

# **HOUSING IMPROVEMENT POLICY 2018**

**(HOUSING STANDARDS ENFORCEMENT)**



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## 1.0 INTRODUCTION

The private rented sector is an important part of our housing market, housing 4.4 million households in England. The increase in house prices and changes to our work contracts has resulted in an increasing number of people being unable to secure funding to purchase their own property. The private rented sector is expanding.

The majority of landlords and letting agents provide decent accommodation, decent service as well as ensuring their properties are well maintained and that repairs are carried out promptly. This is reflected by the fact that 84% of tenants state they are satisfied with their accommodation<sup>1</sup>. Unfortunately, there are a small number of landlords who wilfully flout the law, by renting out overcrowded, dangerous accommodation, such as beds in sheds or by cheating their tenants.

In 2017/18 the Council opened nearly 600 housing standards cases. This included cases regarding concerns over management, consultations on planning applications and referrals from partner agencies e.g. the Fire Service. This compares to over 750 cases in 2016/2017. We believe the decrease reflects our active involvement, changes in legislation and increased competition.

Most of these are dealt with informally, but unfortunately formal action is necessary in some cases. Proactive programmes, including the licensing of houses in multiple occupation (HMOs) also require some support through the enforcement process.

The Council's regulatory intervention is to protect the public from the health and safety effects of poor housing conditions and tenancy management.

The purpose of the housing standards policy is to inform the making of enforcement decisions. These decisions must be consistent, balanced and fair. By supporting the decision making process the Council's actions can be fully justified when challenged both informally and at statutory appeal. In this way the policy supports the Council in its duty to seek the improvement of the standard of housing in Plymouth.

Although this policy applies principally to rented properties and tenancies, from time to time enforcement action is necessary in other tenures. Enforcement actions have to be considered where housing defects affect adjoining property, where they are detrimental to the general environment, where they are necessary to address problems associated with empty properties, or where poor housing needs to be addressed for other reasons.

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<sup>1</sup> *English Housing Survey 2012 to 2013: household report, Department for Communities and Local Government, 23 July 2014*

The reduction of funding available for grant aid has limited this option for improving housing. This has increased the potential for having to improve owner occupied housing using statutory powers.

Within this policy “private sector” has an enlarged meaning and includes all housing matters where the Council may apply legislation to improve housing conditions; this includes owner occupied and rented housing and registered social landlords.

The private sector plays a pivotal role in meeting the City's housing need and its importance to the prosperity of Plymouth. We recognise the importance of addressing problems through dialogue and working with stakeholders. Where possible we will offer clients support and practical assistance. However, compulsion is an essential part of tackling problems and attaining a “level playing field”. This policy provides a framework for these actions.

Plymouth City Council (The Council) will prioritise resources and interventions. To ensure customer ability to access the services a new online form has been created to enable the reporting of problems with accommodation. This collects information on the citizens’ concerns, and other additional information and supports prioritising, signposting and shaping our response to best meet the need of the customer at that time. Further information can be found in Section 7.16.

The aims of this policy are to:

- Set out the legal requirements, policies, and principles regarding Private Sector Housing that Plymouth City Council will follow when enforcing relevant legislation.
- Help provide safer and healthier private housing.
- Increase public confidence in the quality and management of private rented accommodation, leading to a vibrant private rented sector in Plymouth.
- Raise the profile and demonstrate the transparency of enforcement in the private rented sector.

## **2.0 LOCAL CONTEXT**

Plymouth is a port city on the South Devon coast, bounded by the River Tamar to the West and Dartmoor to the North. This physical geography means that the climate is mild but wet and the area hilly.

Plymouth’s housing stock is old, with much of it dating to the Georgian period. Although World War II, and its aftermath, saw some redevelopment, much of the original housing remains. Some of the older housing tends to be unsuited to modern family life and has been converted into flats and other shared housing.

As a port city, Plymouth has seen the introduction of many nationalities and ethnic groups. The rise in importance of the dockyards (and other industry), and their subsequent decline, has led to a change in employment patterns. Deprivation has affected areas, whilst others have flourished with the increased prominence of the universities and high technology. Overall average income remains low and affordability is a major problem.

The total number of dwellings in Plymouth is about 108,000<sup>2</sup>, occupied by about 246,000 people. Of these homes 92,500 (85.5%) are within the private sector<sup>2</sup>. By 2026, subject to planned growth, the population will have increased by about 80,000, and the number of houses by 24,500<sup>3</sup>. The population is predicted to age in accordance with national trends.

#### **Within the private sector:**

- 70,100 households own their homes, through mortgage or outright. This, at 64.4%, is lower than the national average of 70%<sup>4</sup>.
- 22,000 households rent from a housing association landlord
- 15,300 rent from a private landlord (this is higher than the national average of 10% (14.1%), and likely to increase)<sup>4</sup>.

#### **What type of houses do people live in?**

- 27% of dwellings were built before 1919 (which is higher than the national average of 20.8%) with a corresponding reduction in the proportion of newer housing. Almost 50% of private tenants live in pre 1919 housing, and nearly 60% of housing association tenants live in housing newer than 1964<sup>4</sup>.
- 8.7% of dwellings are purpose built flats (lower than the national average of 15.5%)<sup>4</sup>
- 9.9% are HMOs or converted flats (higher than the national average of 3.3%)<sup>4</sup>.
- The average house price was £157,000<sup>3</sup>, which although lower than parts of the region still creates considerable issues of affordability. Despite recent reductions in house values, reasonable levels of equity remain in most homes.

#### **What conditions do people live in?**

- 31.7% of housing is “non-decent”. (39.3% in the private rented sector)<sup>4</sup>
- 7.1% of housing fails the minimum standard for safety (i.e. there are HHSRS category I hazards) (9.8% in the private rented sector)<sup>4</sup>. The national figure is 22%<sup>5</sup> across all tenures, indicating that this may be an underestimate.
- 15.3% of households live in fuel poverty (20.3% in the private rented sector)<sup>4</sup>.

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<sup>2</sup> Plymouth Private Sector Stock Condition Survey 2005

<sup>3</sup> Housing Strategy 2008

<sup>4</sup> Plymouth Private Sector Stock Condition Survey 2005

<sup>5</sup> English House Condition Survey; Housing Surveys Bulletin, Issue 3 Nov 2008 DCLG

- It is estimated that between 2400 and 3400 dwellings have radon levels in excess of the action level of 200 Bq/m<sup>3</sup>, indicating that between 2.3% and 3.3% of all the housing in Plymouth fails the Decency Standard in this respect<sup>6</sup>.
- Privately rented housing, HMOs and flat conversions have worse problems of non-decent housing than other parts of the private sector.
- The private sector housing stock is old, and this contributes to higher levels of non-decency (the “Decency Standard” is the government’s base line definition for acceptability of housing).
- Poor housing is more likely to affect older people, the disabled, young people, Black and Ethnic Minority communities, the unemployed and members of the households of these groups.
- 31.8% of households are in receipt of benefits<sup>4</sup>.

Increasingly the Private Rented Sector is a tenure of choice but for some it is considered housing of the last resort. The shortage of available accommodation limits the choice that vulnerable tenants have; in many cases they have no other alternative than to accept substandard housing (complaint of poor housing conditions may lead to lawful eviction or even unlawful eviction).

The council takes its responsibilities and duties seriously but understands that fundamental change does not happen in isolation. The Housing Department has undergone a major restructure with the aim of creating better internal links and networking, stripping away “silo thinking” and putting client’s needs at the centre of decision making. It has also moved to a locality based model.

Community Connections emerged as a response to this new way of thinking and the desire to make genuine improvements. The new model split the old private rented team, which incorporated HMO licensing and amalgamated it into locality teams. Within these teams officers work closely with other officers on a wider variety of tasks to enable a multi-disciplinary, locality based approach to problem solving and enforcement.

