

**REPORT OF THE EXECUTIVE DIRECTOR OF HEALTH, HOUSING AND
ADULT SERVICES**

HOUSING AND NEIGHBOURHOOD RENEWAL ENFORCEMENT POLICY

1. PURPOSE OF THE REPORT

- 1.1 The purpose of the report is to inform Cabinet of the statutory requirement to produce and publish a service specific enforcement policy and to seek Cabinet approval for the proposed Housing and Neighbourhood Renewal Enforcement Policy which will act to serve statutory, strategic and operational aims.

2. DESCRIPTION OF THE DECISION

- 2.1 Cabinet is requested to approve that the proposed Housing and Neighbourhood Renewal Enforcement Policy be referred to Council for approval and adoption by the Council with immediate effect.

3. BACKGROUND

- 3.1 The existing policy was developed having regard to the 1998 Enforcement Concordat and the Regulator's Compliance Code. The Code is designed to complement the concordat but unlike the concordat that was voluntary, the Code **must** be taken into account by regulators such as local authorities when determining any general policy or principles about the exercising of specified regulatory functions or when exercising or giving guidance about those functions.
- 3.2 The Council implemented the Housing Renewal and Financial Assistance Policy with effect from 1 April 2003 following adoption by Cabinet on 15 January 2003 and from that time the enforcement policy has been an integral part of the overall policy subject to annual review until Cabinet approved a new Financial Assistance Policy in July 2008.
- 3.3 The introduction of the Housing Act 2004 provided a series of substantial new enforcement powers, many of which came into force in 2006, and the Regulators' Compliance Code ("the code") issued under section 22 of the Legislative and Regulatory Reform Act 2006 recommended that regulators publish an enforcement policy that takes account of the requirements of the Code.

- 3.4 The existing Housing Enforcement Policy was approved in February 2009 however since that time new powers in relation Anti Social Behaviour have been adopted by the Council and needed to be embedded within the Enforcement Policy. In addition, the proposed policy has been updated in relation to enforcement options and an improved layout now includes a summary of the Council's enforcement response for a range of circumstances.

4. CURRENT POSITION

- 4.1 In order to comply with the Regulator's Compliance Code, the Council is required to adopt and publish an enforcement policy designed to promote efficient and effective approaches to regulatory inspection and enforcement in order to improve regulatory outcomes without imposing unnecessary burdens on landlords and other businesses.
- 4.2 The policy applies to the Council's enforcement activities in exercising the statutory powers at its disposal in dealing with anti social behaviour, sub-standard or disused private sector housing and outlines the approach to be taken in the use of such powers including investigation, inspection, and dialogue with persons who may be affected by the enforcement activity largely vested in the Council's Housing and Neighbourhood Renewal Team.
- 4.3 The policy was developed with a view to protecting the health, safety and welfare of the residents of Sunderland and to encourage good standards in terms of maintenance and management of homes predominately in the private sector. Further aims are to support the sustainability of the housing stock and the residential environment.
- 4.4 The policy also applies to the ancillary enforcement activities undertaken by the service in the residential sector to deal with matters such as accumulations of waste, statutory nuisances and blocked or defective drainage.
- 4.5 The existing policy has generally been found to apply well for the purpose for which it was developed. However, the introduction and Council adoption of new powers in relation to Anti Social Behaviour under the provisions of the Violent Crime Reduction Act 2006 and the Criminal Justice and Immigration Act 2008 mean that the existing policy will no longer be fit for purpose.
- 4.6 Section 118 of the Criminal Justice and Immigration Act 2008 introduced closure notices and orders to allow the courts to close on a temporary basis, premises associated with significant and persistent disorder or persistent serious nuisance. The tool is similar to the existing crack house closure.

- 4.7 Drink Banning Orders have been introduced through the Violent Crime Reduction Act 2006. They are designed to address an individual's alcohol misuse behaviour and protect others and their properties from such behaviour. They are civil orders that can be made against an individual aged 16 or over if they have engaged in criminal or disorderly conduct whilst under the influence of alcohol. The order remains in place for a minimum of two months and a maximum of two years. There is no custodial penalty for breach or an order although breach of a subsequent court sanction could result in a custodial sentence.
- 4.8 The Home Secretary in a recent speech announced that the current Government intended to look to remove Anti Social Behaviour Order powers from statute. The Executive Director will continue to monitor this position.
- 4.9 Additionally, the statutory duties which the Council must provide in respect to tenancy harassment as set out by the Protection of Eviction Act 1977 will transfer from the Council's Legal Services to the Strategic Housing Service within this year as part of the Councils Business Transformation Programme. When protocols are finalised these duties will be included within the Enforcement Policy.

5. REASONS FOR DECISION

- 5.1 The proposed new enforcement policy is designed to promote efficient, effective and consistent approaches to inspection, investigation and enforcement in order to improve regulatory outcomes without imposing unnecessary burdens.

6. ALTERNATIVE OPTIONS

- 6.1 The alternative option considered and rejected was that the existing policy (which does not have regard to the new powers adopted by the Council) be retained, despite the introduction of new powers and legislative requirements and contrary to statutory guidance.

7. RELEVANT CONSIDERATIONS/CONSULTATION

7.1 Financial Implications

The Director of Financial Resources has confirmed that there are no additional cost implications associated with this report. The costs associated with the implementation of the Housing and Neighbourhood Renewal Enforcement Policy will be met from existing resources.

7.2 **Risk Analysis**

This proposal mitigates risk in terms of legal concerns and indemnity of officers' actions.

The risks of not adopting this policy are that:

Enforcement action is not targeted to benefit those who are most disadvantaged or who would benefit most.

The opportunity to improve clarity, consistency and transparency on why and how we take enforcement action may not be achieved.

The profile of taking enforcement action to protect residents is not raised nor receives further political endorsement.

There may be a greater risk of legal challenge against enforcement decisions.

7.3 **Employee Implications**

7.3.1 **Legal Implications**

Legal Services have also been consulted with regard to the legal aspects of the Policy.

7.3.2 **Policy Implications**

The proposed Housing and Neighbourhood Renewal Enforcement Policy will support and strengthen the Council's key strategies and policies. Such relevant strategies including the Housing Strategy, the Empty Property Strategy, the Anti-Social Behaviour Strategy, the Homelessness Strategy, and the BOTM Succession Strategy.

7.3.3 **Health and Safety Considerations**

All project activities will be undertaken with due regard to health and safety legislation and Council policies and will seek to assist often the most vulnerable people in the city.

7.3.4 **Equality Considerations**

All project activities will be undertaken with due regard to equality legislation and Council policies.

7.3.5 **Stakeholder Consultation**

The members of the Council's Private Landlord Forum have been consulted in respect to the proposed Enforcement Policy.

The appropriate entry has been in place in respect to the Forward Plan.

8. APPENDICES

Appendix 1 - Proposed document "Housing and Neighbourhood Renewal General Enforcement Policy"

9. BACKGROUND PAPERS

Housing Act 2004

Legislative and Regulatory reform Order 2006

Legislative and Regulatory Reform (Regulatory Functions) Order 2007

Cabinet Office Enforcement Concordat

Regulators' Compliance Code issued under section 22 of the Legislative and Regulatory Reform Act 2006

Copies of the above documents are held by the Housing and Neighbourhood Renewal Team and can be viewed by arrangement. Contact the Housing and Neighbourhood Renewal Team on 0191 5611488.

Introduction

The Council is provided with a wide range of powers in relation to standards of housing to enable it to protect individuals, families and the community as a whole. The Housing and Neighbourhood Renewal Team within Health Housing and Adult Services has responsibility for exercising these powers in Sunderland. The team also has the responsibility on behalf of the Council for tackling antisocial behaviour and other crime related issues and where appropriate this is done in partnership with other agencies.

This policy applies to the enforcement activities of Sunderland City Council in exercising the statutory powers at its disposal in dealing with unsafe, substandard or disused private sector housing and anti social behaviour and outlines the approach to be taken in the use of such powers including investigation, inspection, and dialogue with persons who may be affected by such enforcement activity. The policy also applies to the ancillary enforcement activities undertaken by the service in the residential sector to deal with matters such as statutory nuisances and blocked or defective drainage.

This enforcement policy is designed to promote efficient, effective and consistent approaches to regulatory inspection and enforcement. This is in compliance with the Regulators' Compliance Code ("the Code") issued under the provisions of the Legislative and Regulatory Reform Act 2006. Any departure from the code will be properly reasoned, based on material evidence and documented.

Legislation places responsibility on; owners, landlords, tenants and occupiers of private housing and the Housing and Neighbourhood Renewal Team has been vested with the role of providing advice, guidance and assistance to enable persons to meet the statutory requirements. The purpose of this policy is to explain fully how the Housing and Neighbourhood Renewal Team will fulfil this role and sets down the enforcement approach to be taken with those who are not willing to comply with their legal responsibilities.

