



Housing Standards Enforcement Policy

2025

Version 2.0

Contents

1.	Introduction	4
2.	General Approach to Housing Enforcement	5
2.1	Identifying the need for action	5
2.2	Shared enforcement responsibilities	5
2.3	Selecting appropriate enforcement options	5
2.4	Powers of entry and investigative powers	6
3.	Housing Enforcement Actions	7
3.1	Advice and guidance	7
3.2	Informal enforcement action	7
3.3	Statutory (Legal) Notices and Orders	7
3.4	Works in default	7
3.5	Prosecution	7
3.6	Simple Caution	8
3.7	Civil (Financial) Penalties	8
3.8	Rent Repayment Orders	9
3.9	Database of Rogue Landlords and Property Agents	9
3.10	Banning Orders	9
3.11	Interim and Final Management Orders	10
3.12	Community Protection Notices	10
3.13	Other enforcement powers	10
4.	Enforcement of Housing Standards	11
4.1	Housing Act 2004 Part 1 enforcement of housing standards	11
4.2	Licensing and enforcement of Houses in Multiple Occupation	11
4.3	Electrical Safety Standards in the Private Rented Sector Regulations	12
4.4	Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (as amended)	13
4.5	Minimum Energy Efficiency Standards (MEES)	13
4.6	Drainage defects	13
4.7	Filthy and verminous premises	13
4.8	Hoarding and Dilapidated Properties	13
4.9	Statutory Nuisance Provisions	14
4.10	Antisocial behaviour	14
5.	Enforcement of Landlord and Tenant Law	15
5.1	Unlawful eviction and harassment of tenants	15
5.2	Tenant Fees Act 2019	15
5.3	Lettings Agent and Property Management Redress Schemes	17
6.	Empty Homes	18

6.1	Empty Dwelling Management Orders	18
6.2	Compulsory Purchase Orders.....	18
6.3	Enforced Sale	19
7.	Additional Information	20
7.1	Recovery of Enforcement Costs	20
7.2	Recovery of costs associated with Part 1 of the Housing Act 2004	20
7.3	Recovery of costs associated with work in default	20
7.4	Recovery of other costs	20
7.5	Publication of fees and charges	21
7.6	Proceeds of Crime	21
7.7	Grants and financial assistance	21
7.8	Monitoring and Review	21
7.9	Application of the Policy.....	21
7.10	Publicity	21
7.11	Complaints, Representations and Appeals	21
	Appendix 1 – Housing Act 2004 Part 1: enforcement options	22

Version	Issue Date	Change
1.0	July 2021	Adopted by Council
2.0	June 2025	<ol style="list-style-type: none"> 1. Schedules relating to civil penalties removed and sections throughout updated to refer to the new Housing Civil Penalties Policy. 2. Smoke and CO Regulations updated to reflect amendment regulations. 3. Updated links to referred documents. 4. Minor corrections, clarifications and improvements to readability. 5. Update and simplify Housing Act Part 1 recovery of costs approach to reflect current practice. 6. Consequential renumbering etc.

1. Introduction

Cherwell District Council has a responsibility to deal with unsatisfactory housing in its area. This policy sets out the powers we have at our disposal to regulate and improve housing in the district, the Council's approach to enforcement and how we intend to use the available powers.

Our aim is to raise housing standards and contribute to the Council's strategic priorities, in particular to contribute towards improving the existing condition of properties within Cherwell, ensuring high property standards and properties that are fit for the future, working towards net zero.

Homes in the private rented sector were more likely to be non-decent than homes in all other tenures¹, so this is where our work is predominantly focussed. However, there are circumstances where we will act to address issues relating to owner-occupied dwellings and properties managed by Registered Providers and other bodies.

Whenever possible we will provide advice and guidance to assist landlords and other parties in complying with their legal requirements; however, it is recognised that if the law is broken, then robust enforcement action can be essential to protect the public and the environment. Throughout our housing interventions we will be seeking to:

- **Protect** and improve the health, safety, and welfare of occupants, members of the public and the environment;
- **Change** non-compliant behaviours and remove benefits of non-compliance; and
- **Promote** best practice in the private rented sector.

Cherwell District Council recognises and affirms the Regulators' Code² and the importance of achieving and maintaining consistency and transparency of regulatory enforcement action. This policy aims to provide:

- **Guidance** for Council officers to ensure **consistency** and **fairness** when the Council is investigating, considering options and deciding to take enforcement action relating to the housing within its district; and
- **Clarity** to help businesses and members of the public know what to expect from the service when the Council takes legal proceedings.

In deciding upon enforcement options, the Council will have due regard to its overarching Enforcement Policy³ as well as statutory guidance, approved codes of practice and relevant industry or good practice guides. Appropriate enforcement actions that can be taken include, but are not limited to, those outlined below.

