

Public Document Pack

Mid Devon District Council

Cabinet

**Thursday, 4 April 2019 at 2.15 pm
Exe Room, Phoenix House, Tiverton**

**Next ordinary meeting
Thursday, 30 May 2019 at 2.15 pm**

Those attending are advised that this meeting will be recorded

Membership

Cllr C J Eginton	Leader and Environment
Cllr R J Chesterton	Deputy Leader and Planning and Economic Regeneration
Cllr P H D Hare-Scott	Finance
Cllr C R Slade	Community Well Being
Cllr Mrs M E Squires	Working Environment and Support Services
Cllr R L Stanley	Housing

A G E N D A

Members are reminded of the need to make declarations of interest prior to any discussion which may take place

- 1. Apologies**
To receive any apologies for absence.
- 2. Public Question Time**
To receive any questions relating to items on the Agenda from members of the public and replies thereto.
- 3. Declarations of Interest under the Code of Conduct**
Councillors are reminded of the requirement to declare any interest, including the type of interest, and reason for that interest, either at this stage of the meeting or as soon as they become aware of that interest.
- 4. Minutes of the Previous Meeting (Pages 7 - 14)**
Members to consider whether to approve the minutes as a correct record of the meeting held on 4 April 2019.
- 5. Electric Car Charging Points (Pages 15 - 22)**
Arising from a report of the Group Manager for Corporate Property and Commercial Assets, the Environment Policy Development Group has recommended that the Council considers the provision of home electric car charging points in all new developments across the district for all

new properties.

6. **Private Sector Housing Fees and Charges 2019/20** (Pages 23 - 30)
Arising from a report of the Group Manager for Public Health and Regulatory Services, the Homes Policy Development Group has made the following recommendations:

- a) The revised fees and charges as set out in Annex 1 be approved.
- b) That Public Health and Regulatory Services are authorised to enforce The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 as amended 2016.
- c) That a charge is made for providing copies of the Mandatory HMO Licensing Public Register when requested.

7. **Housing Assistance Policy, Devon Wide** (Pages 31 - 70)
Arising from a report of the Group Manager for Public Health and Regulatory Services, the Homes Policy Development Group has recommended that:

- a) The revised Housing Assistance Policy 2019-22 attached in Annex 1 be approved.
- b) The ECO Flex Statement of Intent (SOI) attached in Annex 4 associated with the revised Housing Assistance Policy be approved.
- c) Delegated authority be given to the Group Manager for Public Health and Regulatory Services in consultation with the Cabinet Member for Housing to make minor adjustments to the policy based on demand and local priorities.
- d) Delegated authority be given to the Group Manager for Public Health and Regulatory Services in consultation with the Cabinet Member for Housing to suspend some or all non-mandatory parts of the revised Housing Assistance Policy attached in Annex 1 (all elements of the Policy other than section 4.1 Disabled Facilities Grants) if adequate funding is not available.

8. **Grand Western Canal & Exe Rail Partnership** (Pages 71 - 74)
Arising from a report of the Group Manager for Growth, Economy and Delivery, the Economy Policy Development Group has made the following recommendations:

- a) That the contribution to the Devon & Exeter Rail Project be reviewed following formation of a new Rail Forum.
- b) That the Council continues to offer an annual grant of £45,000 for 2019/20 to the Grand Western Canal to support its maintenance.
- c) That an assessment be undertaken, in liaison with Devon County

Council, prior to the financial year 2020/21 to inform decision making with regard to the level of future grant support for the Canal.

9. **Environmental Health Fees and Charges 2019/20** *(Pages 75 - 84)*
Arising from a report of the Group Manager for Public Health and Regulatory Services, the Community Policy Development Group has made the following recommendations: to approve the Environmental Health Fees and Charges for 2019/2020 and that the missed appointment charge to be in line with the missed appointment charge within the extant Housing Policy used by Building and Housing Services.
10. **Operations Directorate Enforcement Policy** *(Pages 85 - 172)*
Arising from a report of the Group Manager for Public Health and Regulatory Services, a joint meeting of the Community, Environment and Homes Policy Development Groups has made the following recommendation: that Cabinet recommend to Full Council that the Operations Directorate Enforcement Policy be approved.
11. **Financial Monitoring**
To receive a verbal report from the Deputy Chief Executive (S151) presenting a financial update in respect of the income and expenditure so far in the year.
12. **Performance and Risk** *(Pages 173 - 204)*
To consider a report of the Director of Corporate Affairs and Business Transformation providing Members with an update on the performance against the Corporate Plan and local service targets.
13. **Notification of Key Decisions** *(Pages 205 - 216)*
To note the contents of the Forward Plan.
14. **Access to Information - Exclusion of the Press and Public**
During discussion of the following item(s) it may be necessary to pass the following resolution to exclude the press and public having reflected on Article 12 12.02(d) (a presumption in favour of openness) of the Constitution. This decision may be required because consideration of this matter in public may disclose information falling within one of the descriptions of exempt information in Schedule 12A to the Local Government Act 1972. The Cabinet will need to decide whether, in all the circumstances of the case, the public interest in maintaining the exemption, outweighs the public interest in disclosing the information.

To consider passing the following resolution so that financial information may be discussed.

Recommended that under Section 100A(4) of the Local Government Act 1972 the public be excluded from the next item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 3 respectively of Part 1 of Schedule 12A of the Act,

namely information relating to the financial or business affairs of any particular person (including the authority holding that information)

15. **Moorhayes Community Centre, Tiverton** *(Pages 217 - 302)*
To consider a report of the Group Manager for Corporate Property and Commercial Assets regarding options for the disposal of an asset.

Stephen Walford
Chief Executive

Wednesday, 27 March 2019

Anyone wishing to film part or all of the proceedings may do so unless the press and public are excluded for that part of the meeting or there is good reason not to do so, as directed by the Chairman. Any filming must be done as unobtrusively as possible from a single fixed position without the use of any additional lighting; focusing only on those actively participating in the meeting and having regard also to the wishes of any member of the public present who may not wish to be filmed. As a matter of courtesy, anyone wishing to film proceedings is asked to advise the Chairman or the Member Services Officer in attendance so that all those present may be made aware that is happening.

Members of the public may also use other forms of social media to report on proceedings at this meeting.

Members of the public are welcome to attend the meeting and listen to discussion. Lift access the first floor of the building is available from the main ground floor entrance. Toilet facilities, with wheelchair access, are also available. There is time set aside at the beginning of the meeting to allow the public to ask questions.

An induction loop operates to enhance sound for anyone wearing a hearing aid or using a transmitter. If you require any further information, or

If you would like a copy of the Agenda in another format (for example in large print) please contact Sally Gabriel on:

Tel: 01884 234229

E-Mail: sgabriel@middevon.gov.uk

Public Wi-Fi is available in all meeting rooms.

MID DEVON DISTRICT COUNCIL

MINUTES of a **MEETING** of the **CABINET** held on 7 March 2019 at 2.15 pm

Present

Councillors

C J Eginton (Leader)
R J Chesterton, P H D Hare-Scott,
C R Slade, Mrs M E Squires and
R L Stanley

Also Present

Councillor(s)

Mrs C P Daw, F W Letch, F J Rosamond and N A Way

Also Present

Officer(s):

Andrew Jarrett (Deputy Chief Executive (S151)), Andrew Pritchard (Director of Operations), Jill May (Director of Corporate Affairs and Business Transformation), Kathryn Tebbey (Group Manager for Legal Services and Monitoring Officer), Jenny Clifford (Head of Planning, Economy and Regeneration), David Green (Group Manager for Development), Stuart Noyce (Group Manager for Street Scene and Open Spaces), Adrian Welsh (Group Manager for Growth, Economy and Delivery), Jane Lewis (Communications and Engagement Manager) and Carole Oliphant (Member Services Officer)

157. APOLOGIES (00.00.58)

There were no apologies.

158. PUBLIC QUESTION TIME (00.01.09)

There were no questions raised by members of the public.

159. DECLARATIONS OF INTEREST UNDER THE CODE OF CONDUCT (00.01.25)

The following interests were declared:

Councillor	Interest	Reason
C J Eginton	Personal	Item 9 – owned a shop in Tiverton
R L Stanley	Personal	Item 16 – Director of 3 Rivers Development Ltd

160. MINUTES OF THE PREVIOUS MEETING (00.01.53)

The minutes of the previous meeting were approved as a correct record and signed by the Leader.

161. S106 GOVERNANCE (00.02.09)

The Leader advised that the item had been deferred to a future meeting.

162. COSTS IN THE PLANNING SERVICE (00.03.12)

The Cabinet had before it and **NOTED** a * report of the Head of Planning, Economy and Regeneration highlighting some of the headline findings of the recent costs exercise to provide Members with background information on suggested service improvements and changes.

The Cabinet Member for Planning and Economic Regeneration outlined the contents of the report stating that a review of planning service costs was required. He explained that at the last review there had been buy in and collaboration with other local authorities but that they were reluctant to join in with a review of their services on this occasion. He explained that the report gave a comprehensive view of the planning service and what it cost to run.

Consideration was given to:

- Full on costs to reflect the true cost of service provision
- Efficiency savings
- Cost of applications determined under delegated powers by officers verses those which went through the democratic process via Planning Committee
- Inability to recover all costs as planning fees were determined by the Government and legislation
- Number of planning appeals

Note: *Report previously circulated, copy attached to minutes.

163. DISCRETIONARY FEE SETTING IN DEVELOPMENT MANAGEMENT (00.13.21)

The Cabinet had before it a * report of the Head of Planning, Economy and Regeneration regarding discretionary charges.

The Cabinet Member for Planning and Economic Regeneration outlined the contents of the report stating that officers had been tasked with suggesting ways to reimburse some costs. He explained that the charge was for face to face consultations only and that the Planning service would continue to provide a free Planning Duty Officer Service by telephone and over the internet.

In response to questions, the Group Manager for Development explained that South Hams District Council had trialled the fee for 12 months and it had proved to be popular with customers who liked the set 30 minute time slot with a Planning Officer rather than having to wait for them to become available after dealing with other applicants.

RESOLVED that the introduction of a fee for the Planning Duty Officer Service be initially set at £30 (plus VAT)

(Proposed by Cllr R J Chesterton and seconded by Cllr R L Stanley)

Note: *Report previously circulated, copy attached to minutes.

164. CREDITON TOWN CENTRE MASTERPLAN (00.16.22)

The Cabinet had before it a * report of the Head of Planning, Economy and Regeneration outlining the scope for the commissioning of consultants to assist in the preparation of a Masterplan Supplementary Planning Document and Delivery Plan (SPD) for Crediton Town Centre in the budget years 2020/21.

The Cabinet Member for Planning and Economic Regeneration outlined the contents of the report stating that the initial work was primarily to define the scope of the Crediton Town Centre Masterplan. He said the key to focus growth in the main towns was to develop a Masterplan which sat alongside and supplemented the Neighbourhood Plan. He explained that the engagement of the local community was essential for it to succeed and there would be two stages of public consultation.

The local ward members for Crediton welcomed the focus on the town and acknowledged that local people and organisations should be involved in the very early stages of the development of a Masterplan.

Consideration was given to:

- Local Ward Members being consulted
- Inclusion of the local Parishes in the consultation

RESOLVED that

- i) The scope and geographical area of the Masterplan be agreed.
- ii) Delegated authority be given to the Head of Planning, Economy and Regeneration in consultation with the Cabinet Member for Planning and Economic Regeneration to engage consultants to assist with the preparation of a Crediton Town Centre Masterplan and Delivery Plan in the budget year 20/21.

(Proposed by Cllr R J Chesterton and seconded by Cllr Mrs M E Squires)

Note: *Report previously circulated, copy attached to minutes.

165. **FUTURE HIGH STREETS FUND (00.31.04)**

The Cabinet had before it a * report of the Head of Planning, Economy and Regeneration analysing the three market towns and seeking to prioritise which of them should be selected to form the basis of the single expression of interest which is allowable under this fund. It also identified the potential for a further expression of interest to be submitted for the separate heritage part of the fund.

The Cabinet Member for Planning and Economic Regeneration outlined the contents of the report stating that the Government had released a pot of money to regenerate Town Centres and that all three of the districts towns, Tiverton, Cullompton and Crediton, were eligible. He explained that only one town could be applied for and that because the Tiverton Town Centre Masterplan was so well advanced that it was felt that this would be the sensible option.

He explained that the Council could attempt to raise funds for Cullompton from a grant from an architectural heritage fund and now that the recent delivery of a plan for a relief road was complete it was felt that an application would be looked upon favourably by Historic England.

Consideration was given to:

- Stage one of the Tiverton regeneration was ongoing.
- Crediton did not currently qualify for grant funding but this could be revisited in the future.
- Working closely with the County Council to deliver regeneration in the event of a successful bid.

RESOLVED:

- i) That delegated authority be given to the Deputy Chief Executive (S151) in consultation with the Cabinet Member for Planning and Economic Regeneration and the Cabinet Member for Housing to submit an Expression of Interest to the Future High Streets Fund and to determine the financial amount sought under the fund;
- ii) That the expression of interest is made for Tiverton Town Centre; and
- iii) That further delegated authority be given to the Deputy Chief Executive (S151) in consultation with the Cabinet Member for Planning and Economic Regeneration and the Cabinet Member for Housing to submit a further Expression of Interest (or equivalent) if the opportunity presents for the regeneration of Cullompton's historic High Street through the Heritage element of the Future High Streets Fund and to determine the financial amount sought under the fund.

(Proposed by Cllr R J Chesterton and seconded by Cllr C R Slade)

Note:

- a) Cllr C J Eginton declared a personal interest as he owned a shop in Tiverton.
- b) *Report previously circulated, copy attached to minutes.

166. VEHICLE SUPPLY AND MAINTENANCE CONTRACT (00.39.49)

The Cabinet had before it a *report of the Group Manager for Street Scene and Open Spaces advising Members on the results of the procurement exercise for the provision of fleet supply and maintenance and seeking approval to award the contract to the successful bidder.

The Cabinet Member for Finance outlined the contents of the report stating that the Vehicle Hire Contract would be more efficient than the current practice of purchasing and servicing vehicles outright.

Consideration was given to:

- Any extension to the contract at the end of the term would be by mutual consent with Exeter City Council
- The contract had been tendered jointly but there would be two separate contracts run independently with MDDC and Exeter City Council

RESOLVED that

- (i) The contract be awarded jointly with Exeter City Council for fleet supply and maintenance to Supplier C with effect from 1 June 2019 for a term of 7 years with an option for a 7 year extension.
- (ii) The Group Manager for Street Scene & Open Spaces explores further opportunities for joint working for Fleet Management.

(Proposed by Cllr P H D Hare-Scott and seconded by Cllr R L Stanley)

Note: *Report previously circulated, copy attached to minutes.

167. SUPPORTING THE FORMATION OF A SOUTH WEST MUTUAL BANK (00.43.09)

The Cabinet had before it a * report of the Chief Executive seeking approval to invest £49,995 to support the next stage in the setting up of South West Mutual.

The Deputy Chief Executive (S151) outlined the contents of the report stating that a number of Local Authorities were making investments including South Hams, West Devon, East Devon and Teignbridge. There were ongoing discussions with Plymouth, Devon County, Somerset and Dorset who were likely to consider investing in round two. The cost of officers working on the scheme was being met by the social investment business fund and not borne by MDDC.

Consideration was given to:

- The reduction in numbers of High Street Banks servicing our Towns and Parishes
- The importance of Local Authorities supporting their communities with initiatives which benefitted them
- The risks associated with the scheme
- The need for the Council to be regularly updated by the bank

RECOMMENDED to Council that:

1. The investment of £49,995 in South West Mutual Bank for the reasons set out in the report be approved, the investment to be funding from the additional funds received from the 100% Business Rates Pilot Scheme.
2. Delegated authority be given to the Deputy Chief Executive (S151 to conclude the ordinary share acquisition.

(Proposed by The Chairman)

Note: *Report previously circulated, copy attached to minutes.

168. **FINANCIAL MONITORING (01.02.35)**

The Cabinet Member for Finance provided a verbal report stating that the financial deficit had reduced to £45k and this was extremely encouraging.

169. **CABINET MEMBER DECISIONS (01.03.14)**

The following Cabinet Member decisions were **NOTED**:

Cllr P H D Hare-Scott:

To close the bottom half of the Station Road pay and display Car Park Cullompton on Saturday 13th April 2019 between 6am and 2pm.

REASON FOR DECISION:

The Cullompton Farmers Market Committee Group have approached the Council with a request to close part of the Station Road car park in Cullompton to host Cullompton Spring Festival.