Principles of Enforcement

The Council will have regard to the following factors in developing policy and making enforcement decisions:

Regulator's Compliance Code

This enforcement policy is designed to promote efficient, effective and consistent approaches to regulatory inspection and enforcement in order to improve regulatory outcomes without imposing unnecessary burdens. This is in

compliance with the *Regulators' Compliance Code* ("the Code") issued under the provisions of the Legislative and Regulatory Reform Act 2006. In certain instances the Council may conclude that a provision of the Code is not relevant in the circumstances or is outweighed by another consideration. Any departure from the Code will be properly reasoned, based on material evidence and documented.

The Council will have regard to the following factors in developing policy and making enforcement decisions:

- **Economic progress**

Enforcement and interventional activities will be kept under review so as to minimise economic burdens whilst fulfilling the public protection role. Officers will consider the impact of interventions on economic progress and will adopt an approach where the requirements justify the costs incurred.

- **Risk assessments**

Resources will be targeted on the basis of risk assessments and actions directed where they will be most effective

- **Advice and Guidance**

The Council has produced a range of information leaflets on private housing and neighbourhood relations matters. Further information and guidance is available on the Council's website "<http://www.sunderland.gov.uk>" selecting housing service under search. In the course of any enforcement action we will provide clear, concise and accessible information and guidance to help recipients meet their obligations.

- **Inspections and other visits**

All visits and inspections will be justified and where appropriate joint inspections may be carried out with other regulators.

- **Information requirements**

A balanced approach to information needs will be taken with a view to reducing burdens on businesses whilst meeting statutory requirements.

- **Compliance and enforcement actions**

The basis of non-compliance will normally be raised informally before enforcement action is commenced except where this approach may compromise the action, where there is a serious breach of legislation or imminent serious risk to persons or property. A history of good compliance will be recognised. When enforcement action is considered reasons will be discussed whenever possible. Clear reasons will be stated for any action taken and the action will be proportionate to the nature of the breach of regulation.

- **Accountability and consultation**

Sunderland City Council is an accountable body and considered actions shall be justifiable, transparent and in accordance with Council policy in the context of the legal and administrative framework set down for enforcement agencies. The Council will offer consultation and feedback opportunities to persons affected by enforcement activity.

In certain instances we may conclude that provision in the code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

Enforcement Concordat

This will still apply to those regulatory functions where the Regulator's Compliance Code is not applicable. In November 1998 Sunderland City Council formally agreed and adopted the principles of good enforcement in line with the *Enforcement Concordat* produced by the Government's Cabinet Office in conjunction with the Local Government Association. The Housing and Neighbourhood Renewal Team is committed to carrying out enforcement action in an equitable, practical and consistent manner.

The Housing and Neighbourhood Renewal Team in conducting enforcement activities on behalf of the Council will endeavour to adhere to the principles of consistency, transparency and helpfulness as contained in the Enforcement Concordat.

Other Provisions

In carrying out their investigatory and enforcement role officers will have regard to the provisions of the Human Rights Act 1998 and where relevant, activities will be conducted in line with the Criminal Proceedings and Investigations Act 1996, the Regulation of Investigatory Powers Act 2000 and Data Protection legislation. Information sharing with partners in order to tackle anti-social behaviour will take place in line with the agreed protocols of the Safer Sunderland Partnership, in line with the provisions of Section 115 of the Crime and Disorder Act 1998 and the Freedom of Information Act 2000.

The Council has a number of designated Housing Renewal Areas. These areas have been assessed as having some of the worst housing conditions across the city with a large proportion of empty properties, an oversupply of privately rented properties and often a higher numbers of issues relating to anti social behaviour. Any enforcement actions in such areas will be undertaken in line with this policy and, in addition, any neighbourhood renewal plans, including Neighbourhood Renewal Assessments, Master plans and Area Action Plans will be reported to the Council's Cabinet.

Enforcement action will be considered in proportion to the risk to health or safety of residents or on evaluation of the potential impact of substandard housing upon the local community and with due regard to the provisions of the Code. Action will be appropriate to circumstances, and will take into account the seriousness of any breach of statutory provisions and the needs and circumstances of tenants and owners. Council action to tackle antisocial behaviour will have protection of the victim or witness at heart, including respecting the confidentiality of complainants and where appropriate the protection of their identity.

It is recognised that use of formal enforcement procedures may be generally considered as a last resort action to be used appropriately where other approaches would be or have proven to be ineffective or where there is an imminent risk to health and safety of residents. The provision of information and advice and the engagement of owners, landlords, tenants and residents in constructive dialogue are seen as important means of encouraging the co-operation of owners to maintain their properties in good repair, ensure a high standard of management in the private rented sector and the prevention and early resolution of cases of anti-social behaviour.

All enforcement decisions will be documented and, other than where emergency enforcement action is taken, Sunderland City Council will always inform owners and occupiers of the action it proposes to take. If there are concerns that the Council has made an unfair decision, any interested person can request that an appropriate senior manager review the decision. When formal enforcement action is taken, the Council will always advise interested persons of the appeals process available to them.

Enforcement actions have to be taken within the context of the legal and policy framework set for all enforcement agencies. The Enforcement Concordat lays out the principles of good enforcement. These are:

- Drawing up clear standards
- Setting out the level of service and performance the public and business can expect to receive
- Dealing with the public and the business in an open and honest way
- Providing a courteous, efficient and helpful service
- Responding promptly and positively to complaints about the service
- Ensuring that enforcement action is proportionate to the risks to the public
- Carrying out duties in a fair, equitable and consistent manner

A full version of the Enforcement Concordat is available from the Housing and Neighbourhood Renewal Team or by accessing the Cabinet Office's website at www.cabinetoffice.gov.uk

Council Aims and Objectives

Sunderland City Council's strategic aims are laid down in the Sunderland Strategy 2008-2025, 'Sunderland for a better future' and the Council incorporates its strategic aims and objectives in the Corporate Improvement Plan, Service Plans and Strategies that determine how the Council's corporate strategic objectives will be delivered. With regard to crime and disorder the Safer Sunderland Partnership establishes its priorities in the Safer Sunderland Strategy. The Safer Sunderland Strategy 2008-2023 sets out key challenges and priorities for the future. This strategy is supported by a number of local sub-strategies one of these being the Anti Social Behaviour (ASB) Strategy. The work already undertaken by the Council through the 'Together' programme and RESPECT agenda will be embedded and progressed within the Citywide ASB strategy and subsequent ASB Delivery Plan. It will progress the work already being achieved in tackling anti-social behaviour through prevention, early intervention, enforcement, support and rehabilitation. The Council's overall aims and objectives in respect of housing are laid down in the Housing Strategy 2006-2011, and the Private Sector Housing Strategy and Empty Property Strategy set out the Council's vision for housing renewal and which prescribes the standards it wishes to see achieved in the private housing sector. These strategic aims and objectives are then translated into specific service plans that set out how delivery will be achieved.

For the Housing and Neighbourhood Renewal Team the principal aims of the service are to:

- Assist in the provision of safe, secure, warm and affordable decent housing.
- Assist in the creation of safe communities and increased resident confidence
- Deliver a high quality service to those who live here delivering a better environment for all and to work with our partners towards the achievement of the council's overall aims and objectives.
- Assist in delivering the Council's strategic aims in respect to Housing and Community Safety.

Sunderland City Council's plans are drawn up in consultation with Members, the public and reflect the needs of Sunderland as identified through consultation, customer feedback and from the outcomes of the Council's actions.

Approach to Enforcement

The Council's Housing and Neighbourhood Renewal Team has a range of measures, interventions and enforcement powers that may be employed to ensure that compliance with legislation, guidance and good standards of management are achieved.

Actions available to protect public health, tackle anti social behaviour and secure improvement in housing conditions within the private sector are broadly divided into two categories:

- **Informal action**
- **Formal action**

Once we have established that action needs to be taken to resolve an issue, wherever possible an informal approach will be adopted having regard to the Code and the Concordat. However, in certain cases there will be no alternative but to take formal action. Appendix 1 provides a summary of appropriate actions.

Consideration will be given to:

- The impact of interventions on economic progress, especially small businesses,
- Whether benefits justify the costs and poses the minimum burden to achieve the objective,
- Whether informal action may compromise the objective or whether there is a serious breach of legislation or serious instance of ASB. For example, where an imminent risk to public health exists and removal of the risk is only guaranteed through a formal approach.
- Any relevant history in relation to the case. In particular, officers will consider whether any formal action has been taken in the past, the recipient's response and the ability and willingness of the recipient to keep to agreed timetables of work and/or reduce acts of ASB
- Whether an act or omission is serious enough to warrant formal action, or whilst there is no infringement of legislation, a positive benefit from informal action can be derived.

The initial decision to take informal or formal action will be made by the enforcement officer. The decision will be agreed with the relevant line manager however, overall responsibility for officers' actions rests with the Head of Service and Business Unit Manager. Accordingly, management arrangements provide for regular performance monitoring of the Team's actions, outputs and outcomes.

Informal action

In dealing with requests for service or unsatisfactory housing conditions identified by other means the first option is for officers to take an informative and advisory approach to owners, occupiers, tenants and landlords alike and every effort will be made to resolve matters by informal means. Owners, occupiers, tenants and landlords may expect a written explanation of opinions if they so request.