¹ English Housing Survey 2021 to 2022: private rented sector
<https://www.gov.uk/government/statistics/english-housing-survey-2021-to-2022-private-rented-sector/english-housing-survey-2021-to-2022-private-rented-sector>

² Regulators' Code - <https://www.gov.uk/government/publications/regulators-code>

³ Cherwell overarching enforcement policy - <https://www.cherwell.gov.uk/info/5/your-council/1078/enforcement-policy>

2. General Approach to Housing Enforcement

Whilst we shall endeavour to develop a professional and constructive relationship with responsible landlords, the need to ensure that all properties meet minimum standards is paramount. We expect landlords and managing agents to comply with the law and to proactively manage their properties to ensure the health, safety and welfare of tenants is protected. Where individuals or companies are failing in their responsibilities and duties, the Council will take firm but fair enforcement action.

2.1 Identifying the need for action

The Council has a duty to keep the housing conditions in its area under review and we believe enforcement should be targeted at those individuals and organisations who fail to uphold the required standards. Our officers will establish the need to take enforcement action through:

- proactive investigations, audits and inspections of dwellings – including reviews of an individual landlord or agent's portfolio of properties, area-based modelling, and data analysis; and
- reactive responses to complaints, referrals, or requests for assistance.

2.2 Shared enforcement responsibilities

In circumstances where enforcement responsibility is shared between or rests fully with external organisations, officers will have regard to protocols agreed with other enforcement agencies. Where appropriate, officers will ensure that referrals are passed to the appropriate enforcing authority promptly and in accordance with any agreed procedure.

2.3 Selecting appropriate enforcement options

Enforcement action decisions will principally be based on risk, but the exact type of enforcement taken will vary according to the legislation being applied. In many instances it will be appropriate for officers to use informal action such as offering advice, information and assistance to landlords and residents to aid compliance with housing related legislation.

However, when housing law contraventions are established, robust formal actions should be considered, and in some cases, taking a certain enforcement action is a statutory duty. Where failure to comply is of a serious nature, officers will use the full range of enforcement options available to them under the relevant legislation to achieve compliance and to protect those at risk. In the most serious contraventions possible action will include prosecution.

The type of enforcement action pursued is always considered on a case-by-case basis, based on its own merits and taking account of the assessed risk in each case. Officers will be suitably trained to make assessments and informed judgements; in particular in the application and use of the Housing Health and Safety Rating System (HHSRS) as the statutory method of assessing risks in housing.

Following consideration of the specific circumstances of the case, the most appropriate enforcement option will be applied and properly recorded. In every case enforcement seeks to:

- Promote and achieve sustained compliance with the law
- Ensure that risks to health, safety or the environment are appropriately addressed
- Minimise the negative impacts of wrongdoing and see that those who breach legislative requirements are held to account

In all cases, enforcement decisions, whether they are decisions to take action or to not take action, will be recorded, and the outcome communicated appropriately to the parties concerned.

2.4 Powers of entry and investigative powers

The Council has various powers to enter domestic premises and to require information and documents to be supplied in connection with the exercise of its various functions and the investigation of suspected offences. In most cases, entry will be sought under section 239 of the Housing Act 2004, and generally, officers will give at least 24 hours' notice prior to exercising a power of entry. However, no such notice is required where entry is to ascertain whether an offence has been committed in relation to licensing of HMOs, selective licensing of houses, breach of the HMO Management Regulations or Overcrowding Notices. If admission is refused, premises are unoccupied, or giving notice of entry is likely to defeat the purpose of the entry, then a warrant to enter by force may be sought, if judged necessary. Other Acts have their own enforcement powers including powers of entry which will be used accordingly when the Council exercises these specific pieces of legislation.

We will use all available powers to meet the enforcement objectives within this policy, having regard to any relevant Government guidance and other legal requirements that might apply to our actions; for example, the Data Protection Act 2018, Regulation of Investigatory Powers Act 2000 and the codes of practice under the Police and Criminal Evidence Act 1984. We will ensure that our officers are duly authorised, trained and supported to effectively exercise the Council's functions.

3. Housing Enforcement Actions

This section summarises the types of action and legislation most commonly applied in the enforcement of housing standards. It is not an exhaustive list nor is it intended to be a definitive interpretation of the legislation or provide a full statement of the law. The Council may take any number of these courses of action, either simultaneously or consecutively, depending on the circumstances of the case.

In all cases we will seek to ensure that the information we provide is in clear, concise and accessible language, and that legal requirements are clearly distinguished from recommendations above the minimum standards. Decisions to take enforcement action will be properly recorded and justified.

3.1 Advice and guidance

We recognise that prevention is better than cure and we actively work with businesses, landlords and residents to educate and promote compliance with the law. In some cases, a fee may be payable for our advice. Where this is the case you will be informed and provided with details of the charge and how to pay the fee.

3.2 Informal enforcement action

The Council will allow an opportunity for informal compliance where this is considered appropriate. This judgement will be based on risk and compliance history. Where an informal opportunity does not achieve sufficient progress, or there is increased risk, the Council will proceed with formal action.

3.3 Statutory (Legal) Notices and Orders

In respect of breaches under the Housing, Public Health and related legislation Cherwell District Council has powers to issue certain statutory notices. Such notices are legally binding and may require the recipient to carry out work, cease doing specified things, provide information or take other actions depending on the statute or circumstances. As the Council relies upon statutory notices to effectively carry out its regulatory functions, breach of a notice is viewed as a serious matter. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/or other sanctions where appropriate. Where legislation permits the recovery of costs for serving statutory notices, the Council will normally charge.