They have requested on Saturday 13th April from 6am until 4pm to close and erect stalls to the lower part of the car park so stalls can be erected, this would mean the upper car park would be still available for pay and display and permit holders to use but the reduced number of spaces would result in a reduced income.

Cllr R J Chesterton:

Increase Building Control Fees by approximately 3%.

REASON

To maintain cost recovery for Building Control activity. Building Control fees were last changed in 2018 and this change keeps fees in line with inflation and ensures that the service continues to cover its costs.

170. NOTIFICATION OF KEY DECISIONS (01.04.11)

The Cabinet had before it, and **NOTED**, its rolling plan * for March 2019 containing future key decisions.

Note: *Plan previously circulated, copy attached to minutes.

171. ACCESS TO INFORMATION - EXCLUSION OF THE PRESS AND PUBLIC (01.04.25)

Prior to considering the following item on the agenda, discussion took place as to whether it was necessary to pass the following resolution to exclude the press and public having reflected on Article 15 15.02(d) (a presumption in favour of openness) of the Constitution. The Cabinet decided that in all the circumstances of the case, the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

It was therefore:

RESOLVED that under Section 100A(4) of the Local Government Act 1972 the public be excluded from the next item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 3 respectively of Part 1 of Schedule 12A of the Act, namely information relating to the financial or business affairs of any particular person (including the authority holding that information)

(Proposed by the Chairman)

172. 3 RIVERS DEVELOPMENT LIMITED - BUSINESS PLAN

The Cabinet had before it a * report of the Deputy Chief Executive (S151) and the 3 Rivers Developments Limited Acting Managing Director requesting approval of the draft 5 year business plan for 3 Rivers Developments Limited.

The Cabinet Member for Housing outlined the contents of the report.

Returning to open session the Cabinet:

RESOLVED that the draft 5 year business plan for 3 Rivers Developments Limited be approved.

(Proposed by the Chairman)

Notes:

- i) Cllr R L Stanley declared a personal interest as a Director of 3 Rivers Developments Limited;
- ii) *Report previously circulated.

(The meeting ended at 3.37 pm)

CHAIRMAN

ENVIRONMENT POLICY DEVELOPMENT GROUP

5 MARCH 2019

ELECTRIC VEHICLE CHARGING POINTS

Cabinet Member(s): Cllr Ray Stanley – Portfolio holder for Housing & Property Services

Responsible Officer: Andrew Busby – Group Manager for Corporate Property and Commercial Assets

Reason for Report: To provide members with an overview of the progress installing electric charge points in the District for electric/hybrid vehicles and to update members on the performance of electric chargers installed at our leisure centres.

RECOMMENDATION: Members to note the content of the report. Officers to continue with the review of the provision of electric car charging facilities in light of growing popularity of ULEVS (Ultra Low Emission Vehicles).

Financial Implications: There are currently three leases with an electric car charging provider called Instavolt. These chargers are located at Exe Valley Leisure Centre, Culm Valley Sports Centre and Lords Meadow Leisure Centre. Each charger occupies two car parking spaces which results in an income for the authority detailed in item 8.2.

Legal Implications: It is the view of officers that the recommendations have no legal implications. Further consideration will be given to the legal implications should Property Services recommend in the future to proceed with installing an electric vehicle charging infrastructure.

Risk Assessment: The risk is deemed to be low and each charger is maintained by the provider, therefore the risk to the user is the responsibility of the provider. The Council complete duty of care checks on the equipment.

Equality Impact Assessment: Not applicable for this report.

Relationship to Corporate Plan: Priority 4: Environment Aim 2

1.0 Background

1.1 A request was made for an item to be brought to a future committee meeting to outline progress in relation to installing electric charge points. This report details the background in terms of Central Government policy and incentives for Ultra Low Emission Vehicles (ULEVs) and the types of ULEVs available.

1.2 The Government has demonstrated its commitment to increase (ULEVs) through the pledge to end the sale of all new conventional petrol and diesel cars by 2040. ULEVs are vehicles with pure electric engines, plug-in hybrid engines or cars with CO2 emissions below 75g/km at the tailpipe. The Government's rationale for increasing ULEVs is to help promote green manufacturing and jobs as well as reducing emissions from road transport.

Increasing the uptake of ULEVs can have a positive impact on air quality by reducing the nitrogen dioxide emissions from conventional car engines.

- 1.3 Department for Transport statistics (2018) indicate that during 2018 Q2, 15,600 ultra-low emission vehicles (ULEVs) were newly registered in the United Kingdom, an increase of 37% on 2017 Q2. ULEVs made up 2.1% of all new registrations. Consequently to support the increase in ULEVs the Government is introducing a number of incentives and enforcement measures including increasing vehicle tax for new non-electric cars, providing more funding for electric charging infrastructure, and working with the car industry to promote electric vehicles including through the Go Ultra Low initiative.
- 1.4 The Automated and Electric Vehicles Act 2018 came into force on the 19th of July 2018. The Act gives Government powers to ensure that consumers can use publicly accessible charge points without need for multiple memberships, ensure the provision of electric charging infrastructure at key strategic locations such as Motorway Service Areas and leisure centres and require that charge points have 'smart' capability. (Smart capability means that the charger has the ability to communicate with the battery management system in order to control and monitor the charging process, this will reduce high peaks of electricity demand and minimise pressure on the grid).
- 1.5 The Government currently provides grants for consumers to buy new ULEV and there are also a number of schemes and grants administered by the Office for Low Emission Vehicles (OLEV) to support the installation of electric vehicle charging infrastructure:
 - **Electric Vehicle Home Charge Scheme** – Provides grant funding up to 75% towards the cost of installing electric vehicle charge points at domestic properties across the UK;
 - **Workplace Charging Scheme** - voucher-based scheme that provides support towards the up-front costs of the purchase and installation of electric vehicle charge points, for eligible businesses, charities and public sector organisations;
 - **On-street Residential Chargepoint Scheme** - The on-street Residential Chargepoint Scheme (ORCS) provides grant funding for local authorities towards the cost of installing on-street charge points for residents with no access to off street parking to charge plug in electric vehicles (funding is for 75% of the capital costs).

2.0 Electric Vehicles and Charging Infrastructure

- 2.1 Ultra Low Emission Vehicles (ULEVs) comprise three types of vehicle:
 - Pure electric - powered solely by a battery charged from mains electricity with a single charge range typically of up to 100 miles.
 - Plug-in hybrid - a vehicle with a battery for short trips of perhaps 10-35 miles and a standard petrol or diesel engine for longer journeys.
 - Extended range vehicles – powered by a battery with an internal combustion engine generator on board. The vehicle is always powered by the electric motor and has a battery range of about 50 miles which is extended by the generator, powered by the petrol engine, for up to 310 miles of motoring.

- 2.2 The range of an electric vehicle is dependent on a number of factors including weather, topography, and driving style. The use of lights, heaters/air conditioning and windscreen wipers will all affect the number of miles that can be travelled on a single charge. Urban driving is more suitable for electric vehicles as there is more energy recovery from braking, whereas aggressive driving and steady speed driving such as on motorways can be detrimental to battery life with the result in as little as 60% of the reported range of the vehicle being achieved.
- 2.3 The majority of ULEV car owners recharge their vehicles at their home location overnight and do not make use of public recharging points. Research shows that most of the journeys made using electric vehicles are for relatively short distances within the range of a single charge of the vehicle. Currently there are three main vehicle charging options available:
- Rapid charging (43kW to 50kW) – supply either alternating current (AC) or direct current (DC) from a charging unit. Charges an electric vehicle to around 80% charge in 30 minutes. Cost of equipment c. £15-£40k and annual maintenance approximately £1-£5k. We the Council have this type of charger on the premises at EVLC, LMLC and CVSC.
 - Fast charging (7kW to 22kW) – all AC and supply charge times of 3-4 hours. Many commercial and public on-street charges use this technology. Cost of equipment c.£1.7-£5k and annual maintenance approximately £400-£900.
 - Slow charging (3kW) – a full charge can take 6-8 hours and this charging option is typical of the provision at domestic properties where vehicles are charged overnight. Cost of equipment is approximately £250-£1k.
- 2.4 The cost of installing a charge point varies greatly depending on the type and rating of the charger and also the ability to connect to a close and suitable power supply. There will also be additional costs associated with site investigation, ducting/cabling, protection to the charge point, possible changes to Traffic Regulation Orders, and changes to traffic signs and road markings.
- 2.5 The Council commissioned Instavolt to install one electric charger at our leisure and sports centres located at Exe Valley, Lords Meadow and Culm Valley. These chargers proved to be successful that resulted in Instavolt increasing the number of chargers to two at each site. All Instavolt chargers cost £0.35 per kWh to use, with no connection fee and no monthly membership fee.

Site performance statistics – January 2019

Station Name	Number of Sessions	Energy Dispensed (kWh)	GHG Savings (kg)	Fuel Savings (Litres)
INSTAVOLT / EXE VALLEY 1	41	404.617	44.388	192.223
INSTAVOLT / EXE VALLEY 2	102	957.947	105.098	455.066
GRAND TOTAL	143	1362.564	149.486	647.289
INSTAVOLT / CULM VALLEY 1	31	322.367	35.364	153.148
INSTAVOLT / CULM VALLEY 2	36	494.444	54.246	234.898
GRAND TOTAL	67	816.811	89.61	388.046
INSTAVOLT / LORDS MEADOW 1	21	232.661	25.524	110.531
INSTAVOLT / LORDS MEADOW 2	31	246.514	27.041	117.103
GRAND TOTAL	52	479.175	52.565	227.634

Mid Devon District Council Overall Figures – Lifetime

Month	Number of Sessions	Energy Dispensed (kWh)	GHG Savings (kg)	Fuel Savings (Litres)
2017	162	1128.865	123.844	536.302
2018	2018	18282.421	1980.989	7670.161
Jan-18	124	776.150	85.154	368.703
Feb-18	85	667.554	73.238	317.133
Mar-18	103	821.588	89.419	390.313
Apr-18	154	1278.351	135.838	607.319
May-18	173	1548.455	163.010	735.645
Jun-18	159	1430.430	145.676	679.556
Jul-18	173	1523.595	165.656	723.796
Aug-18	166	1640.047	179.924	779.132
Sep-18	185	1690.488	185.459	803.125
Oct-18	251	2495.851	273.809	1185.691
Nov-18	199	2045.006	224.352	971.524
Dec-18	246	2364.906	259.454	108.224
2019	262	2658.550	291.661	1262.969
Jan-19	262	2658.550	291.661	1262.969
Grand Total	2442	22069.836	2396.494	9469.432

- 2.6 There are currently six national charging networks: Charge Your Car, Polar network, Ecotricity, PodPoint, ZeroNet and Tesla. Most networks require registration (usually via Smartphone app) and they either charge an annual membership fee which allows members free usage of the charge points or alternatively Pay As You Go options. The Tesla supercharger network is designed exclusively to Tesla electric vehicles. The Council use the Instavolt Rapid Chargers network.

3.0 Current situation in the South West

- 3.1 Table 1 shows the breakdown of charging point connectors in each of the UK regions. Scotland has the most charging points follow by London and the South-East; the regions with the least charging points are Yorkshire and Wales.

Data sourced from <https://www.zap-map.com/> February 2019

Table 1 – Breakdown of charging point connectors in each of the UK regions.

Region	Number of charging points	Percentage across the UK
East Midlands	931	4.8%
East of England	1300	6.7%
Greater London	4454	22.9%
North East	922	4.7%
North West	1362	7%
Northern Ireland	468	2.4%
Scotland	2814	14.4%
South East	2743	14.1%
South West	1650	8.5%
Wales	620	3.2%
West Midlands	1093	5.6%
Yorkshire and the Humber	1032	5.3%
Other		0.4%
TOTAL	19489	100%

4.0 Options for installing additional electric charging infrastructure in Mid Devon

- 4.1 Across the UK the majority of publicly available charging points are sited either in public off-street car parks, private facilities with public access such as supermarkets or motorway service areas, car dealerships or isolated independent outlets. The majority of provision made by local authorities is within public off-street car parks.
- 4.2 In more isolated areas plugin hybrid and extended range vehicles are likely to be the more appropriate lower emission option at the current time. The business case for providing charge points in the more rural parts of the county is not as strong, because demand from ULEV vehicle owners will be less and there can be issues with connections to both an energy source and mobile

networks which increase the cost of providing new infrastructure. However the Group Manager for Corporate Property & Commercial Assets has requested Instavolt to review the potential of further chargers being installed in our Pay & Display and Amenity Car Parks, this will be subject to feasibility of the providers own internal business model.

- 4.3 Property Services will record the number and location of enquiries from the public about EV charging, and at the present time the numbers of queries about charge points, this will develop a better understanding of demand.
- 4.4 Despite these challenges the Council is committed to reviewing the approach to the provision of electric car charging facilities in light of the growing popularity of ULEVs.
- 4.5 Officers will consider the future provision of electric vehicle charging points around our District looking at the feasibility of trialling appropriate electric charging infrastructure; consider whether OLEV (Office for Low Emission Vehicles) grant funding could be used to help implement a network of electric chargers in residential areas.
- 4.6 Given the number of local authorities in the South West there is some complexity in developing a coordinated network of charge points across the county both in terms of ensuring that there is an appropriate level of provision across the county as well as a consistent approach to the infrastructure provided and how it is used including the charges for parking and electricity.
- 4.7 The research and development of electric vehicle technology and associated charging infrastructure is still relatively new and emerging, with advances in battery technology expected to increase the typical range of vehicles and new wireless charging points being developed (including locating charging infrastructure below the road surface). Officers will continue to monitor the changes taking place and investigate suitable options. One of these new options which is technically feasible, and potentially suitable is the conversion of street lighting columns into electric vehicle charge points.

5.0 Legal Implications

- 5.1 Consideration has been given to the potential for any legal implications arising from the recommendations. It is the view of officers that the recommendations have no legal implications. Further consideration will be given to the legal implications should Property Services recommend in the future to proceed with installing additional electric vehicle charging infrastructure. This may include commercial contracts, leases of land for the installation of the infrastructure and ensuring issues of liability are properly accounted for.

6.0 Equalities Implications

- 6.1 Consideration has been given to the potential for any equality impacts arising from the recommendations as this report is for information only. It is the view of officers that at this stage the report does not have an adverse impact on any of the protected characteristics identified in the Equalities Act 2010. Further consideration will be given to the equalities implications should

Property Services decide in the future to proceed with installing electric vehicle charging infrastructures that will be subject to a further committee report.

7.0 Finance

- 7.1 Consideration has been given to the potential for any financial implications arising from the recommendations. It is the view of officers that this recommendation has no financial implications. Property Services will agree financial risk in the future to proceed with installing electric vehicle charging infrastructure.
- 7.2 In summary the Council are receiving £2,300 per annum per site for two electrical charging points at each location.

8.0 Conclusion

- 8.1 As referred to previously in this report the Government is leading on the promotion of electric vehicles to consumers and also in the provision of nationwide electric charging infrastructure, including at fuel stations. The Council has a role, to support the Government's policy to increase the uptake of electric vehicles and to consider whether it is feasible for local authorities to introduce electric charge points in more locations across our District by supporting proposals which seek to deliver opportunities for the use of electric vehicles.
- 8.2 Officers will continue the review of our electric vehicle charging approach and the provision of charging facilities and also monitor the changes in electric vehicle and associated charging infrastructure technologies in the coming years.

Contact for more Information: Andrew Busby, Group Manager for Corporate Property and Commercial Assets – 01884 234948 / abusby@middevon.gov.uk

Circulation of the Report: Cabinet Member Cllr Ray Stanley, Leadership Team

List of Background Papers: Not applicable

This page is intentionally left blank

HOMES POLICY DEVELOPMENT GROUP

12 MARCH 2019

PRIVATE SECTOR HOUSING FEES AND CHARGES 2019/20 AND ENFORCEMENT UPDATE

Cabinet Member: Cllr Ray Stanley
Responsible Officer: Simon Newcombe, Group Manager for Public Health and Regulatory Services

Reason for Report: To provide members with the revised fees and charges in addition to an enforcement update for the relevant statutory and discretionary Private Sector Housing functions within the Community Team of Public Health and Regulatory Services.

RECOMMENDATIONS:

- (1) That Cabinet approve the revised fees and charges as set out in Annex 1.
- (2) That Public Health and Regulatory Services are authorised to enforce The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 as amended 2016.
- (3) That a charge is made for providing copies of the Mandatory HMO Licensing Public Register when requested.