We continue to work with Landlord Associations, the University, Shelter, local Agents and other partners to further the Private Rented Charter and to improve standards within the sector.

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<sup>6</sup> *Radon Atlas of England and Wales 2002*

### 3.0 NATIONAL CONTEXT

The Government's view is that everyone should have the opportunity to rent or buy a decent home at a price they can afford, in a place where they want to live and work. There have been a number of initiatives and additional legislation around these themes and in particular to improving standards this includes:

- Increased availability of housing (especially Empty Homes initiatives, affordable housing and brownfield development) to provide better choice.
- Energy efficiency measures, implementation of Energy Performance Certificates and minimum standards of energy efficiency for private rented properties.
- Recognising the link between poor housing and health and its financial implications, improving the physical quality of housing through the Housing Health and Safety Rating System, Decent Homes, Licensing and management of houses in multiple occupation.
- Introduction of compulsory Redress Scheme to give better consumer rights.
- Introduction of Housing & Planning Act which includes Banning Orders, Civil Penalties and the Rogue Landlord Database.
- The extension of mandatory HMO licensing.
- Improving the rights of tenants e.g. through restrictions on retaliatory eviction, Tenancy Deposit Schemes and the provision of information at the start of tenancies.
- The introduction of the Smoke and Carbon Monoxide Regulations.

The needs of tenants to have good accommodation have to be balanced against those of the landlords in providing that service. Major problems could arise if landlords see the sector as overregulated and withdraw from the business of renting.

These initiatives are broad and reflect that the problems caused by bad landlords vary considerably from area to area. In some areas, homes may be poorly maintained and dangerously overcrowded. This in turn can have the effect of degrading a neighbourhood, by acting as a cause of anti-social behaviour and other problems. In other areas, landlords are renting outbuildings as permanent living accommodation, compromising the safety of their tenants and causing significant problems for neighbours. Some local authorities have also discovered that vacant commercial

premises, often in poor repair, are being used as living accommodation. The Government is keen that Local authorities should take action in all these circumstances.<sup>7</sup>

Government – Housing Strategy for England – encourages LAs to make full use of their robust powers to tackle dangerous and poorly maintained homes. Government aims to improve energy efficiency, drive up standards and consumer awareness, and highlight needs for landlords and tenants to understand their rights and responsibilities.

### **3.1 Housing's impact on health**

Addressing health and safety issues in housing is a key function of all local authorities. The Housing Health and Safety Rating System (HHSRS) is a tool for identifying those hazards to health and safety which pose an unacceptable risk to occupiers. HHSRS is the major component of the Decent Homes Standard; a significant health hazard (one which has been assessed as a category I hazard) will make a home non decent.

HHSRS sets out the 29 hazards which cause ill health or injury to occupiers. This include physical and mental health.

The most frequently identified category I hazards in Plymouth are Excess Cold, Fire, Falls on Stairs, Damp and Mould and Falls on the Level. Excess Cold is by far the most frequent hazard identified; it has been found in 76% of cases where a category I hazard is present.

Excess Cold accounts for the highest incidence of ill health associated with housing; this is illustrated by the Excess Winter Death statistics. Despite the relatively mild winters in Plymouth, these statistics show that the City has the same Excess Winter Death rates as the remainder of England. It is estimated that, in Plymouth, the hazard of Excess Cold costs the National Health Service £4,915,200 and claims 100 lives annually<sup>8</sup>.

Heating issues have a number of other health effects which are less easy to assess. Poor heating contributes to Damp and Mould (through increasing condensation), Falls on Stairs/Falls on the Level (reduced co-ordination) and Fire (increased use of portable heating). Improved heating reduces mental illness, GP visits and absence from work or school through sickness.<sup>8</sup>

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<sup>7</sup> *Improving the Private Rented Sector and Tackling Bad Practice – A guide for Local Authorities – DCLG March 2015*

<sup>8</sup> *Good Housing Leads To Good Health, CIEH/BRE, 2008. (Calculated from toolkit provided).*



Improving heating is a critical part of addressing poor housing in Plymouth.

Overcrowding is also common within Plymouth. Lack of space and overcrowding have been linked to a number of health outcomes, especially those associated with a lack of privacy and childhood development. Crowded conditions are also linked with increased hygiene risks and increased rate of accidents.

Preventing ill health can occur by supporting people to make healthy choices. These are influenced by 'agency' and 'structure'. 'Agency' suggests that individuals are responsible for the choices they make and 'structure' acknowledges that they do so constrained or enabled by structural circumstances (social, economic and cultural) over which they have limited direct control.

Structure would also include taking steps so that the choice of properties available to tenants, particularly at the lower end of the market, meet minimum physical and space standards and are reasonably free of hazards. It would also include the having suitable management arrangements of HMOs.

'Health inequalities' have an impact on individuals and communities, and can be described as 'differences between people or groups due to social, geographical, biological or other factors'. Some of these differences have a huge impact, because they result in people who are worst off experiencing poorer health and shorter lives.

**Average life expectancy** at birth is the measure chosen by Thrive Plymouth to assess and monitor the overall extent of health inequalities in the city. Average life expectancy in Plymouth is lower than the England average for men (78.0 years compared to 78.9 years) and for women (82.0 years compared to 82.8 years). Variations in life expectancy are found within the city for both men and women.

- Average life expectancy for men ranges from a high of 81.4 years in the Eggbuckland ward to a low of 73.8 years in the Devonport ward.
- Average life expectancy for women ranges from a high of 88.8 years in the Plympton Chaddlewood ward to a low of 78.2 years in the Devonport ward.

In Plymouth the gap in life expectancy (for all persons) by ward is 7.5 years. Variations in life expectancy by ward are illustrated using a bus route map across the city.

These variations are reflected in the affluence of the areas and by nature the level of persons living within rented accommodation.

By comparison the parties who are likely to be subject to enforcement action are more likely to reside within the wealthier areas.

### **3.2 Resources**

The property owner has the prime responsibility for ensuring the health, safety and repair of housing. Where the owner occupies the house this responsibility is more limited (principally to the protection of his own household). Where there is a landlord he will have duties to his tenants amongst others.

The HHSRS is tenancy neutral. Any policy which applies HHSRS will be based upon strategic considerations, and these will apply across all tenures (although the ways that they affect each tenure may differ). This policy provides guidance on the use of enforcement powers under HHSRS and other legislation.

Council resources, both financial and human, are always limited. This strategy will be used to guide overall financial and staffing allocation. Even with this targeting of resources, a system of prioritisation will be needed to direct these to address the highest need and achieve the greatest benefit.

## **4.0 LEGAL FRAMEWORK – OVERVIEW LEGISLATIVE DUTIES AND POWERS**

Over the past 14 years there has been considerable change to the private rented sector. The importance of the sector and the impact that it has upon the health and safety of individuals has led to increased regulation and a desire for the sector to become more professional.

This has resulted in Local Authorities having a “toolbox” of legislation to undertake enforcement when deemed necessary. More information on the “toolbox” can be found in section 11.0.

When utilising our powers, enforcement action is taken against the person who has responsibility for addressing the relevant matter. Such people include landlords, agents, managers, license holders, leaseholders, freeholders, residential owners and tenants. For simplicity, in this report the expression “client” is taken as meaning any such person and includes an individual, partnership, company, charity or association.

### **Enforcement Concordat (1998)**

In 1998 the Government introduced the “Enforcement Concordat”; this is a voluntary protocol for regulators. Plymouth City Council has agreed to conduct its enforcement activities in accordance with the Concordat. The Concordat refers to:

- Standards: setting clear standards of service that clients will receive
- Openness: clear and open provision of information
- Helpfulness: helping business by advising on and assisting with compliance
- Complaints: having a clear complaints procedure
- Proportionality: ensuring that enforcement action is proportionate to the risks involved
- Consistency: ensuring consistent enforcement practice.