3.4 Works in default

Where someone fails to comply with a notice which requires work to be completed, the Council may, depending on the specific legislation, carry out those works instead and recover the costs incurred in so doing. This is known as works in default. The Council will decide in each case whether to undertake works in default, and may also impose other available sanctions, for example prosecution. Some legislation also permits the Council to undertake emergency works where an imminent risk of harm exists. In all cases, the Council will follow the procedures specified in the particular legislation being exercised.

3.5 Prosecution

We apply the Code for Crown Prosecutors⁴ two-stage test when deciding whether a prosecution, civil penalty or simple caution is viable and appropriate, and only proceed when the case has passed both the evidential test and the public interest test. The principles in these tests form the basis of much of our formal enforcement decision-making.

The Evidential Test: We must first be satisfied that for each charge there is sufficient evidence to provide a ‘realistic prospect of conviction’ against each defendant. This means that before taking formal action, the Council must satisfy itself that if the case were to be prosecuted in a magistrates’ court, the Council would be able to demonstrate beyond reasonable doubt that the offence has been committed.

The Public Interest Test: The Council must then decide whether it is in the public interest to prosecute. In deciding on the public interest, the Council will make an overall assessment based on the circumstances of each case and will consider all relevant circumstances carefully, including local and corporate priorities. Some factors may increase the need to prosecute whilst others may suggest that another course of action would be more appropriate.

Cherwell District Council will generally save prosecution for the most serious offences unless there is no alternative sanction, for example non-compliance with certain notices. The Council will also consider prosecution for banning order offences where the circumstances of the case dictate a Banning Order will be appropriate.

3.6 Simple Caution

Cherwell District Council may offer a simple caution as an alternative to prosecution in cases where there is insufficient public interest to prosecute, and:

- a. there is sufficient evidence to give a realistic prospect of conviction; and
- b. the offender admits his or her guilt; and
- c. the person being cautioned agrees to it, having been made aware that the caution may be cited in Court if the person is found guilty of other offences in the future.

The reasons for issuing a simple caution instead of prosecution in the courts would commonly be, for example, that the offender has no previous history in relation to the offence and has done everything in their power to make amends. Depending on the circumstances, this would usually entail remedial work to premises and/or taking proper steps to ensure that the offence cannot recur.

3.7 Civil (Financial) Penalties

The Council has powers to issue civil or financial penalties for breaches under a wide range of housing legislation, including as an alternative to prosecution for certain housing offences. In such cases, the same criminal standard of proof is required for a civil penalty as for prosecution. This means that before taking this action, the Council will be satisfied that if the case were to be prosecuted, there

⁴ The Code for Crown Prosecutors - <https://www.cps.gov.uk/publication/code-crown-prosecutors>

would be a realistic prospect of conviction, having regard to the Crown Prosecution's Service Code for Crown Prosecutors.

Civil penalties will be determined and issued using the Council's current Housing Civil Penalties Policy.

The income received from civil penalties will be retained by the Council to further its statutory functions, as the Local Housing Authority, in relation to its enforcement activities covering the private rented sector.

The Council will seek to recover all debts owed from financial penalties.

3.8 Rent Repayment Orders

Local Authorities and tenants can apply to the First-tier Tribunal (Property Chamber) ("the Tribunal") for a Rent Repayment Order (RRO)⁵. An RRO requires a landlord who has committed certain offences to repay rent (and/or Housing Benefit/Universal Credit payments) received for a period of up to twelve months.

Cherwell District Council must consider applying for a RRO where a landlord has been convicted of a relevant offence in their area, and may also apply for a RRO where an offence has been committed, but the landlord has not been convicted (e.g. where a civil penalty has been issued in lieu of prosecution). Additionally, the Council may support tenants to make RRO claims. In all cases, the Council will apply its RRO Policy⁶ in determining when to apply for a rent repayment order.

3.9 Database of Rogue Landlords and Property Agents

The national database of rogue landlords and property agents allows local authority officers to add, search and keep track of known rogue landlords. The aim is to help authorities target their enforcement activities and to tackle those landlords and agents operating across Council boundaries.

The Council must make an entry on the database where a landlord or property agent has received a Banning Order; and may also make entries where a landlord or property agent has been convicted of a banning order offence, or has received two or more civil penalties within a twelve month period.

The Council will have regard to the government guidance⁷ when deciding whether to include a person on the database, and the duration of any entry.

3.10 Banning Orders

⁵ Rent Repayment Orders guidance - <https://www.gov.uk/government/publications/rent-repayment-orders-under-the-housing-and-planning-act-2016>

⁶ Rent Repayment Order Policy - <https://www.cherwell.gov.uk/download/downloads/id/8160/rent-repayment-order-policy.pdf>

⁷ Rogue Landlord Database guidance - <https://www.gov.uk/government/publications/database-of-rogue-landlords-and-property-agents-under-the-housing-and-planning-act-2016>

After a landlord or agent has been convicted of a Banning Order Offence⁸, the Council can apply to the First Tier Tribunal for a Banning Order⁹. A Banning Order forbids a landlord or property agent from letting and/or managing property in England. Banning Orders last a minimum of twelve months with no statutory maximum. Breaching a Banning Order is a criminal offence which is liable on summary conviction to imprisonment for a period not exceeding 51 weeks, or to a fine, or to both; or as an alternative to prosecution, a civil penalty of up to £30,000.

