the requirement for local housing authorities to develop and document their own policy on when to apply these sanctions and should decide each case independently.
- 5.6. Civil Penalties can be used as an alternative to prosecution for the following offences under the Housing Act 2004:
 - Failure to comply with an Improvement Notice (section 30) for hazards such as excess cold, falls, domestic and personal hygiene, and fire;
 - 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 (selective licensing) (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), including fire safety and waste management.
- 5.7. Unlike civil penalty notices in other areas of the Council's regulatory powers, civil penalties for housing offences can not be applied as on the spot fines. They can be used as the culmination of a process where a landlord has failed to carry out corrective actions that the Council requires from them and the appeal and notice periods have expired.
- 5.8. The maximum civil penalty that can be applied is £30,000. The amount of penalty is to be determined by the Council in each case, having regard to statutory guidance which sets out the factors to take into account when deciding on the appropriate level of penalty. Only one penalty can be imposed in respect of the same offence.
- 5.9. The amended Policy details how the Council will establish whether the circumstances of the housing offence(s) warrants a civil penalty or prosecution, taking into account factors such as vulnerable occupants of the property, previous action taken by the Council and previous housing offences.
- 5.10. The Policy also details the level of civil penalties that will be applied. For the most serious offences where there is a serious adverse effect on an occupant, or a high risk of there being a serious adverse effect, and there

is a high degree of culpability, then the maximum civil penalty of £30,000 will be applied. The lowest civil penalty that will be applied is £1,000. A civil penalty should not be a lower cost to offend than to take the appropriate precautions, and in the event that the appropriate civil penalty taking into account the degree of culpability and harm is lower than the cost of works needed to remedy the disrepair, then the civil penalty will be adjusted upwards.

5.11. Rent repayment orders can be applied for by either a tenant or a local authority where a landlord has committed certain housing offences, and a maximum of 12 months rent has to be repaid to the tenant, or where the rent was paid by Housing Benefit / Universal Credit, repaid to the local authority.

5.12. The housing offences where rent repayment orders can be applied for are:

- The landlord has failed to obtain a licence for a property that was required to be licensed (s.72 and s.95, Housing Act 2004);
- The landlord has failed to comply with an Improvement Notice (s.30, Housing Act 2004);
- The landlord has failed to comply with a Prohibition Order (s.32, Housing Act 2004);
- The landlord has breached a Banning Order (s.21, Housing and Planning Act 2016, to be implemented from 1 October 2017);
- The landlord has used violence to secure entry to a property (s.6, Criminal Law Act 1977);
- The landlord has illegally evicted or harassed the occupiers of a property (s.1, Protection from Eviction Act 1977).

5.13. A conviction does not need to be secured before a rent repayment order can be applied for. A Property Tribunal must be satisfied beyond reasonable doubt that an offence has been committed, so a rent repayment order can be applied for alongside the use of a civil penalty for relevant offences, it is not reliant on a prosecution being sought.

5.14. Where a landlord has been convicted of an offence, the Tribunal must order that the maximum amount of rent is repaid (12 months rent). Where an offence has been committed but a conviction has not been sought, then the local authority can apply for an amount of up to the maximum level. The Council's policy is to seek to recover the maximum amount permitted in every case, except where there are mitigating factors such as the conduct of the landlord or the landlord's financial circumstances.

6. Wards Affected and Local Ward Members

6.1. All wards.

7. Implications of Recommendation

7.1. Policy Implications

7.1.1. The Policy supports the Council's ambition to be an Enforcing Authority that is tough on residents and businesses that are selfish and cause harm to others.

7.1.2. The Policy supports Outcome 5 'People live well and for longer' by using our enforcement powers to bring about housing improvements to give everyone the life chances afforded to them by living in a good quality, stable home.

7.2. Legal Implications

7.2.1. The Housing and Planning Act 2016 introduced statutory powers for local authorities to use civil penalties as an alternative to prosecution, and extended the purposes for which rent repayment orders can be used. These powers commenced on 6 April 2017. Statutory guidance issued by the Department for Communities and Local Government on that date stipulated that local housing authorities must have regard to the guidance in the exercise of their functions.

7.2.2. By publishing its Policy, the Council has fulfilled the statutory requirements that it must have documented its own policy on the justification factors for using civil penalties and how it will calculate the level of penalty, and when it will apply for rent repayment orders.

7.3. Financial Implications

7.3.1. Income received from a civil penalty or a rent repayment order can be retained by the local housing authority provided that it is used to further the local authority's statutory functions in relation to their enforcement activities covering the private rented sector.

7.4. Equality Implications

7.4.1. The aim of the Policy is to outline a transparent and consistent approach to enforcement across Cheshire East. As a consequence there are no equality implications.

7.5. Rural Community Implications

7.5.1. There are no specific implications for rural communities.

7.6. Human Resources Implications

7.6.1. No extra resources are needed to implement the amended Policy; civil penalties can be used as an alternative to existing powers.

7.7. Public Health Implications

- 7.7.1. The Policy will facilitate services which directly impact on public health. Housing improvements will benefit vulnerable residents' mental and physical wellbeing and reduce demand on health and social care services. Cold and damp homes increase the risk and effects of cardiovascular, respiratory and rheumatoid diseases, as well as hypothermia and mental ill health. Young children, older people and people with an illness or disability are more likely to suffer the effects of cold and damp housing.

7.8. Implications for Children and Young People

- 7.8.1. The Policy will provide opportunities for children and young people in low income vulnerable families to live in safe, warm and comfortable homes.

8. Risk Management

- 8.1. Publication of a Policy which sets out clear criteria provides a robust framework to ensure that decisions about enforcement are made in a fair, consistent and equitable manner.
- 8.2. Failure to adopt an enforcement policy can increase the risk of legal challenge and adverse scrutiny. Care has been taken to ensure that the Council is not unduly constrained in taking the appropriate regulatory action. If a policy is too restrictive then this could be detrimental to fair and effective regulation; conversely there is a need to provide detail to allow individuals and businesses to understand what they might expect as a result of non compliance.

9. Access to Information/Bibliography

- 9.1. A copy of the Cheshire East Enforcement Policy can be accessed via the following hyperlink:

<http://www.cheshireeast.gov.uk/business/enforcement/enforcement-policy.aspx>

- 9.2. Statutory guidance on civil penalties can be accessed via the following hyperlink:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606653/Civil_Penalties_guidance.pdf

- 9.3. Statutory guidance on rent repayment orders can be accessed via the following hyperlink:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606654/Rent_Repayment_Orders_guidance.pdf

10. Contact Information

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Service Specific Enforcement Policy

Housing

Draft for Approval – v2.0 August 2017

**To be read in conjunction with the Cheshire East Council Enforcement Policy
adopted July 2016**

Contents

Section	Page
	Summary
1	Introduction
2	General principles and matters to be taken into account when regulating housing conditions <ul style="list-style-type: none"> a) <i>Is advice and guidance sufficient to resolve matters?</i> b) <i>What is the risk associated with the housing conditions?</i> c) <i>Inspection of housing conditions</i> d) <i>Compliance and enforcement actions</i> e) <i>Information sharing</i> f) <i>Partnership working</i> g) <i>Consideration of tenure</i> h) <i>Consideration of the occupier's actions and views</i> i) <i>Consideration of whether it is reasonable and appropriate to intervene</i>
3	Housing Enforcement Legislation
4	Houses in Multiple Occupation
5	Empty Homes
6	Harassment
7	Illegal Eviction
Appendix A	The Housing Act 2004 – Primary legislation used in regulating housing standards
Appendix B	Housing Health and Safety System - Hazard Profile descriptions
Appendix C	Statement of principles used in determining the amount of a penalty charge
Appendix D	Factors to be taken into account when deciding whether to apply a Civil Penalty for certain offences under the Housing Act 2004
Appendix E	Rent Repayment Orders

This service specific enforcement policy for Housing should be read in conjunction with the Council's Enforcement Policy which sets out what those being regulated can expect from the Council, committing us to good enforcement practice, bringing benefits to businesses, enforcers and consumers alike.

Summary

The main function of local government enforcement is to protect the public and the environment and promote wellbeing and quality of life to all residents, workers and visitors within Cheshire East.

This service specific enforcement policy for Housing provides a background to the legislation and guidance on which it is based and specifically relates to the duties and powers vested in the Council to deal with poor housing conditions, statutory nuisances and related public health issues, substandard management of multi-occupancy housing and the enforcement of various legal aspects of the relationship between neighbouring residents, letting agents, landlords and their tenants.

1. Introduction

The objective for the Strategic Housing service, part of the Place Directorate, is to ensure that there is sufficient good quality housing available to meet people's housing needs across all tenures. The private rented sector is an important part of our housing market. Cheshire East Council shares the Government's aim to support good landlords who provide decent well maintained homes, and avoid unnecessary regulation, but recognises that a small number of landlords knowingly rent out unsafe and substandard accommodation.

The Council has a statutory duty to keep housing conditions in its area under review, using a wide range of housing, building and public health related legislation, and to secure its efficient compliance, whilst minimising the burden on businesses, individuals, landlords and organisations, as well as the Council itself.

The Council's Enforcement Policy outlines the approach to enforcement across a wide range of activities and highlights that effective and well-targeted regulation is essential in promoting fairness and protection from harm.

This policy provides details of the Council's specific approach to regulating housing standards in Cheshire East and confirms that:

- The Council will provide awareness, advice and assistance whenever possible to the public, businesses and organisations to help them meet their legal obligations before embarking on the enforcement process.
- The Council is committed to carrying out its duties in a fair and consistent manner and ensuring that enforcement action is proportional to the seriousness of failure to comply with statutory requirements.
- The decision to use enforcement action will depend on the severity of the non-compliance.

The aim of this protocol is to ensure that regulation and enforcement of housing standards is consistent, risk-based, targeted and proportionate and is carried out in line with the Council's Enforcement Policy and other relevant detailed guidance, such as the Housing Health and Safety Rating System (HHSRS) Enforcement Guidance and HHSRS Operating Guidance.

2. General principles and matters to be taken into account when regulating housing conditions

a) Is advice and guidance sufficient to resolve matters?

General information, advice and guidance will be provided in clear, concise and accessible language, using a range of appropriate formats and media.

We will organise and provide events specifically for landlords and letting agents to provide updates and information on good practice and legislative changes.

When offering advice we will distinguish between statutory requirements and discretionary good practice.

Detailed advice such as fire safety risk assessments, floor plans or schedules detailing the work that would be required to let a property in multiple occupation are available as a chargeable service.

b) What is the risk associated with the housing conditions?