### **Regulators Compliance Code (2014)**

The Regulators' Code came into statutory force in April 2014 and provides a clear framework for transparent, open and accountable regulatory delivery. A copy can be found at [www.gov.uk/government/publications/regulators-code](http://www.gov.uk/government/publications/regulators-code)

- Regulators should carry out their activities in a way that supports those they regulate to comply and grow
- Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views
- Regulators should base their regulatory activities on risk
- Regulators should share information about compliance and risk
- Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply
- Regulators should ensure that their approach to their regulatory activities is transparent

The Council has had regard to the Regulators' Code in the preparation of this policy. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence.

We will also consider the Code as "best practice" in policy provisions even where it does not have statutory force.

### **The Code for Crown Prosecutors**

When deciding whether to prosecute the Council has regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions. The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Code sets out two tests that must be satisfied, commonly referred to as the 'Evidential Test' and the 'Public Interest Test':

- Evidential Test - is there enough evidence against the defendant?  
When deciding whether there is enough evidence to prosecute, the Council will consider what evidence can be used in court and is reliable. We must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each alleged offender.
- Public Interest Test - is it in the public interest for the case to be brought to court?

The Council will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The public interest factors that we will take into account are detailed under Approach to Non Compliance – Prosecutions in Section 7.

## 5.0 STRATEGIC CONTEXT

Fairness Commission:

Plymouth engaged with the Fairness Commission, in particular, by enabling members to visit with officers to see first-hand the difficulties people face with their accommodation.

The Commission called for the ability of Local Authorities to issue fixed penalty notices. The Housing and Planning Act 2016 introduced this as an alternative to prosecution. This policy incorporates the ability to make use of these powers.

The policy supports the need to prioritise those in greatest need when allocating resources.

We support voluntary landlord accreditation and tenant empowerment. These are key to improving the sector and reducing the need for Local Authority involvement.

Plan for Private Rented Housing.

The Council is committed to improving private rented housing. We worked with our partners to develop our Charter for Private Rented Housing. This aims to improve the quality of private rented housing and take action against rogue landlords.

This policy supports the charter and our plan for improving private rented accommodation. It sets out the legislation, our intervention standards, our toolbox and our approach to non-compliance.

## 6.0 CORPORATE PRIORITIES

The Housing Improvement Housing Standards Policy directly supports the City's Vision and The Corporate Plan by:

- Directly contributing to 'A Caring City' by:
  - Identifying poor standards and hazards to health in residential accommodation and intervening to require and recommend works.
  - Tackling unlicensed HMOs which often contain the poorest quality of housing.
  - Empowering individuals to make better choices when selecting accommodation.
  - Taking action to support and improve the 'structure' of the sector.
  - Increasing the knowledge of individuals and organisations in relation to their rights and responsibilities.
  
- Directly contributing to 'A Growing City' by:
  - Facilitating improvement works and investment to residential premises within Plymouth.
  - Poor housing standards impact upon development and education. Improvements support better mental health and development particularly within children.

## 7.0 OUR APPROACH TO NON-COMPLIANCE

The general principle will always hinge around negotiation, education and support to ensure maximum benefit from minimum resource input, aiming to avoid imposing unnecessary regulatory burdens.

We will clearly explain the non-compliance and any advice being given, actions required or decisions taken, with reasons for these.

Advice on non-compliance will be given without directly triggering enforcement action, where there is a clear willingness to resolve the non-compliance. However, the council will deal firmly with those that deliberately or persistently fail to comply.

We will provide an opportunity for dialogue in relation to advice given, actions required or decisions taken in relation to non-compliance.

Dialogue is available through all communication channels (face-to-face, telephone, letter, email) and access to translators is available if required.

Typically, an inspection of property will be required to establish conditions, collect evidence and determine occupation.

Enforcement procedures will follow statutory requirements, typically by service of a formal notice requiring compliance (for example setting out the works required). A charge may be made for service of the notice. Where there is non-compliance consideration will be given to the most appropriate course of action. This could be:

- Work in default, and recovering costs
- Civil Penalty (currently up to £30,000), as an alternative to prosecution
- Entry of the offender's details onto the national Rogue Landlord Database
- Banning Order
- Rent Repayment Order
- Prosecution

Where it shares or has a complementary role with other external agencies or internal departments, the Council may consult these agencies before taking any formal enforcement action. This may include for example, Devon & Somerset Fire & Rescue Service or Planning and/or Building Control or Trading Standards Teams within Plymouth City Council.

Where the Council considers that breaches should be investigated by another enforcement body, or internal department, details will be shared with that organisation / department.

Any follow-up on anonymous complaints will be dependent on the circumstances of each report.

In the course of our enforcement activities, we will consider the circumstances and the legislation available to us when deciding the best course of action.

These provide a range of actions that are available to the Local Authority and include:

### **7.1 Advice, Guidance and Support**

The Council uses compliance advice, guidance and support as a first response in the case of many breaches of legislation that are identified.

Advice may be verbal, by signposting to relevant information or parties, but may also be written. This may include our website, leaflets, post inspection letters and schedules of work for licensed HMOs, or by way of a Hazard Awareness Notice where the principle enforcement route would be through Part I of the

Housing Act 2004. Written advice may also cover other areas of legislation not directly enforced by the Housing Improvement Team.

This will set out the relevant legislation we enforce, identify contraventions and advise what should be done to rectify contraventions.

## **7.2 Voluntary Undertakings**

The Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. The Council will take any failure to honour voluntary undertakings seriously and enforcement action is likely to result.

## **7.3 Statutory (Legal) Notices**

In respect of many breaches the Council has powers to issue statutory notices. These include:

- Hazard Awareness Notice
- Improvement Notices (requiring works),
- Prohibition Orders (restricting use of whole or part of a property, or restricting by age of occupier),
- Overcrowding Notices (limiting occupation),
- Demolition Orders,
- Abatement Notices,
- Demands for documents / information,
- Powers for Entry etc.

Such notices are legally binding. Failure to comply with a statutory notice is often a criminal offence and may lead to civil penalties / prosecution and/or, where appropriate, the carrying out of work in default. It may also lead to Rent Repayment Orders, Banning Orders and addition to the Rogue Landlord Database.

A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient.

Some notices issued in respect of premises may be affixed to the premises and/or registered as local land charges.

We will make use of the Land Registry, Council Tax and if applicable other sources of information available to us to assist us in ensuring that notices are correctly served upon the relevant persons.

#### **7.4 Works in Default / Emergency remedial works**

Where statutory provision exists, the Council will consider carrying out works in default to remedy non-compliance. Once works have started it is an offence for a person to obstruct the Local Authority or any of the contractors that have been employed to carry out the works. In such cases, the cost of the works and the Council's reasonable costs are recoverable from the offender.

Carrying out works in default does not prevent prosecution, or issuing of a civil penalty, which may also be appropriate.

From time to time the Council uses the default mechanism to carry out works with the agreement of the property owner.

Charges in respect of work undertaken in default of notice may also be subject to interest charges. (See Private Sector Housing – Charging for Notices Policy)

The Council may also carry out works under the “Emergency Remedial Action” procedure. This is a power under Part I of the Housing Act 2004 which enables category I hazards assessed as “imminent risk of serious harm to the health and safety of any occupier.....” to be dealt with immediately by the Council carrying out the appropriate works. The decision of whether or not to apply this power is determined by the severity of the problem, how it affects the occupiers, the legislation and enforcement guidance.