Cherwell District Council will reserve banning for the most serious offenders who have repeatedly breached their legal obligations and continue to rent out accommodation, which is substandard, in accordance with the Council's Banning Order policy¹⁰.

3.11 Interim and Final Management Orders

Interim Management Orders (IMOs) and Final Management Orders (FMOs) transfer management control of a residential property to the Council for a period of between 12 months (for IMOs) and up to five years (for FMOs). The purpose of an IMO is to take immediate steps to protect the health, safety, or welfare of persons occupying the house, or persons occupying or having an estate or interest in any premises in the vicinity. FMOs aim to secure the proper management of the house on a long-term basis in accordance with a management scheme contained in the order.

The Council will make IMOs and FMOs where necessary, in accordance with the relevant legislation and government guidance.

3.12 Community Protection Notices

Housing Standards officers may use community protection notices and fixed penalty notices under the Antisocial, Crime and Policing Act 2014 in cases relating to residential premises where there is judged to be unreasonable conduct of a persistent or continuing nature arising which is having a detrimental effect on the quality of life of those in the locality.

3.13 Other enforcement powers

Other enforcement tools and legislative powers will be applied as new legislation is introduced, and/or where the Council considers those other powers to be the most appropriate remedy under the circumstances. Cherwell District Council will ensure that the relevant officers are duly authorised and trained to use such powers, and consultation with Legal Services and approval from the Assistant Director is sought where necessary.

⁸ Banning Order Offences - <http://www.legislation.gov.uk/ukxi/2018/216/contents/made>

⁹ Banning Orders guidance - <https://www.gov.uk/government/publications/banning-orders-for-landlords-and-property-agents-under-the-housing-and-planning-act-2016>

¹⁰ Banning Orders Policy - <https://www.cherwell.gov.uk/download/downloads/id/8161/banning-order-policy.pdf>

4. Enforcement of Housing Standards

Although housing issues will principally be dealt with under the Housing Act 2004, there are circumstances where other pieces of legislation are more appropriate to use, or where specific duties exist, or breaches are created and enforced under another Act. The following section provides an overview of the different areas of legislation and duties subject to enforcement by the Housing Standards Team.

4.1 Housing Act 2004 Part 1 enforcement of housing standards

Part 1 of Housing Act 2004 provides that, amongst other things, the statutory minimum standard for all homes in England and Wales be assessed by means of the Housing Health and Safety Rating System (HHSRS). The HHSRS is a calculation of the effect of 29 possible hazards on the health of occupiers and visitors to dwellings, and the legislation provides a range of actions for addressing identified hazards. The HHSRS is tenure-neutral and can be applied to owner-occupied properties and empty dwellings, as well as rented accommodation. The forms of enforcement action that can be taken under Part 1 of the Housing Act 2004 are summarised in

Appendix 1.

The Council has a duty to take action to address Category 1 (the most serious) hazards and discretionary power to take action to address Category 2 (less serious) hazards. A Statement of Reasons will accompany each Part 1 notice or order served explaining why the chosen action was most appropriate.

In the case of Category 2 hazards identified under HHSRS, the Council will generally seek to address higher Category 2 hazards when these are identified; but will exercise its discretion and consider individual cases and circumstances when deciding whether or not to take action in response to any Category 2 hazards found within its district. For example, lower-scoring Category 2 hazards may need to be addressed when found in conjunction with Category 1 or high Category 2 hazards on the same premises. Conversely, it may not be possible to reduce a higher-scoring Category 2 hazard without undertaking significant or costly works to an otherwise satisfactory property. In such cases appropriate advice will be given and the decision recorded.

4.2 Licensing and enforcement of Houses in Multiple Occupation

A house in multiple occupation (HMO) is a property occupied by three or more unrelated tenants. HMOs include shared houses and poorly or partially converted buildings. All HMOs must be kept in good safe repair in accordance with the HMO Management Regulations ^{11 12} and failure to comply with a regulation is an offence.

¹¹ The 2006 HMO Management Regulations (apply to all Section 254 HMOs)
<http://www.legislation.gov.uk/uksi/2006/372/contents/made>

¹² The 2007 HMO Management Regulations (apply only to Section 257 HMOs)
<http://www.legislation.gov.uk/uksi/2007/1903/contents/made>

Enforcement of fire safety in HMOs is carried out in partnership with Oxfordshire Fire and Rescue Service in accordance with a Memorandum of Understanding incorporating all five district Councils in Oxfordshire.

HMOs with five or more occupants sharing facilities must be licensed (unless exempt). Failing to apply for an HMO licence and not complying with HMO licence conditions are offences. The Council will administer HMO licence applications in accordance with its current HMO Licensing policy¹³.