Relationship to the Corporate Plan: This report relates to the economy, homes and community elements for the corporate plan priorities, by recharging for officer time in relation to enforcement activities, Houses in Multiple Occupation (HMO) licensing and recovering costs associated with non-statutory services.

Financial Implications: The revised fees and charges are set out in Annex1 of the report. The fees have been updated to reflect current service delivery costs. Any income generated from this activity is unpredictable based on the nature of enforcement action. It is therefore not possible to forecast any income levels for the year. It is important to remember that that this is not an income-generating stream, but recovering the cost of those services where the Council can lawfully do so. Targets are not therefore appropriate, as this might appear to incentivise enforcement action – which is categorically not the way the service is operated.

Legal Implications: Where there are specific provisions under legislation, statutory functions or discretionary services for fees to be charged then these are indicated in the body of the report. In the event that charges are properly due but are not paid, legal proceedings may be required.

Risk Assessment: There are no major risks. A failure to update the relevant fees and charges could mean we are not able to adequately recover costs where we are able to do so.

Equality Impact Assessment: A full assessment is not necessary for this report. The charges are set and applicable to the service being provided and do not disadvantage any protected characteristics or specific groups.

1.0 Introduction

- 1.1 Private Sector Housing has a duty to ensure that private accommodation meets minimum standards. In particular there are regulations for the licensing, management and use of houses in multiple occupation (HMO), carbon monoxide detectors and smoke alarms, and hazards within the home.
- 1.2 All enforcement activities and relevant fees and charges within this report are set out in compliance with the legislation and the Public Health Services Enforcement Policy adopted in August 2016 and the draft Operations Directorate Enforcement Policy 2019.

2.0 Changes to the fees and charges

- 2.1 A breakdown of the Council's current and proposed charges in respect of the private sector housing functions is included in Annex 1.

HMO Licensing

- 2.2 Section 63(3) of the 2004 Act gives the Council the power to recover all reasonable costs associated with the administration of the HMO licensing function.
- 2.3 The officer time and resources involved in processing a new application have been reviewed and a revised fee calculated. As part of this review the issuing of licence renewals has also been considered.

Mandatory HMO Licensing Public Register

- 2.4 Section 232 of the Housing Act 2004 allows the council to make a reasonable fee for supplying a person with a copy of the register if requested.
- 2.5 It is proposed to charge a nominal administration fee for providing the register in electronic form or hardcopy. Details of the proposed charges can be found in Annex 1.
- 2.6 An extract from the register will be provided on our website free of charge and the charges will only apply for requests for the full register.

Charging for enforcement action

- 2.7 The Housing Act 2004 section 49 gives the local housing authority the power to charge for certain enforcement action. The provisions are clear that only the costs associated with determining whether enforcement action is

necessary, identifying the type of action and the serving of the notice can be recovered.

- 2.8 The average officer time and resources for carrying out these functions have been recalculated and a revised standard fee has been proposed.
- 2.9 The charge can be applied to all enforcement action under part one of the Act; we currently apply the charge to Improvement Notices, Prohibition Orders, Emergency Remedial Action, Emergency Prohibition Orders and Demolition Orders.
- 2.10 A demand for payment of the charge will be applied where Prohibition Orders, Emergency Remedial Action Notices and Emergency Prohibition Orders are served. The charge for a Demolition Orders will also include the survey cost that is required as part of the serving of the order.
- 2.11 This is a change from the previous approach as we propose to charge for Prohibition Orders and Demolition Orders on service rather than where there is non-compliance in order to be more consistent with section 49 of the Act (see 2.7). These are the more complex and serious enforcement actions in respect of private sector housing.
- 2.12 Where an Improvement Notice is served the charge will be applied where there is non-compliance with the notice only. This will encourage compliance with notice requirements and, as these are relatively common notices addressing non-urgent improvements, then this approach is designed to increase housing standards as widely as possible.
- 2.13 It is not considered appropriate to charge for the service of Hazard Awareness Notices as there is no penalty for non-compliance, it is a recommendation of the work to be carried out and it is not placed as a local land charge.

Immigration housing request visits

- 2.14 Historically applications to live and/or work in the UK have required the local housing authority to undertake an inspection of the proposed living accommodation to check its suitability and ensure there would not be overcrowding. These visits no longer need to be undertaken by the local housing authority as part of an application but occasionally the team will receive a request to carry out a visit and provide a report.
- 2.15 As this is not a statutory requirement it is acceptable for the Council to charge for the provision of this service. The proposed fee covers the average amount of officer time involved in dealing with a request, visiting and producing the relevant report.

Financial penalties for Housing Act offences

- 2.16 The Housing and Planning Act 2016 introduces an amendment to the Housing Act 2004 to allow local housing authorities to impose a financial penalty on an owner of a property where they have failed to comply with provisions under

the 2004 Act as an alternative to prosecution. The maximum penalty is £30,000.

Penalty Charges for offences under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015

- 2.17 There is no change to the penalty under these regulations. The Council has already introduced the maximum penalty of £5,000 with a 25% reduction if payment is made within 14 days of the demand for payment.

Financial penalties for offences under the Electrical Safety Standards

- 2.18 Section 122 of the Housing and Planning Act 2016 imposes electrical safety standards for properties let by private landlords. The following section 123 makes provision for the local housing authority to impose a financial penalty on an owner of a property where they have failed to comply with the electrical safety standards.
- 2.19 Neither section has currently been brought into force.

Penalties for offences under The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 as amended 2016

- 2.20 The regulations require that private rented domestic properties meet a minimum energy performance level before they can be rented out. The regulations came into force on 1st October 2017 and from 1st April 2018 landlords of certain domestic properties may not grant a tenancy to new or existing tenants if their property has an EPC (energy performance certificate) rating of band F or G. From 1st April 2020 landlords must not continue to let a domestic property that has already been let if the property has an EPC rating of band F or G.
- 2.21 Local authorities have responsibility for enforcing these regulations which means it can be enforced by either Trading Standards Officers or Environmental Health Officers. It is recommended that the local housing authority should be the enforcing body for the domestic private rented part of the regulations and this would sit within Public Health and Regulatory Services at Mid Devon. Commercial properties are required to be enforced by Trading Standards under the regulations.
- 2.22 Non-compliance with any notice served under the regulations may result in a financial penalty. The regulations set the maximum amount of penalty that can be administered. It is recommended that the maximum fines are agreed for contraventions as detailed in Annex 1.
- 2.23 In addition to a financial penalty the council may serve a Publication Penalty. This means that we can publish details of the landlords breach on a publicly accessible part of the Private Rental Sector (PRS) Exemptions Register and should remain on the register for a minimum of 12-months.

Works in default

- 2.24 As set out by provisions contained in Schedule 3 Part 3 of the Housing Act 2004, it is proposed that interest is to be paid on all costs associated with carrying out works in default (including the costs of the work itself) where the demand for payment remains unpaid after the initial 28 days. A £100 administrative fee is proposed with an interest rate of 3% applied per annum.

Contact for more Information: Tanya Wenham, Team Leader (Community Team) 01884 244610 or twenham@middevon.gov.uk or Simon Newcombe, Group Manager for Public Health and Regulatory Services 01884 244615 or snewcombe@middevon.gov.uk.

Circulation of the Report:

Cllr Ray Stanley, Cabinet Member for Housing
Members of the Homes PDG
Leadership Team
Financial Services
Legal Services
Group Manager for Performance, Governance and Data Security

Annex 1

Mid Devon District Council Public Health and Regulatory Services (Community Team) Private Sector Housing Fees and Charges 2019/20

HMO licensing		
New licence	Fee 2019/20	Previous fee 18/19
3-5 Units	£820	£793
6-10 units	£876	£838
11+ units	£933	£883
Renewal		
3-5 Units	£673	£658
6-10 units	£701	£680
11+ units	£729	£703

HMO Licensing Public Register	
	Charge
Request for full register electronically	£5
Request for full register hardcopy	£8

Charging for enforcement action		
	Charge 2019/20	Previous Charge 18/19
Improvement notice	£438	£333
Prohibition Order	£438	£333
Emergency Remedial Action	£438	£333
Emergency prohibition order	£438	£333
Demolition Order	£438 plus survey fees	£333

Immigration housing request visits		
	Fee 2019/20	Previous Fee 18/19
All requests	£261	£199

Financial penalties	
	Penalty
Smoke and carbon monoxide alarms	£5000 reducing by 25% if paid within 14 days of demand
Electrical Safety Standards	Not yet in force
Housing Act offences	Financial penalty as alternative to prosecution up to £30,000

Energy Efficiency Regulations		
	Penalty	
Renting out a non-compliant property	Less than three months in breach	£2000 and Publication penalty
	Three months or more in breach	£4000 and Publication penalty
Providing false or misleading information on the Exemption register	£1000 and Publication penalty	
Failing to comply with a compliance notice	£2000 and publication penalty	

- These penalties are applied to each property where there is a breach to a maximum of £5000 per property
- Publication penalty – some of the details of the financial penalties are published on the publicly accessible part of the PRS Exemptions Register

Works in default	
	Charge
Interest on works and associated costs	Cost of the work plus £100 admin fee plus 3% interest per annum

This page is intentionally left blank

HOMES POLICY DEVELOPMENT GROUP

12 March 2019

DEVON WIDE HOUSING ASSISTANCE POLICY 2019-22 AND ECO FLEX 3

Cabinet Member: Cllr Ray Stanley
Responsible Officer: Simon Newcombe, Group Manager for Public Health and Regulatory Services

Reason for Report: To present a revised Housing Assistance Policy under Article 4 of the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002 following the one year review of the existing policy that was agreed and adopted in February 2018 (Housing Assistance Policy 2018-19).

RECOMMENDATION(S):

- (1) That Cabinet approve the revised Housing Assistance Policy 2019-22 attached in Annex 1.
- (2) That Cabinet approve the ECO Flex Statement of Intent (SOI) attached in Annex 4 associated with the revised Housing Assistance Policy.
- (3) That delegated authority is given to the Group Manager for Public Health and Regulatory Services in consultation with the Cabinet member for Housing to make minor adjustments to the policy based on demand and local priorities.
- (4) That delegated authority is given to the Group Manager for Public Health and Regulatory Services in consultation with the Cabinet member for Housing to suspend some or all non-mandatory parts of the revised Housing Assistance Policy attached in Annex 1 (all elements of the Policy other than section 4.1 Disabled Facilities Grants) if adequate funding is not available.

Relationship to the Corporate Plan: The Housing Assistance Policy sets out the forms of financial assistance that may be available subject to available funding. The policy concentrates on disabled adaptations and assisting elderly and vulnerable people. The policy will help the Council meet Priority 2: Homes of the Corporate Plan by considering the impact of an aging population and helping the elderly to retain their independence and remain in their own home.

Financial Implications: The assistance detailed in the policy will utilise the Better Care Fund (BCF) allocation received by the Council. The delivery of the assistance will be dependent on available external funding from the BCF pot held by Devon County Council.

The Council is not expected to provide its own capital towards the delivery of the assistance as the BCF is currently sufficient to cover existing demand. The Council will however retain responsibility for meeting demand for mandatory Disabled Facilities Grants (DFGs)

Future allocations of the BCF from Devon County Council will be made on a demand basis and therefore the allocation may differ from that published by Department for Communities and Local Government (DCLG). This is to ensure that the basic demand for mandatory DFGs is met first as a priority for the whole of the County before any remaining funding is distributed to the district councils for the other forms of assistance found in the policy.

There is an ability for the Council to suspend all or parts of the discretionary elements of the policy locally (i.e. everything except the mandatory DFGs) if BCF funding is not adequate within any given year due to exceptional demand. Authority to make this decision is set out in Recommendation 4.

However, currently the Council has benefitted from substantially more funding and therefore Recommendation 3 seeks to be able to provide additional assistance where demand presents itself to ensure the full utilisation of the available grant pot.

Legal Implications: The Council must have an up to date and relevant Housing Assistance Policy under Article 4 of the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002 in order to be able to provide assistance across the district.

The Home Energy Conservation Act 1995 (HECA) requires local authorities to produce a plan to achieve improved home energy efficiency. The plan must identify practicable and cost-effective measures likely to result in significant energy reduction in all residential accommodation in their area i.e. across the private sector housing and social housing stocks. The statutory HECA guidance requires us to report this plan to the Government every two-years and ECO schemes (see Section 3.7 and Annexes 3 and 4) form the major part of our submission in respect of private sector housing i.e. over 90% of the local housing stock.

Risk Assessment: Not having a relevant policy means that the Council would be unable to utilise the BCF for anything other than the mandatory DFG. This may have an impact on the Councils ability to help vulnerable households across the district.

Equality Impact Assessment: A full equality impact assessment was undertaken for the policy in 2018 and no substantial changes have been made that affect the validity of the assessment that was undertaken at that time. No further equality issues have been identified within the policy and none have arisen to date as a result of its implementation. The Public Sector Equality Duty will apply to decisions made under this policy.

1.0 Introduction

- 1.1 The Better Care Fund intentionally provides more funding to Devon than is currently required to meet the demand for mandatory DFGs only. A wider policy is needed to allow the Devon councils to spend the BCF on assistance that helps a wider range of households and meets the broader BCF objectives.
- 1.2 The policy agreed in February 2018 substantially updated and replaced the previous Mid Devon Private Sector Housing Renewal Policy adopted in 2012.

The Policy presented by this report has been updated based on the experience of delivering the new policy over the past year.

- 1.3 The revised version of the policy can be found in Annex 1 to this report.
- 1.4 In addition there have been changes to the ECO flex fund and therefore this needs to be reflected in the statement of intent (SOI). The SOI is a mandatory requirement setting out the specific terms for accessing this funding locally. This will allow the council to continue to provide assistance to local residents to improve the energy efficiency of their homes and reduce their fuel bills.

2.0 Main scope of the policy

- 2.1 The policy aims to provide a consistent approach to the delivery of the BCF across Devon that satisfies the terms of the funding agreement.
- 2.2 The policy will provide the flexibility and discretion for the councils to provide appropriate assistance to meet the following objectives:

Objective 1 - Assist disabled residents to remain in their own homes through supporting the provision of adaptations (so far as this is necessary, appropriate and reasonably practicable) to prevent admissions to care and to assist with delayed transfers where possible.

Objective 2 – Safeguard the health and well-being of vulnerable residents by removing unnecessary hazards to health and safety in the home to reduce avoidable emergency admissions

Objective 3 – Provide adaptations that are suitable for the future by ensuring the scheme of works is dementia aware.

Objective 4 – Assist vulnerable people to afford to heat their homes through appropriate energy efficiency and heating measures.

- 2.3 These objectives meet the combined priorities of the BCF, the district councils and the county council in Devon.

3.0 Summary of the Assistance contained in the policy

Mandatory Disabled Facilities Grant (DFG)

- 3.1 The delivery of the Disabled Facilities Grant programme is mandatory and a statutory function of the local housing authority (Public Health/Private Sector Housing Team). The delivery of this function is governed by the Housing Grants, Construction and Regeneration Act 1996.
- 3.2 There are no proposed changes to this part of the policy other than to introduce clarification that additional works specifically required to manage disability caused by dementia or related conditions are eligible.

Accessible Homes Grant

- 3.3 The Accessible Homes Grant enables an enhanced offer in addition to the Mandatory Disabled Facilities Grant subject to available funding.
- 3.4 This grant is available in the following circumstances:
- Where a mandatory grant has been approved but the cost of the work exceeds £30,000
 - Where there are works that may not be covered by the DFG in relation to adapting the home and making it safe.
 - Where the means test identifies that a contribution is required.
 - Where moving house more appropriate than adapting the existing property.
- 3.5 The main change to this part of the policy is the introduction of a stair lift grant. This grant is not means tested and is available to provide an internal stair lift where a need has been identified by an NHS Occupational Therapist or a Social Services Occupational Therapist. This means that we can help people be discharged from hospital much more quickly.
- 3.6 Mid Devon together with Exeter City Council have been piloting this change successfully since December 2018 (see Cabinet Member for Housing decision dated 10/12/2018 on the MDDC decision register available at [<decision>](#)).

Healthy Homes grant

- 3.7 The Healthy Homes grant is a flexible grant to provide urgent/essential repairs to the home to ensure the health, safety and welfare of the occupier. This has been extended to include helping those residents at risk due to hoarding or accumulations in their property.