The Council has adopted an effective multi agency 'graded response' to tackling anti-social behaviour across Sunderland irrespective of housing tenure. The focus is on preventing anti-social behaviour escalating by means of early intervention which may include the issuing of early warning letters and Acceptable Behaviour Agreements.

The ASB Team deal with serious and persistent ASB that impacts on the community, however it is recognised that less serious acts of ASB, such as neighbour disputes impact greatly on the quality of peoples lives and the Council Mediation Service offers an alternative route for complainants to resolve these types of dispute. We may consider that the parties involved should be referred to this service, subject to their agreement. Mediation is often successful for resolving disputes between neighbours.

Advisory letters will contain an explanation of what breaches of legislation have been identified, what remedial action is needed and what would be a reasonable timescale for compliance. The recipient will also be advised of what formal action may be pursued if remedial action is not forthcoming.

The Council is not precluded from taking immediate formal enforcement action where such action may be considered necessary and appropriate in the light of situations or circumstances. This will include situations where there is an imminent risk to the occupants of a property or members of the public or where a relevant person has previously failed to respond to an informal approach.

Sunderland City Council has a long-established Private Landlords Forum which was set up in 2001 to promote dialogue between private landlords and the Council. The Voluntary Landlord Accreditation Scheme largely arose out of this and is designed as a partnership arrangement between landlords and the Council to improve the quality and management of the private rented sector and to reduce ASB. Landlords are invited and encouraged to sign up to agreed and prescribed standards and in turn gain an improved relationship and increased support from the Council. Accredited Landlords undertake to meet agreed standards without the need for formal enforcement intervention by the Council. This is proving a successful partnership and has enabled some positive joint actions to improve conditions in the private rented sector and also in tackling anti social behaviour and management issues.

In recognition of their co-operative working relationship with the Council, formal action in relation to property standards will not normally be taken against accredited landlords in the first instance unless there is imminent danger to the occupiers of a property i.e. category 1 hazards as defined by the Housing Act 2004. Where possible an informal approach will be taken, officers will consult with the accredited landlord and obtain agreement for all necessary works to be carried out within specified timescales. If the landlord fails to comply with those arrangements the Council will then serve the requisite legal notice and also charge the recipient the costs incurred in service of the notice.

Formal Action

If informal engagement fails, or it is not appropriate to adopt an informal approach, as certain circumstances require immediate intervention, formal action may be taken. Formal action includes:

Service of Statutory Notices

We can serve statutory legal notices that require the recipient of the notice to take specific action to improve the situation. All notices contain notes that explain the effect of the notice and the recipient's right of appeal. When we do this, we often charge the appropriate person for the cost associated with the service of the notice. A list of fees and charges can be found on the Councils website at www.sunderland.gov.uk/index.aspx?articleid=2371 and enter the fees and charges listed on the right hand side of the screen.

We will always be willing to discuss the works specified in the notice, as well as timescales given and the reason for the service of the notice. In emergency circumstances we are authorised to carry out works without the service of a notice; normally when this would cause an undue delay.

If the recipient fails to comply with the notice, the Council has various sanctions it can impose including: carrying out works in default, caution, prosecution, and/or the use of emergency powers.

In other situations, there is a presumption that notices will be served if the criteria set down in the legislation are met. However, this presumption can be rebutted depending on the circumstances of the case. As cases vary so much it is difficult to be prescriptive about when we will not serve notices. Each case is looked at individually and the following are the main factors taken into account:

- The effects of the situation on the health and safety of those affected,
- Any previous complaints about the person concerned or his agent,
- The willingness of the person complained of to put right any problems without the need for formal enforcement action,
- Lack of credible evidence or reliable witnesses.

Carrying out Works in Default

In many cases the Council has the power to carry out work in default of a statutory notice.

If the recipient of the notice does not do the work required we, where appropriate, are able to employ a contractor to enter the property and carry out the work. When we have to do this, we will charge the appropriate person for the cost of the works together with an administration fee.

In determining whether carrying out works in default is the most appropriate course of action, we will consider the following:

- The effects of not carrying out the work on the health and safety of the residents concerned
- The reason for the work not being carried out in the first place
- Whether benefits justify the costs and poses the minimum burden to achieve the objective,

This is not an exhaustive list and other factors may be taken into account.

It should be noted that carrying out works in default does not necessarily prevent us from also issuing a formal caution or prosecuting the offender. We are legally entitled to ensure that the work is carried out and we will also consider if it is appropriate to take further action.

There are various methods by which we can recover costs incurred in carrying out works in default, dependent on the type of notice that has been served:

- **Sundry debtor method** - Using this method we will send the appropriate person an invoice requesting payment. If this is not paid within 28 days, a reminder invoice is sent requesting payment immediately. If the invoice is not paid within two weeks of the reminder being sent, the matter, depending on the size of the debt, will be referred to the Council's Legal Services to pursue debt recovery proceedings.
- **Charge on the property** - When works in default are carried out we may place a land charge on the property. When the property is sold, the Council can recover the amount of the debt and any accrued interest.
- **Enforced Sale Procedure** – In some cases when there are land charges on a property amounting to a considerable debt, we have the power to recover the amount owed through enforced sale of the property.
- **Rent Repayment Order** – A Rent Repayment Order (RRO) is a financial penalty that can be imposed upon a landlord who, without reasonable excuse, manages or lets a property which ought to be licensed under Part 2 or 3 of the Housing Act 2004 and is not so licensed.

An application to the Residential Property Tribunal for an order may only be made if the landlord has been convicted of the offence of operating a licensed property without a license, or the local authority is satisfied the offence has been committed (even though the landlord has not been prosecuted for offence).

The Residential Property Tribunal may make an order if it is satisfied that the landlord has been convicted of the offence, or, that he has committed it. The Residential Property Tribunal has the power to make an RRO for an amount equivalent to any rent received during the period of the offence up to a maximum of 12 months.

Court Orders

We may obtain civil orders from the relevant court to protect the public from behaviour that causes, or is likely to cause harassment, alarm or distress. Examples of these are Possession Orders, Direction Orders, Anti-social Behaviour Orders (ASBO's), Parenting Orders, Drink Banning Orders, Closure Orders and Individual Support Orders.

Injunctions

We may use a range of injunctions which are available to tackle anti-social behaviour, housing related and public nuisance. Injunctions are flexible, straightforward and fast – a court can make an injunction before the problem escalates allowing for immediate protection for others. They can also prevent perpetrators from entering specific premises or areas.

Caution or Prosecution

Where an offence has been committed, under particular legislation, non-compliance with a statutory notice issued by an authorised officer is a criminal offence. The Council is the prosecuting authority for such offences and proceedings are taken in the relevant Court.

In cases where an offender admits the offence an alternative to prosecution is the issuing of a formal caution. A formal caution is where an offender is given written details of the offence and he signs to say that he admits the offence. It is not a form of sentence.

The Council, maintains a record of the caution for a period of three years as it may subsequently influence a decision to instigate proceedings should a further relevant offence occur. It may also be cited in court in the same way as a previous conviction if the Council takes legal action for a subsequent offence.

The decision to offer a formal caution or prosecute is one that is not taken lightly. We recognise that our decision is significant and could have far reaching consequences upon the alleged offender and others.

Each case that we deal with is unique and must be considered on its own facts. In deciding whether to issue a formal caution or proceed with a prosecution, the initial recommendation will be made by the enforcement officer in consultation with the Team Leader and Assistant Manager or Manager. Having collected and collated evidence, the manager will consult with the Head of Service and ultimately Legal Services to consider and review the merit of the proposed action.

Where a decision to **prosecute** is made, this decision will be taken in line with the **Crown Prosecutors Code**, which details considerations to be taken into account before considering prosecution proceedings. The Council has a target to ensure that instructions to commence legal proceedings are given to Legal Services within 8 weeks of the expiry of the time period for complying with a formal notice.

A full copy of the code is available from:

The Crown Prosecution Service London
50 Ludgate Hill

London

EC4M 7EX

Tel: 020 7796 8000

Web: <http://www.cps.gov.uk/publications/docs/code2004english.pdf>

There are two overarching tests used in determining whether to prosecute. These are the **Evidential Test** and the **Public Interest Test**:

- **Evidential Test**

The prosecutor must be satisfied that there is enough evidence to provide a realistic prospect of conviction. This is an objective test and means that a court is more likely than not to convict the offender of the charge alleged. In deciding

whether there is a realistic prospect of conviction, consideration is given to the following matters:

- **Is the evidence admissible in court?** There are certain legal rules that might mean that evidence that seems relevant may not be used at a trial.
- **Is the evidence reliable?** The prosecutor has to consider whether there is evidence that may detract or support any admission by the offender.

- **Public Interest Test**

If the evidential requirements are met, the prosecutor must then consider whether the public interest requires a prosecution. It is not the case that the Council will prosecute simply because an offence has been committed. There should generally be a public interest in bringing such an offence to Court.