Suitably trained officers routinely use the Housing Health and Safety Rating System (HHSRS), which is a statutory, evidence-based, risk assessment method for assessing and dealing with poor housing conditions.

We will use risk assessment to concentrate resources in the areas that need them most and on the properties in the worst condition.

Following receipt of a service request or complaint about poor housing conditions, an initial risk assessment will normally be carried out and any follow up advice or action will depend on the outcome of this initial assessment.

c) Inspection of housing conditions

Inspections will take place in response to:

- A service request from a tenant or landlord;
- Where poor conditions have been brought to our attention by a third party;
- As a result of a risk based inspection programme; or
- In accordance with statutory inspection requirements.

Unless the visit is intended for advice purposes only, the landlord or their agent will be given the opportunity to accompany the investigating officer at the visit. Following an inspection, positive feedback will be given wherever possible to encourage and reinforce good practices.

d) Compliance and enforcement actions

By taking a stepped approach to enforcement and working with landlords and their agents to bring about improvements to rented housing, we aim to achieve a good, safe standard of housing and reducing the need for remedial enforcement actions. Resources will be targeted on those that deliberately or persistently flout housing legislation.

For clarity, our stepped approach to enforcement is set out below; where each step is not successful, further action in the stepped approach will be considered on each of their merits:

- i. General advice and information, available to all members of the public;
- ii. Tailored advice and information for the occupiers and owners and their agents;
- iii. Informal action to resolve the issues including information on what will be acceptable to remedy the issue; in the use of the Housing Act 2004 this will involve the service of a Hazard Awareness Notice;
- iv. Formal action through the service of a legal Notice;
- v. Prosecution and/or carrying out of the works in default, and charging the Owner for any costs.

This is a summary of our approach and will be tailored according to the powers set out in the applicable legislation and the merits of each case.

There will be occasions where the severity of the hazard or breach of legislation necessitates swifter action, such as an imminent risk to health and safety, and the stepped approach may commence at an advanced level. We will take all reasonable steps to discuss our actions with the landlord or their agent and seek to resolve this without our intervention.

We will ensure that clear reasons for, and any implications of, enforcement action are given and complaints and appeals procedures are explained at the same time.

If a notice is complied with, no further action will be taken. However if the notice is not complied with and there is no reasonable excuse for non-compliance, the Council will consider the following options:

- Prosecution;
- Civil penalty;
- Carrying out the works in default;
- Carrying out the works in default and prosecution;
- Whether a simple caution is appropriate;

Failure to comply with an Improvement Notice or a Prohibition Order is an offence punishable by an unlimited fine (previously up to £5,000). Following conviction, it is an offence to carry on using the premises in breach of the Prohibition Order, attracting a daily fine.

The Council will take action to recover its costs in connection with work in default. The Council will also take action to recover the costs incurred in carrying out works associated with Emergency Remedial Action.

Civil Penalties

The Housing and Planning Act 2016 introduced new powers for local authorities to use civil penalties for the following offences under the Housing Act 2004 as an alternative to prosecution.

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

The maximum penalty is £30,000. The amount of penalty is to be determined by the Council in each case, having regard to statutory guidance which sets out the factors to take into account when deciding on the appropriate level of penalty. Only one penalty can be imposed in respect of the same offence. More information about how we will determine whether a civil penalty is an appropriate course of action, and how the penalty will be calculated, is contained within Appendix D.

e) Information sharing

Matters concerning non-compliance may be shared, where appropriate and in public interest, with other enforcement agencies. This could include situations where there is a shared or complementary enforcement role with other agencies such as the Police, Home Office, Fire & Rescue Service, Health & Safety Executive and other Council departments.

Requests for information will be administered having regard to the Freedom of Information Act 2001 and the Data Protection Act 1998.

f) Partnership working

Partnership working with like-minded agencies and departments will lead to a healthier housing stock and will ensure consistent and targeted enforcement. We will ensure that partnership links are developed and maintained and will co-ordinate guidance and act as the regulatory link with other enforcement authorities both locally and throughout Cheshire East.

External partners include Cheshire Fire and Rescue Service (CFRS), Cheshire Police, the Home Office, Health services in Cheshire East, Registered Providers of social housing and members of the Landlord Accreditation Scheme.

g) Consideration of tenure

All legislation set out in Section 3 below is available to the Council regardless of whether the premises in question are owner-occupied, privately rented or belong to a Registered Provider of Social Housing. However, the Council considers that owner-occupiers are usually in a position to take informed decisions concerning maintenance and improvement issues that might affect their welfare and are then able to set their financial priorities accordingly, whereas tenants do not have the legal responsibility to maintain their home

and are in a contractual relationship with a landlord whose duty it is to provide a well maintained home that is free from hazards.

For this reason the Council judges that it is appropriate for its powers to be used differently according to tenure, as follows:

Owner-Occupiers

Other than in exceptional cases, the Council expects owner-occupiers, including long leaseholders, to take their own action to remedy problems of disrepair or nuisance.

In the event that intervention is needed, the Council anticipates that Hazard Awareness Notices served under the Housing Act 2004 will frequently be the appropriate course of action, together with assistance through our home improvement agency service. However, the use of legal Notices will be considered in cases involving:

- Vulnerable or elderly people who are judged not-capable of making informed decisions about their own welfare or the safety of others;
- Vulnerable individuals who require the intervention of the Council to ensure their welfare is best protected;
- Hazards that might reasonably affect persons other than the occupants; or
- Serious risk of life-threatening harm such as electrocution or fire.

Private Tenants

The Council's primary focus on regulation of housing standards, assessed on a risk based approach, is the private rented sector. There are many responsible private landlords that offer good management and accommodation standards. In some instances however, standards offered by landlords can fall below what is expected. As generally private landlords do not have access to in-house maintenance teams, they can have an ad-hoc approach to repairs and maintenance. Disappointingly, there is a small proportion of private landlords who either do not understand their legal responsibilities when providing housing, or deliberately ignore their duties. Whilst our risk based approach dictates that the private rented sector deserves more of our focus, we also apply that risk based approach further within the sector to target our resources to the worst conditions.

The Council will seek to ensure that the tenant has taken all necessary steps to inform the landlord of any disrepair before taking any action itself, and will provide guidance to the tenant on what is expected from them.

Following an inspection, if the Council considers that satisfactory proposals and timescales for the work to be carried out are received and agreed, and provided matters then proceed to a satisfactory conclusion, the Council will not normally need to take any further action to discharge its duties.

We will proceed with formal action to remedy housing conditions if:

- There is no response from the landlord/agent or;

- A response is judged inadequate or;
- Proposals that were judged acceptable but which are not then followed-through (for example if works fail to start when agreed, fail to make proper progress or are completed to an inadequate standard).

Formal action will be initiated immediately if:

- The housing conditions pose an imminent risk of serious harm to any person (whether or not immediate action is required, and whether the hazard(s) in question is likely to affect a tenant, an employee or a member of the public), or;
- The landlord in question is known to have failed, on a previous occasion, to take appropriate action in response to an informal approach;

Landlords are expected either to provide any agent acting for them with sufficient authority to act on their behalf in the event they are contacted by the Council, or to ensure that they maintain appropriate communication with their agent in order that appropriate decisions and responses can be provided to the Council. The failure of an agent to respond to communication from the Council or any failure to take appropriate action may be treated as a failure by the landlord.

Social Housing Tenants

Registered Providers typically provide a high standard of accommodation for their tenants, and their management is subject to regulation by other bodies.

The Council will not normally take formal action against a Registered Provider unless:

- It is satisfied that the problem in question has been properly reported to the Registered Provider and;
- The Registered Provider has then failed to take appropriate action;

If the Council determines that it is appropriate to take action, it will then normally notify the Registered Provider that a complaint has been received and/or a hazard identified and seek the Registered Provider's comments and proposals. Only in cases where it judges that an unsatisfactory response has been received will the Council take further action in a stepped approach.

h) Consideration of the occupier's actions and views

Before we consider taking any action in respect of a tenanted property, we expect that normally the tenant should contact the landlord first, and give the landlord reasonable opportunity to remedy the housing conditions.

Legislation covering landlord and tenant issues require that tenants notify their landlords of any problems with the property. This is because it is more difficult for landlords to carry out their obligations under the legislation, unless they have been made aware of the problem.

Where the matter appears to present an imminent risk to the health and safety of the occupants, it is expected that tenants will still try to contact their landlord, even if this is after they have contacted the Council.

In exceptional circumstances we will not insist on tenants contacting their landlord first, for example:

- Where there is a history of harassment/threatened eviction/poor management practice;
- Where the tenant appears to be vulnerable or where there are vulnerable members of the household;
- Where the tenant could not for some other reason be expected to contact their landlord/managing agent;
- Where the property is a House in Multiple Occupation which appears to fall within HMO licensing;

Tenants are responsible for keeping officers informed of any contact they have had with their landlord (or the landlord's agent or builder, etc.), which may affect the action the Council is taking or considering taking. Tenants should also consider seeking independent legal advice about their own individual powers to resolve any dispute with their landlord.

i) Consideration of whether it is reasonable and appropriate to intervene

Where any of the following situations arise, consideration will be given to whether it is reasonable and/or appropriate to intervene in the regulation of housing standards:

- Where the tenant unreasonably refuses access to the landlord, managing agent or landlord's contractor, to arrange or carry out works;
- Where the tenant has, in the opinion of the Council, caused the damage to the property, and there are no other items of disrepair;
- Where the tenant repeatedly fails to keep an appointment and/or not responded to any follow up contact;
- Where the tenant has been aggressive, threatening, verbally or physically abusive towards officers;
- Where there is found to be no justification for the complaint regarding housing conditions; or
- Where the tenant unreasonably refuses to provide the Council with relevant documentation that is necessary for the Council to be able to carry out its duties.

3. Housing Enforcement Legislation

Following is a list and brief description of the more frequently used legislation to regulate housing standards (this is not an exhaustive list):

Housing Act 2004 – Chapter 34

The Housing Health and Safety Rating System (HHSRS) is the method for assessing, rating and categorising hazards (category 1 or category 2) found in dwellings, the service of statutory notices and the undertaking of emergency remedial action.

Mandatory HMO Licensing is detailed in Part 2 of the Act, and places an obligation for all local authorities to set up a scheme to licence those properties that are 3 or more stories, with 5 or more tenants, making up 2 or more households, and who share amenities.

The Housing Act 2004 is the primary piece of legislation used in regulating housing standards and is explored in greater detail in Appendix A.

Housing Act 1985 (as amended)

Where Category 1 Hazards exist as rated using the HHSRS, the Housing Act 1985 may be used to declare Clearance Areas or Demolition Orders;

Part 10 of this Act makes provision for determining whether a dwelling is overcrowded.