Home Improvement Loan

- 3.8 Wessex Resolutions Community Interest Company (WRCIC) currently administers loans within the requirements of this policy and the local policies of each district council within Devon. The Home Improvement Loan is a flexible product that can be used for the following purposes:
- Home repairs and improvements
 - Adaptation works where grant is not available
 - To cover a client contribution to a grant
 - To cover the cost of the work over the DFG or Accessible Homes grant maximum.
 - To bring empty homes back into use
 - For landlords to carry out repairs or improvement to rented accommodation
 - For energy efficiency improvements
- 3.9 Continued participation in the home improvement scheme is reviewed on an annual basis by the Cabinet Member for Housing and the Director of Operations, in consultation with the Councils s151 Finance Officer.
- 3.10 There are no proposed changes to this part of the policy.

ECO3 and the ECO Flex ‘Top up’ Grant

- 3.11 Where a client is eligible for a grant provided by an external third party under the Energy Company Obligation (ECO) Flex funding and ECO top ups (HHCR0 – Home Heating Cost Reduction Obligation) the client may apply for a top up grant from the council. This will only be available where the ECO flex funding does not cover the full cost of the work. The ECO Flex top up grant aims to meet the funding gap for energy efficiency measures..
- 3.12 The eligibility for ECO Flex funding itself is subject to a separate Statement of Intent that needs to be issued by each Local Authority. That Statement of Intent sets out local eligibility criteria. No ECO funding is provided by the Local Authority.
- 3.13 The first phase of the Energy Company Obligation (ECO), known as ECO1, ran from January 2013 to March 2015. This placed obligations on larger energy suppliers to deliver energy efficiency measures to domestic premises in Great Britain. The next obligation period, known as ECO2, launched on 1 April 2015 and ended on 31 March 2017. The government had taken action to extend ECO2 until at least the end of September 2018. Following this 18-month period, the Government was expected to introduce a longer term scheme.
- 3.14 In July 2018, the Government confirmed that the ECO3 scheme would become a 100% Affordable Warmth scheme. The Electricity and Gas (Energy Company Obligation) Order 2018 (“the ECO Order”) are the regulations that will bring into force the third ECO scheme (ECO3).
- 3.15 ECO3 supports low income, vulnerable and fuel poor households meaning that all measures should be delivered to these groups. The scheme helps homes to reduce their energy bills and consequently tackles fuel poverty and vulnerability to the cold. The scheme will run until 31 March 2022. This meets the objectives of the Better Care Fund allowing the use of that money to help ‘top up’ where needed.
- 3.16 A key change introduced by the ECO Order is that funding will not be available for replacement of oil or coal heating systems. In future systems will be funded under the scheme that source renewables such as air source heat pumps, ground source heat pumps and biomass boilers.
- 3.17 Cavity, solid wall, loft and other insulation (double glazing, draught –proofing) remain as eligible measures along with heating controls and solar panels.
- 3.18 Mid Devon District Council produced a Statement of Intent (SOI) in February 2018 during the ECO2 funding phase. The SOI outlines the Council’s criteria for eligibility for ECO measures that should be adopted by heating and insulation installers. During this phase (Feb-Oct 2018) the Council approved declarations for almost 100 properties. From 1st November (commencement of ECO 3) to date the Council has approved a further 17 applications.

- 3.19 The majority of new applications are primarily for insulation. This partly reflects the fact that the replacement of oil/coal heating systems has been removed from the scheme and that installers are in new negotiations with their funders (Energy companies) following the revised ECO3 obligation rules.
- 3.20 With the introduction of ECO3 it is timely that we review the current SOI to ensure it is in line with the government's intentions. Properties with a reliance on solid fuel heating will be removed from the eligible criteria list. In addition, it is proposed that the income criteria is increased to '£38K and under'. This reflects the increase cost of heating systems that use renewables, increasing heating bills and is comparable to other district income thresholds.
- 3.21 The proposed SOI is contained in Annex 2.

4.0 Recommendation

- 4.1 That the PDG consider the updated policy in Annex 1 and recommend it for approval by Cabinet.
- 4.2 That the PDG recommends Cabinet approve the updated ECO Flex Statement of Intent (SOI) attached in Annex 2 associated with the revised Housing Assistance Policy.
- 4.3 That PDG recommends that delegated authority is given to the Cabinet member for Housing in conjunction with the Group Manager to make minor adjustments to the policy based on demand and local priorities.
- 4.4 That the PDG recommends that delegated authority is given to the Cabinet member for Housing to suspend some or all non-mandatory parts of the revised Housing Assistance Policy attached in Annex 1 if adequate funding is not available.

Contact for more Information: Tanya Wenham (Team Leader (Community Team) 01884 244610 twenham@middevon.gov.uk or Simon Newcombe (Group Manager, Public Health and Regulatory Services) 01884 244615 snewcombe@middevon.gov.uk

Circulation of the Report:

Cllr Ray Stanley, Cabinet Member for Housing
Members of the Homes PDG
Leadership Team
Financial Services
Legal Services
Group Manager for Performance, Governance and Data Security

List of Background Papers:

MDDC Housing Assistance Policy 2018-19 (previous policy)

More information on Wessex Home Improvement Loans is available [<here>](#)

More information on the national ECO Flex scheme is also available at [<here>](#); and by downloading the following document:

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

Annex 1 – Devon Wide Housing Assistance policy 2019-22 (attached separately)

Annex 2 – ECO Flex Statement of Intent (SOI) (attached separately)

This page is intentionally left blank



HOUSING ASSISTANCE POLICY FOR THE BETTER CARE FUND 2019-22

Adopted xxx

CONTENTS

1.0 Introduction

- 1.1 Purpose
- 1.2 Review
- 1.3 Funding

2.0 Context

- 2.1 Housing and Health
- 2.2 Better Care Fund
- 2.3 Delayed transfers of care

3.0 Priorities

4.0 Types of Assistance

- 4.1 Mandatory Disabled Facilities Grant (DFG)
- 4.2 Accessible Homes Grant
- 4.3 Healthy Homes Grant
- 4.4 Home Improvement Loans
- 4.5 Top up to Eco-Flex

5.0 Exceptions to the policy

6.0 Appeals and Complaints

Appendix One - Eligible works

Appendix Two – Local Policies

Appendix Three – Summary Table

HOUSING ASSISTANCE POLICY FOR THE BETTER CARE FUND 2019-22

1.0 INTRODUCTION

1.1 Purpose

This policy is required under Article 4 of the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002. The Order provides councils with the discretion to develop schemes to provide financial assistance to deal with a range of housing issues. This policy sets out the areas on which Devon will focus any available resources in order to improve housing conditions across the district. With limited resources available it is essential that funding is targeted to those areas that contribute to the delivery of the Better Care Fund and Health and Wellbeing Board priorities and local district council priorities.

The policy covers a three-financial year period: 2019/20, 2020/21 and 2021/22

This policy provides the Devon Councils with the flexibility and discretion to provide appropriate assistance to meet the aims and priorities set out in section 3 below. Appendix 2 allows for each local authority to deliver its own local schemes that may be available over and above the Devon wide schemes.

This policy is owned by the following Councils:

Devon County Council
East Devon District Council
Exeter City Council
Mid Devon District Council
North Devon District Council
South Hams District Council
Teignbridge District Council
Torridge District Council
West Devon District Council

1.2 Review

The policy will be reviewed on an annual basis.

1.3 Funding

The assistance contained within this policy is only available subject to the availability of funding. Where funding is limited priority for spend will be given to the Mandatory Disabled Facilities Grant across the County.

2.0 CONTEXT

2.1 Housing and Health

Housing is a key determinant of health, and by promoting good quality housing this policy can contribute to reducing health inequalities for the residents of Devon.

In 2008, flexibilities were introduced enabling councils to use government grant that has been allocated for disabled facilities grants to be used more intelligently to deliver adaptations for disabled people outside of the mandatory grant regime.

Research has shown that there is a direct impact on the health and well-being of residents resulting from the homes in which they live; therefore, poor housing can contribute to poor health.

Each year hazards in the home result in unnecessary injuries, episodes of ill-health, and harm to mental health and in many cases the occupiers do not link the poor condition of their homes with a potential negative impact on their health. The poorest housing stock can be found in the private sector, and in some cases residents who own their own home are not able to maintain them and as a result hazards can develop.

An estimated 34,400 excess winter deaths were recorded in England and Wales in 2016/17 as reported by the Office of National Statistics (ONS) in their document Excess Winter Mortality in England and Wales 2016-17.

Many of these people die unnecessarily as a result of living in cold homes each year. Although the data collected does not identify the number of people that die directly as a result of the home environment various studies have found a link and these are detailed within the ONS report. In extreme cases the inability to afford to heat the home results in cold temperatures that create hypothermic conditions; however, for many individuals (particularly older persons) cold homes may result in trips, slips and falls, or injuries/health impacts resulting from cardiovascular, circulatory diseases and respiratory disease.

2.2 Better Care Fund

In 2015 the government introduced the Better Care fund in an attempt to bring health and social care together in an integrated way. The fund is a combination of government funding from the Department of Health and the Department for Communities and Local Government and includes the grant allocation for disabled facilities grants (DFG). The 2017-19 Integration and Better Care fund policy framework document lists the conditions that the better care fund must be used to address.

These are:

Condition 1: *Plans to be jointly agreed* – The plan to use the BCF allocation must be jointly agreed and signed off by the Health and Wellbeing Board, and constituent councils and clinical commissioning groups. The local housing authority must also be involved due to the inclusion of the DFG allocation, which forms part of the fund.

Condition 2: *NHS contribution to social care is maintained in line with inflation.* - The funding must be used to contribute to the maintenance of adult social care services in each local authority, which also has a health benefit. However, beyond this broad condition, the Department of Health wants to provide flexibility for local areas to determine how this investment in adult social care services is best used.

Condition 3: *Agreement to invest in NHS commissioned out of hospital services, which may include 7 day services and adult social care* - This should be achieved by funding NHS commissioned out-of-hospital services, which may also include 7-day services and adult social care, as part of the agreed BCF plan.

Condition 4: *Managing Transfers of Care* - Plans should set out how local partners will work together to fund and implement transfers of care effectively.

More detail can be found in the 2017-19 Integration and Better Care Fund Policy Framework.

Based on these broad conditions, Devon county Council and the District Councils have identified an opportunity to provide additional grant and loan products to meet these conditions and deliver against the Health and Wellbeing Board priorities.

2.3 Delayed transfers of care.

Delayed transfers of care, sometimes referred to as ‘bed-blocking’, occur when a patient is ready to depart from care and is still occupying a bed. According to NHS England, a patient is ready to depart when:

- a. A clinical decision has been made that the patient is ready for transfer AND
- b. A multi-disciplinary team decision has been made that the patient is ready for transfer, AND
- c. The patient is safe to discharge/transfer.

In 2016/17 there were 2.3 million total delayed days in England with 1.3 million of these attributable to the NHS, averaging around 6,200 delayed transfers of care per day with around 3,600 of these attributable to the NHS. *Delayed transfers of care in the NHS Briefing paper number 7415, 20 June 2017.*

The longer a patient stays in hospital the more detrimental this can be in terms of patient morale, mobility, and an increase in the risk of hospital-acquired infections. Older patients are particularly susceptible to negative effects around mobility with studies suggesting that a wait of more than two days negates the benefit of intermediate care, and a wait of seven days or more is associated with a 10% decline in muscle strength.

Delayed transfers of care are also costly for hospital trusts as insufficient beds can mean elective procedures need to be cancelled, resulting in the hospital trust losing these as a source of income.

A survey in 2015 by the Guardian found that at least 10% of beds were occupied by patients who were ready to be discharged and the NHS providers' audited accounts for 2016/17 estimated that delayed transfers of care cost £173 million.

Much of the recent debate around delayed transfers of care attributes rising numbers to pressures in social care.

The number of delayed days attributable to social care had been in decline until August 2013, after which the figure began to rise sharply. When looking at the specific reasons for delayed transfers of care, there are notable increases in non-healthcare reasons as indicated below:

Table 1: Reasons for delayed transfers of care, 2016/17

Reason for delay	Total delayed days	Change from previous year
Awaiting care package in own home	456,447	+45.3%
Awaiting further non-acute NHS care	386,028	+16.8%
Awaiting completion of assessment	380,832	+22.9%
Awaiting nursing home placement or availability	342,982	+39.6%
Patient or family choice	245,033	+5.8%
Awaiting residential home placement or availability	231,994	+22.9%
Awaiting public funding	81,327	+17.5%
Housing – patients not covered by NHS and Community Care Act	52,431	-1.0%
Awaiting community equipment and adaptations	52,121	+12.8%
Disputes	24,641	+18.9%

3.0 PRIORITIES

In Devon, the Better Care Fund priorities aim to achieve the following outcomes:

- Reduced admissions to residential and nursing care homes
- Reduce delayed transfers of care
- Reduce avoidable emergency admissions
- Increase dementia diagnosis rates

To meet these priorities this policy aims to focus on the following areas:

Objective 1 - Assist disabled residents to remain in their own homes through supporting the provision of adaptations (so far as this is necessary, appropriate and

reasonably practicable) to prevent admissions to care and to assist with delayed transfers where possible.

Objective 2 – Safeguard the health and well-being of vulnerable residents by removing unnecessary hazards to health and safety in the home to reduce avoidable emergency admissions

Objective 3 – Provide adaptations that are suitable for the future by ensuring the scheme of works is dementia aware.

Objective 4 – Assist vulnerable people to afford to heat their homes through appropriate energy efficiency and heating measures.

4.0 TYPES OF ASSISTANCE

4.1 Mandatory Disabled Facilities Grant (DFG)

The delivery of the disabled facilities grant programme is mandatory and a statutory function of the local housing authority. The delivery of this function is governed by the Housing Grants, Construction and Regeneration Act 1996.

Eligibility

Any disabled householder seeking financial assistance with the cost of adaptations to their home must be assessed by an occupational therapist (OT) working on behalf of, or approved by Devon County Council.

For the purposes of the DFG a person is considered disabled if they meet any of the following criteria:

- their sight, hearing or speech is substantially impaired,
- they have a mental disorder or impairment of any kind, or
- they are physically substantially disabled by illness, injury, impairment present since birth, or otherwise.

A person aged eighteen or over shall be considered disabled if:

- they are registered under section 29(1) of the National Assistance Act 1948 (disabled persons' welfare), or
- they are a person for whose welfare arrangements have been made under that provision or, in the opinion of the social services authority, might be made under it.

A person under the age of eighteen shall be considered disabled if:

- they are on a register of disabled children maintained under paragraph 2 of Schedule 2 to the Children Act 1989, or
- they are in the opinion of the social services authority a disabled child as defined for the purposes of Part III of the Children Act 1989 (local authority support for children and their families).

All owner-occupiers, tenants, licensees or occupiers who meet the above criteria are eligible to apply for a DFG.

Conditions

1. All grants other than those for children are subject to a test of financial resources, which is prescribed by The Housing Renewal Grants Regulations 1996.
2. The grant maximum is £30,000
3. The disabled person must intend to occupy the property as their only or main residence for a period of five years after the works are complete (or such shorter period as the person's health or other relevant circumstances permit).
4. In order to make an application the client must supply the following:
 - A completed and signed application form
 - Evidence of financial situation
 - Evidence of ownership of the property or the right to reside at the property
 - Permission for the works to be carried out
 - A detailed schedule of works and plans for complex works that must be agreed by the council
 - Any planning or building regulation approvals
 - 2 tenders for the works unless using an agreed framework.
5. Only the works agreed by the council will be covered by the grant.
6. If the grant is approved there are 12 months to complete the works
7. The works must be completed by the contractor stated on the approval document
8. No grant works should proceed until the grant application has been processed and all relevant planning, Building Regulation or landlord approval has been obtained.
9. Owner occupiers may have a local land charge placed on their property on completion of the grant. If the property is sold, assigned or transferred within 10 years of the grant being completed then the grant may have to be repaid. The council will have regard to *The Housing Grants, Construction and Regeneration Act 1996: Disabled Facilities Grants (Conditions relating to approval or payment of Grant) General Consent 2008* when deciding whether to demand repayment. The charge only applies where the grant is more than £5,000. Where the grant is more than £5000 only the amount over the first £5,000 is added as a charge. There is a charge limit of £10,000.
10. If the applicant has a contribution to pay they must ensure they have the money to cover their share of the costs before the work begins on site.

11. Unforeseen and additional costs will only be paid for where they are necessary to complete the adaptation and must be agreed by the council before they are undertaken.
12. Any increase in the grant may have an impact on the charge placed against the property.
13. Where the cost of the work exceeds the mandatory grant limit of £30,000 the applicant may be eligible to apply for the **Accessible Homes Grant** subject to available funds.
14. Applicants who are successful in their application for assistance will be required to maintain the adaptation.
15. The contract for the works is the responsibility of the applicant.
16. The grant will normally be paid direct to contractors in all but the most exceptional cases.
17. The council will only offer grant for those works that are considered mandatory to meet the needs of the disabled person.
18. No grant will be paid until a satisfactory invoice has been received and the works have been carried out to the satisfaction of the client and Council.