Licensed HMOs must comply with minimum standards for bedroom sizes and certain other amenities and facilities, as prescribed by Regulation. The Council also has discretion to produce its own HMO standards¹⁴ which are applied to all types of HMO, whether licensable or not. These standards are used by the Council to help in determining whether an HMO is reasonably suitable for occupation by a given number of occupants or households. Having a reference guide also helps achieve consistency and informs landlords and tenants of the expected standards.

Where a property is found to be overcrowded, the Council has a range of options depending on the specific circumstances:

- Licensed HMOs – the Council can impose and enforce licence conditions, or enforce Section 72(2) if landlord knowingly over-occupied the HMO
- Non-licensable HMOs – the Council can serve an overcrowding notice under Section 139 of the Housing Act 2004
- Any properties including single family homes – the Council can use HHSRS and Part 1 of the Housing Act 2004; and/or Part X of the Housing Act 1985

4.3 Electrical Safety Standards in the Private Rented Sector Regulations

Private landlords must ensure that the electrical installations in their rented properties are safe and meet the electrical safety standards at all times while let under specified tenancies. An electrical installation inspection and testing report must be obtained from a qualified person at least every five years, and copies supplied to specified parties.

Where the Council finds a landlord has breached their duties, we have a duty to serve a Remedial Notice. If this is not complied with, and/or there are urgent remedial works required the Council can undertake the remedial action and recover any costs incurred.

If the Council is satisfied beyond reasonable doubt that a private landlord has breached their duties, the Council may impose financial penalties of up to £30,000. Financial penalties under these regulations will be calculated using the Housing Civil Penalties Policy.

¹³ HMO Licensing Policy - <https://www.cherwell.gov.uk/download/downloads/id/16116/hmo-licensing-policy-2024.pdf>

¹⁴ Cherwell District Council's HMO Standards Policy - <https://www.cherwell.gov.uk/download/downloads/id/8196/hmo-standards-2018.pdf>

4.4 Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (as amended)

Landlords must ensure that their rented properties have working smoke alarms on every storey, and carbon monoxide alarms installed in any room containing a combustion appliance (except a gas cooker).

Where the Council has reasonable grounds to believe that there is insufficient provision of smoke alarms or carbon monoxide alarms in the property as required by the regulations; or the smoke alarms or carbon monoxide alarms were not working at the start of a tenancy or licence the Council must serve a remedial notice detailing the actions the landlord must take to comply with the regulations. If after 28 days, the landlord has not complied with the remedial notice, the Council must arrange for an authorised person to take the remedial action specified in the remedial notice.

Where the Council is satisfied on the balance of probabilities that a landlord has failed to comply with a remedial notice, the Council may issue a financial penalty of up to £5,000. Financial penalties under these regulations will be calculated using the Housing Civil Penalties Policy.

4.5 Minimum Energy Efficiency Standards (MEES)

Landlords are prohibited from letting any properties with an Energy Performance Certificate (EPC) rating below E unless they have lodged a valid exemption on the Government's PRS Exemption Register. The Council will carry out proactive and reactive investigations into substandard rented properties using Compliance Notices and may issue landlords who are found to have breached these regulations with financial penalties of up to £5,000 and may, either additionally or alternatively, publish details of any breaches on the PRS Exemption Register for 12 months or longer as it sees fit. Penalties for breaches of these regulations will be determined using the Council's Civil Penalties Policy.

4.6 Drainage defects

A range of notices can be used to require repairs to defective drains including clearing of blockages, CCTV surveys, and structural work relating to both owner occupied and rented properties where necessary. These may include notices under the Building Act 1984, Local Government (Miscellaneous Provisions) Acts 1976 and 1982, or other legislation as appropriate in the circumstances.

4.7 Filthy and verminous premises

The Council can use the Public Health Act 1936 (as amended) and the Prevention of Damage by Pests Act 1949 to tackle premises which are filthy or infested with vermin. Notices under these Acts can specify cleaning and treatment, including proofing work and clearance to prevent rodent infestations, and permit the Council to enter and undertake Works in default if necessary.

4.8 Hoarded and Dilapidated Properties

These properties are often occupied by vulnerable persons, such as individuals with mental health issues or elderly people who are struggling to cope. The Council will primarily seek to provide advice, assistance and signposting to relevant agencies to help them deal with any underlying issues. However, we will take enforcement action where there is significant disrepair, lack of hygiene or accumulations within properties which are likely to cause harm or ill health to the occupier or those in the locality, i.e. where there is a wider health issue or where statutory nuisance may exist. We shall engage with other agencies and refer such cases to them as necessary, particularly when there are safeguarding issues.

4.9 Statutory Nuisance Provisions

If a property or defect is prejudicial to health or is causing (or likely to cause) a nuisance to the locality, it may constitute a statutory nuisance under the Environmental Protection Act 1990. For an issue to constitute a statutory nuisance it must either:

- unreasonably and substantially interfere with the use or enjoyment of a home or other premises; or
- injure health or be likely to injure health.

Where the Council finds a statutory nuisance, it must serve an abatement notice requiring whoever is responsible to stop the nuisance or to take specific actions to prevent the occurrence or recurrence of the nuisance.