#### **7.5 Financial / Civil Penalties / Rent Repayment**

The Council has powers to issue a civil penalty notice under The Housing and Planning Act 2016. This is as an alternative to prosecution, where there is evidence beyond reasonable doubt of certain offences i.e. failure to:

- Comply with an Improvement Notice
- Licence a property that requires a licence
- Comply with licence conditions or occupancy requirements
- Comply with an Overcrowding Notice
- Comply with HMO management regulations requirements

Civil penalties can be used where a breach is serious and the Council may determine that a significant financial penalty (or penalties if there have been several breaches), rather than prosecution, is the most appropriate and effective sanction in a particular case.

A civil penalty notice is not a criminal fine, and does not appear on an individual's criminal record. If a civil penalty is not paid, the council may refer to the County



Court for an order of that court. If necessary, the Local Housing Authority may use County Court bailiffs to enforce the order and recover the debt.

These will be considered on a case by cases basis and in conjunction with any statutory guidance, legislation and Council policy. (See Community Connections Civil Penalties Policy)

The Council also has, in certain circumstances, the ability to seek a Rent Repayment Order to attempt to recover housing benefit payments. The landlord can be required to repay up to 12 months' rent. The relevant offences are:

- Violence for securing entry
- Illegal eviction or harassment of occupiers
- Failure to comply with an Improvement Notice or Prohibition Order
- Failure to licence a property that requires a licence
- Breach of a Banning Order

This may be in addition to a fine / civil penalty and will be considered on a case by case basis. The Council may support tenant's to seek a Rent Repayment Order.

In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a fixed penalty notice.

## **7.6 Simple Caution**

The City Council will consider the use of a simple caution as an alternative to a prosecution. Cautions can be mentioned to the Court when sentencing the same offender for a later offence.

The purpose of a simple caution is to:

- address mitigating circumstances
- deal quickly and simply with less serious offences
- divert less serious offences away from the Courts
- reduce the likelihood of repeat offences

Simple cautions may be offered where it is considered appropriate having regard to these purposes.

To safeguard the suspected offender's interest, the following conditions should be fulfilled before the caution is administered:

- There must be evidence of the suspected offender's guilt sufficient to give a realistic prospect of conviction. The advice of the Head of Legal Services will be sought as to whether this requirement has been satisfied.
- The suspected offender must admit the offence

- The suspected offender must understand the significance of a caution and give an informed consent to being cautioned

Where there is insufficient evidence for prosecution, then the conditions for caution will not be satisfied. It will also be inappropriate to use a caution where the suspected offender does not make a clear and reliable admission of the offence.

There is no legal obligation on any person to accept the offer of a formal caution and no pressure should be applied to the person to accept a caution.

## **7.7 Prosecution**

The Council may prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as voluntary undertakings or statutory notices have failed to secure compliance. When circumstances have been identified which may warrant prosecution, all relevant evidence and information will be considered to enable a consistent, fair and objective decision to be made.

Before a prosecution proceeds, the case officer will consult with Legal Services to ensure that there is sufficient relevant, admissible and reliable evidence that an offence has been committed by the client. There must be a realistic prospect of conviction.

When deciding whether to prosecute the Council has regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

Before deciding that prosecution is appropriate, the Council will consider all relevant circumstances carefully including:

- how serious is the offence committed?
- Previous history, similar offences, failure to respond to warnings or statutory notices
- what are the circumstances of and the harm caused to the victim?
- is prosecution a proportionate response?
- any explanation offered by the client
- The credibility of any important witness
- The willingness and ability of the offender to guarantee to prevent a recurrence of the problem

A successful prosecution will result in a criminal record. The court may impose a fine which in some cases is unlimited. Plymouth City Council will seek to recover the costs of Court proceedings from convicted offenders based on officers' records of time spent in the enquiry and all relevant expenses.

A successful prosecution will impact upon a person's Fit & Proper status in relation to holding a licence for a house in multiple occupation. This could potentially lead to a number of additional actions, which include but are not limited to:

- Revocation of HMO licence(s)
- an Interim or Final Management Order
- addition to Rogue Landlord Database, leading to a Banning Order
- Rent Repayment Order
- Inability to hold a HMO licence for the person and any know direct associates.

Verdicts and sentences in criminal cases are given in open court and are a matter of public record. The council will publicise sentences following prosecution on a case by case basis. Publicising guidance has a presumption in favour of publicising outcomes of criminal cases and basic personal information about convicted offenders.

## **7.8 Banning Orders**

The Council may apply to the First-tier Tribunal upon becoming aware that a landlord who operates within their area has committed a relevant banning order offence as listed within The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017, (or subsequent legislation), or who has received two or more financial penalties.

Before applying for a Banning Order the Council will consider a range of factors including:

- The seriousness of the offence
- Previous convictions / reference to the rogue landlord database
- The harm caused to the tenant
- Punishment of the offender
- Deterrence to the offender from repeating the offence
- Deterrence to others from committing similar offences.
- Relevant guidance and associated policy

If the council intends to pursue a Banning Order we will issue a Notice of Intent, and consider any representation within 28 days.

A Banning Order bans a landlord from:

- Letting housing in England;
- Engaging in English letting agency work;
- Engaging in English property management work; or
- Doing two or more of those things.

Breach of a Banning Order is a criminal offence.

### **7.9 Rogue Landlord & Agent Database**

The Council will make an entry on the database for a person or organisation in accordance with legislation, having regard to relevant guidance and associated Plymouth City Council's Policy.

The Council will issue the person with a decision notice before making an entry, specifying the period for which the entry will be maintained.

### **7.10 Refusal / Revocation of Licence & short licences**

The Council may refuse, revoke or grant shortened licences after taking into account current and previous breaches and enforcement action in accordance with relevant legislation, guidance and the Council's internal policies.

### **7.11 Management Orders**

Where there is no prospect of an HMO being licensed or the health and safety condition is satisfied, the Council is required to make an Interim Management Order. This enables the Council to take over the management of an HMO and become responsible for the running of the property and collecting rents for up to one year. In extreme cases this can be extended as a Final Management Order to five years with the Council also having the power to grant tenancies.

Any proposed action will have to be agreed by the Service Director of Community Connections.

These orders can only be made with the authorisation of the First-tier Tribunal.

### **7.12 Powers of entry**

The Council will have regard to its powers for entry in respect of investigations, compliance and enforcement activities. In most circumstance entry will be in agreement with the relevant interested parties. However, should access not be forthcoming, or our entry be actively barred the Council will look to use its powers of entry. This would be particularly relevant in respect of investigations to identify if offences have been committed, or to allow works in default. In addition to powers of entry the council may seek to obtain a warrant for entry from the court.

The Council will also consider requests from partner agencies for collaborative working.

### **7.13 Interviews**

The Council may invite persons to formal interviews as part of the decision making process to determine the best course of action, or to collect information prior to issuing a civil penalty / fine or bringing a prosecution.

### **7.14 General Principles**

Unless other guidance applies, The Council follows the principles set out in the Macrory Review, which expects policies to:

- a) aim to change the behaviour of the offender;
- b) aim to eliminate any financial gain or benefit from non-compliance;
- c) be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- d) be proportionate to the nature of the offence and the harm caused;
- e) aim to restore the harm caused by regulatory non-compliance, where appropriate; and,
- f) aim to deter future non-compliance.

We will act impartially in landlord/tenant issues and favour neither party. We will seek to ensure that all clients comply with their legal obligations, and we will apply those provisions fairly and impartially in accordance with the situations as we find them.

Although we may have a duty to enforce legislation, this does not automatically mean that formal enforcement action will be taken in respect of each and every infringement. Instead, we will take steps to promote compliance by the most appropriate means and in accordance with enforcement priorities and resources available.