4.2 Accessible Homes Grant

The Accessible Homes Grant enables an enhanced offer in addition to the Mandatory Disabled Facilities Grant subject to available funding.

This grant is available in the following circumstances:

- Where a mandatory grant has been approved but the cost of the work exceeds £30,000
- Where there are works that may not be covered by the DFG in relation to adapting the home and making it safe or in relation to fees associated with feasibility works to determine if the adaptation can proceed
- Where the means test identifies that a contribution is required.
- Where moving house more appropriate than adapting the existing property.

Eligibility

To be eligible for this grant the applicant must meet the following:

- The applicant must have applied for and be eligible for the DFG first before the discretionary grant can be considered.
- All applicants are subject to a means test including the parents and/or guardians of a disabled child. Adult clients will have been means tested as part of the formal DFG application. In the case of a child's application the means test will be applied to the parents or guardians of the disabled child **before** an application for a discretionary grant can be made.
- As an alternative to the adaptation of an applicant's home, consideration will be given to the option of re-housing to more appropriate or adapted accommodation.

- An applicant will only be eligible to apply for additional grant to cover any identified contribution where the amount the client has to pay represents at least a third or more of the applicant's savings.

Conditions

1. Conditions relating to the DFG as described above also apply.
2. The grant maximum is £20,000. Anything over £20,000 will not attract any further public grant unless in exceptional cases.
3. Where additional funding is required to cover either a contribution or the cost of works over £50,000 (£30,000 from the Disabled Facilities Grant and £20,000 from the Accessible Homes Grant), then a Home Improvement Loan application can be made.
4. The DFG paperwork will be used to assist the applicant in making an application for this grant.
5. Only the works agreed by the council will be covered by the grant
6. If the grant is approved there are 12 months to complete the works
7. The works must be completed by the contractor stated on the approval document
8. No grant works should proceed until the grant application has been processed and all relevant planning, Building Regulation or landlord approval has been obtained.
9. Owner occupiers will have a local land charge placed on their property on completion of the grant. If the property is sold, assigned or transferred within 10 years of the grant being completed then the grant will need to be repaid.
10. Unforeseen and additional costs will only be paid for where they are necessary to complete the adaptation and must be agreed by the council before they are undertaken.
11. Any increase in the grant may have an impact on the charge placed against the property.
12. Applicants who are successful in their application for assistance will be required to maintain the adaptation.
13. The contract for the works is the responsibility of the applicant.
14. The grant will normally be paid direct to contractors in all but the most exceptional cases.
15. The council will only offer grant for those works that are considered appropriate to meet the needs of the disabled person.
16. No grant will be paid until a satisfactory invoice has been received and the works have been carried out to the satisfaction of the client and Council.
17. Housing association properties - where the mandatory DFG does not fully cover the cost of the adaptation then the client and/or council may approach the housing association for a contribution towards the cost.

4.3 Accessible Homes Grant – Stair lift Grant

This grant provides internal straight track or curved track stair lifts without a means test for the applicant.

Eligibility

To be eligible for this grant the following must be in place:

- A referral or statement of need must be received from a social services OT or from an NHS OT.
- Where additional works are required to install the stair lift these will be covered as part of this grant.
- Where a client requires multiple adaptations in addition to the stair lift, the stair lift will be provided through this grant and the other adaptations through the DFG or accessible homes grant where the client is eligible.

Conditions

1. The applicant must have permission from the owner of the property for the work to be carried out. The council will require an owners certificate if the property is rented.
2. The applicant agrees to live in the property as the only or main residence for the period of 5 years or for a shorter period as health or other relevant circumstances permit.
3. The contractor must be sourced from the stair lift company determined by the Devon Framework agreement. Where the Council does not use the framework it should be sourced in a manner determined by them.
4. Only the works agreed by the Council will be covered by the grant.
5. If the grant is approved there are 8 weeks to complete the works.
6. The works must be completed by the contractor stated on the approval document
7. No grant works should proceed until the grant application has been processed and all relevant planning, Building Regulation or landlord approval has been obtained.
8. Unforeseen and additional costs will only be paid for where they are necessary to complete the adaptation and must be agreed by the council before they are undertaken.
9. Applicants who are successful in their application for assistance will be required to maintain the stair lift and have it regularly serviced.
10. The contract for the works is the responsibility of the applicant.
11. The grant will be paid direct to the stair lift contractor.
12. No grant will be paid until a satisfactory invoice has been received and the works have been carried out to the satisfaction of the client and Council.

4.4 Accessible Homes Grant - Moving application

This grant may be available to assist a disabled person to move to more suitable accommodation subject to available funding.

Eligibility

An applicant will be eligible for this grant where:

- Where the Occupational Therapist and/or the Council consider re-housing to be more appropriate than adapting the existing accommodation.
- Where the landlord has refused permission for any adaptation works to be carried out and therefore it is no longer feasible for the occupier to remain in the property.
- Where it is possible to carry out works at the existing property the total cost incurred in the eligible 'moving on' expenses and any estimated eligible adaptation costs at the 'new' property should not be greater than the cost of adapting the applicant's current home.
- The 'new' property shall in the opinion of the Council provide a long term, sustainable home for the person for whose benefit the works are required.
- If the property is within a neighbouring authority covered by this policy then the new authority will need to ensure the new property is suitable. This should also be agreed with the occupational therapist. The applicant must ensure that the relevant council's officers and Occupational Therapist have been consulted.

In determining the 'reasonable expenses' regard shall be had to the following criteria:

- The cost of the eligible works at the applicants existing property are not deemed reasonable, or;
- The eligible works at the applicants existing home are not technically feasible, or;
- The adaptation of the applicants existing property does not provide a sustainable, long term solution for their housing needs, or;
- The landlord of the property refuses to give permission for the necessary works to be carried out.

Eligible Expenses

Owner Occupier

The expenses that can attract grant under this section may include the cost of:

- Any arrangement fee charged by a lender to cover the formation of a mortgage.
- Conveyancing fees.
- Land Registry Fee
- Local Authority Searches
- Stamp Duty
- Valuation, Homebuyers or Full Structural Survey

- Professional or other removal costs
- Estate Agent Commission.

The maximum grant payable for eligible expenses under this heading for an owner occupier is £10,000.

Tenant

For a tenant the expenses that can attract grant under this section may include the cost of:

- Letting agent fees
- Rent deposit
- Professional or other removal fees

The maximum grant payable for eligible expenses under this heading for a tenant is £5000.

Conditions

1. Grant assistance is only payable to an owner occupier upon the successful completion of the purchase of the 'new' property and the disabled person then occupying that property as their only and main residence.
2. When moving to rented accommodation the applicant must obtain permission from the landlord for any adaptations to be carried out before the grant will be paid.
3. To qualify for this grant the applicant must have been resident in the property for at least 2 years prior to making an application to move.
4. The applicant must agree to live in the property as their only or main residence for a period of 5 years (or such shorter period as the person's health or other relevant circumstances permit).
5. For owner occupiers a local land charge will be placed against the property for a period of 5 years.

4.5 Healthy Homes grant

The Healthy Homes grant is a flexible grant to provide urgent/essential repairs to the home to ensure the health, safety and welfare of the occupier. This includes assisting an occupier with accumulations (hoarding) where this poses a risk to health and safety.

Eligibility

- An applicant must apply for a loan first including a Home Improvement Loan and will only be eligible to apply for this grant if a loan is refused.
- Only those works agreed by the Council as urgent or essential will be eligible for this grant. A loan application will be required for all other types of works and repairs.
- To qualify for this grant the applicant must be in receipt of one of the following benefits:

- Housing benefit
- Disability Living Allowance
- Personal Independent Payment with the daily living component
- Attendance Allowance
- Guarantee Pension Credit
- Income support
- Council tax benefit (not the single person discount)
- Universal Credit – universal credit replaces the following means tested benefits – Housing Benefit, income related ESA, Income based JSA, Child tax credit, working tax credit and income support.

Conditions

1. The maximum grant available is £5000 over a rolling two year period.
2. For owner occupiers a local land charge will be placed against the property for 5 years.
3. For tenants the grant may only be available to assist with immediate repairs or to deal with hoarding and accumulations. The landlord is responsible for the general repair of the property and the Council may require the landlord to carry out works as appropriate.
4. An applicant must apply for a loan for any substantial work beyond removing the immediate health and safety risk.

4.6 Home Improvement Loans

Wessex Resolutions Community Interest Company (WRCIC) is a not-for-profit company contracted to deliver loans to residents in the Devon area.

WRCIC administer loans within the requirements of this policy and the local policies of each district council within Devon. The Home Improvement Loan is a flexible product that can be used for the following purposes:

- Home repairs and improvements
- Adaptation works where grant is not available
- To cover a client contribution to a grant
- To cover the cost of the work over the DFG or Accessible Homes grant maximum.
- To bring empty homes back into use
- For landlords to carry out repairs or improvement to rented accommodation
- For energy efficiency improvements

Eligibility

This will vary and is based on the individual circumstances of each client. Loan advisors will carry out an assessment and provide independent advice on ethical and responsible lending the most appropriate product to suit their needs.

Conditions

Conditions may vary depending on the loan product selected and the individual circumstances of each applicant.

Loans are subject to status and Wessex Resolutions CIC may insist on loans being protected at the Land Registry by a Title Restriction. Missing any payments could affect your credit rating and ability to obtain credit in the future.

The typical APR for this loan is 4.2%.

4.7 Top up to Eco-Flex

This grant is to provide top up funding for energy efficiency measures where EcoFlex funding and ECO top ups (HHCRO) have been provided by energy providers but the available funding does not cover the full cost of the work.

Eligibility

- Applicants must have been identified through each Council's Statement of Intent which can be found on the council's website.
- To qualify for the top up a survey must be carried out by the energy provider, a local installer, or an agent and qualifying works identified.
- For owner occupiers and private landlords a maximum of up to £2000 is available.
- If more than £2,000 is needed then the client should apply for a Wessex loan subject to availability and eligibility (see 4.6)

Conditions

1. The applicant must agree to live in the property as their only or main residence for a period of 5 years (or such shorter period as the person's health or other relevant circumstances permit).
2. A local land charge will be placed on their property on completion of the grant. If the property is sold, assigned or transferred or the tenant vacates within 5 years of the grant being completed then the grant may have to be repaid.
3. Any increase in the grant may have an impact on the charge placed against the property.
4. The contract for the works is the responsibility of the applicant.
5. The grant will normally be paid direct to contractors in all but the most exceptional cases.
6. No grant will be paid until a satisfactory invoice has been received and the works have been carried out to the satisfaction of the client and Council.

5.0 EXCEPTIONS TO THE POLICY

The Councils accept that applications may be received for adaptations not covered by the circumstances listed above which will need to be formally determined. Any such application will be referred through the appropriate process of the council managing the application.

6.0 APPEALS AND COMPLAINTS

- Where the applicant has a complaint about the manner in which a council is applying this policy, then they should follow that Councils formal complaints process.
- Where there is a complaint about the content of this policy this should be made to Devon County Council so that it can be considered on a Devon wide basis.
- Where the complaint is in respect of works, the complaint should be made to the contractor in the first instance, if this does not resolve the problem then the appropriate council should be contacted for advice.
- Where an applicant wishes to appeal against a decision of the Council in respect of any of the grants contained in this policy this should be made to the appropriate Council. Where agreement cannot be reached then the appeal should be escalated to the Devon wide group of Councils for a decision. Consensus between all the participating Councils will need to be reached as any decision may result in an amendment to the policy.

APPENDIX ONE – ELIGIBLE WORKS

Disabled Facilities Grant and Accessible Homes Grant

This is a guide and there may be scope for discretion on the works that can be included under the Accessible Homes Grant in some circumstances.

Facilitating access

Facilitating access by the disabled occupant

- to and from the dwelling
- to a room used or usable as the principle family room
- to a room used for or usable for sleeping
- to a room in which there is a lavatory
- to a room in which there is a bath or shower
- to a room with a wash hand basin

Such works may include:

- Ramping and/or handrails to the main external door. This could instead be a rear door in the case of a rear access. Only one access point will be allowed for each dwelling. External stair lifts will be considered if reasonably practicable and they are not prone to vandalism.
- Widening the main entrance door and the doorways to the bedroom, bathroom and living room. Automatic door opening to main entrance doors will only be allowed for persons who are otherwise unable to open the door. Door entry systems will be considered where the person has severe mobility problems.
- Alterations to facilitate wheelchair access to the bedroom, bathroom and living room. Access to other rooms may be considered where the disabled person is also a carer.
- Other adaptations that are necessary to facilitate access to any of the relevant rooms by the disabled person, for example, stair lifts or vertical lifts in some cases. Where a stair lift breaks down and it is 5-10 years old, a manufacturers report is needed before it can be replaced. If it is over 10 years, a report may not be required.
- Provision of hard standings (3.6 m x 4.8 m max unless exceptional circumstances) and associated crossover for vehicle access where the disabled person is in a wheelchair or has difficulty walking to the house. This will only be given where existing on-street parking is considered unsatisfactory and a marked disabled parking bay is not possible or where it affords a more economical

solution than providing additional paths/ramping from the roadside. Provision of off-street parking on its own is not eligible.

Please note: Being a holder of a blue badge is not an eligibility criterion for this item.

Washing facilities

Facilitating the use of washing facilities by the disabled occupant

- Adaptation of the facilities in the bathroom and toilet, including the provision of flush floor showers, lever taps, specialist WCs, Clos-o-mat or Geberit etc. The adaptation or provision of more than one bathroom to a house e.g. additional ground floor wc, will only be considered if evidenced by functional need.

Kitchen Facilities

Facilitating the preparation and cooking of food

- Where someone other than the disabled person does and will continue to do the cooking and preparation of meals, normally it will not be necessary to carry out full adaptations. However, it may be possible to carry out minor adaptations to allow the disabled person to prepare light meals or hot drinks, typically this may include a low-level worktop with power points for a kettle/microwave.
- Full adaptations can be considered where the disabled person is the only or main user of the kitchen. The following adaptations can be considered:
 - a. Kitchen sink, including alteration to its height or position or the type of taps fitted to it. Powered, adjustable-height sinks will not generally be allowed, as the provision of a second sink is a more economic solution.
 - b. Cooker point and oven-housing unit ensuring its height and position is in a safe location and the provision of worktops on either side.
 - c. Work surfaces located beside the sink and on each side of the cooker having a total length of approximately 1.5m, all at a suitable height for the disabled person.
 - d. Food storage in an accessible position, usually space for a refrigerator with power supply.
 - e. Wheelchair access, if necessary, including wider doors, rearrangement of facilities etc.
 - f. Alterations to the kitchen door, light switches and power points, but only if it is necessary.
 - g. Extensions or enlargement to kitchens can only be agreed where they are absolutely necessary in order to provide turning space for a wheelchair and if suitable space cannot be achieved by rearrangement of the existing facilities.

- h. The provision of cupboard and storage units on an "essential" basis. (2x1m base units and baskets or equivalent).
- i. Mechanical ventilation where kitchen schemes require Building Regulation approval.

Other works that may be considered for grant assistance

Electrical work

- Alterations to the height and/or position of light switches and power points to make them accessible to the disabled person.
- Upgrading of electrical installation where the current installation is considered unsafe.

Heating

- Heating the rooms that are in everyday use by the disabled person where a medical need can be demonstrated. Changes to the type of heating system will only be allowed if evidenced by medical need (e.g. change from solid fuel to gas where applicant can no longer carry fuel) and the applicant is not eligible for other types of grant such as ECO Flex.
- Upgrading/replacing of boilers/radiators where the property has been extended as part of the adaptation.

Guarding

- Provision of laminate glass or specialist lighting or guards to fires and around radiators where disabled children with violent behavioural problems may harm themselves.
- Restrictors or works to windows for the safety of the disabled person.

Alarms

- Provision of enhanced fire alarm systems for those with hearing difficulties.

Structural alterations

- Carrying out structural alterations where necessary to provide fixings for disabled equipment provided by Social Services e.g. fixing for tracking /overhead hoists.
- Storage or space for essential medical equipment as part of the adaptation works but not as a stand-alone item.
- Where an adaptation is required to a listed building and additional works are required to comply with requirements.