4.10 Antisocial behaviour

Where antisocial behaviour is associated with a residential property, we will work with other enforcement teams and agencies to seek to address the underlying issues, and where appropriate serve Community Protection Notices¹⁵ on landlords, managing agents and/or occupiers to achieve cessation of the conduct. The Council may also seek injunctions and post-conviction orders where it is judged appropriate.

¹⁵ Under Part 4, Chapter 1 of the [Anti-social Behaviour, Crime and Policing Act 2014](#)

5. Enforcement of Landlord and Tenant Law

The Council is committed to promoting and upholding tenants' rights under housing and landlord and tenant law. Our Tenancy Relations Officer works proactively with landlords and tenants to increase knowledge and awareness of everyone's rights and responsibilities within the private rented sector; thereby helping to improve the quality of tenant experience in the sector, reduce homelessness and promote sustainable tenancies. However, when things go wrong, we will step in to investigate alleged offences and will take robust enforcement action.

5.1 Unlawful eviction and harassment of tenants

Depending on their tenant's security of tenure, most landlords are normally required to give notice and then obtain a court order for possession after the notice has expired. Illegal eviction occurs when the tenant is unlawfully prevented from entering all or part of their accommodation. Examples include:

- The use of violence (or threats of violence) to force the tenant to leave;
- Preventing the tenant from entering accommodation they have the right to occupy;
- Changing the locks while the tenant is out; and
- Evicting a tenant before the proper legal procedures have been followed.

Harassment occurs when a landlord (or someone acting on their behalf) does something that is likely to interfere with the tenant's peace and enjoyment or persistently withdraws or withholds services that the tenant reasonably requires for the occupation of the premises in the knowledge that this is likely to cause them to leave the property or refrain from exercising their tenancy rights. Examples include:

- Forcing the tenant to sign agreements which take away their legal rights;
- Removing or restricting essential services such as hot water or heating, or failing to pay bills in order that these services are cut off;
- Constant visits to the property (especially if late at night or without warning);
- Entering the accommodation when the tenant is not there, or without the tenant's permission; and
- The use of violence or threats of violence.

The Tenancy Relations Officer will work closely with the Police and the Council's Housing Options and Allocations Teams to prevent homelessness, reinstate tenants who have been evicted illegally, and investigate and prosecute offences of illegal eviction and harassment. If conviction is secured the Council will also seek rent repayment orders where housing benefit or Universal Credit has been paid, and will advise tenants in applying for injunctions, compensation and rent repayment orders.

5.2 Tenant Fees Act 2019

The Tenant Fees Act 2019 ("the TFA 2019") prohibits landlords and letting agents from charging any fees in respect of private rented sector tenancies which are not

“permitted payments.” If a payment is not of a type specifically listed in Schedule 1 of the TFA 2019, it is prohibited by default.

The Government has published statutory guidance¹⁶ to which enforcement authorities must have regard in relation to enforcing the TFA 2019. Bristol City Council in its capacity as Lead Enforcement Authority for the TFA 2019 has also produced guidance. This policy has been developed with due regard to these statutory and non-statutory guidance documents.

The duty to enforce the TFA 2019 falls to Oxfordshire Trading Standards as the local weights and measures authority. As a district Council that is not a local weights and measures authority, Cherwell has the power to enforce section 1 (prohibitions applying to landlords), section 2 (Prohibitions applying to letting agents) and schedule 2 (treatment of holding deposits). The Council will investigate and determine the most appropriate and effective sanction in each case, having due regard to relevant policies and guidance

A first breach of the legislation will be a civil breach with a financial penalty of up to £5,000. However, if a further breach is committed within five years, enforcement authorities may impose financial penalties of up to £30,000 or prosecute as a criminal offence depending on the breach. Since a second or subsequent breach, within five years, is a criminal offence, Cherwell District Council will apply the criminal burden of proof (i.e. satisfied beyond reasonable doubt) when imposing sanctions for all initial and subsequent breaches.

Financial penalties under the TFA 2019 will be determined using the Council's Housing Civil Penalties Policy.

Any unpaid financial penalty can be recovered as a civil debt through the County Court. The money from financial penalties must be used to fund further enforcement of the private rented sector.

Prohibited payments can be recovered by tenants through the County Court, and the Council may assist tenants and conduct litigation on their behalf.

The Council will, wherever appropriate, seek to work with Oxfordshire Trading Standards and the other Oxfordshire district Councils to share information and best practice to maximise enforcement outcomes. The Council may also seek the guidance of the Lead Enforcement Authority if required.

There are certain circumstances in which an enforcement authority must notify another body when relevant enforcement actions are taken or cease. These circumstances are set out in section 14 of the Act. This prevents duplication of work and allows an accurate record of previous enforcement action to be maintained so authorities to check if a breach is a first breach or further offence. The Council will notify Oxfordshire Trading Standards whenever it (Cherwell District Council)

¹⁶ Tenant Fees Act 2019: Statutory Guidance for enforcement authorities - <https://www.gov.uk/government/publications/tenant-fees-act-2019-guidance>

proposes to take enforcement action or decides not to continue with enforcement action relating to breaches of the TFA 2019.