Cases may arise where disrepair results from poor tenant conduct. Enforcement decisions will consider this, as well as the other circumstances of the case.

The Council will consider risk at every stage of their decision-making progress, choosing the most appropriate type of enforcement action including taking note of the compliance record of those being regulated.

Where time limits are specified for the completion of works or other actions, these will reflect the circumstances of the case. In particular, we will consider the extent of work required, the risk to persons affected, the availability of financial assistance, and the need for consents etc. Time limits will comply with statutory requirements.

Where there is a change of circumstances we will consider whether our course of action is still applicable. If a dwelling becomes vacant following Council intervention we will continue to seek improvement wherever appropriate. Vacation of the dwelling may be the result of “retaliatory eviction” or an attempt to evade responsibilities. This will result in a future occupier experiencing the same poor living conditions. The continuation of enforcement action deters poor management practice and supports housing strategy.

The role of the Housing Improvement Team and this policy is to improve housing not to advance the client’s case for social Housing.

### **7.15 Health and Safety**

Nothing in this policy shall require Council Officers to put themselves, or others, at excessive risk to their health and safety.

### **7.16 Client’s concerns**

Clients are encouraged to report their concerns via the Council’s website by completing an online Housing Improvement service request form. This allows the client to provide relevant information and upload photographs. This will help the service determine the seriousness of the concerns raised and prioritise resources. Alternatively they may email or phone.

The form advises Tenants to report the problem to their landlord (or letting agent) in writing if they have not already done so. This will maximise any protection afforded under the Deregulation Act 2015 in respect of “retaliatory eviction”. This is usually a requirement of their tenancy agreement.

Where we are aware that a Tenant is, or is considering, withholding the rent we shall advise it could give rise to lawful eviction, and subsequent difficulties with re-housing both in the public and private sectors.

Where the matter is of lesser urgency we will write to the landlord conveying the tenant’s concerns, and any concerns we identify. A copy of this letter will also be sent to the occupier.

The letter will state that we will contact the tenant (usually in 28 days) to find out whether remedial action has been agreed. If problems persist, officers may make a full inspection of the property to determine the extent, causes and remedial actions necessary. Should it be necessary the Council will require appropriate improvements to be carried out using the best use of the tools available to it and in accordance with the principles of this policy.

We may identify non-compliance with legislation other than that relating to property condition, a letting agent failing to belong to a redress scheme; a requirement jointly enforced by the Plymouth City Council Trading Standards Team. In these circumstances the relevant legislation will be followed in accordance with the general principles of this policy and any specific Council policy. Tenants will be advised that the Council's function is to improve housing conditions within the occupier's present accommodation. Tenants will be advised that re-housing will not be recommended except in very exceptional circumstances.

Tenants will be advised of steps they may be able to take to help address the problem (e.g. where condensation appears to be present).

It is difficult to proceed with the improvement of poor housing conditions without the support of the occupiers. They will be expected to provide access to Council officers and update them on changes to their situation. They have a contractual responsibility to reasonably co-operate with their landlord, manager and appointed contractors. Where this tenant support is lacking the Council may close the case and cease its involvement in the property.

### **7.17 Charging for Enforcement Action**

If a statutory notice is served, the Council may charge a fee for the cost of administration. This is in accordance with the policy "Fees and Charges Relating to the Enforcement of Housing Standards" most recently updated in 2011.

Where permitted charges will be placed as a Local Land Charge against the property until recovered.

The assumption is that where interest can be charged on sums owed to the council it will be charged. A charge placed against a property may remain there for many years. Over this period the sum devalues in real terms. The use of interest counteracts devaluation that occurs over time. This is to reduce the attractiveness of non-compliance and letting the council place a charge against the property. The interest should pay for the costs incurred to the council in administering the debt

Fees can be charged in relation to our duties under Part 2 of the Housing Act 2004 – HMO licensing. These charges are set out in the relevant HMO licensing policy. In general the cost of the licence should recover the costs incurred to the council in administering the scheme.

### **7.18 Use of money recovered through financial charges.**

Income received from a civil penalty can be retained by the local housing authority provided that it is used to further the local housing authority's statutory functions in relation to their enforcement activities covering the private rented sector, as specified in Regulations<sup>9</sup>.

## **8.0 INTERVENTION/ENFORCEMENT STANDARDS**

### **8.1 Category 1 Hazards (HHSRS)**

Bands are defined in the Housing Health and Safety Rating System (England) Regulations 2005. A Category 1 hazard will be either band A, B or C; a category 2 hazard will be one of bands D to J. Band A hazards are extremely high risk, band J are very low risk.

Where a Category 1 hazard is identified, following a formal inspection of a property, there is a legal duty upon the Authority to take some form of enforcement action. Typically, this will be to require works to reduce the hazard to a level which is no longer Category 1. However, the duty to intervene does not necessarily involve demanding (or assisting with) the removal of the deficiencies that cause the risk. This duty can also be addressed by formally informing the owner of the problems (a Hazard Awareness Notice) or prohibiting the use of part of the dwelling.

In some circumstances it may not be reasonable or practicable to undertake remedial works. An alternative resolution within the framework of the legislation may be adopted.

### **8.2 Category 2 Hazards (HHSRS)**

Councils may also take action on lesser risks to health and safety (category 2 hazards) where this is appropriate.

Improvements will be considered where there is a category two hazard:

- Where the occupier is at a specific risk from a problem due to illness or disability, (i.e. vulnerability), or
- Where the benefits of carrying out the work outweigh the costs of their execution
- Where we are taking action in relation to Category 1 hazards
- In consideration with other PCC policies or priorities

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<sup>9</sup> <http://www.legislation.gov.uk/uksi/2017/367/contents/made> and <http://www.legislation.gov.uk/uksi/2018/209/contents/made>



- In consideration with National guidance.

The HHSRS guidance does not define the standard of improvement for the dwelling once the hazard has been identified.

### **8.3 Where the housing / management fails to comply with legal requirements**

There are a number of other legislative frameworks enforced within the Private Sector; these include:

- HMO Licensing (this is addressed in the HMO Licensing Policy as well as above)
- Management Regulations (in relation to HMOs)
- Statutory Nuisance (this is set out in statute and case law)
- The Smoke and Carbon Monoxide Regulations
- The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (Enforcement responsibility shared with Plymouth City Council Trading Standards Team)
- The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 (Enforcement responsibility shared with Plymouth City Council Trading Standards Team)

Improvement will be considered in circumstances where there is a breach of any legislative framework which applies to private sector housing.

### **8.4 Excess Cold**

Excess cold has been identified as a key issue in terms of climate change and fuel poverty. It also contributes to the hazards of damp, fire and falls. There has been a big drive to improve the thermal efficiency of buildings and to provide suitable heating so that the occupiers can maintain a healthy indoor temperature.

There has been, and will be, additional legislation and guidance that overlaps with this hazard as defined under the Housing Act 2004.

The service will make use of EPC's available to it when making decisions regarding enforcement but will expect measures that are either cost effective or necessary to achieve an adequate standard of heating / insulation.

The service may challenge EPC's via the assessors accrediting body or refer them to Trading Standards where perceived to be incorrect or missing when required.

Additional guidance for improving dwellings where there is the Hazard of Excess Cold is attached as an Annex see section 19.

## **8.5 Overcrowding**

Overcrowding can occur for a number of reasons including, natural growth, accident or intent. Our intervention and course of action will take into account relevant factors on a case by case basis. This will include the intent of the parties involved.

Overcrowding of licensed HMO's is an offence and will be investigated.

We will have consideration to relevant national guidance.