- Where an adaptation cannot be carried out due to disrepair issues those repairs, within reason, may be carried out. Such works may include replacement of rotted flooring or strengthening of the floor as part of a flush floor shower installation, electrical repairs to enable works to be carried out safely, and dealing with low water pressure. More substantial repairs that are not directly affecting the adaptation will need to be referred to a home improvement loan or healthy homes grant.
- Additional bathrooms or bedrooms may be allowed where they are specifically for the disabled person and it can be demonstrated that adaptation of other rooms or space or access to those rooms in the property is unsuitable. **Extensions will only be allowed following a detailed cost/benefit analysis of alternative options.**
- Requests are sometimes received to provide separate bedrooms where disabled children with behavioural difficulties share a room with other siblings and disturb their sleep. This will only be considered where it can be demonstrated the child is prone to violent outbursts and there is risk of physical harm to the child or to the other siblings. Families will first be expected to re-arrange the sleeping arrangements in their home to try to eliminate the need for extra bedrooms. If there is more than one reception room the family will be expected to use the extra room(s) for sleeping purposes.

Garden and external access

- In cases of small terraced properties with narrow passageways or very difficult access, effective adaptation can only proceed where it can be reasonably and practicably carried out without having a detrimental impact on neighbouring properties.
- Access to the garden may be given to improve an existing access to make it safe for the disabled occupant to use. It does not include extending an existing access e.g. creating a side access so a person can also go around the side of a house. Generally, the most modest solution for providing access to both the house and the garden will be considered and this can mean that one access may be sufficient to access both the house and the garden. Where homes have communal gardens, e.g., blocks of flats served by a single access, grants will not normally be provided for an individual access to the garden unless it can be demonstrated that because of the disabled persons condition the travel distance to the garden would be excessive and unreasonable.
- The grant will only be for providing immediate access to the garden and does not include landscaping gardens to make them more suitable for the disabled person

to access. However, to assist a disabled person to live independently, an allowance of 4m² of pathway, (which may include a turning circle for a wheelchair user), will be considered to assist access to any specific areas enjoyed by the disabled person.

- Provision of fencing or guarding for the safety of the disabled person when in the garden.

Fees and feasibility works

- The Accessible Homes Grant may be available to cover the cost of works associated with assessing whether an adaption is reasonable and practicable and/or necessary and appropriate. These costs can be covered even if the works do not go ahead, at which point a moving grant may be more suitable.

Additional Adaptations for Dementia (or related conditions)

- Replacing floor coverings that cause confusion or safety issues
- Replacing tiling or bathroom fittings (such as toilet seats and rails) to improve visual perception
- Changing cupboards to glass fronted doors, to enable recognition of where items are in the kitchen
- Changing lighting schemes to improve visibility around the home
- Installing noise reduction measures

Healthy Homes grant

An assessment of the property may be necessary to determine the scope of the work and does not cover the full renovation of a property. It is intended that the grant is sufficient to make safe a defect that is considered to pose a risk to the health, safety or welfare of the occupier.

This could include but is not limited to the following:

- Hoarding and accumulations – where the conditions pose a serious risk to the safety of the occupier.
- Electrical safety- where the condition of the electrical wiring could lead to imminent risk of electrocution or fire or accidents as a result of inadequate lighting.
- Falls – where the condition of the stairs or floors are in such a state as to provide an imminent risk of a fall in the home.

- Cold – where the heating is inadequate or lacking, and the condition of the doors and windows are contributing to the home being cold in the winter and there is a risk of falls or other ill effect from cold temperatures.
- Dampness – damp conditions so significant that a roof is failing and water is visibly entering the property. Rising damp, condensation or minor leaks may not be covered by this grant.
- Structural collapse- where a structural part of the building is in such a state as to constitute an imminent risk.
- Amenities – the lack of a functioning basic amenity such as a toilet, bath, wash hand basin or kitchen sink.
- Hot water – where there is no hot water available for the occupier due to a fault with a boiler or hot water tank.

This list is not exhaustive and each case will be assessed based on its individual circumstances.

Home Improvement Loan

The loan will cover those works covered by this policy and any other works specified by each individual Council involved in the Home Improvement Loan scheme.

ECO Flex Top up

Works will generally include:

- Mains gas boiler replacement,
- Loft insulation,
- Cavity wall insulation,
- Heating controls,
- Replacement storage heaters,
- Internal or external wall insulation,
- Room in roof insulation,
- Flat roof insulation

APPENDIX TWO – LOCAL POLICIES

The following councils have their own additional policy that can be viewed on their websites.

East Devon District Council
Exeter City Council
North Devon District Council
South Hams District Council
Teignbridge District Council
Torridge District Council
West Devon District Council

APPENDIX THREE – SUMMARY TABLE

Type of assistance	Scope	Grant Max	Eligibility	Main Conditions
Mandatory DFG	Disabled adaptations as described by the Housing Grants Construction and Regeneration Act 1996.	Up to £30,000	Meets disability criteria Assessed by an OT Subject to means test No means test for Children	Must remain in the property as only or main residence for 5 years Local land charge for 10 years for owner occupiers in some circumstances
Accessible Homes Grant	Cover the costs of adaptations over the mandatory DFG limit Cover some contributions identified under mandatory DFG Cover some works not covered by the DFG	Up to £20,000	Meets disability criteria Assessed by an OT Subject to means test for children's applications Contribution constitutes more than a 1/3 of available savings	Must remain in the property as only or main residence for 5 years Local land charge for 10 years for owner occupiers
Accessible Homes Grant – Stair lifts	Cover the cost of internal straight track and curved track stair lifts	No grant max	Assessed by the OT or referred by NHS OT Must have permission from the property owner	Must remain in the property as only or main residence for 5 years

Type of assistance	Scope	Grant Max	Eligibility	Main Conditions
Accessible Homes Grant – Moving	Cover some of the costs associated with moving to a more suitable property	Owner occupier up to £10,000 Tenant up to £5000	Suitable property has been identified Cost of moving with any adaptation to the new home is less than adapting existing home Been resident in existing property for 2 years prior to making the application For tenants – landlord has referred to make adaptations	Must remain in the property as only or main residence for 5 years Local land charge for 5 years for owner occupiers
Healthy Homes Grant	Works to make safe a defect or hoarding/accumulation that is considered to pose a risk to the health, safety or welfare of the occupier.	Up to £5000 over a 2 year rolling period	In receipt of a qualifying benefit Works agreed by the Council	Local land charge for 5 years for owner occupiers Must apply for a loan for more substantial works and repairs Council may require landlord to carry out repairs
Home Improvement	Cover works identified in the other grants	Based on affordability	Based on local criteria	Based on local criteria

Type of assistance	Scope	Grant Max	Eligibility	Main Conditions
Loan	As determined by each Council policy			
ECOFlex Top up	Energy efficiency works	Up to £2000	<p>Qualify for ECO funding</p> <p>Meet the councils statement of intent criteria</p> <p>Owner occupier or private landlord</p>	<p>Must remain in the property as only or main residence for 5 years</p> <p>Local land charge for 5 years</p>



Statement of Intent

Local Authority Flexible Eligibility Statement of Intent

- 1) Mid Devon District Council
- 2) Date of publication xx/xx/19
- 3) Version 3.0
- 4) <https://www.middevon.gov.uk/ECOFlexibleEligibility>

1) Introduction

According to the Devon Joint Strategic Needs Assessment (2017), fuel poverty in Devon (13%) remains higher than the national average (10.6%). Mid Devon District Council's Public Health Plan 2016-19 identifies fuel poverty as a key priority area.

A number of health conditions arise or are exacerbated by living in a cold and/or damp home. These are included in this Statement of Intent (SOI).

Mid Devon District Council supports the continuation of Flexible Eligibility scheme (ECO Flex 3) so that those who don't qualify through existing schemes but are in fuel poverty can obtain financial help to install key energy measures.

Important Note: The final decision on whether a household receives an ECO measure is made by the energy suppliers or their agents/contractors. Inclusion in a Declaration of Eligibility made by the Local Authority to a supplier will not guarantee installation of measures. The final decision will depend on:

- i) The survey carried out by suppliers' agents/contractors and installation costs calculated.
- ii) The energy savings that can be achieved for a property, and
- iii) Whether suppliers have achieved their targets or require further measures to meet their ECO targets.

Mid Devon District Council expects that any obligated energy supplier, or contractor working on behalf of the obligated energy supplier will;

- comply with the Data Protection Act 2018
- fully follow Ofgem requirements for the Energy Company Obligation Help to Heat, and

- act in accordance with industry best practice in relation to consumer care and quality standards of any works that may take place.

2) How Mid Devon District Council intends to identify eligible households

The Department of Business, Energy and Industry Strategy (BEIS) provides guidance on the targeting of Flexible Eligibility which seeks to identify private households that may benefit from energy saving measures and these are:

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

In addition, the council may use its discretion to declare some non-fuel poor homes as eligible to facilitate solid wall insulation projects, as long as a proportion of the households in the project are in fuel poverty or LIVC.

From time to time and subject to available resources within the Council we may work with those households having regard to BEIS guidance. Any focussed activity will be carried out in accordance with the legal use of data. Relevant groups may include:

- Those living in the private sector and in receipt of the relevant means-tested benefits and/or on a low income
- Those living in energy inefficient Residential Mobile Homes (Park Homes) who are over the age of 55
- Low income households living in energy inefficient housing will be identified in the private rented sector.
- Households receiving help through the Local Energy Advice Programme (LEAP) or Exeter Community Energy
- Private tenants living in properties with D, E, F or G EPC rating

Identifying households in fuel poverty

Private homeowners qualify to apply through ECO flexible eligibility subject to meeting category 1 and category 2 eligibility criteria below. Private tenants and residents of park homes will be eligible regardless of income.

Category 1

For the 'low income' portion of this indicator, the referring agency will look to find evidence that a member of the household is in receipt of an ECO qualifying income-related benefit in the first instance. Should the resident not receive any ECO

qualifying income-related benefits, then the referring agency will consider a household in receipt of Council Tax Benefit, Housing Benefit, or with a combined household income of less than £38,000 (gross) for the purposes of these criteria.

Category 2

For the 'high cost' portion of the indicator, the referring agency will look to identify eligible households as those that have an **Energy Performance Certificate (EPC) rating of 'D' or lower**. These properties will be identified using the Landmark online EPC register. In the event that a property does not meet this criteria or does not have an EPC, the referring agency will identify if the property falls into one of these additional categories which have been selected due to their high energy bills, hard to treat and hard to reach nature:

- Park homes and other permanent caravan residences (regardless of income)
- Privately rented properties including Houses in Multiple Occupation (HMOs) (regardless of income)
- Properties with a reliance on solid fuel heating
- Flats above commercial premises
- System built properties
- Homes which require cavity wall insulation
- Homes which require a loft insulation top up
- Homes which require solid wall insulation
- Homes with a boiler which meets the ECO Qualifying Boiler criteria

Council will provide advice on request to heating and insulation installers on appropriate marketing of ECO Flex and will also use existing networks, such as community energy agencies, the community and voluntary sector and Council officer intelligence to identify eligible households.

Identifying low income and vulnerability to cold

Mid Devon District Council will target households containing people with the following 'at risk' characteristics, which reflect the National Institute for Health and Care Excellence (NICE) 2015 guidance on excess winter deaths and illness caused by cold homes. In addition to the 'below £38,000 income' threshold we will need one of the following categories.

- i. Aged over 60 (55 in the case of mobile homes), and particularly those over 75
- ii. Households with children under 16
- iii. Pregnant mothers
- iv. Private tenants on low income living in properties with D, E, F or G EPC rating
- v. Respiratory disease (chronic obstructive pulmonary disease (COPD), asthma)

- vi. Cardiovascular disease (e.g. ischaemic heart disease, cerebrovascular disease)
- vii. Moderate to severe mental illness (e.g. schizophrenia, bipolar disorder)
- viii. Types of Dementia or Creutzfeld-Jacob disease (CZD)
- ix. Neurobiological and related diseases (e.g. fibromyalgia, myalgic encephalomyelitis (ME) or similar fatigue syndromes)
- x. Cancer
- xi. Limited mobility
- xii. Haemoglobinopathies (sickle cell disease, thalassaemia)
- xiii. Severe learning disabilities
- xiv. Autoimmune and immunodeficiency diseases (e.g. lupus, multiple sclerosis (MS), diabetes, human immunodeficiency virus (HIV))

(c) Any details of scheme requirements for Solid Wall Insulation “in-fill” projects

Where potential works have been identified households will be supported to take advantage of "in-fill" projects where the minimum number of vulnerable households is met. Reference will be made to the guidance.

3) Referrals

Mid Devon District Council will use a number of referral mechanisms and pathways to identify and generate customers for ECO Flex as follows:

1. Through the Local Energy Advice Program (LEAP) which is currently providing energy advice across Devon in partnership with Cosy Devon districts.
2. Referrals generated by community agencies, local energy agencies, contractors and installers.
3. Referrals generated as a result of Council staff interaction with householders, landlords e.g. Private sector housing, Benefits, Customer First (front of house)

4) Evidence, monitoring and reporting

- a. Anonymised data on the characteristics of households reached through Flexible Eligibility will be reviewed
- b. The data above will include details of households assessed, how many were deemed eligible and ineligible, and how many received heating and insulation
- c. Eligibility checks will be conducted internally using data sets held by Council in accordance with Data Protection guidance and legislation.

d. Dedicated officers within Public Health and Regulatory Services will collect, collate and review data generated from the roll out of the program.

5) Governance

Responsible officer

The officer below will be responsible for signing Declarations on behalf of the local authority (in his absence the Director of Operations).

Simon Newcombe

Job title: Group Manager for Public Health and Regulatory Services

Telephone: 01884 244615

Email: snewcombe@middevon.gov.uk

Monitoring and Implementation

The Coordination Team, Public Health and Regulatory Services, will be responsible for initial enquiries about the Statement of Intent and the process for submitting and receiving declarations.

Coordination Team

Telephone: 01884 244625

Email: health@middevon.gov.uk

6) Signature

Andrew Pritchard

Director of Operations

Mid Devon District Council

This page is intentionally left blank

ECONOMY PDG

14TH MARCH 2019

REPORT OF THE HEAD OF PLANNING, ECONOMY AND REGENERATION

GRAND WESTERN CANAL AND DEVON AND EXETER RAIL PROJECT

Cabinet Member(s): Cllr Richard Chesterton

Responsible Officer: Jenny Clifford, Head of Planning, Economy and Regeneration

Reason for Report: To report to members on funding provided to two grant aided bodies under the Economy PDG.

RECOMMENDATION:

- a) That the contribution to the Devon and Exeter Rail Project be reviewed following formation of a new Rail Forum.
- b) That the Council continues to offer an annual grant of £45,000 for 2019/20 to the Grand Western Canal to support its maintenance.
- c) That an assessment be undertaken, in liaison with Devon County Council, prior to the financial year 2020/21 to inform decision making with regard to the level of future grant support for the Canal.

Financial Implications: The Council contributes £45,000 annually to the Grand Western Canal and £3,500 to the Exe Rail Project. Neither of these grants is subject to a formal funding agreement.

Legal Implications: Closer monitoring will give the Council better understanding of the Canal's financial situation and allow for periodic reviews of the level of grant funding.

Risk Assessment: By introducing more stringent monitoring the Council will be better aware of the budgetary pressures on the canal, allow it understand how the previous year's grant has been used, and help future budget setting.

Equality Impact Assessment: None anticipated.

Relationship to Corporate Plan: The activities of the Grand Western Canal and Devon and Exeter Rail Project support the Council's corporate objectives for the Economy, in particular 'Growing the tourism sector' and for the Environment, in particular 'Protecting the natural environment'.

1.0 Introduction/Background

- 1.1 This report summaries the position in relation to grant contributions to two external bodies, the Grand Western Canal and the Devon and Exeter Rail Partnership Working Group. These are aligned to the Economic priorities of the Council's Corporate Plan.