Local Government (Miscellaneous Provisions) Act 1976

Section 16 provides provision for the authority to serve a Requisition for Information Notice, requiring the recipient to disclose their interest in a particular property or land and that of any other person who they believe may have an interest.

Local Government (Miscellaneous Provisions) Act 1982

Section 29 provides the authority with the power to secure a property that is not effectively secure against unauthorised entry.

Environmental Protection Act 1990

Section 80 enables authorities to deal with properties that are injurious or prejudicial to health or causing a statutory nuisance.

Town and Country Planning Act 1990

Section 215 enables authorities to deal with poor and unsightly condition of properties and/or land that are judged to be detrimental to the local amenity.

Prevention of Damage by Pest Act 1949

Enables authorities to remove article(s) that are considered putrescible or offering harbourage to pests, either within a premise or on the land around.

Public Health Act 1961

Sections 16-18 provides emergency powers for authorities to deal with blocked drains.

Public Health Act 1936

Section 45 provides for the service of a Notice to repair and/ or cleanse a defective water closet that is in such condition as to be prejudicial to health or a nuisance;

Section 50 provides authorities with a power to deal with overflowing/leaking cesspools.

Building Act 1984

Section 59 provides powers to deal with defective drainage including gutters and down pipes;

Section 64 provides a duty to serve a Notice requiring the provision of water closets in a dwelling where insufficient facilities exist;

Section 63 covers water closets, drains and soil pipes improperly constructed or repaired and in such a state as to be prejudicial to health or a nuisance;

Section 76 affords a quicker response to dealing with premises that are prejudicial to health or a nuisance than is afforded through the use of Section 80 of the Environmental Protection Act 1990;

Section 79 covers ruinous or dilapidated buildings and neglected sites.

Protection from Eviction Act 1977

Section 1 provides powers to deal with landlords and/or their agent who unlawfully evict or harassment a tenant or a member of their household.

Landlord and Tenant Act 1985

Section 11 implies a covenant into all leases of a dwelling house for less than seven years. Landlords must keep in repair the structure and exterior of the dwelling (including drains, gutters and external pipes) and keep in repair and in proper working order the installations in the house for the provision of water, heating, electricity, gas and sanitation (including basins, sinks, baths and sanitary conveniences).

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

From 1 October 2015, private sector landlords are required to have at least one smoke alarm installed on every storey of their properties and a carbon monoxide alarm in any room containing a solid fuel burning appliance (e.g. a coal fire, wood burning stove). After that, the landlord must make sure the alarms are in working order at the start of each new tenancy.

4. Houses in Multiple Occupation

The Housing Act 2004 introduced a mandatory licensing for certain types of Houses in Multiple Occupation (HMO). The aim of licensing is to ensure the larger type, higher risk HMOs are properly managed and provide greater protection for the health, safety and welfare for the occupants and visitors.

The responsibility as to who must apply to the Council for a licence rests with the person having control of, or the person managing the property.

Fees for Licences

The Council will charge a differentiated fee structure depending on the size of the HMO. Licence fee charges reflect the level of work Council officers undertake in processing an application for a licence.

Licensing Offences

The Housing Act 2004 lays down a number of licensing related offences including:

- Operating a licensable HMO without a licence or allowing it to be occupied by more persons than a licence allows: unlimited fine (previously up to £20,000);
- Breach of any licence conditions: unlimited fine (previously up to £5,000);
- Supplying incorrect information in a licence application: unlimited fine (previously up to £5,000);

In addition to the above, a landlord who operates a licensable HMO without a licence:

- May be subject to Rent Repayment Order (RRO) requiring repayment in respect of all Housing Benefit received by the landlord over the previous 12 months;
- Loses the right to automatic possession under an assured shorthold agreement;
- May be subject to a Management Order where the Council will take control of the HMO (see Interim and Final Management Orders on page 21 within Appendix A).

Where an unlicensed HMO has been identified without good reason for it not being so licensed, the Council will take formal proceedings with a view to prosecution in the courts.

If a landlord of an unlicensed HMO approaches the Council for a licence of their own volition and subsequently co-operates fully with the Council, including addressing any identified management, safety or amenity issue within an agreed timescale, the Council would not normally pursue formal enforcement action.

Any breach of licence condition will initially be dealt with informally. However, if this breach is not remedied within an agreed timeframe or is considered to be a serious nature putting the health, safety or welfare of any occupier or other persons living or owning property in the vicinity at risk, the Council will pursue formal enforcement action.

Interim and Final Management Orders

See Interim and Final Management Orders on page 21 within Appendix A

Temporary Exemption Notices

A Local Housing Authority has a discretionary power to serve a Temporary Exemption Notice (TEN) on managers or owners of HMOs which are capable of being licensed, who notify the local housing authority of their intention to take particular steps to ensure that their HMO no longer requires a licence. TENs last for 3 months but are renewable for another 3 months in exceptional circumstances.

Raising Standards in HMOs

Traditionally, housing conditions in HMO type properties are viewed as being the worst in the rented sector for safety, facilities, repairs, harassment of occupiers and management standards, and are often occupied by people living on low income who are often from vulnerable or disadvantaged groups.

Many of these HMO type properties will not require a licence to operate as such and the Council will look to regulate these HMOs through the enforcement of the HMO Management Regulations and by the use of the Housing Health and Safety Rating system.

Currently, these non-licensable HMOs will only be inspected when the Council receives a complaint or enquiry about the property. These HMO properties will then be subjected to risk assessment by the Council, scoring the HMO in five areas; Confidence in Management; Amenities; Standard of Fire Safety Management; Structure and Fire Provisions. Where landlords can demonstrate a good standard of compliance within these five areas, they will benefit from a lower frequency for re-inspection, which could be in 5 years.

Fire Safety in HMOs

Statistically, HMO type properties have one of the highest incidents of deaths caused by fire in any type of housing. It is therefore essential that any HMO possesses an adequate means of escape in the event that a fire should occur and also adequate fire detection and alarm measures in place to provide early warning of such.

This area of law is covered by both the Housing Act 2004 and the Regulatory Reform (Fire Safety) Order 2005, the latter of which is enforced by Cheshire Fire and Rescue Service.

The LACORS, Housing - Fire Safety guidance helps to manage the relationship between the Housing Act 2004 and the Fire Safety Order by offering advice and assistance to enforcers, landlords, managing agents and tenants, amongst others, on ways to make residential buildings safe from fire and compliant with legislation.

The Local Housing Authority will generally be the lead enforcing authority for fire safety in HMO type properties, however, where an HMO contains communal areas, the Regulatory Reform (Fire Safety) Order 2005 requires the responsible person for an HMO to carry out and provide a Fire Risk Assessment.

The actual level of fire protection and detection that will be required to be provided within any HMO will be risk assessed, taking into account the property characteristics, the management practices in place, the written fire risk assessment and the recommendations contained within the LACORS, Housing - Fire Safety guidance

General Management of HMOs

The Management of Houses in Multiple Occupation (England) Regulations 2006 and The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007, require the person having control of any HMO to ensure that:-

- The name, address and contact telephone number for the manager of the HMO is provided to each occupier and also displayed within a prominent position in the HMO;
- All means of escape from fire are kept free from obstruction and maintained in good order and repair and ensure any fire fighting equipment and fire alarms are maintained in good working order;
- Ensure the water supply and drainage system is maintained in good, clean and working condition and protected from frost damage where appropriate;
- Ensure that any gas appliance and fixed electrical installation is inspected and tested by a recognised engineer and certification provided specifying the results of the test;
- All common parts are maintained in good and clean decorative repair, maintained in a safe and working condition and kept clear from obstruction;
- The external structure, outbuildings, yards, forecourts, gardens and boundary walls, fences and railings are maintained in good, safe repair and clean condition;
- That each unit of living accommodation and any furniture supplied with it are in clean condition at the beginning of a person's occupation;
- The internal structure, any fixtures, fitting or appliances and every window and other means of ventilation are kept in good repair and in clean working order;
- Ensure sufficient bins or other receptacles are provided for the storage and disposal of refuse and litter from the HMO;
- All Tenants should fulfil their tenancy obligations and conduct themselves in a manner that will not hinder or frustrate the manager in the performance of his duties.

5. Empty Homes

Empty homes are a recognised wasted housing resource and deprive people of a much needed home. When left empty, they have the potential to cause blight to local communities, prevent investment and regeneration, devalue surrounding properties and also attract anti-social behaviour. Cheshire East Council is committed to identifying long term empty 'nuisance' properties and will strive to take steps to reduce the impact for our communities and ultimately bring them back into use.

Properties will become empty at some point as part of the normal operation of the housing market, usually during the rental or buying process. It is only when properties stay empty longer than six months without any obvious signs of renovation or rental that they become 'true' empty homes.

Our approach is to work with the owners of empty homes, to support and encourage voluntary action to bring these homes back into use. Where co-operation fails, we will use a scoring matrix to determine the extent the empty home impacts on its neighbours and the wider community, which shall in turn inform our decision whether to intervene using our enforcement powers.

Some of the criteria used in this scoring matrix includes: the condition of the property and state of the garden, any anti-social behaviour evident, any fly tipping evident, the number of complaints received, the owner's response to our contact, is the property open to access and length of time the property has been empty.

The Council will use its enforcement powers in line with the most appropriate of the following legislation:

- Town and Country Planning Act 1990 (untidy land notice)
- Environmental Protection Act 1990
- The Housing Act 2004
- Prevention of Damage by Pests Act 1949
- The Building Act 1984
- Local Government (Miscellaneous Provisions) Act 1982
- The Housing Act 1985
- Law of Property Act 1925

6. Harassment

Harassment is a criminal offence and occurs when landlords deliberately interfere with a tenant's quiet enjoyment of their residential home. Harassment can also be committed by the landlord's managing/letting agent, friend or family member.

The law protects tenants living in residential property against harassment and illegal eviction, making it an offence for the landlord or an agent of the landlord to;

- a) interfere with the peace or comfort of an occupier or members of their household; or
- b) persistently withdraw or withhold services for which the tenant has a reasonable need to live in the premises as a home;

and in either case has reasonable cause to believe this conduct is likely to cause the occupier to give up the occupation of either the whole or part of the premises.

Harassment will ultimately be interpreted by the courts but may include such things as: frequent visits by the landlord to demand rent or to inspect the condition of the property, verbal abuse, entering the property without the tenant's consent, failing to carry out essential repairs or disconnection or disruption of the electricity, gas or water supply without good cause.

7. Illegal Eviction

It's a criminal offence for a landlord or their managing/letting agent to evict a tenant without following the correct legal steps for eviction.