The following are examples of factors taken into account when determining public interest; again this list is by no means exhaustive:

- **The seriousness of the offence.** This will mean considering, for example, the effect of not complying with the notice.
- **Whether there was violence used in the commission of the offence.** This may be particularly important when we investigate cases of anti social behaviour.
- **The vulnerability of the victim of the offence.** Again, this is a particularly important consideration when considering anti social behaviour cases. Although offences of this type are not acceptable regardless of the victim, it is considered even less acceptable if the victims are elderly, suffering ill health or disability or have young children.
- **Whether the offence was motivated by discrimination.** Consideration as to the nature of the sanction imposed will be determined by whether the offender was motivated by any form of discrimination against the victim's ethnic or national origin, sex, religious beliefs, political views or sexual orientation.
- **The history of the offender.** In particular, regard will be given to whether notices have been served in the past, the response to those notices and any previous private sector housing based convictions.
- **The likely penalty.** Consideration will be given to whether the offence is such that it would only attract a nominal penalty from the Court.
- **Reason for the offence occurring.** Although there may be, on the face of it, a breach of the law, there may also be a statutory defence available. Other factors will also be considered. For example, if the offence results from a genuine mistake or misunderstanding these may be factors against prosecution but this would be balanced against the seriousness of the offence, or in the case of an industry or business whether best practical means were being employed.
- **Victim's well being.** Consideration is not only given to the offence and the offender but also the victim. Consideration will be given to the victim's physical or mental health but again this is balanced against the seriousness of the offence.
- **Witnesses.** Regard will be had to the ability and willingness of witnesses (which generally includes the victim) to give evidence.

In addition to the two tests there are certain conditions that must exist before a **caution** can be administered, they are as follows:

- There must be evidence of the offender's guilt sufficient to give a realistic prospect of conviction
- The offender must admit the offence
- The offender must understand the significance of the caution and give his informed consent to accepting the caution.

If any of the above criteria are not met, then we will **not** consider the issuing of a formal caution. Above all, a caution will not be used as a substitute for a prosecution that would otherwise be unsustainable.

Use of Emergency Powers

Emergency powers allow the Council to carry out works, where justified on the grounds of risk to the public, without the prior service of a statutory notice. This is carried out when we judge it necessary to undertake works immediately. An example of this would be when it is judged necessary to secure a building that is not adequately secured against unauthorised entry, with the intention of protecting the person entering the building and others against their acts, including arson. This is also carried out when it is not practicable to ascertain the details of an owner or to trace the whereabouts of an occupier who is not present at the property.

In all cases where an offence is committed, we will give consideration as to whether a sanction should be imposed and if so, which one. In some cases it may be appropriate to impose more than one sanction, for example, carrying out works in default in conjunction with prosecution.

Legislation

The Team's regulatory functions are extensive. They include: anti-social behaviour, public health nuisance, housing improvement and inspection of Houses in Multiple Occupation. Shown below is a schedule of legislation that Officers of the Team enforce on a regular basis:

- Anti-social Behaviour Act 2003
- Crime and Disorder Act 1998
- Criminal Justice and Public Order Act 1994
- Criminal Justice and Immigration Act 2008
- Violent Crime Reduction Act 2006
- Local Government Act 1972
- Building Act 1984
- Civil Procedures Rules
- Clean Air Act 1993
- Control of Pollution Act 1974

- Environmental Protection Act 1990
- Housing Acts 1985, 1996 and 2004
- Housing, Grants, Construction and Regeneration Act 1996
- Local Government and Housing Act 1989
- Local Government (Miscellaneous Provisions) Acts 1976 and 1982
- Prevention of Damage by Pests Act 1949
- Public Health Acts 1936 and 1961
- Public Health Acts Amendment Act 1907
- Caravan Sites Act 1968
- Caravan Sites and Control of Development Act 1960

Anti-Social Behaviour

Anti-social behaviour can include a whole range of problems – noisy neighbours, abandoned cars, vandalism, graffiti, litter and youth nuisance. It can hold back the regeneration of the most disadvantaged areas, creating an environment in which crime can take hold. The Crime and Disorder Act 1998 and the Anti-social Behaviour Act 2003, created new powers and incentives to help local authorities deal with the issue.

Specific measures that have been introduced include;

- **Anti Social Behaviour Orders (ASBO's)** are statutory measures that contain conditions prohibiting offenders from specific anti-social acts or entering defined areas. They are civil orders made in court, and are effective for a minimum of two years. ASBOs can be applied for by local authorities, police forces, British Transport Police and by registered social landlords, but not by members of the public.
- **Parenting Orders** are made when there has been a problem with an under 16-year olds behaviour. Orders impose requirements on the parent(s) or guardian, which will usually include their attendance on guidance or counselling programme.
- **'Crack House' Closure Orders** have been introduced to enable the swift closure of properties taken over by drug users or dealers of Class A drugs. We work in partnership with the Police in determining the appropriateness of issuing a Notice. The Police must then apply to the court within 48 hours to apply for a Closure Order. The Order can last for 3 months and can be extended for a further 3 months. During this time entering or remaining in the property will be an offence and the property will be sealed.
- **Closure Orders** Section 118 of the Criminal Justice and Immigration Act 2008 introduced new powers for the courts to close on a temporary basis, premises associated with significant and persistent disorder or persistent serious nuisance. The tool is similar to the existing crack house closure. Since the order is tenure neutral it also applies to owner occupied properties. Closure would clearly have a dramatic impact and should only be pursued after a full range of appropriate anti social behaviour interventions have failed.

- **Acceptable Behaviour Agreements (ABAs)** are voluntary written agreements between a person who has been involved in anti-social behaviour and one or more local agencies whose role it is to prevent such behaviour (e.g. police and housing). They are most commonly used for young people but may also be used for adults.
- **Drink Banning Orders (DBOs)** have been introduced through the Violent Crime Reduction Act 2006 and have been available to Local Authorities and the Police from the 31st August 2009. DBOs are designed to address an individual's alcohol misuse behaviour and protect others and their properties from such behaviour. DBOs are civil orders that can be made against an individual aged 16 or over if they have engaged in criminal or disorderly conduct whilst under the influence of alcohol. The order last for a minimum of two months and a maximum of two years. There is no custodial penalty for breach of an order although breach of a subsequent court sanction could result in a custodial sentence.

Public Health (Nuisance)

Section 79 of the **Environmental Protection Act 1990** defines Statutory Nuisance. These are nuisances to which the abatement procedures of Part 3 of the Act apply and are:

- Any premises in such a state as to be prejudicial to health or a nuisance;
- Smoke emitted from premises so as to be prejudicial to health or a nuisance;
- Fumes or gases emitted from private dwellings so as to be prejudicial to health or a nuisance;
- Any dust, steam, smells or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance
- Any accumulation or deposit that is prejudicial to health or a nuisance;
- Artificial light emitted from premises so as to be prejudicial to health or a nuisance;
- Any animal kept in such a place or manner as to be prejudicial to health or nuisance;
- Noise emitted from premises so as to be prejudicial to health or a nuisance;
- Noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street; or
- Any other matter declared by any enactment to be prejudicial or a nuisance.

A nuisance is taken to be anything that interferes with the use and enjoyment of a neighbouring property or which materially affects the comfort and quality of life of the public at large. **Prejudicial to health** is defined as injurious or likely to cause injury to health.

Where we are satisfied that a statutory nuisance exists, or, is likely to occur or recur, we are required to serve an abatement notice requiring all or any of the following:

- Requiring the abatement of the nuisance or prohibiting or restricting its occurrence;
- Requiring the execution of such works or steps as necessary for the purposes;

The notice must specify the time or times within which the Notice is to be complied with. The notice must also indicate the rights for and times of appeal. The period allowed for compliance must be reasonable but may nevertheless be short, for example, to deal with noise from a party.

Where the period allowed is less than the time allowed for appeal, the notice is suspended in certain circumstances. In certain circumstances, we may serve an abatement notice to deal with a nuisance that exists or has occurred outside its area.

Public Health (drainage)

The Building Act 1984 as it relates to the Team is concerned mainly with repair to existing drainage systems. The relevant sections of the Act are Sections 59 and 60.

The procedure is applied to buildings that have: -

- Unsatisfactory provision for drainage (sec.59 (1) (a))
- Cesspools, private sewers, drains, soil pipes, rainwater pipes, spouts, sinks or other necessary appliances which are insufficient or, in the case of a private sewer or drain communicating with a public sewer, is so defective as to admit subsoil water (Sec.59 (1) (b))
- Cesspools, etc. as detailed in (b) above, in such a condition as to be prejudicial or a nuisance and this also covers cesspools, private sewers and drains no longer in use (Sec.59 (1) (c))
- Rainwater pipes being used for foul waste, soil pipes from water closets not properly ventilated and surface water pipes acting as vents to foul drains or sewers (Sec.60).

When we serve a Notice under the Building Act, it must indicate the nature of the defect and the works required and state the time within which they are to be executed. The time allowed should not be less than the period for appeal, that is, 21 days (sec.99 (1)).