## **8.6 Damp and Mould**

Where the service request identifies only concerns of damp and mould:

- In the first instance advice will be provided to help the tenant identify the causes and remedy any concerns. Typically, this will include a link to a video produced in partnership with Plymouth Energy Community.
- Where the concerns are believed to be condensation related the tenant will be expected to undertake measures within their control to reduce the concerns for a period of 8 weeks. This would include correctly cleaning down surfaces for the removal and prevention of mould growth.
- The case will be closed but will be re-opened should the client make contact after this period to advise concerns remain.

Our aim is to empower citizens to undertake measures to improve their own circumstances where appropriate on a risk based approach.

## **8.7 Fire**

We will always look to enforce the minimum standards within the smoke and carbon monoxide regulations.

Within licensable HMO's we will enforce the minimum standards set out in the HMO licensing policy, or in their absence in accordance with this policy.

There is an overlap of legislation and jurisdiction in relation to fire safety. Plymouth City Council will work with regard to any agreement with Devon & Somerset Fire & Rescue Service (DSFRS).

Generally PCC will take the lead in respect of residential accommodation and Devon & Somerset Fire and Rescue Service will be the lead authority in relation to commercial premises or mixed commercial/residential properties. Where we are also taking action on a property where DSFRS have issued a notice for works we will endeavour to mirror those requirements. In some instances this may require works where our intervention standards would not normally be triggered.

Both authorities have regard to national guidance including LACORS – Housing – Fire Safety.

Typically in complex or unusual circumstances we will liaise with DFSRS. We will, where appropriate, promote knowledge of the Fire – Regulatory Reform Order as enforced by DFSRS.

## **9.0 APPEALS & REPRESENTATIONS**

Where a right of appeal exists to any regulatory action, the Council will include details of the appeal process at the appropriate time. In some circumstances persons may be invited to formal interviews as part of the decision making process to determine the best course of action, or to collect information prior to issuing a civil penalty / fine or bringing a prosecution.

Specific actions (e.g. notices of approval or rejection of an application for a licence) require that a preliminary notice be served advising of the intention. Such notices enable the recipient to make representations concerning the intended action. The Council has a duty to consider these representations.

## **10.0 PUBLICITY**

The Council will always aim to publicise successful convictions and details of civil penalties to reassure compliant businesses or regulated persons that economic competition is a 'level playing field'.

To ensure that landlords, managers and other clients are aware of this policy it will be published on the Council's internet WebPages. We will also raise awareness through our partners for example via landlord associations and the Private Rented Charter Group.

## **11.0 LEGISLATIVE TOOLBOX (BY PIECE OF LEGISLATION)**

The following pieces of legislation make up the tool box available as part of our enforcement activities.

### **11.1 Housing Act 2004**

The Introduction of the Housing Health & Safety Rating System (HHSRS) under Part 1 of the Housing Act 2004 introduced a direct link between housing standards and health. It is a risk based approach used to determine if a hazard or

hazards or present within a dwelling and whether the potential health outcomes warrant intervention by the Local Authority. It provides a framework for assessing conditions and taking enforcement action. It incorporates the ability for a person whom the LA take action upon to appeal to a tribunal.

This is our principle piece of legislation and the majority of enforcement actions will likely be taken using this piece of legislation to improve housing conditions.

HHSRS covers 29 Hazards and the assessment indicates if there are Category 1 and/or Category 2 hazards present. The Council will take into account relevant matters to determine the most appropriate course of action. (See intervention standards).

Mandatory HMO licensing was introduced by Part 2 of the Housing Act 2004 to regulate those HMO's considered to be at a higher risk. Regulations define the range of HMOs to be included within it.

Mandatory licensing demands that the Council properly consider applications from prospective license holders. The Council will decide whether to approve a licence and if so whether to attach any discretionary conditions to the approval. The Council's HMO Licensing Policy will apply to these decisions.

Licensing imposes requirements that the license holder must meet. These include conditions explicitly stated in the Act, and those that the Council may demand under Section 67 of the Act. It also limits the occupation of the HMO to that which is reasonable in the circumstances. Breaches of these requirements can result in prosecution and/or withdrawal of the licence.

The operation of an HMO in contravention of the requirement to have a licence is also an offence which may result in prosecution or civil penalty.

Enforcement decisions in respect of HMO licensing are to be made in accordance with the legislation, the Licensing Policy and the general principles of this policy.

All licensing decisions are subject to appeal, and details of the appeals process will be given with the decision document.

Part 3 allows for additional and selective licensing in addition to mandatory HMO licensing. The Council do not currently operate these but will keep the need for these under review.

Part 4 provides for additional control measures in relation to residential property including Management Orders.

Part 7 contains additional provisions which includes management regulations, the tests for HMO status and fixed penalty notices (as introduced by the Housing and Planning Act 2015).

There are a range of enforcement options depending on which part of the act is relevant. Typically for Part 1 this may include serving formal notices for which a charge can be made. Failing to comply with a notice can lead to prosecution or a civil penalty (up to £30,000), and work in default with cost recovery. There are additional penalties under the Housing and Planning Act 2016.

Enforcement may also include rent repayment orders, banning orders, management orders, loss of fit and proper status and inclusion on the rogue landlord & agent database.

### **11.2 Environmental Protection Act 1990**

The Council may serve an abatement notice where the premises is in such a state as to be prejudicial to health or a nuisance.

Enforcement for failing to comply with a notice may include the Council undertaking works and recovering the costs incurred and/or bringing a prosecution.

### **11.3 Local Government Miscellaneous Provisions Act 1976**

Section 16 - the Council may serve a notice requiring a person to provide information in connection with land. This includes details of the occupier(s), persons with an interest in the land (e.g. freeholder), who receives rent, (directly or indirectly) etc.

Enforcement for failing to comply with a notice may be by way of prosecution.

Section 33 - The Council has the power to ensure the re-connection (or to prevent the disconnection) of the gas, electricity or water supply, to lettings within a tenanted property. These powers will only be used where the tenants are not responsible for payment of the bill. In properties occupied by a single tenant it is expected that he/she will arrange for a supply in their own name and reconnection by the Council will not normally be considered appropriate.

The owner of the property will be charged the cost of re-connection and/or payment of the bill plus interest. This debt will be recovered either by way of rent from tenants or in the civil court.

## **11.4 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015**

These regulations are used to impose a basic minimum level of smoke detection and where necessary carbon monoxide detection within residential property. The landlord should also check that each alarm is in proper working order on the day that the tenancy begins.

The intention of the regulations is to increase the safety of private sector tenants by ensuring that they have working alarms at the beginning of the tenancy.

Enforcement is via service of a remedial notice. Failure to comply with the notice can lead to work in default, cost recovery and a civil penalty.

## **11.5 Housing and Planning Act 2016**

These introduced a range of measures:

Part 2 – provides greater powers for local authorities to identify and tackle rogue landlords and property agents including, banning orders, a database of rogue landlords/agents and an extension to rent repayment orders.

The database is a new tool for local housing authorities in England to keep track of rogue landlords and property agents. Database users will be able to view all entries on the database, including those made by other local housing authorities. The database can be searched to help keep track of known rogues, especially those operating across council boundaries and will help authorities target their enforcement activities.

Part 5 – this introduced the following:

*Electrical safety standards*- the Secretary of State may make regulations to require private sector landlords to meet electrical safety standards.

*“Fit & Proper” test* - a more stringent test for landlords letting out licensed properties, such as Houses in Multiple Occupation, to help ensure that they have the appropriate skills to manage such properties and do not pose a risk to the health and safety of their tenants; (These will be reflected in PCC’s HMO Licensing Policy).

*Financial penalty as alternative to prosecution under Housing Act 2004* - to be imposed as an alternative to prosecution for certain offences; and increases the fine for overcrowding to an unlimited level.