Actions that would typically be considered to constitute an illegal eviction by a landlord are:

- if a landlord forces a tenant to leave by threatening or harassing;
- a landlord physically throws a tenant out;
- a landlord prevents a tenant from using certain parts of their home;
- a landlord changes the locks whilst the tenant is out, if the correct procedure for eviction has not been followed.

If a private tenant has an assured shorthold tenancy or a pre-1989 'fair rent' or regulated tenancy, only a bailiff can lawfully evict them from their home.

Before the bailiffs can come, a landlord must first:

1. give the tenant notice to leave;
2. go to a court for a possession order;
3. apply to a court for bailiffs to evict the tenant.

It's illegal eviction if a landlord forces their tenant to leave before bailiffs arrive, even if the landlord has obtained a court order requiring the tenant to leave or has given the tenant written notice to leave.

The Housing Act 2004 – Primary legislation used in regulating housing standards

Following is a list and brief description of some of the duties and functions provided by the local housing authority under this Act in relation to regulating housing standards (this is not an exhaustive list):

Further information on the Housing Act 2004 is available at the following website:-

<http://www.legislation.gov.uk/ukpga/2004/34/contents>

The Housing Act 2004 introduced the Housing Health & Safety Rating System (HHSRS), described “as a means of identifying faults in dwellings and of evaluating the potential effect of any faults on the health and safety of the occupants or visitors”. Faults contribute to and are categorised into 29 possible hazard profiles (see Appendix B for further information on hazard profiles) for which the legislation provides a range of actions for addressing identified hazards. It is a two stage calculation combining the likelihood of an occurrence taking place and then the range of probable harm outcomes that might arise from that occurrence to give a numerical rating. This is repeated for each of the hazards present. The assessment is not based upon the risk to the actual occupant but upon the group most vulnerable to that particular risk. Once scored, any action that is then considered will take into account the effect of that risk upon the actual occupant.

The scores for each hazard present are then banded from A to J. Bands A to C (ratings of 1,000 points and over) are the most severe, and are known as Category 1 hazards when considering action. Bands D to J, are less severe (rating less than 1,000 points) and are known as Category 2 hazards.

HHSRS provides a combined score for each hazard identified and does not provide a single score for the dwelling as a whole. It is applied to all residential premises, whether owner-occupied or rented.

When a Category 1 hazard is identified, the Council has a duty to take appropriate action and must decide which of the available enforcement options is most appropriate to use (these are explained in more detail below).

When a Category 2 hazard is identified, the Council has a discretionary power to take action and will consider individual cases and circumstances when deciding whether any action should be taken.

This Protocol takes account of guidance provided by the Government and sets out how the Council will use its powers and reach its decisions in relation to the Housing Health & Safety Rating System (Part 1 of the Housing Act 2004).

Authority to investigate

The Housing Act 2004 and associated secondary legislation sets out the duties and powers that the Council has in relation to regulating housing standards in its capacity as Local Housing Authority.

The Act requires the local housing authority to consider the housing conditions within their area. The Act also provides that the local housing authority must arrange for an inspection to be carried out, where it has become aware that it would be appropriate for a residential premises to be inspected.

Choice of appropriate enforcement action

When determining the most appropriate action we will have regard to the Housing Act 2004 Enforcement Guidance. Unless there is an imminent risk to the health and safety of the occupant or visitors to the property, the Council will attempt to secure the required improvements informally and within a reasonable amount of time.

Since informal action is not a legislative option for the Council under the Housing Act 2004, where hazards are found and assessed to represent either a category 1 or significant category 2 hazard, a Hazard Awareness Notice may initially be served, to draw a landlord's or owner-occupier's attention to the desirability of remedial action.

Where an informal approach fails the Council will determine which of the specific enforcement options it will use, taking into account the facts and circumstances in each individual case.

Reasons for the Council's decision to serve a notice or order

A statement of reasons will be provided with any notice or order served, explaining why the Council decided to take a particular course of action, rather than any other kind of enforcement action.

The notice or order will also include details on the right to appeal against the decision and the period in which an appeal may be made. Since there is no actual requirement to comply with a Hazard Awareness Notice there is no appeal process against this type of notice.

When a Category 1 hazard is identified, the Council will take the most appropriate of the following courses of action:

- Serve an Improvement Notice (including a Suspended Improvement Notice);
- Make a Prohibition Order (including a Suspended Prohibition Order);
- Serve a Hazard Awareness Notice;
- Take Emergency Remedial Action;
- Make an Emergency Prohibition Order;
- Make a Demolition Order;
- Declare a Clearance Area.

When a Category 2 hazard is identified, the Council may take the most appropriate of the following courses of action:

- Serve an Improvement Notice (including a Suspended Improvement Notice);
- Make a Prohibition Order (including a Suspended Prohibition Order);
- Serve a Hazard Awareness Notice;
- In prescribed circumstances – make a Demolition Order;
- In prescribed circumstances – declare a Clearance Area.

Improvement Notices

It is anticipated that Improvement Notices will be an appropriate and practical remedy for most hazards.

Where the Council determines that an Improvement Notice should be served in respect of a Category 1 Hazard, it will require works that will either remove the hazard entirely or will reduce its effect so that it ceases to be a Category 1 hazard.

If the Council determines the hazard can only be reduced to a Category 2 hazard rather than removed altogether, it will require works to be carried out as far as is reasonably practical to reduce the likelihood of harm.

Where the Council determines that an Improvement Notice should be served in respect of a Category 2 Hazard, it will require works it judges sufficient either to remove the hazard or reduce the likelihood of harm to an appropriate degree, and will make these decisions having considered the circumstances of the case.

Suspended Improvement Notice

The Council has the power to suspend the operation of an Improvement Notice, if considered reasonable to do so, until the occurrence of a specified time or event, which will be specified within the notice. The following are situations in which it may be appropriate to suspend an Improvement Notice:

- The need to obtain planning permission (or other appropriate consent) that is required before repairs and/or improvements can be undertaken;
- Works which cannot properly be undertaken whilst the premises are occupied and which can be deferred until such time as the premises falls vacant or temporary alternative accommodation can be provided;
- Personal circumstances of occupants, for example, temporary ill-health, which suggests that works, ought to be deferred;

When deciding whether it is appropriate to suspend an Improvement Notice the Council will have regard to:

- The level of risk presented by the hazard(s);
- The turnover of tenants at the property;
- The response or otherwise of the landlord or owner;
- Any other relevant circumstances (e.g. whether the vulnerable age group is present);

Suspended Improvement Notices will be reviewed after a maximum of 12 months and then at intervals of not more than 12 months, but suspension will not normally exceed 6 months.

Prohibition Orders

Prohibition Orders can be used where either a Category 1 and/or Category 2 hazard exists on a residential dwelling or HMO, or part of, where repair and/or improvement appears to

be inappropriate on grounds of practicality or excessive cost (i.e. the cost is unrealistic in terms of the benefit to be derived). An example might include:

- The use of a dwelling or part of a dwelling where adequate natural lighting or adequate fire escape cannot realistically be provided (cellar or attic);
- The use of specified dwelling units or of common parts within an HMO if the means-of-escape is unsatisfactory;
- To specify the maximum number of persons who can occupy a dwelling where it is too small for the household's needs, in particular, in relation to the number of bedrooms;
- Where a premise is lacking an appropriate number of washing, bathing or toileting facilities but of which are nonetheless suitable for a reduced number of occupants;

In addition to prohibiting all uses in relation to the whole or part of the premises in question (other than uses specifically approved by the Council), Prohibition Orders can prohibit specific uses (section 22 (4)(b) Housing Act 2004). This option may be employed to prevent occupation by particular descriptions of persons. Use of this power may be appropriate in situations such as the following:

- Premises with steep staircases or uneven floors which make them particularly hazardous to elderly occupants;
- Premises with open staircase risers or widely spaced balustrades that make them particularly unsuitable for infants;

Suspended Prohibition Order

The Council has the power to suspend a Prohibition Order once served and will consider this course of action where it is reasonable to do so if the facts of a particular case appear to justify it.

Suspended Prohibition Orders will be reviewed after a maximum of 12 months and then at intervals of not more than 12 months, but suspension will not normally exceed 6 months.

The Council will consider any written requests made for alternative uses of premises or part-premises which are subject to a Prohibition Order, and will not withhold its consent unreasonably. Any such consent will be confirmed in writing.

Hazard Awareness Notice

Hazard Awareness Notice is a notice advising the person on whom it is served of the existence of a category 1 or 2 hazard on their residential premises. The use of such a notice allows for a warning to be heeded and voluntary action taken or representations to be made, before alternative stricter enforcement action may be used.

It might be applicable to use a Hazard Awareness Notice:

- To notify owner-occupiers of the existence of hazards (for example where the risk from the hazard is mitigated by the longstanding nature of the occupancy);
- It is judged appropriate to draw a landlord's attention to the desirability of remedial action;
- To notify a landlord about a hazard as part of a measured enforcement response;

Emergency Remedial Action & Emergency Prohibition Order

The situations in which Emergency Remedial Action and Emergency Prohibition Orders may be used are specified by sections 40 to 45 of the Housing Act 2004. Specifically, the Council must be satisfied that:

- A Category 1 hazard exists on the residential premises, and;
- The hazard involves an imminent risk of serious harm to any occupier; and;
- That no management order is in force in respect of the premises;

If these conditions are met the Council will take appropriate emergency action to remove or reduce any imminent risk of serious harm and will seek to recover its expenses incurred in having to do so.

Situations in which emergency action may be appropriate include:

- Residential accommodation located above commercial premises and lacking a safe means of escape in the event of fire because there is no independent access;
- Risk of electrocution, fire, gassing, explosion or building collapse;

Demolition Orders

The provisions within Section 265 of the Housing Act 1985 have been amended to align that legislation with the new method of hazard assessment and the enforcement provisions in Part 1 of the Housing Act 2004.

Where a category 1 hazard exists on any residential premises, the making of a demolition order, when considered to be the most appropriate enforcement action to take, is an option available to the Council. Where a category 2 hazard exists on any residential premises, only under prescribed circumstances will a demolition order be considered. In either event, in determining whether to issue a Demolition Order the Council will take account of Government guidance and will consider all the circumstances of the case.

Clearance Areas

The Council can declare an area to be a Clearance Area if it is satisfied that each of the premises in the area is affected by one or more Category 1 hazards (or that they are dangerous or harmful to the health & safety of inhabitants as a result of bad arrangement or narrowness of streets). In determining whether to declare a Clearance Area the Council will act only in accordance with section 289 of the Housing Act 1985 (as amended) and having had regard to relevant Government guidance on Clearance Areas and all the circumstances of the case.