Housing Improvement

Housing Health and Safety Rating System (HHSRS) - The Housing Health and Safety Rating System (HHSRS or the Rating System) is the Government's approach to the evaluation of the potential risks to health and safety from any deficiencies identified in dwellings.

The underlying principle of the HHSRS is that any residential premises should provide a safe and healthy environment for any potential occupier or visitor.

The HHSRS is founded on the logical evaluation of both the likelihood of an occurrence that could cause harm, and the probable severity of the outcomes of such an occurrence. It relies on the informed professional judgements of both of these to provide a simple means of representing the severity of any dangers present in a dwelling.

For the purposes of the HHSRS, it must be pointed out that the assessment is solely about the risks to health and safety. The feasibility, cost or extent of any remedial action is irrelevant to the assessment. For example some deficiencies, such as a broken stair tread or a leaking pipe may be quickly, easily and cheaply remedied, but while such deficiencies are present, the threat to health or safety can be considerable.

The Council has a duty under the Housing Act 2004 to take action if we discover a Category 1 hazard in a property, and we have the power to take action to deal with a Category 2 hazard.

The first step will be to approach the owner informally, however the amount of leeway allowed informally will be at our discretion. We will have consideration to the requirements of the Regulators' Compliance Code and the Enforcement Concordat, whichever one is applicable.

If the owner does not respond within a reasonable time, we are most likely to move onto formal action, which may include any of the following:

- Serve an **Improvement Notice** requiring that the hazard is removed within a set time
- Make a **Prohibition Order** which prohibits the use of all or part of the dwelling. In reaching a decision officers will consider the following factors.
 - Whether a category 1 or category 2 hazard exists on the premises.
 - Whether there is an interim or final management order existing on the property
 - The availability of local accommodation for the re-housing of any displaced occupants.

The Council must review the suspension of a prohibition order not less than one year after the order was made.

- Serve a **Hazard Awareness Notice** for minor hazards. The notice simply advises and does not require action to be taken by the owners. This does not preclude the council from instigating further action at a later date.
- Take **Emergency Remedial Action** or make an **Emergency Prohibition Order** if a category 1 hazard exists and is so serious that it represents an 'imminent risk of serious harm' to the occupants. Such a notice allows the Council to enter the premises and take urgent action to deal with the hazard.
- Make a **Demolition Order**. In certain situations, a demolition order can be made in regard to properties where a category 1 hazard or category 2 hazard exists where this is considered to be the most appropriate course of action (unless the premises are a 'listed' building). In deciding whether to make a demolition order the Council should:
 - Take into account the availability of local accommodation for rehusing the occupants
 - Take into account the demand for, and sustainability of, the accommodation if the hazard was remedied

- Consider the prospective use of the cleared site
- Consider the local environment, the suitability of the area for continued residential occupation and character of the neighbourhood
- **Declare a Clearance Area.** The Council can declare an area to be a Clearance Area if it is satisfied that each of the residential buildings in the area contains one or more category 1 hazards or (in certain cases) category 2 hazards and that the other buildings in the area (if any) are dangerous or harmful to the health or safety of the inhabitants. The Council will consider the desirability of clearance in the context of the proposals for the wider neighbourhood of which the dwelling forms part. In deciding whether to declare a clearance area the following should be considered.
 - The likely long-term demand for residential accommodation.
 - The degree of concentration of dwellings containing serious hazards within the area.
 - The overall availability of housing accommodation in the wider neighbourhood in relation to housing needs and demands.
 - The proportion of dwellings free of hazards and other, non-residential, premises in sound condition, which would also need to be cleared to arrive at a suitable site.
 - Whether it would be necessary to acquire land surrounding or adjoining the proposed clearance area; and whether land can be acquired by agreement with owners.
 - The existence of any 'listed' building protected by notice pending listing. Protected buildings should only be included in a clearance area in exceptional circumstances and only when building consent has been given.
 - The results of statutory consultations.
 - The arrangements necessary for re-housing the displaced occupants and the extent to which occupants are satisfied with those arrangements.
 - The impact of clearance on and the scope for relocating, commercial premises.
 - The suitability of the proposed after-use of the site having regard to its shape and size the needs of the wider neighbourhood and the socio-economic benefits which the after use would bring, the degree of support by the local residents and the extent to which such use would attract private investment into the area.
 - In those circumstances when the Council is considering declaration of a Clearance Area a Neighbourhood Renewal Assessment will be undertaken.

Even without using emergency powers, we can, with or without the agreement of the owner, carry out the works required in a notice and charge accordingly. Alternatively the owners can be prosecuted for failing to comply with an Improvement Notice or Prohibition Order.

If a hazard is specific to a child or elderly person but none of these occupy the property, then we could decide to suspend the notice (or part of it) until such time as a child or elderly person moves in. If this is carried out then we are obliged to review the situation at least once a year to check if the suspension continues to be justified.

The Act gives us the power to charge to recover the costs of any enforcement action: any such charge must be reasonable and can only cover the Council's costs.

The Housing Act 2004 allows for the Council to make a charge in respect of the service of notices in order to recover its costs. The current enforcement system is that a **Notice of Intention** is served on the landlord and, once this expires, a formal Notice is served, for which there is a charge. A charge is also made where an **Improvement or Prohibition Notice** has been served.

HMO Licensing - The Housing Act 2004 introduced mandatory licensing for houses in multiple occupation (HMOs) comprising of three or more storeys and occupied by five or more persons (comprising at least two households).

A licence will be granted subject to the applicant passing a "fit and proper person" test and it will relate to one property and one person with a maximum set term of five years.

There is a charge payable to the Council for the issuing of a licence.

The Council also has the power to designate HMOs in the whole or part of the district as subject to additional licensing. This will allow us to extend the requirements of licensing to HMOs that do not fall within the mandatory threshold.

The Council can designate an area as subject to additional licensing if:

- It is an area of low demand
- Licensing will improve social or economic conditions
- Licensing will lead to a reduction in anti-social behaviour

We must take reasonable steps to consult persons likely to be affected by the proposed designation and to have regard to any representations made in the course of the consultation process.

Selective Licensing - The Housing Act 2004 allows the Council to designate all or part of the private rented sector housing in the City as subject to selective licensing if either:

- Area of low demand (or likely to become one), and
- Licensing, when combined with other measures, will contribute to improvement of social or economic conditions

Or:

- Area has experienced significant and persistent anti-social behaviour
- Private landlords are taking insufficient steps to tackle it

- Licensing, when combined with other measures, will lead to reduction or elimination of the problems

Selective licensing is only available in respect to properties occupied under a tenancy or licence and specifically excludes properties let by registered social landlords. There is a charge payable to the Council for the issuing of a licence.

There are consequences for the landlord/manager for non-compliance with licensing provisions and these include: refusal of license, revocation of license, making a rent repayment order. In the case of managing a house without a licence it is a criminal offence carrying a maximum penalty upon conviction of a fine not exceeding £20,000 and in the case of breach of condition of licence liable on summary conviction to a maximum fine of £5000.

Currently, we operate a Selective Licensing Scheme in the Middle Hendon and 'Long Streets' area of the city.

Interim and Final Management Orders - The Council has been given powers under section 102 of the Housing Act 2004 to take over the management of privately rented accommodation if it is not being managed responsibly and safely to the benefit of occupiers or others living in the vicinity.

The Council must make an Interim Management Order (IMO) if it is satisfied that there is no reasonable prospect of the property being licensed in the near future with appropriate conditions or it is necessary to protect the health, safety or welfare of occupiers of the property or properties in the vicinity. An IMO is in force for 12 months and allows the Council to manage the property with many of the rights of a landlord and to collect rent and expend it on work to the property. The Council may delegate the management of the HMO to another organisation. An IMO ceases to have effect if a licence is granted. There are provisions to vary, revoke and appeal against an IMO.

The Council must make a Final Management Order (FMO) where, on expiry of an IMO if, the property requires to be licensed but the Council considers it is still unable to grant a licence. A FMO is similar to an IMO in that the Council continues to manage the property with many of the rights of the landlord, but they must be reviewed from time to time. The Council may delegate the Management of the HMO to another organisation. As with IMOs, there are provisions for varying, revoking and appealing the making of a FMO.

The Council do not become the legal owners of the property and cannot sell the property.

Service level agreements – Sunderland City Council is no longer a social landlord, therefore housing management services for properties subject to orders will be procured by formal agreement for those service levels required.

Empty Properties

The **Local Government (Miscellaneous Provisions) Act 1982** as it relates to the Team is concerned mainly with the problem of unauthorised entry to property.

The relevant section of the Act is Section 29. If it appears that a building is not adequately secured against unauthorised entry, we can serve a notice specifying such works needed to rectify the problem. When such action is warranted and a notice is served a timescale of 48 hours minimum must be specified. In extreme circumstances, that is, if there is a risk of arson, injury etc. emergency powers allow the property to be sealed immediately.

We may recover from any person to whom the notice is given the expenses incurred by the Council in carrying out the works (sec.29 (11)). This legislation is used by the Council to deal with the common problem of trespass into vacant properties.