*Housing information in England*- requires Tenancy Deposit Scheme data to be shared with local authorities; and gives the secretary of a tenants’ association a

right to obtain from the landlord contact information for other leaseholders in a shared block provided that leaseholders have individually consented to their information being made available in this way.

*Client money protection schemes for property agents* – allows the Secretary of State to impose new regulations in relation to client money protection schemes and the Local Authority to enforce membership of one of these schemes.

### **11.6 The Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015**

These introduce measures to improve the energy efficiency of private rented property in England and Wales.

PART 2 - This enables the tenant of a domestic private rented property (“domestic PR property”) to request their landlord’s consent to the tenant making energy efficiency improvements to the property, and place a duty on the landlord, and any superior landlord, not to unreasonably refuse consent to the improvements being made, prescribing exemptions as to when such consent will not be considered to be unreasonably withheld (the “tenants’ energy efficiency improvements” provisions.)

PART 3 - Prescribes a minimum level of energy efficiency, defined with reference to the Energy Performance Certificate EPC (“the minimum level of energy efficiency”), for domestic PR properties and non-domestic private rented properties and provide that, subject to exemptions, a landlord may not:

- grant a new tenancy or renew an existing tenancy of a private rented property after 1st April 2018, continue to let a domestic PR property after 1st April 2020,
- or continue to let a non-domestic private rented property after 1st April 2023,

where its energy performance falls below the minimum level of energy efficiency.

It also provides for enforcement by way of fixed penalty notices and gives information on exemptions.

### **11.7 The Redress Schemes for Letting Agency Work and Property Management Work Requirement to Belong to a Scheme etc.) (England) Order 2014**

This Order requires persons who engage in letting agency work or property management work to belong to a redress scheme that has been approved by the Secretary of State or that has been designated as a government administered

redress scheme. It excludes persons who engage in certain types of activity from the requirement to belong to such a scheme. It makes provision for the enforcement of the duty to belong to a scheme.

**PART 2 Lettings agency work** - In the Act, lettings agency work means things done by an agent in the course of a business in response to instructions from:

- a private rented sector landlord who wants to find a tenant; or
- a tenant who wants to find a property in the private rented sector.

In the Act, lettings agency work does not include the following things when done by a person who does no other work falling within the definition above:

- publishing advertisements or providing information;
- providing a way for landlords or tenants to make direct contact with each other in response to an advertisement or information provided;
- providing a way for landlords or tenants to continue to communicate directly with each other.

**PART 3 Property management work** - In the Act, property management work means things done by a person in the course of a business in response to instructions from another person who wants to arrange services, repairs, maintenance, improvement, or insurance or to deal with any other aspect of the management of residential premises.

**PART 4 Enforcement** - Allows for making a monetary penalty not exceeding £5,000.

### **11.8 Public Health Act 1936**

This allows the LA to take action in respect of defective WCs capable of repair. There is a power of entry in relation to these activities.

Enforcement is by way of formal notice. Failing to comply with a notice can lead to work in default and prosecution with ongoing fine.

### **11.9 Building Act 1984:**

This allows the Local Authority to take action in relation to certain drainage defects and food storage provision. It also has provisions in relation to defective premises and action as an alternative to Section 80 of the Environmental Protection Act 1990.



Enforcement is by way of formal notice. Failing to comply with a notice can lead to work in default, cost recovery and prosecution with ongoing fine.

### **11.10 Deregulation Act 2015**

Section 33 provides some protection for assured shorthold tenants in the private rented sector against retaliatory eviction, where such tenants are suffering from poor or unsafe property conditions. The council will raise awareness of this and encourage tenants to contact their landlord, in writing, in the first instance.

### **11.11 Future / other legislation**

Where additional legislation not set out within this policy is available for use, in relation to housing, by the Housing Improvement Team within Plymouth City Council it will be utilised in line with the legislation, any relevant internal policy and/or the underlying enforcement approach outlined within this policy without the need for updating this policy.

## **12.0 CONSULTATION**

We have consulted with a number of partners, internal and external agencies including: South West Landlord Association, Plymouth Community Homes, Plymouth Residential Lettings, Trading Standards, Plymouth Access To Housing, Plymouth Citizen's Advice, AHAH lets, Plymouth University and Shelter.

## **13.0 IMPLEMENTATION**

Once agreed and signed by Cabinet the policy will be announced by publishing it on the Council's website, using social media, dissemination via the local landlord guilds and presentation to the Private Rented Charter Group.

The policy needs to be properly implemented to ensure that there is consistency in its application.

Decisions to take formal enforcement activity are jointly made by the case officer and Housing Improvement (Technical Lead). This enables the process of the case, and the course of action, to be reviewed.

Each closed case is subject to random auditing; this is to ensure that proper procedures have been followed.

## **14.0 FAIRNESS**

The Council's policy is to treat all those that it interacts with fairly and on an equitable basis founded on case by case circumstances, regardless of gender, sexual orientation, marital status, race, nationality (including citizenship), disabilities or religious or political affiliation.

Plymouth's agreement with the Fairness Commission states that Plymouth City Council should commit to fairness in what it does and how it does it.

In this instance the following principles apply:

- The city should give priority to those in greatest need when it allocates resources.
- Things that make the biggest difference to people's lives should get priority when deciding where resources go.
- Preventing inequalities is more effective than trying to eliminate them.
- Services should be provided 'with' people, not 'for' them.

## **15.0 REVIEW**

The Council will keep under review the effectiveness of their chosen regulatory activities in delivering the desired outcomes and make any necessary adjustments accordingly.

## **16.0 COMPLAINTS AND COMMENTS ABOUT THIS POLICY**

Comments, complaints or suggestions about the Policy or any aspect of our work are welcomed. The Council's standard comments, complaints and appeals procedure will be followed. If you would like a copy of this, please contact us on Tel 01752 398500 or go to the website [www.plymouth.gov.uk](http://www.plymouth.gov.uk).

If a complaint is about a Freedom of Information request, you can complain to the Information Commissioner, [www.ico.org.uk](http://www.ico.org.uk).

Enquiries about this policy can be made by:

Email: [communityconnections@plymouth.gov.uk](mailto:communityconnections@plymouth.gov.uk)

Tel: 01752 398500

Letter: Community Connections, Plymouth City Council, Ballard House, Plymouth, PL1 3BJ

# 17.0 ANNEX A

## English Housing Survey 2016-17

Exerts from statistics indicate:

- A near doubling of private rented tenures in last 13 years
- Typically private rented tenants are working individuals
- There is increasing overcrowding
- Decrease in number of non-decent homes
- Increase in average SPA rating