Discretionary Powers

Alongside the abovementioned main enforcement powers, the Housing Act 2004 introduced a range of discretionary measures relating to both individual residential premises and geographically defined areas within the local authority.

These are listed below with a brief explanation of their relevance. We will only introduce such powers when the evidence to do so is compelling.

Designation of Additional Licensing Areas

In addition to the mandatory licensing for specified types of HMOs, local housing authorities are permitted to extend these licensing requirements to also include other types of HMOs as well, either within a specific part of its area or across all of its area. Certain criteria will need to be met prior to introducing additional licensing, which includes an overall determination to be assessed on the level and adequacy of the management of the specified HMOs, the level and extent of anti-social behaviour being caused and whether other courses of action, other than licensing, may be used to deal with the identified problem such as a voluntary accreditation scheme. Prior to the introduction of any additional licensing areas, the local authority are required to consult with those who are likely to be affected by any such scheme.

Designation of Areas subject to Selective Licensing

This allows for all privately rented properties within either part or the entire local authority area to be subject to licensing criteria. Selective licensing is designed to be able to focus on more localised problems, such as low housing demand and to run in parallel and to compliment HMO licensing. As for Additional Licensing Areas, the local authority is required to consult with those who are likely to be affected by any such scheme prior to its introduction, and specific housing problems need to be evident, such as low housing demand or anti-social behaviour. The Council will keep the need for selective licensing under review.

Interim and Final Management Orders (IMO and FMO)

These provisions are designed to be used to safeguard the health, safety or welfare of any occupier or other persons living or owning property in the vicinity of a poorly managed rental property. Management Orders allow local housing authorities to intervene in particular circumstances and step into the shoes of a failing landlord and provide mechanisms to ensure necessary improvements in the physical conditions, the management of the rented accommodation and the behaviour of the occupiers are in place. IMOs are temporary measures designed to last for 12 months, whereas FMOs can last for up to 5 years.

In certain circumstances, such as in the case of a licensable HMO which is not and is not likely to become licensed in the near future the provision to make a management order is mandatory. In other circumstances relating to non-licensable HMOs and other rented properties, management orders are discretionary and need to be ratified by a Residential Property Tribunal (RPT).

Empty Dwelling Management Orders (EDMO)

These are orders that allow local housing authorities where certain conditions are met to step into the shoes of the owner of an unoccupied privately owned house or flat to secure its occupation and to provide proper management of the property on a day to day basis. Initially the local housing authority will need to apply to the Residential Property Tribunal for authorisation to make an Interim EDMO. Interim EDMOs can last for up to 12 months and can be replaced with a Final EDMO, which may then last for an additional 7 seven

years (or longer if a subsequent EDMO has been applied for) and allows the authority to create new assured short-hold tenancies, collect rent, and carry out any repairs and to maintain the property throughout this period.

Overcrowding Notices

These provisions are designed to prevent overcrowding in non-licensable HMOs. The local authority may serve an overcrowding notice on the relevant person(s) if, having regard to the rooms available, it considers that too many persons are being, or are likely to be accommodated in the HMO concerned. The notice will state the maximum number of persons that will be allowed to occupy a room as sleeping accommodation, and will specify which rooms will not be allowed to be used for sleeping accommodation.

Additionally, under the Housing Health and Safety Rating System, residential premises can be assessed against the hazard of Crowding and Space. In the event of a single dwelling being significantly over occupied, an Order may be served specifying the maximum number of persons who may be allowed to occupy it.

Works in Default

Works in Default will be considered when all other methods to try to remedy any identified deficiencies have proved unsuccessful.

Where an Improvement Notice under the Housing Act 2004 is served, the council will require sufficient works to be carried out to abate the hazard for five years. The law prescribes that only the minimum works to abate the hazard should be carried out in default. The Council will require works of a reasonable duration to prevent a recurrence of the hazard and the Council considers five years to be a reasonable duration.

In determining if work in default is appropriate, we will consider:

- The effects of not carrying out the work on the health and safety of the occupant of the property concerned;
- The wishes of the tenant where the Notice has been served in respect of a rented property;
- The reason for the work not being carried out in the first place;
- Any other factors that are specific to individual properties;
- The Council will normally seek to recover all of the costs associated with undertaking of work in default (including time spent by its officers, administrative costs, contractors costs, the cost of any specialist reports, supervisory costs etc.)
- In the case of Officer time, the Council will calculate costs as follows:
 - ⌚ The actual time spent by Council Officers on the chargeable activities and recorded using file notes and database;
 - ⌚ Time spent will be converted into a monetary figure using the appropriate hourly rate set for the Officer(s) concerned;

The expenses are to be recovered from the person(s) on whom the Notice or Order is/are served ("the relevant person"). Where the relevant person receives the rent on behalf of another, the expenses are also to be recovered from that other person.

Where applicable, expenses will carry interest, applied on a daily basis from the date the demand becomes operative until all sums due under the demand are recovered. The Law Societies interest rate will be used for the purpose of calculating any due interest.

The recoverable expenses, together with interest accrued on them are a charge on the premises and will be recorded in the Local Land Charges Register.

In addition, as a means of recovering the costs, the Council may also serve Recovery Notices to recover, receive and give a discharge for any rent or sums in the nature of rent.

See Appendix C for further information regarding charging for enforcement activity.

Power of Entry

The Council has the power of entry to properties at any reasonable time to carry out its duties under Section 239 of the Housing Act 2004 provided that:

- The Officer has written authority from an appropriate officer stating the particular purpose for which entry is authorised;
- The Officer has given 24 hours notice to the owner (if known) and the occupier (if any) of the premises they intend to enter;

No notice is required where entry is to ascertain whether an offence has been committed under sections 72 (offences in relation to licensing of HMOs), 95 (offences in relation to licensing of houses) or 234(3) (offences in relation to HMO management regulations).

If admission is refused, premises are unoccupied or prior warning of entry is likely to defeat the purpose of the entry then a warrant may be granted by a Justice of the Peace on written application. A warrant under this section includes power to enter by force, if necessary.

Power to Require Information

The Council also has power under Section 235 of the Housing Act 2004 to require documentation to be produced in connection with:

- Any purpose connected with the exercise of its functions under Parts 1-4 of the Housing Act 2004;
- Investigating whether any offence has been committed under Parts 1-4 of the Housing Act 2004;

The Council also has powers under Section 237 of the Housing Act 2004 to use information obtained by the authority for Housing Benefit and Council Tax purposes to carry out its functions in relation to Parts 1-4 of the Act.

Power to Charge for Enforcement Action

The Local Authority has the power under Section 49 of the Housing Act 2004 to make a reasonable charge as a means of recovering certain administrative and other expenses incurred in serving an Improvement Notice, Hazard Awareness Notice, making a Prohibition, Emergency Prohibition or Demolition Order or taking Emergency Remedial Action.

Where a charge is made, the Council can recover a reasonable amount for expenses incurred in connection with time spent gaining entry, visiting and inspecting the premises to determine appropriate action and the administration costs for the production of a Notice, Order or Remedial Action.

Costs incurred carrying out Work in Default or Remedial Action will be charged separately.

When the charge demand becomes operative, the sum recoverable will be a local land charge. As a charge on the property, the costs give the Authority the same powers and remedies as a Mortgagee under the Law of Property Act 1925 (Enforced Sale).

See Appendix C for further information regarding charging for enforcement activity.

Revocation and Variation of Notices

Once an improvement notice has either been fully or partially complied with, the local housing authority will decide whether to revoke or vary the original improvement notice and will serve either a notice of revocation or variation to reflect the circumstances. Similarly, if the local housing authority decides not to revoke or vary an improvement notice then a notice of refusal to revoke or vary must be served. Either of these notices can be appealed against to the Residential Property Tribunal.

Housing Health & Safety Rating System – Hazard profile descriptions

	Hazard	Description
1	Damp and Mould Growth	Exposure to house dust mites, mould or fungal growths resulting from dampness or high humidity
2	Excess Cold	A temperature, which is less than 18 degrees centigrade
3	Excess Heat	A temperature, which is more than 25 degrees centigrade
4	Asbestos and MMF	Exposure to asbestos fibres or manufactured mineral fibres
5	Biocides	Exposure to chemicals used to treat timber and mould growth
6	Carbon Monoxide and Fuel Combustion Products	Exposure to carbon monoxide, nitrogen dioxide, sulphur dioxide and smoke
7	Lead	The ingestion of lead
8	Radiation	Exposure to radon gas
9	Uncombusted Fuel Gas	Exposure to uncombusted fuel gas
10	Volatile Organic Compounds	Exposure to volatile organic compounds that are gaseous at room temperature
11	Crowding and Space	A lack of adequate space for living and sleeping
12	Entry by Intruders	Difficulties in keeping the dwelling or HMO secure against unauthorised entry
13	Lighting	A lack of adequate lighting
14	Noise	Exposure to noise
15	Domestic Hygiene, Pests and Refuge	a) Poor design, layout or construction such that the dwelling or HMO cannot readily be kept clean b) Exposure to pests c) An adequate provision for the hygienic storage and disposal of household waste
16	Food Safety	An inadequate provision of facilities for the storage, preparation and cooking of food
17	Personal Hygiene, Sanitation and Drainage	a) Facilities for maintaining good personal hygiene; b) Sanitation and drainage
18	Water Supply	An inadequate supply of water for drinking and other domestic purposes

19	Falls Associated with Baths	Falls associated with baths, showers or other washing facilities
20	Falls on Level Surfaces etc	Falls on any level surface or falls between surfaces where the change in level is not more than 300 millimetres
21	Falls Associated with Stairs etc	Falls on stairs, steps or ramps where the change in level is more than 300 millimetres
22	Falls between Levels	Falls between levels where the difference in levels is more than 300 millimetres
23	Electrical Hazards	Exposure to electricity
24	Fire	Exposure to uncontrolled fire
25	Flames, Hot Surfaces etc	Contact with: a) Controlled fire or flames; b) Hot objects, liquid or vapours
26	Collision and Entrapment	Collision with or entrapment of body parts in doors, windows or other architectural features
27	Explosions	An explosion at, or near, the dwelling or HMO
28	Position of amenities etc	The position and location of amenities, fittings and equipment
29	Structural Collapse and Falling Elements	The collapse of the whole or part of the dwelling or HMO

Statement of Principles used in determining the recovery of costs

The Council has a statutory duty to keep housing conditions in its area under review, which may result in the need to address sub-standard housing conditions, utilising a wide range of powers and service of statutory notices under housing, building and public health related legislation.