The Council will notify the Lead Enforcement Authority as soon as reasonably practicable if a financial penalty is imposed, withdrawn, quashed; or proceedings for an offence result in conviction.

If the Council takes action relating to breaches occurring outside its district, it will notify the relevant Local Housing Authority whenever relevant action is taken.

5.3 Lettings Agent and Property Management Redress Schemes

It is a legal requirement that all lettings agents and property managers in England join one of two Government-approved redress schemes (The Property Ombudsman - www.tpos.co.uk and The Property Redress Scheme - www.theprs.co.uk).¹⁷ The Council can impose financial penalties of up to £5,000 when it is satisfied on the balance of probabilities that a lettings agent or property manager has failed to comply with the requirement to belong to an approved redress scheme. Financial penalties under this Order will be determined using the Council's Housing Civil Penalties Policy.

¹⁷ The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 - <https://www.legislation.gov.uk/uksi/2014/2359/contents/made>

6. Empty Homes

Our general approach to dealing with empty homes will be based on the following principles:

- We want empty homes to be used
- We will encourage and facilitate their re-use
- We will take action to resolve specific issues caused by empty homes
- We will take action to secure re-use of empty homes where a business case exists.

We will seek to work alongside owners of empty homes with a solution-based approach to support and encourage voluntary action. However, we are also committed to using appropriate enforcement action where owners fail to take responsibility for their properties, reasonable negotiations fail or there is little prospect of the property being bought back into use voluntarily.

A number of factors will be considered in deciding the best course of action for an empty home. The Council will provide advice, assistance and has the discretion to provide financial assistance to the owners of empty properties to help bring the home back into use under the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002¹⁸, subject to appropriate funding being available.

We will however also consider using any of the following enforcement options:

6.1 Empty Dwelling Management Orders

Where a property has been left empty for over two years and is attracting anti-social behaviour, the Council may seek an EDMO, the provisions for which are contained in the Housing Act 2004. An EDMO allows the Council to take over full management of the property for up to seven years, reclaiming any management and refurbishment costs from the rental income.

6.2 Compulsory Purchase Orders

CPOs can be made under s17 of the Housing Act 1985 where it can be shown that there is housing need, rather than proving the property was causing blight or other problems. In cases such as this Cherwell District Council will take account of up-to-date housing statistics, local policies and such other information it judges relevant, the outcome of any voluntary negotiations and the prospect of the property being brought back into use.

Section 226 of the Town & Country Planning Act 1990 permits a local authority, when authorised by the Secretary of State, to compulsorily acquire any land in their administrative area which will facilitate the carrying out of development, re-development or improvement of the area (provided this will contribute to economic, social or environmental well-being), or which is necessary to achieve in the interests of the proper planning of an area in which the land to be acquired is situated. This

¹⁸ Regulatory Reform (Housing Assistance) (England and Wales) Order 2002
<https://www.legislation.gov.uk/uksi/2002/1860/contents/made>

power can be used for the acquisition of individual 'problem properties' that can be regenerated to provide much needed affordable housing, improve the appearance of the surrounding area and reduce anti-social behaviour. Cherwell District Council will consider Compulsory purchase orders ("CPOs") under these powers where there is the opportunity to bring individual problematic properties back into use.

Both powers allow the Council to purchase properties in specific circumstances without the owner's consent.

6.3 Enforced Sale

The Law of Property Act 1925 allows the recovery of debt secured by a registered charge by forcing the sale of a property. In situations where the Council has served notices requiring the owner to ensure that their property is not unsafe or having a negative impact, but they have failed to act, the Council may be forced to carry out the works in default. If the costs incurred are not paid, the Council will register a charge against the property and should the owner still not pay this debt, the Council can commence legal proceedings to sell the property to recover the costs.

7. Additional Information

7.1 Recovery of Enforcement Costs

The Council will generally seek to recover the full costs of its enforcement interventions from offender, in accordance with its policies and guidance provided by Government, with the aim of minimising the cost of non-compliance on the Council and the community. Where a charge has been levied and not paid, the Council will seek to recover any debt owed in accordance with its policies and the relevant debt recovery mechanisms as specified in statute.

The Council will seek to recover all costs incurred from successful prosecutions. Financial penalties will generally be set at a level which is not less than the cost of compliance or the costs incurred by the Council in investigating the contravention, whichever is greater.

7.2 Recovery of costs associated with Part 1 of the Housing Act 2004

The Housing Act 2004 allows the Council to recover certain costs incurred by the Council in the assessment, preparation and service of certain notices and orders dealing with the enforcement of housing conditions. An average charge per notice/order will be set annually by the Council.

The Council will seek to recover the costs associated with taking all relevant enforcement action, unless there are exceptional circumstances.

7.3 Recovery of costs associated with work in default

The Council will seek to recover from the relevant person(s) all costs incurred and associated with undertaking work in default (including for example, time spent by its officers, administrative costs, contractors' costs, the cost of any specialist reports, supervisory costs etc.), to the extent permitted under the relevant legislation being enforced.