Empty Dwelling Management Orders (EDMOs) - We may make an Empty Dwelling Management Order to rent out properties that the owner has chosen to leave empty and use the rental income to cover repair and management charges and take control of an empty property. This enables us to secure occupation and proper management of privately owned houses and flats and where the property has been empty for six months or longer.

The Council do not become the legal owner of the property and cannot sell the property.

Enforced sales procedure (ESP) - This is used to recoup debts and to bring empty properties back into use. The emphasis is on ensuring a stable community.

Where statutes confer the necessary rights, we can **either**

- Recover the expenses through debt recovery process **OR**
- Charge the legal title(s) to a property with the debt and then selling it to recover the debt.

Where statutory provisions permit, recovery of debts can be made on:-

- Land
- Occupied dwellings
- Empty properties
- Commercial Premises

Compulsory Purchase Orders - The Council can compulsorily purchase a property using powers under section 17 of the Housing Act 1985 to tackle issues in declining areas.

Compulsory purchase would usually take place

- where a property has been vacant for at least 2 years and is a source of recurring problems and complaints from residents in the neighbourhood.
- Where it is known that the reoccupation or development is not imminent.
- Where our attempts at persuasion and statutory action have failed to achieve a satisfactory solution.

Legal Proceedings

All enforcement action taken will be as set out above and in conjunction with Legal Services.

Review of Legislative Provisions

The policy and range of enforcement actions to be employed may be subject to legislative changes and may need to be revised accordingly. The policy will be reviewed at least on an annual basis and at other such times as legislative changes come into immediate effect.

Charging for the Issue of Notices

The Council may make a reasonable charge under section 49 of the Housing Act 2004 as a means of recovering certain administrative and other expenses incurred in issuing and serving certain types of notice. Charges for the following will be reviewed on an annual basis:

- An Improvement Notice under section 11 or 12
- Making a Prohibition Order under section 20 or 21
- Serving a Hazard Awareness Notice under section 28 or 29
- Taking Emergency Remedial Action under section 40
- Making an Emergency Prohibition Order under section 43; or
- Making a Demolition Order under section 265 of the Housing Act 1985

Licence Fees

The Council will charge a fee which will be reviewed annually. The licence will be valid for a period of five years. The Council may charge a fee for variation of a licence but no charge will be applied for revocation of a licence.

The Executive Director of Health, Housing and Adult Services has delegated powers in respect of fixing such charges.

Public Register

Section 232 of the Housing Act 2004 requires every Housing Authority to establish and maintain a register of:

- All licenses granted under Part 2 and 3 of the Act (HMO and selective licensing);
- All temporary exemption notices served;
- All management orders made.

Similarly the Caravan Sites and Control of Development Act 1960 requires the authority to maintain a register of licensed caravan sites.

Registers may be in such a format as the Authority consider necessary, subject to requirements prescribed in Regulations and can be found at www.sunderland.gov.uk/index.aspx?articleid=2371

Requisition for Information

When we need to obtain information about a property in respect of which we are proposing to take enforcement action, we will serve a requisition for information under section 16 of the **Local Government (Miscellaneous Provisions) Act 1972**, on the occupier and/or any person who has a legal interest in the property, or who directly or indirectly receives the rent or who is authorised to manage or to arrange the letting of the property.

We will generally indicate the Act and the section of the Act that we are proposing to enforce. A requisition for information will generally be served at an early stage of the enforcement process. However where the Council considers urgent action is needed it may be served at the same time as a formal notice.

Powers of entry

Legislation enforced by the Team gives us, on production of our authority, the power to enter premises at any reasonable time. These far reaching powers of entry allow access to ascertain whether or not a statutory nuisance exists; or for the purpose of taking any action, or executing any work, authorised or required by law. This may include inspections or the taking of samples, photographs, and recordings.

A number of these acts allow us to obtain a warrant from a magistrate where either entry has been refused or refusal of entry is apprehended. This warrant permits us to enter at any time (by force if need be) in order to ascertain whether there is a contravention of the relevant act or to carry out remedial action.

Authorisation of Officers

Only officers who the Council have determined as competent will be authorised to take enforcement action. They will hold appropriate qualifications or experience. Officers will also have sufficient training and understanding of this enforcement policy and in their area of work to ensure a consistent approach to their duties. We undertake to monitor officers' actions to ensure they are always in accordance with our policies.

All officers carry identification and an authorisation to show what legislation they are able to enforce. They are required to show these if asked.

All officers are required to carry out their duties in accordance with set procedures and protocols. These procedures vary depending on the area of work involved.

Interviews under caution

Such interviews are governed by Codes of Practice issued under the Police and Criminal Evidence Act (PACE).

Delegation of Authority

The Executive Director of Health, Housing and Adult Services has made delegations of authority to the Head of Housing Services, Housing and Neighbourhood Renewal Manager and the Assistant Housing and

Neighbourhood Renewal Manager and other senior managers of the Business Unit in respect to enforcement activity. These details can be found within the Directorate Delegation and Service Protocol Scheme.

Consultation processes

The service employs a range of measures to engage landlords, tenants and other residents. Commercial landlords are surveyed in accordance with National Indicator 182 to gauge impact of enforcement on businesses, tenants are subject to customer satisfaction surveys and the Council engages resident groups in renewal areas. The Private Landlords Forum continues to be held on a quarterly basis and Newsletters are distributed in areas of specific activity.

Openness and Helpfulness

Sunderland City Council aims to be open about the work it does and its Housing and Neighbourhood Renewal Team will be available to provide general advice, deal with specific cases and investigate complaints and other requests for service. The Council views formal enforcement as a last resort and prefers to work with our clients and customers to achieve compliance. The Council will also provide its customers with a case officer who will provide their contact details. If English is not their first spoken language, we can make arrangements to provide a translation and interpretation service.

Dissatisfaction and Complaints Procedure

If any person is dissatisfied with the action that an officer of the Council has taken, then a senior manager will investigate their concerns. Sunderland City Council aims to settle all areas of dissatisfaction quickly and smoothly, recognising that it is preferable to resolve complaints where they arise. Complainants are asked initially to make their complaint to the person dealing with their query or that person's line supervisor or manager. Many issues can be resolved promptly with an explanation, action or apology. All matters will be logged by the Complaint's Co-ordinator of the Health, Housing and Adult Services Directorate to ensure performance can be reviewed. However if the complaint cannot be resolved at this stage, or the complainant feels that more important issues are involved your complaint will be progressed to a senior officer or dealt with in accordance with the Councils formal complaints procedure.

Endorsement

This policy was endorsed and adopted by Sunderland City Council on (date to entered). It is reviewed annually and the Council would be pleased to receive any comments on it.

Consultation and Review

This is a public document. Further copies of this and other documents mentioned above can be obtained from the Housing and Neighbourhood Renewal Manager, Housing Service, Health Housing and Adult Services, PO Box 102, Civic Centre, Sunderland, SR2 7DN. Many of the documents can also be found on our website – <http://www.sunderland.gov.uk>

Offence / Incident	Priority / Category	Legislation	Initial action (all Requests for Service to be responded to within 2 working days)	Secondary action	Subsequent actions	
Empty Properties						
Empty property open to access (immediate danger to public health and/or within hotspot areas)	High	Sec. 29, Local Govt (Misc Prov) Act 1982	Undertake inspection of property within 24 hours	Determine ownership and contact owner(s) the same day for the property to be secured.	If owner refuses to issue instructions for the work to be carried out immediately by LA contractor.	Undertake works in default and recover costs. Consider Empty Dwelling Management Order
				If ownership details cannot be verified the same day issue instructions for the work to be carried out immediately by LA contractor.		Consider EDMO
Empty Property in a ruinous or dilapidated state or dangerous condition	High	Sec. 77-83, Building Act 1984	Undertake inspection of property within 24 hours	Refer to Building Control same day.		
Empty property open to access (no immediate danger to public health)	Medium	Sec. 29, Local Govt (Misc Prov) Act 1982	Undertake inspection of property within 24 hours	Determine ownership and contact owner(s) within 2 working days for property to be secured within	If property is not secured in a reasonable timescale, notice to be served advising that LA will	Undertake WID and recover costs. Consider EDMO

				an agreed timescale.	undertake works in a further 2 working days.	
Housing Health and Safety Rating System						
Presence of Category 1 hazard	High	Sec 11 – 27 Housing Act 2004	Visit to be undertaken within 24 hours. Presence of cat 1 hazard verified during visit to premises.	Contact landlord (letter and phone call) within 2 working days and advise of works required and timescale to complete works within.	If works are not carried out within the agreed timescale serve Improvement Notice.	Notice of entry to be given to landlord in order to carry out a full HHSRS inspection with a view to serving an Improvement Notice. Non compliance will lead to carrying out WID, recovery of costs and potentially prosecution
Presence of Category 1 hazard (owner occupied)	High	Sec 28, Housing Act 2004	Visit to be undertaken within 48 hours. Presence of cat 1 hazard verified during visit to premises.	Hazard Awareness Notice issued within 14 days. If hazard is affecting other properties consider service of Improvement Notice or Statutory Nuisance Notice (Environmental Protection Act 1990)		
Presence of Category 1 hazard Imminent risk to occupant(s) and/or neighbouring	High	Sec. 40 - 45, Housing Act 2004	Visit to be undertaken within 48 hours. Presence of cat 1 hazard verified during visit to premises.	Emergency remedial action with immediate effect (no necessity to give landlord notice of entry)	Serve NERA within 7 days of commencing work	WID and recover costs Prosecution