Whilst Council officers will look to secure compliance chiefly through negotiation and co-operation, it will however occasionally be necessary to undertake formal enforcement proceedings. Where formal enforcement is considered necessary, the Council will act fairly, lawfully and without discrimination, in-line with legislation, the Council's Enforcement Policy and this protocol.

Various legislative acts allow the Council to make a reasonable charge as a means of recovering expenses that have been directly incurred when undertaking enforcement activity. Certain legislation also allows for the expenses to then be recoverable through a charge on the property, and until these expenses are repaid, the Council may also levy interest on any outstanding sum.

Where a demand for payment becomes operative and interest becomes payable, interest will be applied on a daily basis from the date the demand becomes operative until all sums due under the demand are recovered. The Law Societies interest rate will be used for the purpose of calculating any due interest.

Interest payments where applicable will be applied to prevent those persons responsible for carrying out repairs to their property from benefiting from what would otherwise be an interest free loan from the Council, and profiteering from their poor management of the property.

Where legislation allows, the Council will seek full recovery of its administrative costs incurred in the service of any formal enforcement notice and also for any expenses properly incurred in carrying out any remedial works, when required in default of the person responsible.

The aim of levying a charge is to hopefully avoid the need to serve a notice in the first place. The levying of charges and interest is not simply a matter of recovering costs incurred by the Council, but will importantly also discourage bad management practice.

Any charge will be assessed by time recording the various activities involved, as appropriate to the Act's provisions. The relevant officer salaries will be used with an apportionment for on costs.

When determining the costs to be levied having taken enforcement action, the council will have consideration of some or all of the following and will not be limited to time spent:

- Travel and time involved in inspecting the premises;
- Collation of documentation and information;
- Analysis of the issues and decision to serve a notice;
- Obtaining specialist advice and reports;

- Drafting a notice and requisite schedules;
- Administration costs in serving the notice and securing payment;
- Preparation of schedules of work and organising contractor quotations;
- Inspecting completion of works carried out in default;

Generally, charges will be levied where the responsible person for taking action fails to co-operate with the Council, resulting in the service of a statutory enforcement notice. Additionally, charges will generally be levied where there is a continued lack of co-operation and results in the need to review a notice.

Under certain circumstances it may be necessary to serve a statutory notice on an owner occupier. This notice would normally be Hazard Awareness Notice that would not incur a charge, but occasionally it may be necessary to serve another type of statutory notice for which a charge will be levied. In these cases, consideration of their financial position will be considered when deciding whether to charge.

Officers will not charge for their time in circumstances that were not in the owner or landlord's control, such as when a tenant or builder does not turn up or make themselves available.

In all cases the action to be taken must be appropriate to the nature of the problem. It would be contrary to the principles of enforcement to use specific powers solely because a fee can be charged. Other powers may be appropriate, and all options should be considered on their merits.

The most appropriate notice will be used in all cases. In some situations it may be necessary to serve more than one notice on a property; however, there will be good reason for this, either because of statutory requirements or due to the specific circumstances of the case.

There will be discretion to waive a charge when it is not reasonable to expect a person to pay for the enforcement action taken i.e. where the reason for the charge was outside of the control of the person charged or persons acting on their behalf. There may also be circumstances where it is considered inappropriate to charge or appropriate to delay, waive or demand a lesser charge in certain situations.

Factors to be taken into account when deciding whether to apply a Civil Penalty for certain offences under the Housing Act 2004

The following matrix will be used to determine whether a civil penalty is an appropriate course of action. Civil penalties should not normally be used for the most serious or severe offences, where prosecution should be the preferred route, but a civil penalty at the maximum level would be a significant penalty, so should not be discounted.

Failure to comply with an Improvement Notice (Section 30)

Aggravating Factor	Response	Points
Is a member of the vulnerable group for the relevant hazard occupying the property?	Yes	5 (per vulnerable person)
	No	0
Have previous notices been served on this landlord at this or other properties under Part 1 of the Housing Act 2004?	Yes	10 (per notice)
	No	0
Has the landlord complied with previous notices?	Yes	0
	No	10 (per notice)
Does the landlord have previous convictions / cautions for Housing Act offences?	Yes	20
	No	0
Has the landlord previously been issued with a Civil Penalty?	Yes	20
	No	0

Score	Course of Action
0-10	Works in Default or Civil Penalty
11 – 30	Civil Penalty
30+	Prosecution

Offences in relation to Houses in Multiple Occupation (sections 72, 139 and 234)

Aggravating Factor	Response	Points
Is it a licensable HMO for which no licence has been granted?	Yes	10
	No	0
Have previous notices been served on this landlord at this or other properties under Part 1 of the Housing Act 2004?	Yes	10 (per notice)
	No	0
Has the landlord complied with previous notices?	Yes	0
	No	10 (per notice)
Has the landlord previously been issued with a Civil Penalty?	Yes	20
	No	0
Existing fire safety breaches at the property for which a notice was served		5 (per offence)
Historical fire safety breaches at the property for which a notice was served		5 (per offence)
Existing other breaches at the property for		1 (per offence)

which a notice was served		
Historical other breaches at the property for which a notice was served		1 (per offence)
Number of occupants in excess of the maximum permitted		5 (per person)
Number of occupants in a vulnerable group (disabled, child under 16, over 65)		5 (per person)

Score	Course of Action
0-40	Civil Penalty
41+	Prosecution

Aggravating Factor	Response	Points
Is it a licensable HMO for which no licence has been granted?	Yes	10
	No	0
Have previous notices been served on this landlord at this or other properties under Part 1 of the Housing Act 2004?	Yes	10 (per notice)
	No	0
Has the landlord complied with previous notices?	Yes	0
	No	10 (per notice)
Has the landlord previously been issued with a Civil Penalty?	Yes	20
	No	0
Existing fire safety breaches at the property for which a notice was served		5 (per offence)
Historical fire safety breaches at the property for which a notice was served		5 (per offence)
Existing other breaches at the property for which a notice was served		1 (per offence)
Historical other breaches at the property for which a notice was served		1 (per offence)
Number of occupants		1 (per person)
Number of occupants in a vulnerable group (disabled, child under 16, over 65)		5 (per person)

Once it is established that a Civil Penalty is an appropriate course of action, the level of penalty should be set. Statutory guidance states that we should consider the following factors to help ensure that the civil penalty is set at an appropriate level:

a) **Severity of the offence.** The more serious the offence, the higher the penalty should be.

b) **Culpability and track record of the offender.** A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.

c) **The harm caused to the tenant.** This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.

d) **Punishment of the offender.** A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrates the consequences of not complying with their responsibilities.

e) **Deter the offender from repeating the offence.** The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.

f) **Deter others from committing similar offences.** While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that the local housing authority is proactive in levying civil penalties.

g) **Remove any financial benefit the offender may have obtained as a result of committing the offence.** The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

The following matrix will be used to calculate the civil penalty to be applied, with the caveat that, except where a maximum £30,000 penalty is stated, the penalties expressed below will be the **minimum** penalty that will be applied. A civil penalty should not be regarded as an easy or lesser option compared to prosecution, and it should not be a lower cost to offend than to take the appropriate precautions.

Calculation of Civil Penalties

Culpability	Serious harm – serious adverse effect, or high risk of an adverse effect on individuals and/or having a widespread impact	Medium harm – adverse effect, or medium risk of adverse effect on individuals, or tenant disadvantaged by the failing	Some harm – some risk of an adverse effect on individual
Very high – where the landlord intentionally breached, or flagrantly disregarded, the law	£30,000	£15,000	£10,000
High – actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken	£10,000	£5,000	£3,000
Medium – offence committed through act or omission which a person exercising reasonable care would not commit	£5,000	£3,000	£2,000
Low - offence committed with little fault, eg failings were minor and occurred as an isolated incident, or efforts were made to address the risk but were inadequate on this occasion	£3,000	£2,000	£1,000

Rent Repayment Orders

New powers were introduced under the Housing and Planning Act 2016 regarding the use of Rent Repayment Orders where a landlord has committed certain offences under the Housing Act 2004, as follows:

- Landlord has failed to obtain a licence for a property that was required to be licensed (Sections 72 and 95);
- Landlord has failed to comply with an Improvement Notice (Section 30);
- Landlord has failed to comply with a Prohibition Order (Section 32);
- Landlord has breached a Banning Order (Section 21 of the Housing and Planning Act 2016);
- Landlord uses violence to secure entry to a property (Section 6 of the Criminal Law Act 1977);
- Landlord illegal evicts or harasses the occupiers of a property (Section 1 of the Protection from Eviction Act 1977).

The term landlord also includes property agents, letting agents and managing agents.

A Rent Repayment Order can be applied for when the landlord has committed an offence, whether or not a landlord has been convicted of one of the offences listed. A criminal standard of proof is required. This means that the First-Tier Tribunal must be satisfied beyond reasonable doubt that the landlord has committed the offence or the landlord has been convicted in the courts of the offence for which the rent repayment order application is being made.

Where a landlord has been convicted of an offence to which the Rent Repayment Order relates, the First-Tier Tribunal must order the maximum amount of rent to be repaid (capped at a maximum of 12 months). Where a landlord has not been convicted of an offence to which the rent repayment order relates, the Council will consider the following factors when considering how much rent to apply to recover:

- a) **Punishment of the offender.** Rent repayment orders should have a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities. Factors that the Council may consider will include the conduct of the landlord and tenant, the financial circumstances of the landlord and whether the landlord has previously been convicted of similar offences;
- b) **Deter the offender from repeating the offence.** The level of the penalty should be set at a high enough level such that it is likely to deter the offender from repeating the offence;
- c) **Dissuade others from committing similar offences.** Rent repayment orders are imposed by the First-tier Tribunal and so the fact someone has received a rent repayment order will be in the public domain. Robust and proportionate use of rent repayment orders is likely to help ensure others comply with their responsibilities.

- d) **Remove any financial benefit the offender may have obtained as a result of committing the offence.** This is an important element of rent repayment orders: the landlord is forced to repay rent, and thereby loses much, if not all, of the benefit that accrued to them by not complying with their responsibilities.

When seeking to recover rent through an application for a Rent Repayment Order, the Council will always seek to recover the maximum amount to be repaid (capped at 12 months), except where the conduct or the financial circumstances of the landlord provide mitigating factors, in which case the Rent Repayment Order may be for a lesser amount. The amount of any rent repayment order can never be more than the rent that was actually paid over the previous 12 months. This applies regardless of whether rent was paid from the tenant's own resources or through Housing Benefit/Universal Credit.