The Council will calculate the cost of officer time on the basis of the actual time spent by officers on the chargeable activities, including travel, and will charge that time at an appropriate hourly rate. The Head of Service will be responsible for determining (periodically) what hourly rate or rates should be applied and in doing so, will take into account employment costs of relevant officers (which may be standardised or averaged), and corporate overheads (which may be applied as a percentage addition to employment costs).

The Council will normally invoice the responsible person(s) for the cost of work but will in addition make the cost of work in default a charge on the relevant premises in all cases where the applicable legislation provides for that to be done. Accrued interest will be added to charges at an appropriate rate determined by the Council.

Any exceptions to this approach will be determined by the relevant Head of Service.

7.4 Recovery of other costs

The Council may make reasonable charges to cover the costs of providing discretionary services, for example the provision of detailed advice.

7.5 Publication of fees and charges

All fees and charges (except for works in default which by its nature is ad hoc) will be reviewed periodically and published on the Council's website.

7.6 Proceeds of Crime

The Proceeds of Crime Act 2002 (POCA) allows Local Authorities to recover assets that have been accrued through criminal activity. Where appropriate the Council will consider the use of POCA, however it is expected that in most housing cases this same outcome will be achieved via Rent Repayment Orders.

7.7 Grants and financial assistance

The Council offers a range of grants and other forms of assistance to improve housing conditions for Cherwell residents. These are provided in accordance with the Council's grants and assistance policies. Discretionary grants and assistance will not generally be available to landlords who are, or have recently been, subject to enforcement action.

7.8 Monitoring and Review

The Council will keep its regulatory activities and interventions under review to ensure their maximum impact on the improvement of housing standards within the district. Changes will be introduced into this document where necessary to accommodate new legislation, guidance and local needs.

7.9 Application of the Policy

All officers must have regard to this policy when making enforcement decisions.

7.10 Publicity

Enforcement cases will be publicised in the media in accordance with the Council's media policies.

7.11 Complaints, Representations and Appeals

Where legislation includes a right to make representations these will be considered in accordance with the relevant statute and where appropriate reviewed by a senior officer. Appeals against formal enforcement actions such as civil penalties, notices or prosecutions, must be made to the relevant court or tribunal for determination. Any such appeal does not preclude any aggrieved person from making a formal complaint about the service or any officers. Any such complaint will be dealt with in accordance with the Council's complaints procedures and guidance.

Appendix 1 – Housing Act 2004 Part 1: enforcement options

The forms of enforcement action that can be taken under Part 1 of the Housing Act 2004 are as follows:

Improvement Notices require the recipient to carry out certain works within a specified time period. If works are not carried out to the appropriate standard within that time frame, the Council may issue a financial penalty, prosecute and/or carry out works in default.

An Improvement Notice may be **suspended** depending on the circumstances of the case, e.g. there is a need to obtain planning permission before works can be undertaken, or the personal circumstances of the occupants suggests that works ought to be deferred.

Suspended Improvement Notices will be reviewed on an ongoing basis, at least every 6 months.

Prohibition Orders prevent the use of all or part of a property until such time as works are carried out to remove the hazards identified. They are likely to be used if repair and/or improvement appear inappropriate on grounds of practicality or excessive cost (i.e. the cost is unrealistic in terms of the benefit to be derived). Prohibition Orders can also be used to prevent occupation by particular groups of persons, e.g. those that are particularly vulnerable to the hazard(s) identified.

Prohibition Orders may be **suspended** depending on the circumstances of the case.

Hazard Awareness Notices are advisory notices that inform the owner/landlord that a hazard requires attention, but further formal action is unlikely unless conditions worsen or circumstances change. Hazard Awareness Notices will be reviewed on an ongoing basis to ensure they remain the most appropriate course of action.

Emergency Remedial Action and Emergency Prohibition Orders may be used specifically where the Council is satisfied that:

- A Category 1 hazard exists, and that
- the hazard poses an imminent risk of serious harm to health or safety, and that
- immediate action is necessary.

Demolition Orders and Clearance Areas

The Council has powers to order the demolition of dwellings as a possible response to Category 1 hazard(s); however, these powers are rarely used and unlikely to be a proportionate response to address the majority of hazards identified in the district.

Tenure

The HHSRS is tenure neutral; that is, it applies as much to owner-occupied dwellings as to rented dwellings, so all enforcement options are available to the Council

regardless of whether the premises in question are owner-occupied, privately rented or belong to a social landlord (now called Registered Providers or RPs).

Occupiers' views will be taken into consideration when considering what action is appropriate. Owner-occupiers are generally considered to be in a position to take informed decisions concerning maintenance and improvement issues which might affect their welfare. Tenants, and particularly non-RP tenants, are not usually able to do so in the same way and the Council judges that it is appropriate for tenure to help inform its decisions about appropriate action; for example, an Improvement Notice may be served where the property is tenanted because the tenant has little control over remedying the defect (and the responsibility to do so is generally the landlord's) but a Hazard Awareness Notice may be served where the occupier is also the owner who may not choose to take remedial action.

The Council will consider other relevant factors when considering the most appropriate course of action, including the vulnerability of occupants, the views of any welfare authority (or other support agency) involved as well as the severity of the hazards identified and potential risks to other people.