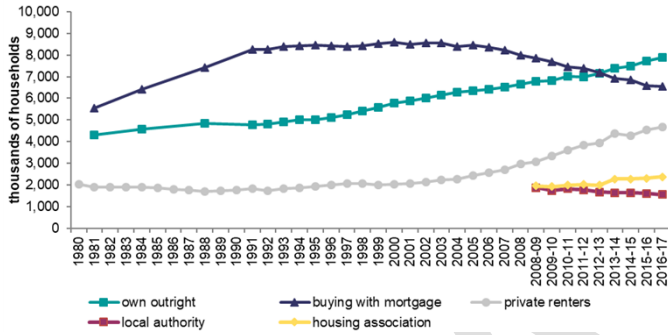


Figure 1.10: Overcrowding, by tenure, 1996-97 to 2016-17

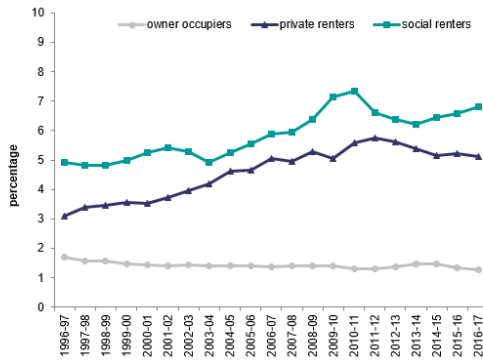


Figure 2.5: Non-decent homes, by tenure, 2006 to 2016

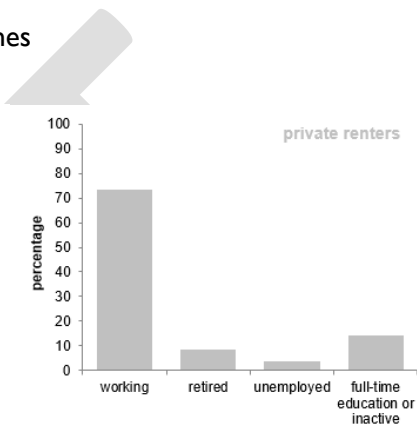
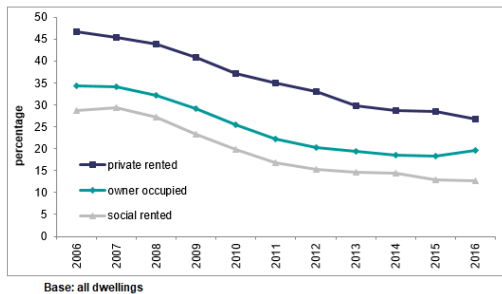


Figure 1.12: Mean life satisfaction score, by tenure, 2016-17

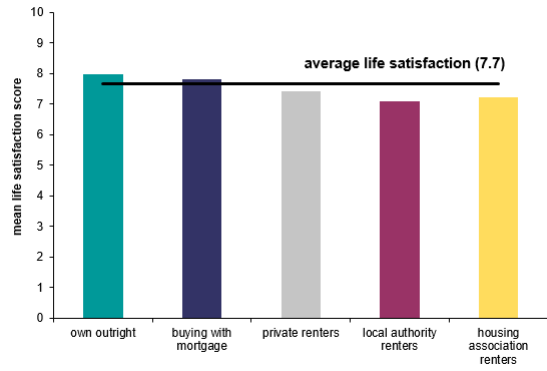
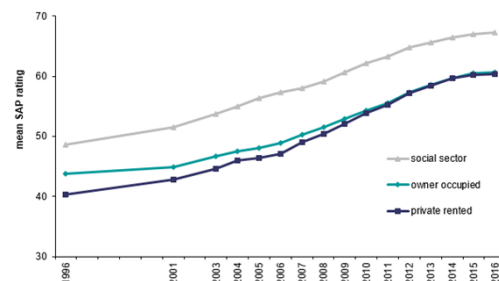


Figure 2.8: Mean SAP rating, by tenure, 1996 to 2016



## 18.0 ANNEX B

### *Guidance for Improving Dwelling where there is the Hazard of Excess Cold*

The unit to be improved (the house or flat, or any dwelling within it, must no longer present a category I hazard. In this context (HHSRS) an individual bedsit or a bed/study in a shared house would constitute a dwelling.

Where the dwelling is assessed as having a SAP<sup>10</sup> of 34 or less<sup>11</sup>, it will usually be deemed to be a Category I hazard (although an exception to this may be where the SAP rating is reduced by the presence of less efficient secondary heating systems).

Even if a dwelling has a SAP rating of above 34, it may still be considered to be a category I hazard. This will reflect cases where:

- (a) the SAP process does not fully describe the property; it will include issues of disrepair of heating appliances and the building fabric (leading to excessive heat loss) and/or
- (b) there are other factors within the HHSRS operational guidance<sup>12</sup> which indicates that a category I hazard exists.

The SAP process is not designed to apply to non self-contained units of accommodation (e.g. bedsits and not fully self-contained flats) even though those are considered dwellings for housing purposes. Nevertheless, it can still provide useful information on the heat loss from the living accommodation in such units. The “SAP” value produced can be used as an indicative assessment of the Excess Cold hazard, and a value of 34 or less will usually be a Category I hazard. The process can also be used to specify the remedial works which may be necessary. An assessment of the whole HMO may be of some value although it does not relate to any individual dwelling within that HMO.

A fully controlled gas central heating system (fitted in accordance with current building regulation standards and good practice) is the preferred option. This will usually be the most economical means of providing adequate heating and will be the benchmark for improvement where there is a gas supply within the road.

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<sup>10</sup> SAP; Standard Assessment Procedure, the government’s adopted method of assessment of energy performance in buildings. RDSAP (Reduced Data SAP) is the derivative used to assess existing houses and provide Energy Performance Certificates and is applicable for these purposes.

<sup>11</sup> A decent Home; Definition and guidance for implementation (DCLG June 2006).

<sup>12</sup> Housing Health and Safety Rating System Operating Guidance (ODPM February 2006).

The hazard of Excess Cold does not relate to the economical provision of hot water even though SAP includes the cost of water heating. Energy improvements to the hot water system cannot be demanded, but they will be recommended. In addition, consideration may be given to offsetting any requirements for additional insulation against the benefits that may be gained from improvements to hot water heating (as assessed by SAP).

Owners may elect to provide an alternative heating system, but if they do so they may be required to provide additional insulation to compensate for any loss of any heating efficiency in the system they use. The overall SAP target will be based upon that of providing gas central heating (as in 5 above); additional insulation will probably be needed to balance the less efficient heating system selected.

Where there is a serviceable gas boiler no more than 10 years old there will usually be no requirement to replace it with a new boiler. The current building regulations require a SEDBUK<sup>13</sup> A or B rated boiler (in effect, one of a range of specified condensing boilers). These are about 30% more efficient than the traditional design which has a concurrent effect on heating adequacy and SAP rating.

Where there is no gas supply, or the HMO is occupied as bedsits on individual tenancies, it may be appropriate to consider night storage heating. However, due to the lower efficiency of these systems higher standards of insulation may be required to compensate.

Insulation is to be provided to all accessible loft voids by laying between and/or across the joists to current Building Regulation standards. Loft access panels may be needed to reach such areas and improved roof space ventilation may also be required.

Insulation may be required to insulate sloping ceilings, ceilings under inaccessible loft areas, dormer wall/ceiling areas and external walls depending upon the individual circumstances of the dwelling. The option of considering such works will only be considered where (1) the proposed improvements to heating and loft insulation are insufficient to remove the category I hazard of Excess Cold, (2) the existing lack of insulation also contributes to a significant other problems (e.g. damp and mould or Excess Heat) or (3) there is disrepair to an element and it is cost effective to upgrade insulation at this time.

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<sup>13</sup> SEDBUK; Seasonal Efficiency of Domestic Boilers in the UK (the database for assessment of the efficiency of boilers). This has been incorporated into the Boiler Efficiency Database (BEDF).

Where the above insulation is required, consideration will initially be given to applying a roll on foam based material (e.g. Sempatap Thermal). If this is insufficient (or concurrent repairs are required), works may be required to insulate in accordance with Building Regulations.

Major insulation works have a prolonged “pay back” period. In the case of double glazing, this can be 30 years. Internal and external dry lining have pay back periods of about 10 years<sup>14</sup>. The cost effectiveness of these works will change when there are other matters which can be addressed concurrently (e.g. repairs to render, plasterwork or windows).

Building regulations now require that when significant works are being carried out to a construction element that element is upgraded to the standards of the Approved Document to Part L which deal with domestic dwellings –ADLIB (existing buildings). Exemptions to this regulation apply where (a) the work is technically not feasible or (b) the simple payback period exceeds 15 years.

The client may elect to adopt other heating/insulation/alternative energy solutions which will achieve the above standards and comply with legislative requirements.

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<sup>14</sup> HHSRS.org.uk March 2007

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