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Cheshire East Council

Cabinet Member for Housing and Planning

Date of Meeting: 1st August 2017

Report of: Executive Director, Place

Subject/Title: ECO Flexible Eligibility Statement of Intent

Portfolio Holder: Councillor Ainsley Arnold, Housing and Planning

1. Report Summary

- 1.1. This report sets out how Cheshire East Council will increase opportunities for vulnerable residents to live in safe, warm homes that they can afford to heat and safeguard their physical and mental wellbeing. We want Cheshire East to remain a green, sustainable place and our people to live well and for longer. Our 'energy vision' is a bold but achievable statement and is split into three strands:
 - Affordable energy for residents
 - Growing energy businesses – developing a local energy economy
 - Independent energy – secure, decentralised and locally managed energy
- 1.2. As part of our commitment to securing affordable energy for our residents, the Council delivers and supports a number of local initiatives, including fairer energy pricing through Fairerpower, home repairs grants and loans, promoting better energy use and multi agency working to keep people safe in winter. The Government's recent change to the obligation placed on energy suppliers to invest in energy saving measures has presented an opportunity to extend the help that is offered to vulnerable people in Cheshire East.
- 1.3. By publishing an ECO Flexible Eligibility Statement of Intent setting out how residents can qualify for discretionary help with keeping warm at home, energy suppliers and their agents and contractors will be able to extend the help they offer with insulation and heating to a wider group of residents who are in fuel poverty or are vulnerable to the effects of cold. All residents across the Borough who meet the criteria are eligible to apply for help. The final decision on whether residents will receive assistance will be made by the energy suppliers.

2. Recommendation

2.1. It is recommended that the Portfolio Holder:

- Approves the ECO Flexible Eligibility Statement of Intent, and
- Authorises the Executive Director, Place to put all necessary steps in place to implement the Statement of Intent.

3. Other Options Considered

- 3.1. The Council could opt to not publish a Statement of Intent using the flexible powers granted by central Government, however Cheshire East is committed to providing opportunities for vulnerable residents to access funding for energy saving measures that they would otherwise be unable to access.

4. Reasons for Recommendation

- 4.1. Cheshire East has a new opportunity to engage with energy suppliers to increase the number of energy saving measures that are delivered to people in fuel poverty or are vulnerable to the effects of cold in our area, who may not be in receipt of income related benefits. To implement this flexible approach, we must publish a Statement of Intent in which we set out the criteria we will use to identify eligible households.
- 4.2. Health and Wellbeing Boards have a duty to produce a Joint Strategic Needs Assessment (JSNA) for their area, which identifies health and social care needs, how well these are being met and opportunities for improvement to inform decision making. The JSNA for Cheshire East identifies excess winter deaths as an issue for our area, with an estimated 370 excess winter deaths during 2014-15, above the national average. Fuel poverty is a significant issue affecting our communities, with an estimated 10.1% of households in Cheshire East needing to spend a disproportionate amount of their income on heating their home, rising to 26.2% in St Johns in Crewe, the worst affected ward.
- 4.3. Publication of a Statement of Intent is consistent with recommended actions within the JSNA to target flu vaccinations and winter warmth initiatives to older people, particularly those who are aged 85 and over, and to people with dementia or Alzheimer's disease, and respiratory conditions.

5. Background/Chronology

- 5.1. The Energy Company Obligation is a government energy efficiency scheme to help reduce carbon emissions and tackle fuel poverty. It was introduced in April 2013 and has undergone a number of amendments, the most recent being implemented in April 2017.

- 5.2. The scheme provides for a range of energy efficiency measures to be funded by the largest energy suppliers, including insulation and replacement boilers. The primary focus of the scheme is to improve the ability of low income and vulnerable households to heat their home, but also extends to reducing carbon emissions for other households through lower cost measures.
- 5.3. As of January 2017, the ECO scheme has delivered energy efficiency measures to 10,064 households in Cheshire East, of which 4,147 are low income and vulnerable households, or households in specified areas of low income.
- 5.4. The Government's Spending Review 2015 announced plans for a supplier obligation to run for five years from April 2017 at an estimated level of £640 million per year, rising with inflation. Energy suppliers are expected to provide support to households who meet mandated eligibility criteria, but will also be able to achieve up to 10% of their obligation for low income and vulnerable households by installing energy saving measures in households declared eligible by local authorities using their ECO Flexible Eligibility powers. The ECO scheme is due to run until 30 September 2018, and the Government expects to consult on the future of the scheme post-October 2018 later in 2017.
- 5.5. ECO Flexible Eligibility is an opportunity for local authorities to set local criteria to be able to refer households to suppliers for support, in recognition of the fact that not all households that need support with improving their homes necessarily receive income related benefits. The purpose of ECO Flexible Eligibility is to identify private households that may benefit from energy saving measures and are:
 - i. Fuel poor households, especially those that are not in receipt of Affordable Warmth eligible benefits, and the estimated 20% of fuel poor households that are not in receipt of any benefits; and
 - ii. Low income household that are vulnerable to the effects of living in a cold home.
- 5.6. The final decision on whether a household receives an ECO measure will be made by the energy suppliers or their agents / contractors. By providing a Flexible Eligibility Declaration for a household, the Council cannot provide a guarantee that measures will be installed, as the final decision will depend on the following factors:
 - i. A survey carried out by the supplier's agent / contractor and the cost of installation, and
 - ii. The energy savings that can be achieved for a property, and
 - iii. Whether suppliers have achieved their targets or require further measures to meet their ECO targets
- 5.7. Whilst the Council is unable to guarantee that a measure will be installed, by publishing a Statement of Intent it is increasing opportunities for

residents to benefit from energy saving measures being provided by energy suppliers and their agents / contractors.

- 5.8. The Statement of Intent sets out our local criteria for qualifying households, and is compliant with the aims of the original intention of ECO Flexible Eligibility.
- 5.9. To meet the eligibility criteria, households must have savings less than £8,000 and a household without children must have a net household income of less than £19,000, or for households with children the income must be less than £26,000, and meet one or more of the following criteria:
- The property is likely to have high energy costs, and/or
 - Someone in the household is in a vulnerable group or has a health condition which makes them more susceptible to the effects of cold.
- 5.10. The income criteria for households with no children has been selected based on the lowest median household income at ward level in Cheshire East. Residents in the Crewe St Barnabas ward have the lowest median average income in our area at £18,800, compared to £33,000 for the whole of Cheshire East. A different threshold is provided for households with children, reflecting that larger households require larger incomes in order to achieve the same standard of living as smaller ones.
- 5.11. The criteria for high energy costs has been established based on the factors that are likely to make the cost of heating the home more expensive, including the fuel type, the existing heating system, the age of the property, and whether anyone spends long periods at home.
- 5.12. Vulnerability to cold criteria has been established from the recommendations within the Cheshire East JSNA, National Institute of Clinical Excellence (NICE) guidance on reducing excess winter deaths, and the Government's ECO Flexible Eligibility Guidance.
- 5.13. Appendix A sets out the process that will be followed to ensure that residents receive a fair and equitable service to access energy saving measures.

6. Wards Affected and Local Ward Members

- 6.1. All wards.

7. Implications of Recommendation

7.1. Policy Implications

- 7.1.1. The Statement of Intent is aligned to the fuel poverty strategy for England, and focuses on the link between health and fuel poverty.

- 7.1.2. The Statement of Intent sets out ways to meet Outcome 5 'People live well and for longer'. We are committed to supporting the most vulnerable residents, whilst enabling others to support themselves and lead a prosperous and healthy life.

7.2. Legal Implications

- 7.2.1. The Electricity and Gas (Energy Company Obligation) (Amendment) Order 2017 amended the 2014 Order by inserting Article 16A, which permits energy suppliers to install energy saving measures as part of their ECO targets where a local authority has published a statement of intent and been consulted on the installation of a heating qualifying action at the premises; and on or after publication of its statement of intent, the local authority has made a statement in writing that, in the opinion of the local authority, the premises are occupied by a household living in fuel poverty; or that the premises are occupied by a household living on a low income and vulnerable to the effects of living in a cold home.
- 7.2.2. Cheshire East does not have a statutory duty to operate an ECO flexible eligibility scheme. The Council may however consider using its discretionary power to do so, and if it chooses to utilise this discretionary power, then it must publish a Statement of Intent.
- 7.2.3. By publishing a Statement of Intent which details the eligibility criteria that it will use, the Council has fulfilled the mandatory requirements to enable it to issue a written declaration to energy suppliers that a household would benefit from an energy saving measure under flexible eligibility.

7.3. Financial Implications

- 7.3.1. There are no financial implications. Publication of a Statement of Intent enables energy suppliers and their agents or contractors to deliver energy saving measures to eligible households in Cheshire East at no cost to the local authority. Promotion of the scheme will be undertaken primarily through the energy suppliers and their agents / contractors and through existing partnership mechanisms; any joint promotional activity will be at nil cost to the authority.

7.4. Equality Implications

- 7.4.1. The Statement of Intent will enable Cheshire East to deliver efficient and effective services to groups with protected characteristics who are vulnerable, in particular but not limited to older people and people with a disability.

7.5. Rural Community Implications

7.5.1. The Energy Company Obligation was amended in April 2017 to place a stronger focus on tackling off gas properties, so that energy suppliers have to commit more expenditure in rural areas.

7.6. Human Resources Implications

7.6.1. There are no human resources implications. Eligibility of residents will be checked by Strategic Housing staff using existing systems employed for grants and loans.

7.7. Public Health Implications

7.7.1. The Statement of Intent will facilitate services which directly impact on public health. Housing improvements will benefit vulnerable residents' mental and physical wellbeing and reduce demand on health and social care services. Cold and damp homes increase the risk and effects of cardiovascular, respiratory and rheumatoid diseases, as well as hypothermia and mental ill health. Young children, older people and people with an illness or disability are more likely to suffer the effects of cold and damp housing.

7.8. Implications for Children and Young People

7.8.1. The Statement of Intent will provide opportunities for children and young people in low income vulnerable families to live in warm and comfortable homes.

8. Risk Management

8.1. Publication of a Statement of Intent which sets out clear criteria provides a robust framework to ensure that decisions about eligibility are made in a fair, consistent and equitable manner.