occupier(s)				Emergency prohibition with immediate effect (no necessity to give landlord notice of entry)	EPO to be served same day	Non compliance to lead to prosecution
Presence of Category 1 hazard Property non-repairable at reasonable cost (non sustainable)	High	Sec. 46, Housing Act 2004	Visit to be undertaken within 48 hours.	Onsite meeting with owner or his representative.	Manager to determine most appropriate course of action. Consider Demolition Order or Closure Order.	
Presence of Category 2 hazard	Medium	Sec. 28, Housing Act 2004	Visit to be undertaken within hours. Presence of cat 2 hazard verified during visit to premises.	Contact landlord (phone call and letter) within 3 working days and advise of works required and timescale to complete works within	If works are not carried out within the agreed timescale serve Improvement Notice.	Notice of entry to be given to landlord in order to carry out a full HHSRS inspection with a view to serving an Improvement Notice. Non compliance may lead to carrying out WID, recovery of costs and potentially prosecution
Presence of Category 2 hazard (owner occupied)	Medium/low	Sec 28, Housing Act 2004	Visit to be undertaken within 48 hours. Presence of cat 2 hazard verified during visit to premises.	Hazard Awareness Notice to be issues within 14 days. If hazard is affecting other properties consider service of Improvement Notice.	Consider referral to Support agencies including Home Improvement Agency	
Area Renewal						

Area in which all or most properties contain cat.1's	High	Sec. 47, Housing Act 2004	Undertake an appraisal of the area to determine appropriate level of intervention.	Report to H and N R Manager.		
Licensable Houses in Multiple Occupation						
Operating without a licence	High	Sec.72, Housing Act 2004	Visit to be undertaken within 48 hours of notification to determine status of property. (Notice of entry not required).	Initiate investigation for enforcement options including; prosecution, IMO, rent repayment order (RPT), within 2 working days. Issue Application Pack within 2 working days. Consider the need for service of an HMO declaration.	Process application to notice of intention to grant / refuse licence stage within 28 days of receipt of full application	Conclude investigation with regard to enforcement options within 3 weeks Grant licence within 10 days of expiry of notice of intention or consideration of any representations made. Refuse licence within 10 days of consideration of any representations made and invoke the Management Order procedure within same period.
Operating without a licence, with no prospect of being licensed in near future and health and safety is compromised	High	Sec.72, Housing Act 2004	Visit to be undertaken within 48 hours to determine status of property. (Notice of entry not required).	Within 24 hours, use findings of inspection to determine if occupants can remain at the property. If property remains occupied but	Management Order to be reviewed no longer than 12 months from the effective date.	Conclude investigation with regard to enforcement options within 3 weeks

				unlicensed, invoke Management Order Procedure within 7 days		
Contravening licence conditions	High	Sec.72, Housing Act 2004	Visit to be undertaken within 48 hours of receipt of complaint/evidence to determine compliance with licence. (Notice of entry may be required; therefore initial visit may be within 4 days).	Initiate enforcement options including prosecution, service of IMO and rent repayment order (RPT) within 48 hours		
Permitting over occupation	High	Sec 72, Housing Act 2004	Visit to be undertaken within 48 hours of receipt of complaint to determine status of property. (Notice of entry may be required).	Consider enforcement options including; prosecution, service of IMO and rent repayment order (RPT) within 5 working days		

<p>Presence of Category 1 hazard Imminent risk to occupant(s) and/or neighbouring occupier(s)</p>	<p>High</p>	<p>Sec. 40 - 45, Housing Act 2004</p>	<p>Visit to be undertaken within 48 hours. Presence of cat 1 hazard verified during visit to premises.</p>	<p>Contact to be made with the landlord/licence holder as soon as possible. Where the landlord cant be contacted or refusal to carry out the necessary works the following should be considered:</p> <p>Emergency remedial action with immediate effect (no necessity to give landlord notice of entry)</p> <p>Emergency prohibition with immediate effect (no necessity to give landlord notice of entry)</p>	<p>Serve NERA within 7 days of commencing work</p> <p>Emergency Prohibition Order to be served same day</p>	<p>WID and recover costs Prosecution</p> <p>Non compliance to lead to prosecution</p> <p>Consider if Licence holder is fit and proper to hold the licence within 2 weeks. Initiate potential prosecution proceedings and further action where consideration of revoking licence is required within 2 weeks.</p>
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Landlord found not to be a fit and proper person before granting licence	High	Section 66, Housing Act 2004	Prepare and serve refusal to grant HMO licence documentation within 7 days of decision.	Consider any written representations made within 14 days of the end of the consultation period.	Serve refusal documents to necessary persons. Or Where new licence holder has been proposed determine the fit and proper person status and consider grant/refusal of the HMO licence.	Prepare consultation documentation to grant licence to new proposed licence holder. Grant licence within 10 days of expiry of notice of intention or consideration of any representations made. Refuse licence within 10 days of consideration of any representations made and invoke the Management Order procedure within same period.
Landlord found not to be a fit and proper person after a licence is granted	High	Section 66, Housing Act 2004	Initiate investigation within 48 hours of receipt of information. Determination of landlord being fit and proper within 7 days on completion of investigation.	Revocation of the HMO Licence documentation within 7 days of the date the decision was made and provide at least 14 days consultation period under section 70 of the Housing Act 2004.	Instigate Management order proceedings if suitable person cant be found to hold the licence within 28 days.	
Contravening the House in Multiple Occupation (England) Regulations	High	Section 234, Housing Act 2004	Visit to be undertaken within 48 hours of receipt of the complaint to determine extent of the breach.	Consider revoking licence within 28 days where a suitable licence holder can't be found.	Repeated breaches of the regulations then consider prosecution and the fit and proper person status of the HMO	

2006					Licence holder	
Non Licensable Houses in Multiple Occupation						
Permitting over occupation	High	Sec 139-144, Housing Act 2004	Visit to be undertaken within 48 hours of receipt of complaint to determine status of property. (Notice of entry may be required).	Give 7 days notice of intention to serve an Overcrowding Notice to relevant persons	After 7 days serve Overcrowding Notice on relevant persons. Notice becomes operative after a further 21 days	Consider prosecution for continued contravention
Contravening the Management of Houses in Multiple Occupation (England) Regulations 2006	High	Section 234, Housing Act 2004	Visit to be undertaken within 48 hours of receipt of the complaint to determine extent of the breach.	Letter/Notice to be served within 5 days.	Repeated breaches of the regulations then consider prosecution	
Category 1 hazard causing Imminent risk of harm from non maintenance of fire precautions and poor management	High	Section 234, Housing Act 2004	Visit to be undertaken within 24 hours. Presence of cat 1 hazard verified during visit to premises.	Contact to be made with the landlord/licence holder as soon as possible. Where the landlord cannot be contacted or refusal to carry out the necessary works the following should be considered: Emergency	Serve NERA within	WID and recover costs

				remedial action with immediate effect (no necessity to give landlord notice of entry) Emergency prohibition with immediate effect (no necessity to give landlord notice of entry)	7 days of commencing work Emergency Prohibition Order to be served same day	Prosecution Non compliance to lead to prosecution
Presence of Category 1 hazard where property does not have the appropriate fire detection	High	Sec 11-27, Housing Act 2004	Visit to be undertaken within 24 hours. Presence of cat 1 hazard verified during visit to premises.	Landlord to be notified immediately on establishing the imminent risk and requesting immediate action to reduce the risk by installing temporary battery alarms. Letter to be sent to landlord same day. Further action to be considered within 24 hours. Consider the service of Emergency Remedial Action notice or Emergency Prohibition Order where property is in poor condition. Full HHSRS inspection should be	Full HHSRS inspection should be requested with landlord within 2 working days where appropriate for an improvement notice to be served.	Initiate WID and recover costs. Initiate potential prosecution proceedings and further action within 2 weeks of non compliance with the Improvement notice.