2.0 **Grand Western Canal**

- 2.1 The Grand Western Canal is owned and managed as a Country Park and County Wildlife Site by Devon County Council, in partnership with Mid Devon District Council. Since its acquisition in 1971, management costs for the canal have been covered jointly by Devon County Council and Mid Devon District Council (and its antecedents). Although this is a long established relationship, there does not seem to be any formal written agreement that governs this arrangement. The County Council employs a Canal Manager and two Rangers who manage and maintain the Canal and Country Park. They are supported by a band of willing volunteers who support the rangers from time to time with a variety of maintenance projects.
- 2.2 Mid Devon District Council currently provides £45k as an annual grant towards the running of the canal, representing 25% of the annual revenue budget, which currently stands at £180k. The District Council contribution has reduced from £54,700 to £45,000 since 2011. The County Council contribution is currently £76,000. The remainder is raised through income from parking, letting premises and sale of fishing and boating permits. The earned income has increased markedly over the last decade.
- 2.3 In addition to the revenue funding for core staff, routine maintenance and small scale improvements, the canal requires considerable capital investment to maintain its proper functioning, to maintain historic structures, and to add to the visitor experience. These capital costs are covered 'ad hoc' by a mixture of external grants, Devon County Council and contributions from various other partners. Between 2002 and 2008, most of the Canal was dredged at a cost of £624K (with £354k from DCC, £150k from MDDC and £103k from the EU's Interreg III programme and £17k from other sources). Between 2009 and 2013 all of the Canal's culverts were inspected, cleaned and repaired at a cost of £330k. The 2012 breach in the canal at the Swing Embankment, Halberton required over £3 million to restore the embankment and repair the breach which was funded through Devon County Council sources. In 2012 a new Canal Visitor Centre was completed at a cost of £246k from the Investing in Devon Fund. In 2013 a new silt trap and reed bed system was constructed near Burlescombe, at a cost of £341k. During 2017-18 a new play area has been constructed (£50,000) with major works on the retaining wall (£244k).
- 2.4 The Canal has a Joint Advisory Committee (JAC) with representatives from a wide range of user groups, canal-related businesses, and county, district, town and parish councils. The group meets 3 times per year and is chaired alternately by DCC and MDDC members. The current chairman is Cllr Colin Slade. The committee functions as a highly effective forum for discussing canal and countryside issues and advising DCC on its management of the canal. The JAC receives regular six-monthly reports on progress with the canal.
- 2.5 The Grand Western Canal Management Plan 2009-2014 (which is available at <https://new.devon.gov.uk/grandwesterncanal/management>) is currently being revised, and the JAC will be receiving a draft for their comment prior to their meeting in October.

- 2.6 The Canal provides an important economic, leisure and environmental asset for the District. In 2012 it was estimated that there were 6 businesses directly linked to the canal and a further 25 benefiting from their proximity to the canal creating between 60 and 120 full time equivalent jobs. It is an important visitor attraction with over 250,000 visitors annually, as well as providing an important leisure facility for local residents, who use the canal for walking, running, cycling, fishing and boating. It is also an important nature reserve and wildlife corridor.

	16-17	17-18	18-19 (provisional)
Total number of visitors	208,452	214,088	215,000
Total number of canal based businesses supported	6	6	6
Total number of school children visiting as part of arranged school visits.	273	80	300
Total number of volunteering hours provided (excluding the Friends of the Grand Western Canal).	4,016	3,176	3,400

- 2.7 Although there is a long-standing arrangement to support the running of the canal through an annual grant, the relationship is not formalised into a funding agreement. Reporting and monitoring is largely achieved through the Joint Advisory Committee, but this does not provide sufficient information to inform the Council's decision making with regard to the level of future grant support funding. Going forward, and in liaison with Devon County Council, the Council will ask for an annual report prior to budget setting process detailing progress on the previous year's objectives, current financial position and projected budget for the coming year. This will allow the Council to monitor the Canal's financial situation and allow for a periodic review of the level of grant.

3.0 Devon & Exeter Rail Project Working Group (Exe Rail Project)

- 3.1 The Devon & Exeter Rail Project Working Party (formerly the Exe Rail Project), has met twice a year to discuss issues relating to railway provision in Devon, and in particular the rail services that run in and out of Exeter. Up until recently the working group has been part of the County Council's formal committee structure, to which District Councillors from the relevant authorities have been invited. Cllrs Bob Deed, and Terry Snow currently represent Mid Devon District Council at these meetings.
- 3.2 Following changes to personnel, Devon County Council has decided it can no longer administer the group and at their last meeting in July 2018¹ it was decided to change the working group into a forum aligned to the Devon and Cornwall Rail Partnership with wider community involvement. The last formal meeting of the working group was on 18th January 2019.

¹ <https://democracy.devon.gov.uk/ieListDocuments.aspx?CId=181&MId=3105&Ver=4>

3.3 The Devon and Cornwall Rail Partnership² is one of a number of Community Rail Partnerships across the country, working for the interest of the rail network throughout Devon and Cornwall. Its stated aims are to

- Promoting the area's branch lines
- Engaging the community
- Supporting economic growth
- Helping deliver improvements
- Working in partnership.

The Devon and Cornwall Rail Partnership has been very successful in promoting the use of branch lines and the number passenger journeys on the Tarka Line have more than doubled since 2001.

3.4 The District Council has been contributing £3,500 annually to the Devon and Exeter Rail Project for a number of years. With the change of structure in the New Year, it seems appropriate to review the current arrangements and contributions for 2019-20 following the setting up of the new forum. A report will be brought to a further meeting of the Economy PDG for consideration, once the new forum is established.

Contact for more Information: John Bodley Scott, (Economic Development Team Leader) 01884 234363, jbodleyscott@middevon.gov.uk

Circulation of the Report: Cllr Richard Chesterton, Leadership Team.

List of Background Papers:

² <http://www.dcrp.org.uk/our-work/working-in-partnership/>.

COMMUNITY POLICY DEVELOPMENT GROUP

19 MARCH 2019

ENVIRONMENTAL HEALTH FEES AND CHARGES

Cabinet Member: Cllrs Colin Slade and Margaret Squires
Responsible Officer: Simon Newcombe, Group Manager for Public Health & Regulatory Services

Reason for Report: To provide members with the revised fees and charges for statutory and discretionary functions within the Public Health & Regulatory Services Commercial Team.

RECOMMENDATION:

- (1) That Cabinet approve the revised fees and charges as set out in Annex 1.

Relationship to the Corporate Plan: Priority Area Community - Promoting physical activity, health and wellbeing. The statutory functions of the Commercial Team directly protect the health and wellbeing of residents, workers and visitors across Mid Devon.

Financial Implications: The revised fees and charges are set out in Annex1 of the report. The fees have been updated to reflect current service delivery costs.

Legal Implications: The Council cannot charge for the performance of its statutory duties unless permitted by legislation. It can, however, charge for discretionary services, provided such charges are made on a cost recovery basis i.e. that the charge levied reflects the overall cost to the Council in the delivery of the service. The cost can include overheads i.e. it is not simply an hourly rate based on the cost of employing the officer. Charges above cost recovery i.e. which result in a profit are not permissible – the Council would have to establish a trading company and that is not proposed in this report.

Risk Assessment: There are no major risks. A failure to update the relevant fees and charges could mean we are not able to adequately recover costs where we are able to do so.

Equality Impact Assessment: A full assessment is not necessary for this report. The charges are set and applicable to the service being provided and do not disadvantage any protected characteristics or specific groups.

1.0 Introduction

- 1.1 A review of fees and charges is necessary to offset or cover the costs incurred by this authority in carrying its duties.
- 1.2 As the pressure on Council budgets increases, service areas are having to re-examine the functions offered and, in addition to key statutory functions, provide discretionary functions in a way that does not present an undue cost

to the authority. An innovative approach has also been taken to off-set the cost through the commercialisation of some discretionary services, wherever possible and permissible.

- 1.3 A new cost of charging for missed appointments is introduced to reflect the corporate risk function now carried out by the Commercial Team on behalf of Building Services, in particular Council housing but can apply to corporate commercial property, though instances of missed appointments are much less common in the latter. This change mirrors the adopted recharges policy currently carried out by Building Services.

2.0 Changes to the fees and charges

- 2.1 A breakdown of the Council's current and proposed charges in respect of the environmental health functions is set out in Annex 1.

Private Water Supplies

- 2.2 The Commercial Team within Public Health and Regulatory Services carries out duties to ensure that private water supplies are safe and drinking water quality is acceptable to consumers under the Private Water Supplies (England) Regulations 2016. This includes the risk assessment of water supplies, the taking of and the analysis of water samples, and the investigation into the reasons why the results of some tests breach the regulatory standards.
- 2.3 On the basis of the number of tests and assessments carried out in previous years, the Council can expect to achieve an income in the region of £35,000 for 2019/20.
- 2.4 Local Authorities can make reasonable charges to cover the costs of carrying out the duties in relation to private water supplies, as set out in the Private Water Supplies (England) Regulations 2016.

Environmental Testing Services

- 2.5 In relation to the testing of swimming pool and hot tubs it is important that operators carry out bacteriological monitoring on a regular basis to ensure that the pool water is being adequately disinfected and that no person is being exposed to any harmful bacteria in the pool. Public Health offers the discretionary service of pool water sampling visits and provides advice given in the event of any failures.
- 2.6 The testing of water quality for legionella may, in future, be offered to third parties complementary to the corporate risk work currently being carried out and outside of the hours paid for by corporate risk client services (Corporate Property, Building Services and Leisure). As part of the employer's responsibilities to manage legionella this service would initially be offered to MDDC owned tenanted sites on a trial basis and include advice in the event of any unsatisfactory results. In the future, this work could be delivered to commercial/social housing clients or to other local government clients within or outside of the district.

- 2.7 The sampling of material suspected of containing asbestos may, in future, be offered to third parties. This would also be a complementary to the asbestos surveys currently being undertaken on Council owned housing stock by the team.
- 2.8 An ultraviolet light box and hand gel is available as a 'wash and glow' training solution to educate both children and adults in correct hand-washing techniques. A hire charge is introduced to cover the costs of hire although this may be waived where it forms part of an 'official control' or public health function.

Charges for Food Hygiene Rating Scheme Revisits

- 2.9 The Commercial Team participate in the delivery of the national Food Hygiene Rating Scheme where food businesses are rated between 0 (*urgent improvement necessary*) and 5 (*very good*). As a food business operator with a food hygiene rating of 4 or below there is a right to request a revisit from a food hygiene officer to re-rate the business providing action has been taken to improve any issues found during the original inspection.
- 2.10 A cost recovery fee for food hygiene rating scheme re-rating inspections is to be introduced. Legal advice received by the Food Standards Agency indicates that powers available to local authorities in England under the Localism Act 2011 allow for the recovery of costs for re-inspection requested by businesses to re-assess their food hygiene rating. This is because early re-rating assessment visits as set out below are a discretionary service rather than a statutory duty.
- 2.11 Currently a food business operator can only request one re-rating inspection between due periodic inspections, ranging from six months to three years. The re-rating inspection is carried out unannounced and is typically carried out between three to six months of the initial inspection. Under the fee paying scheme, all requested revisits will be carried out within three months of the fee being paid and there is no limit on the number of requests a business can make.
- 2.12 There is no prescribed fee for undertaking this work and Food Standards Agency guidance indicates local authorities must set a fee having regard to HM Treasury 'managing public money' and other relevant guidance. The fee set therefore covers the cost of delivery for re-rating inspections only.

Charges for Food Safety Advice to Businesses

- 2.13 The Commercial Team is responsible for carrying out inspections of all food businesses in Mid Devon and have a range of enforcement powers to ensure they meet the requirements of food hygiene law. The provision of advice to individual businesses is one such part of our successful strategy to change behaviour and increase compliance rates in food businesses.
- 2.14 The demand for professional food safety advice, particularly from new businesses, is threatened by the competing demands for resources as part of

our primary aim of regulating businesses for the protection of the public. While it is recognised that timely advice can have a greater impact on securing compliance over enforcement action there is now a point where the provision of advice goes over and above what is deemed statutory and places undue cost on the service at the expense of other functions.

- 2.15 Section 93 of the Local Government Act 2003 contains powers for all local authorities to levy charges for 'discretionary services' i.e. where the authority has a choice whether or not to undertake the service and the recipient has a choice whether or not to receive the service. A significant proportion of the food safety advice provided by the Commercial Team is discretionary. No fee is permitted to be charged for the inspection of food businesses which is carried out as part of the Council's statutory duties.
- 2.16 Businesses will continue to be given sufficient information or advice free of charge so that they are clear as to the legal obligations placed upon them. A pre-agreed charge on a cost recovery basis will however be introduced for certain aspects of the advisory work currently undertaken including:
- all advisory visits
 - where "considerable" assistance to start-up a new food business is required
 - where help is required to produce and implement a food safety management system
 - where tailored advice specific to the businesses needs is requested
 - requested visits, advice or guidance carried out in advance of a Food Hygiene Rating Scheme visit

Charging for other Food Related Activities

- 2.17 The Commercial Team issue food export certification where a food business wishes to commercially export food outside the European Union. Food export certificates are issued to satisfy the particular requirements of each importing country that may require a detailed inspection of the consignment and processing requirements or simple documentation that the premises are subject to inspection by the local authority.
- 2.18 In the event of a no-deal Brexit there will likely be an increase in the number of export certificates which local authorities need to issue to producers exporting to the European Union.
- 2.19 A food condemnation certificate may be issued where a food business has food that is no longer fit for purpose (for example freezer breakdown, out of date food, damaged stock). Environmental Health Officers will visit and certify the quantity of unfit food (often required for insurance purposes) and ensure that it is appropriately disposed of.
- 2.20 There is no legal obligation on the part of the local authority to issue health certificates or food condemnation certificates and therefore this remains a discretionary service.

Requests for Statements and Information

- 2.21 In certain circumstances, such as an accident investigation, a request can be made by a third party to provide a 'witness of fact statement'. Officers may produce a full report or they may provide all the information in the form of a statement whilst having due regard to any photographs, plans, calculations, analyses, measurements, survey reports or other similar documents. A charge will be levied on all such requests.
- 2.22 All food premises used for storing, selling, distributing or preparing food must register with the local authority as a food business establishment. Registration is free and enables environmental health to keep an up-to-date list of all premises operating in Mid Devon. The name and address of the food business and the nature of the food business will be held on the Public Register. A copy of the list or any entry on it may be provided to anyone who makes a request for such information under Article 31(1)(b) of Regulation 882/2004.

Charging for Missed Appointments

- 2.23 A newly assigned function of the Commercial Team is to carry out Legionella sampling and asbestos surveys on Council properties as part of the statutory corporate risk obligations for Building Services. Where a Tenant has had suitable notice and refused access for the Council to carry out this monitoring, the Council will recharge the Tenant for any costs incurred with the aborted visit and any subsequent attempts to gain access. This will include lost officer time, travel costs, administration fees, and legal/court costs where applicable.
- 2.24 If a Tenant is out or does not answer the door when we visit for a pre-arranged repair appointment, the Council will recharge the Tenant for any costs incurred with the aborted visit.
- 2.25 As regulators for private water supplies, where the owner or person responsible for the supply has had suitable notice and refused access for the Council to carry out its statutory duties, the Council will recharge the responsible person for any costs incurred with the aborted visit and any subsequent attempts to gain access. This will include lost officer time, travel costs, administration fees, and legal/court costs where applicable.

3.0 Summary

- 3.1 A review has been carried out of fees and charges and is necessary to offset or cover the costs incurred by this authority in carrying out its statutory duties under the Private Water Supplies (England) Regulations 2016 and for those discretionary services offered by the service as outlined above.
- 3.2 The 2019-20 fees and charges are set out in Annex 1. In order to compare fee structures, a range of local authority service charges are benchmarked from published information as detailed in Annex 2.

- 3.3 The charges for our discretionary services are on a cost recovery basis only in order to comply with legal limitations on charging.

Contact for more Information: Jeremy Pritchard, Team Leader (Commercial Team) on 01884 244614 or jpritchard@middevon.gov.uk or Simon Newcombe, Group Manager for Public Health and Regulatory Services 01884 244615 or snewcombe@middevon.gov.uk.