9. Access to Information/Bibliography

9.1. Energy Company Obligation – Flexible Eligibility. Guidance for local authorities on engaging with energy suppliers to identify households that would benefit from energy efficiency improvements:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/608042/ECO_Help_to_Heat_flexible_eligibility_guidance_for_LAs.pdf

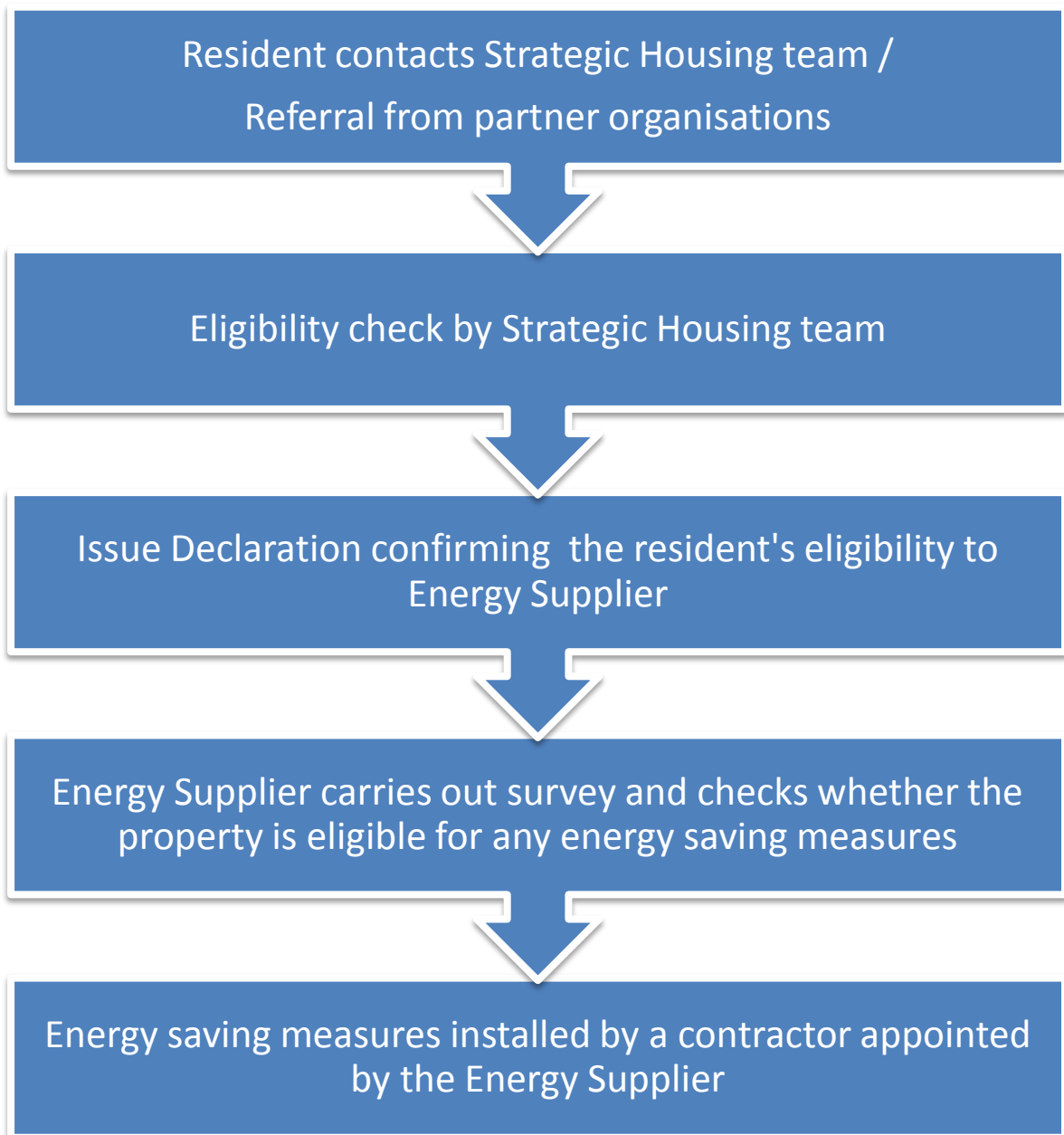
10. Contact Information

Contact details for this report are as follows:

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Tel. No.:	01270 686653
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**ECO Flexible Eligibility Statement of Intent
Process**



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Energy Company Obligation Flexible Eligibility

Statement of Intent

1. Introduction

1.1 The Energy Company Obligation (ECO) is an obligation on energy suppliers aimed at helping households cut their energy bills and reduce carbon emissions by installing energy saving measures. As of January 2017, it has delivered energy efficiency measures to 10,064 households in Cheshire East, of which 4,147 are low income and vulnerable households, or households in specified areas of low income.

1.2 The Government's Spending Review 2015 announced plans for a supplier obligation to run for five years from April 2017 at an estimated level of £640 million per year, rising with inflation. Energy suppliers are expected to provide support to households who meet mandated eligibility criteria, but will also be able to achieve up to 10% of their obligation for low income and vulnerable households by installing energy saving measures in households declared eligible by local authorities using their ECO Flexible Eligibility powers.

1.3 ECO Flexible Eligibility is an opportunity for local authorities to set local criteria to be able to refer households to suppliers for support, in recognition of the fact that not all households that need support with improving their homes necessarily receive income related benefits. The purpose of ECO Flexible Eligibility is to identify private households that may benefit from energy saving measures and are:

- i. Fuel poor households, especially those that are not in receipt of Affordable Warmth eligible benefits, and the estimated 20% of fuel poor households that are not in receipt of any benefits; and
- ii. Low income household that are vulnerable to the effects of living in a cold home.

1.4 We want Cheshire East to remain a green, sustainable place and our people to live well and for longer. Our 'energy vision' is a bold but achievable statement and is split into three strands:

- Affordable energy – putting residents first
- Growing energy businesses – developing a local energy economy
- Independent energy – secure, decentralised and locally managed energy

1.5 As part of our commitment to securing affordable energy for our residents, the Council delivers and supports a number of local initiatives:

- **Fairer energy pricing** – the Council's Fairerpower scheme offers residents a more affordable deal on their energy and helps combat fuel poverty

- **Improving homes, improving lives** – the Council supports low income households to access grants and loans to improve comfort in the home through boiler repairs and replacements and installing first time central heating systems
- **Promoting better energy use** – partner organisations promote better energy use through a telephone advice line, targeted support for vulnerable households, and energy efficiency advice in our communities
- **Keeping people safe in winter** – The multi-agency Extreme Weather partnership works together to ensure residents can access emergency measures during the winter and identifies households most at risk of cold.

1.6 Cheshire East Council is committed to putting residents first, and has elected to publish a Statement of Intent detailing the ECO Flexible Eligibility criteria against which residents will be assessed for energy saving measures, helping them to live in safe, warm homes that they can afford to heat.

1.7 The final decision on whether a household receives an ECO measure will be made by the energy suppliers or their agents / contractors. By providing a Flexible Eligibility Declaration for a household, the Council cannot provide a guarantee that measures will be installed, as the final decision will depend on the following factors:

- i. A survey carried out by the supplier's agent / contractor and the cost of installation, and
- ii. The energy savings that can be achieved for a property, and
- iii. Whether suppliers have achieved their targets or require further measures to meet their ECO targets

1.8 Whilst the Council is unable to guarantee that a measure will be installed, by publishing a Statement of Intent it is increasing opportunities for residents to benefit from energy saving measures being provided by energy suppliers and their agents / contractors.

2. Identifying eligible households

2.1 ECO Flexible Eligibility is available to private sector households, including owner occupiers and private tenants.

2.2 Households must meet either the 'Fuel Poverty (Low Income High Energy Costs)' criteria, OR the 'Low Income Vulnerable to Cold' criteria.

2.3 Fuel Poverty (Low Income High Energy Costs) Criteria

2.3.1 Households must be assessed as being on a low income **AND** have high energy costs.

2.3.2 Low income (TABLE 1):

Household composition	Annual household income	Household savings threshold
Household with no children under the age of 16	£19,000 ¹	£8,000
Households with 1 or more child under the age of 16	£26,000 ²	

2.3.2.1 Income is defined as income from all sources such as net earnings (after tax), income from savings and investments, pensions, and all benefits excluding housing benefit and council tax support.

2.3.3 High energy costs

2.3.3.1 Households who live in properties with an energy performance rating of Band, E, F or G will be eligible.

2.3.3.2 Where the energy performance rating is not known, households who score 35 or more on the following scoring matrix:

¹ £19,000 is derived from the lowest median household income at ward level in Cheshire East (£18,800)

² £26,000 is derived from the Government's highest recommended income threshold for families with children in the ECO Flexible Eligibility guidance (£25,700)

High Energy Costs (TABLE 2):

Question	Response	Score
Is a boiler used to heat the home?	Yes	0
	No	5
Was the home built before 1964?	Yes	25
	No	0
What is the main heating fuel?	Gas	0
	Electricity	30
	Oil / LPG / Other	30
Does at least one member of the household spend most of the day in the home?	Yes	5
	No	0

2.4 Low Income Vulnerable to Cold Criteria

2.4.1 To be eligible under the Low Income Vulnerable to Cold criteria, households must be assessed as being on a low income in accordance with Table 1 **AND** have one of the following health conditions, or be in a vulnerable group:

Vulnerable to Cold (TABLE 3):

Health conditions	Vulnerable group
<ul style="list-style-type: none"> • Cardiovascular condition • Respiratory condition • Neurological condition • Mental health condition • Physical disability that has a substantial or long term effect on your ability to do normal daily activities • Terminal illness • Suppressed immune system 	<ul style="list-style-type: none"> • People aged 85 or over • Children aged under 5 • Pregnant women

3. Governance and Transparency

3.1 Applications for ECO Flexible Eligibility will be administered by the Strategic Housing service on behalf of the Council.

3.2 Reasonable and proportionate enquiries will be undertaken by the Council to deter, prevent and detect fraud as part of the assessment to determine whether a household meets the eligibility criteria within this Statement of Intent, and records of all enquiries will be retained in accordance with the Council's data retention policy.

3.3 An annual statement detailing the numbers, distribution and qualification of households where eligibility has been declared will be prepared and published on the Council's website.

Signed on behalf of Cheshire East Council

Signed _____

Print Name _____

Position _____

Date _____

Appendix 1: Local Authority Flexible Eligibility Declaration

[illegible]

Local authority declaration

I declare that:

- | | |
|--------------------------|--|
| <input type="checkbox"/> | the Statement of Intent (Sol) for Cheshire East Council was published before the date this declaration was made and is currently available to view at the above location. |
| <input type="checkbox"/> | Cheshire East Council has been consulted on the installation of a measure ("heating qualifying action") at the premises listed above. |
| <input type="checkbox"/> | in the opinion of Cheshire East Council, the premises listed above are occupied by a household(s) either:
a) living in fuel poverty, OR
b) on a low income and vulnerable to the effects of living in a cold home. |

Signed

Date

 Authorised
signatory

Job title

Address

Contact details