				requested with landlord within 2 working days where appropriate for an improvement notice to be served.		
Fire incident at property notified by the Fire Authority	High	Sec. 40 - 45, Housing Act 2004	Visit to the property within 48 hours to assess whether the property has any imminent risk or category 1 hazards as a result of the fire.	Contact landlord by telephone immediately and advise of actions to be taken to remove/reduce the risk (letter and phone call followed by letter) within 24 hours.	Consideration of the most appropriate course of action within 24 hours. Landlord to be notified immediately on establishing the imminent risk and requesting immediate action to reduce the risk by installing temporary battery alarms. Letter to be sent to landlord same day. Further action to be considered within 24 hours. Consider the service of Emergency Remedial Action notice or Emergency Prohibition Order where property is in poor condition. Full HHSRS inspection should be requested with landlord within 48 hours where appropriate for an	Letter with Schedule of works or Service of Improvement Notice within 10 working days of inspection. Non compliance then initiate WID immediately after expiry of the notice or potential prosecution proceedings within 2 weeks of non compliance of the Improvement Notice

					improvement notice to be served.	
Protecting Public Health						
Blocked drain, waste pipe, soil pipe or wc. Public health impact beyond property boundary or, rented property where landlord not willing to undertake works	High	Sec 17, Public Health Act 1961	Site visit within 48 hours. Determine impact of blockage.	Notice to be served within 48 hours on relevant persons requiring works to be carried out within 48 hours.		WID and recovery of costs
Blocked; drain, waste pipe, soil pipe or w.c. No public health impact beyond property boundary	Low / Medium	Sec 17, Public Health Act 1961	Advice and letter within 5 days			
Broken drain repairable for <£250. Public health impact beyond property boundary or,	High	Sec. 17, Public Health Act 1961	Site visit within 48 hours. Determine impact of blockage.	Notice to be served within 48 hours on relevant persons requiring works to be carried out within 7 days.		WID and recovery of costs

rented property where landlord not willing to undertake works						
Broken drain repairable for <£250. No public health impact beyond property boundary	Low / Medium	Sec. 17, Public Health Act 1961	Advice and letter			
Broken drain NOT repairable for <£250. Public health impact beyond property boundary or, rented property where landlord not willing to undertake works	High	Sec 59, Building Act 1984.	Site visit within 48 hours. Determine impact of blockage.	Notice to be served within 48 hours on relevant persons requiring works to be carried out within 48 hours.		WID and recovery of costs
Broken drain NOT repairable for <£250. No public health	Low / Medium	Sec 59, Building Act 1984.	Advice and letter			

impact beyond property boundary						
Blocked private sewer. Public Health impact	High	Sec 35, Local Govt (Misc Prov) Act 1976	Site visit within 48 hours. Determine which properties are served by the sewer. Attempt to speak to relevant occupiers.	Letter to all relevant households requiring works to be carried out within appropriate time period.	Notice to be served on relevant persons requiring works to be carried out within 48 hours	WID and recovery of costs
Blocked private sewer. No public health impact	Low / Medium	Sec 35, Local Govt (Misc Prov) Act 1976	Site visit within 48 hours. Determine which properties are served by the sewer. Attempt to speak to relevant occupiers.	Letter to all relevant households requiring works to be carried out within appropriate time period.	Notice to be served on all relevant households requiring works to be carried out within appropriate time period.	WID and recovery of costs
Collapsed/broken private sewer. Public health impact	High	Sec 59, Building Act 1984.	Site visit within 48 hours. Determine which properties are served by the sewer. Attempt to speak to relevant occupiers.	Letter to all relevant households requiring works to be carried out within appropriate time period.	Notice to be served on all relevant households requiring works to be carried out within 48 hours.	WID and recovery of costs
Collapsed/broken private sewer. No public health impact	Low / Medium	Sec 59, Building Act 1984.	Site visit within 48 hours. Determine which properties are served by the sewer. Attempt to speak to relevant occupiers.	Notice to be served on all relevant households requiring works to be carried out within appropriate time period.	Notice to be served on all relevant households requiring works to be carried out within appropriate time period.	WID and recovery of costs
Statutory nuisance	Medium	Sec 80, Environmental Protection Act 1990	Site visit within 48 hours to ascertain existence of nuisance	Issue diary sheets where appropriate.	If nuisance is proved Abatement Notice to be served	WID and/or prosecution

Filthy or verminous premises and articles	High	Sec. 83-84, Public Health Act 1936	Site visit within 48 hours to ascertain condition of premises. Issue advice and guidance. Agree timescale for property to be cleansed.	Service of Notice to cleanse the premises and cleanse or destroy articles. Referral to support agencies where appropriate within 48 hours.	Service of Notice to cleanse the premises and cleanse or destroy articles.	WID
Licensing of Caravan Sites						
Operating without a licence	High	Caravan Sites and Control of Development Act 1960	Site visit within 5 working days to ascertain status and condition of site.	Consider enforcement options within 2 working days. Application pack to be issued within 3 days.	Site owner to submit application within 28 days	Complete application to be determined within 2 months
Anti Social Behaviour						
Serious ASB (Including; racial harassment, domestic violence or threats of violence).						
ASB widespread across an area (directly linked to private rented sector)	High	Part 1A Anti Social Behaviour Act 2003. Housing Act 2004	Initiate investigation within 2 working days of receipt of information.	Evidence gathering consultation with Police and necessary partner agencies, obtain statements from complainants. Consider short term appropriate actions. May include; Warning letters,	Longer term solutions may include; Premises closure order. Introduction of Selective Licensing. Area renewal initiatives etc	

				<p>notices, raise at LMAPS or call ELMAPS, undertake leaflet drop or community impact questionnaires if appropriate, Acceptable Behaviour Agreement, referral to victim support or other interventions</p>		
<p>Violence, abuse and threat of violence</p>	<p>High</p>	<p>S 222 Local Government Act 1972 (as amended by the Police and Justice Act 2006 Crime and Disorder Act 1998 Anti Social Behaviour Act 2003</p>	<p>Initiate investigation within 2 working days of receipt of information.</p>	<p>Gather evidence. Raise awareness of issue with relevant agencies</p>	<p>Warning Letter raise at LMAPS or call ELMAPS, undertake leaflet drop or community impact questionnaires if appropriate, Acceptable Behaviour Agreement, referral to victim support, Visit/ continuing correspondence Final Warning</p>	<p>Section 222 Injunction Anti Social Behaviour Order</p>
<p>Persistent serious Anti-Social Behaviour in the community arising from a particular property</p>	<p>High</p>	<p>Part 1A Anti Social Behaviour Act 2003</p>	<p>Initiate investigation within 2 working days of receipt of information.</p>	<p>Gather evidence. Consultation with Police and necessary partner agencies, obtain statements from complainants Warning letter raise at LMAPS or call ELMAPS, undertake</p>	<p>Visit / continuing correspondence Premises closure order</p>	

				leaflet drop or community impact questionnaires if appropriate, Acceptable Behaviour Agreement, referral to victim support or other interventions If property is PRS Consider the service of a Special Interim Management Order,		
Racial Abuse	High	S 222 Local Government Act 1972 (as amended by the Police and Justice Act 2006 Crime and Disorder Act 1998 Anti Social Behaviour Act 2003	Referral to Arch, Safe Homes, raise at LMAPS or call ELMAPS, undertake leaflet drop or community impact questionnaires if appropriate, Acceptable Behaviour Agreement, referral to victim support,	Letter to seek independent advice		Section 222 Injunction or ASBO
Medium Impact This is for situations where there is no immediate threat to the person who made the complaint or anyone else, such as damage to property or regular loud noise. Our aim is to interview the person who made the complaint within five working days of receiving the						

complaint.						
Rowdy and Nuisance Behaviour	Medium	Crime and Disorder Act 1998 Anti Social Behaviour Act 2003	<p>Letter/advisory information to complainant within 2 working days of receipt of enquiry.</p> <p>Where considered appropriate advisory leaflet to residents in the in the relevant area within 7 working days</p> <p>Where further complaints are rec'd - Request to complainant to provide further evidence over the following 7 days</p>	<p>Review case upon receipt of complainants' evidence and instigate appropriate action with 2 days.</p> <p>May include; consultation with Police and necessary partner agencies, obtaining statements from complainants, visit will be considered if there is evidence of increased activity, warning letter raise at LMAPS or call ELMAPS, undertake leaflet drop or community impact questionnaires if appropriate,</p>	<p>Acceptable Behaviour Agreements</p> <p>Parenting Contract</p> <p>Referral to intervention project such as Targeted Youth Support, Family Intervention, victim support etc.</p>	<p>Anti Social Behaviour Order, Parenting Orders</p>
Noise Nuisance	Medium /Low	Environmental Protection Act 1980	Referral to Environmental Health within 2 days	Joint visit will be considered with EH where ASB is evident and there is evidence of increased activity		
Low impact ASB This is fairly	Low	Anti Social Behaviour Act	Letter/advisory information to	Should the situation deteriorate with	Referral to LMAPS	

<p>low-level persistent ASB, such as garden misuse, ball games, minor neighbour disputes and occasional noise. Our aim is to interview the person who made the complaint within ten working days of receiving the complaint. Level 4: Sometimes there is not enough information regarding the ASB complaint. This level acknowledges and logs the complaint and then closes the case due to insufficient information.</p>		<p>2003 Environmental Protection Act 1980</p>	<p>complainant within 4 working days. Where considered appropriate advisory leaflet to residents in the in the relevant area within 7 working days.</p>	<p>further complaints being received requested to provide evidence and appropriate further action will be determined. Visit will be considered if there is evidence of increased activity.</p>		
<p>Note. All timescales above relate to real working days time in either hours or days</p>						