Circulation of the Report:

Cllrs Colin Slade and Margaret Squires, Cabinet Member for Community Well-being and Public Health respectively
Members of the Community PDG
Leadership Team
Financial Services
Legal Services
Group Manager for Performance, Governance and Data Security

Annex 1

Mid Devon District Council Public Health & Regulatory Services Commercial Team Charges 2019/20

PRIVATE WATER SUPPLIES			
Activity	Current charge	Proposed charge	Comments
Risk Assessment	£220 for up to 2 hrs + £40 hr thereafter	£200 for up to 2 hrs on-site + £40 hr thereafter	A risk assessment is required for all private water supplies except for single domestic dwellings
Risk Assessment Report	Included with above fee	£70	Includes up to 2 hours write-up
Sampling visit	£80	£100	Sampling visit only, does not include analysis costs
Investigation	£100	£50	An investigation must be carried out to determine the cause of a failure including service of notice
Authorisation	£100	£100	Issued for a temporary basis whilst remedial work is carried out to improve the supply

FOOD SAFETY			
Activity	Current charge	Proposed charge	Comments
Food Condemnation Certificate	£100	£100	Customer to arrange for removal of condemned food by approved contractor (includes first hour plus £40 per hour thereafter)
Food Export Certificate	£50	£100	Includes a site visit. Additional certificate(s) £30 each
Food Export Certificate	£23 each	£30 each	No site visit. Certificates sent through post
Training course in Food Safety in Catering	£15 per person	£15 per person	2-hour food hygiene (refresher) training course
UV light box hire	-	£40	(includes a minimum 1 x 200ml UV cream)
1 hour regulatory business advice at our office	-	£53	(£40 per hour thereafter)
1 hour regulatory business advice site visit	-	£99	(£40 per hour thereafter)
Safer Food Better Business pack	-	£30	(an additional £4.95 for postage)
Food Hygiene Rating Scheme re-inspection charge	-	£155	

ENVIRONMENTAL SAMPLING/TESTING			
Activity	Current charge	Proposed charge	Comments
Swimming pool and hot tubs sampling*	-	£140	(Includes bacteriological analysis) Additional samples £50 each
Legionella sampling	-	£120	Additional samples £40 each
Asbestos sampling	-	£150	Additional samples £50 each
<i>*includes sampling for Leisure Services</i>			
REQUESTS FOR STATEMENTS/INFORMATION			
Issue of Factual Statement	-	£200	Includes up to 4 hours work
Individual copy of Food Premises Registration form	£12	£15	Paper copy
Entire copy of Food Premises Registration Forms	£550	£550	Paper copy
	£110	£110	Electronic copy
PRIMARY AUTHORITY PARTNERSHIP			
Initial set-up fee	-	£550	
1 hour business advice at our office	-	£53	(from £40 per hour thereafter)
1 hour business advice site visit (within Mid Devon)	-	£99	(from £40 per hour thereafter)
FIXED PENALTY NOTICES			
Smoking in a smoke free designated area or vehicle	£50	£50	Reduced to £30 if paid within 15 days of being issued
Failing to display smoke free signage	£200	£200	Reduced to £150 if paid within 15 days of issue
MISSED APPOINTMENTS			
Missed appointment	-	£15	
Refused access	-	Officer time, travel costs, administration and court costs where applicable	

Annex 2

Benchmarking Local Authority Charges

PRIVATE WATER SUPPLY CHARGES			
Local authority	Activity	Charge	MDDC Charge
Cornwall Council	Sampling visit	£100	£100
	Risk Assessment	£317 (2 hrs + £52 per hr) & £126 report (1.5 hrs)	£200 (2 hrs + £40 hour & £70 report 2 hrs)
North Devon District Council	Sampling visit (programmed)	£100 (single request)	£100
	Risk Assessment	£204	£200 (2 hrs + £40 hour & £70 report 2 hrs)
	Investigation	£100	£50
	Authorisation	£100	£100
FOOD SAFETY CHARGES			
Cornwall Council	Food Condemnation Certificate	£84 (per hour)	£100
	Food Export Certificates (site visit)	£122	£100
	Food Export Certificate (signing only)	£61	£30
	Food Hygiene Rating Scheme re-inspection charge	£175	£155
North Devon District Council	Food Condemnation Certificate	£50 (per hour)	£100
	Food Export Certificates (site visit)	£50	£50
	Food Export Certificate (signing only)	£50	£23
Teignbridge District Council	Food Hygiene Rating Scheme re-inspection charge	£160	£155
OTHER CHARGES			
Cornwall Council	Issue of Factual Statement	£336	£200
	Primary Authority Partnership	£672 (set-up) and advice from £84 hr	£450 (set-up) and advice from £40 hr
	Regulatory business advice	From £84	From £53
Teignbridge District Council	Issue of Factual Statement	£150	£200

This page is intentionally left blank

JOINT COMMUNITY, ENVIROMMENT AND HOMES PDG REPORT

15 MARCH 2019

OPERATIONS DIRECTORATE ENFORCEMENT POLICY

Cabinet Members: Cllrs Clive Eginton, Colin Slade, Margaret Squires and Ray Stanley

Responsible Officer: Simon Newcombe, Group Manager for Public Health and Regulatory Services

Reason for Report: To provide Members with the updated Operations Directorate Enforcement Policy PH/EP/01/19. This policy was formerly the Public Health Services Enforcement Policy PH/EP/02/16 adopted in August 2016. The policy was due for review and has been expanded to encompass the remaining enforcement functions in the Operations Directorate within Housing Services and Street Scene Services.

RECOMMENDATION(S): That Cabinet recommends to full Council that the updated Operations Directorate Enforcement Policy attached in Annex 1 be approved.

Relationship to Corporate Plan: As a regulatory authority, enforcement activities are matters which overarch the Corporate Plan .

Financial Implications: There are no direct financial implications arising from adopting this policy other than to specify circumstances where the Operations Directorate is able to charge for enforcement actions (cost recovery). However, poorly managed enforcement and failure of legal proceedings can result in resources being used wasted and costs being awarded against the Council.

Legal Implications: If we do not have an appropriate enforcement policy in place for the statutory functions of the services within the Directorate we may not meet the relevant legal requirements that are our duty as a regulatory authority. Specifically, as set out in the Regulators' Code 2014 (Department of Business Innovation and Skills – now Department for Business, Energy and Industrial Strategy), the Code of Practice Powers of Entry 2014 (Home Office) and the provisions outlined in the Legislative and Regulatory Reform Act 2006 and the Regulatory and Enforcement Sanctions Act 2008.

Risk Assessment: Having an adequate policy in place is essential to meet the legal requirements set out above and the principles of good enforcement. It also serves to inform officers and decision-makers of the framework under which they operate, in addition to providing information to those people, organisations and businesses which are regulated and those protected by regulation.

Not having an adequate policy therefore undermines the principles of good enforcement, can impact upon legal proceedings and may ultimately result in a failure to protect the public from harm.

Equality Impact Assessment: A full assessment is not necessary for this report. This policy has however been reviewed in accordance with the requirements of the Equality Act 2010. That review indicates the policy complies with the public sector Equality Duty. This is underpinned by virtue of the policy seeking to ensure the overarching principles of good enforcement are met as set out in section 1.1 and 1.2 of the policy and that all our enforcement activities are carried out in a fair, consistent and equitable manner irrespective of the otherwise protected characteristics of individuals subject to enforcement and regulatory action. More information is also provided in Section 3.0 of this report.

The policy does recognise there may be circumstances where alternative enforcement actions including no action are undertaken due to the vulnerability of the persons involved which may include a mental or physical disability. In these situations, any deviation from a standard policy approach will be considered on a case by case assessment in conjunction with available information provided by the individuals concerned and from any professional clinicians or therapists directly involved. Where appropriate this information will be included in the case merit test as set out in Section 5.17 of the policy.

1.0 Introduction

- 1.1 The purpose of this policy is to ensure compliance with Regulators' Code and the principles of good enforcement. It also serves to inform investigating officers and decision-makers of the framework under which they operate, in addition to providing information to those people, organisations and businesses which are regulated and those protected by regulation.
- 1.2 The target audience of this policy is investigating officers and decision-makers and service or Group Managers, Leadership Team, Cabinet, Legal Services and any person, organisation, company or business affected by regulatory action by the Operations Directorate. This includes Public Health and Regulatory Services, Housing Services and Street Scene Services.
- 1.3 The Operations Directorate is responsible for several different broad enforcement functions across a number of services and teams:

Public Health and Regulatory Services

- **Licensing** (hackney carriage and private hire drivers, vehicles and operators, alcohol sales, entertainments, temporary events/festivals, gambling, charity collections, animal establishments, caravan sites, scrap metal dealers, sex establishments and skin piercing/tattooists)
- **Environmental Health** (food safety, health and safety, private water supplies, communicable disease control, environmental permitting, air/land quality, noise and other statutory nuisances, pest control, filthy premises and drainage)
- **Private Sector Housing** (private sector housing conditions/fitness and renewal, rogue landlords, empty homes and houses in multiple occupation)

- **Anti-social behaviour** (closure orders, civil injunctions, community protection notices and public protection orders)

Housing Services

- **Tenancy breaches** (tenancy breaches within the Council's own housing stock, anti-social or disruptive behaviour by tenants, evictions and possession)
- **General tenancy management** (including provisions to undertake mandatory inspections and safety checks)
- **Unlawful occupation** (illegal squatting and unlawful subletting)

Street Scene Services

- **Fly-tipping and littering** (illegal dumping of waste, littering, dog fouling and fixed penalty notices)
- **Civil parking** (off-street parking enforcement in Mid Devon District Council's car parks)

- 1.4 This brings together the core work and functions of this authority that improve the safety and health of the residents, visitors and workers in Mid Devon. As a consequence we are often dealing with the most vulnerable persons in need of support and protection. Enforcement actions therefore must be timely, effective and well-managed.
- 1.5 Each area of work uses different legislation to ensure compliance and each has its own extensive body of regulations, codes of practice and guidance. The majority of our duties and powers are set out under criminal legislation, however there are a number of areas covered by civil legislation (i.e. an offence under this legislation is not a criminal offence). Ultimately therefore, we may take action through the criminal and civil courts or engage with other tribunals or formal hearings. The exact nature of procedures used in each circumstance will vary and cannot be set out in full within this policy and will be applied as relevant on a case-by-case basis.
- 1.6 In addition to dealing with the impacts of the activities of private individuals, the Directorate is working with many of our local commercial organisations and traders. Good enforcement policy and approaches should ensure this is done in a way which provides a level playing field in terms of regulation/regulatory burden and supports economic growth in addition to the principles of Better Business for All (BBfA).
- 1.7 BBfA brings together businesses and regulators to consider and change how local regulation is delivered and received. It involves the creation of local partnerships to identify the issues facing local businesses and shape the provision of effective support services to them. It was initially developed by Better Regulation Delivery Office (BRDO) which is now the Regulatory Delivery team at the Dept. for Business Innovation and Skills. More information is available in section 2.15 of the policy or at

- 1.8 With united core aims but such a broad range of individual functions the unit comes under a number of cabinet and corporate priority areas including Environment, Community Well-Being and Homes in addition to Licensing and Regulatory committees.
- 1.9 Overall, the functions undertaken by the Operations Directorate assist the Council in achieving its ambition by contributing towards several priority outcomes including the health and resilience of our residents, growth of the economy and fairness. It strives to accomplish this by undertaking its duties in a fair, consistent and equitable manner by requiring individuals, organisations and businesses to fulfil their legal responsibilities. It will achieve this using a combination of education, informal advice and regulation.

2.0 What is regulatory and enforcement activity?

- 2.1 'Regulatory' encompasses the Council's numerous powers and duties enabling the behaviour of individuals and/or organisations to be controlled in the public interest.
- 2.2 'Enforcement' includes any action carried out in the exercise of, or against the background of, statutory powers and duties of regulation. This is not limited to formal enforcement action such as prosecution in the criminal Courts or the giving of Notices. It also includes, among other things, the inspection of premises for the purpose of checking compliance with regulations or conditions, the imposition of conditions on any licence, consent or similar formal permission, the issue of fixed penalty notices, the giving of Home Office cautions and the making of applications to the Courts for Orders to control the conduct of individuals and/or organisations, possession proceedings, demoted tenancy proceedings and closure orders
- 2.2 These actions cover the full hierarchy of options available, ranging from education and informal advice through to statutory notices and works in default, fixed penalty notices, seizure of goods and formal cautions. Ultimately this also includes prosecution for criminal offences. This may require evidence gathering which involves the seizure of information/documentation, overt and covert monitoring and sampling involving a wide range of media.
- 2.3 Whilst the general principles outlined in the policy will apply in all cases it must be recognised that each individual case will vary and each must be considered on its own merits before a decision is reached. Any significant deviations from the published policy must still meet statutory requirements and the reasons/justification documented.

3.0 Principles of good enforcement and the Regulators' Code

- 3.1 This policy seeks to ensure that the application of any enforcement is undertaken in accordance with key over-arching principles and therefore is:
- transparent and accountable;

- proportionate;
 - targeted;
 - consistent in approach; and
 - appropriate.
- 3.2 Further to these principles, that enforcement has regard to the provisions of the Regulators' Code, in that it:
- supports those we regulate to comply and grow;
 - provides for straightforward way for those we regulate to engage with us;
 - recognises that we base our regulatory activities on risk;
 - that we share information about compliance and risk;
 - information, guidance and advice is made available or signposted to help those we regulate to meet their responsibilities to comply; and
 - sets out our approach to transparent service standards, the provision of information and checks on compliance

More information on how we set out to achieve this is contained in Section 2 of the Policy.

4.0 Policy review and update

- 4.1 The review of this policy was subject to a business case and Project Initiation Document (PID) approved by Group Management Team and Operations Director in September 2018. The review and drafting process was contained in more detail in the PID. Nonetheless, in summary the policy was developed as follows:

- initial update and practice review by the Group Manager for Public Health and Regulatory Services including key learning points from recent evidence, procedure/best practice and case review training (Advanced Certificate of Professional Investigative Practice – APCIP)
- a multi-stage process of review and edit with all the relevant service team leads including Housing and Street Scene
- incorporation of key learning points from the recent RIPA training completed by senior managers and Leadership Team
- final draft line by line legal review by Legal Services.
- review by Director of Operations

5.0 What is new in this policy?

- 5.1 Overall, the policy recognises and formalises changes in enforcement practice in the two-years plus since the previous policy was drafted and adopted, in line with the regulatory framework outlined above. In doing so it provides a comprehensive overview of the following areas:

- compliance with the principles of good enforcement
- links and relationship with Better Business for All
- updated enforcement options and hierarchy including cautions

- revised Evidential and Public Interest Tests
- Proceeds of Crime
- use of powers of entry
- surveillance in light of changes to RIPA (Regulation of Investigatory Powers Act 2000) powers
- updated guidance on the use of Covert Human Intelligence Sources
- use of open source research (e.g. web, social media and information networks)
- charging for enforcement actions including recent case law
- policy implementation, monitoring and review
- civil sanctions and enforcement in a social housing context (Council housing tenants and Housing Services)
- littering and fly-tipping powers (Street Scene Services)
- new Private Sector Housing powers in respect of rogue landlords and Houses in Multiple Occupation
- new Financial (Civil) Penalties
- merit and legal tests for prosecution or alternatives to prosecution
- publicity and information requests connected to enforcement actions

5.2 The policy also reflects updated management structures and responsibilities including relevant Group Managers.

5.3 Sections 1 – 8 inclusive of the document form the key adopted policy. These contain all the common or generic over-arching policy approaches as will be relevant across most or all the statutory functions across the Operations Directorate.

5.4 The policy also contains separate appendices A-M which are supplementary enforcement policies containing more detailed and largely function specific information. These are designed to be updated and revised more easily without requiring formal re-adoption of the overarching policy. Nonetheless, the full policy will be reviewed every two-years and as required in light of any major changes to legislation or statutory guidance.

5.5 The main policy and appendices do not work in isolation. As set out, the document links to a number of other policies and guidelines that apply. This includes how the policy works in conjunction with other relevant government guidance from authoritative bodies e.g. Health & Safety Executive, Environment Agency and Food Standards Agency. It also links to corporate policies covering areas such as conflict of interest and bribery. Finally, the policy contains essential links with function specific policies, for example those adopted as the Licensing Authority.

6.0 Summary

6.1 The policy is needed to ensure we are continuing to meet our legal requirements and carrying out our enforcement activities in a fair, transparent, equitable and effective manner.

6.2 This policy brings together the enforcement policy for the wide range of enforcement functions within the Operations Directorate. In doing so, it sets out the enforcement approach and framework for all the enforcement activities

of the Council with the exception of Planning enforcement and debt recovery.

- 6.3 All enforcement procedure and practice must therefore be developed, reviewed and ultimately take into account matters set out in this policy in addition to relevant function or activity specific legislation and statutory guidance.

Contact for more Information:

Simon Newcombe, Group Manager for Public Health and Regulatory Services,
01884 244615 or snewcombe@middevon.gov.uk)

Circulation of the Report:

Cabinet Members for Environment (Cllr Clive Eginton), Working Environment & Support Services/Public Health (Cllr Margaret Squires), Community Well-Being and Licensing (Cllr Colin Slade) and Housing (Cllr Ray Stanley)
Leadership Team
Operations Director
Group Manager for Street Scene and Open Spaces
Group Manager for Housing Services
Group Manager for Legal Services and Monitoring Officer
Group Manager for Performance and Governance
Members of Licensing and Regulatory Committees
Members of Community, Homes and Environment Policy Development Groups

List of background papers:

Regulators' Code 2014 (Department of Business Innovation and Skills),

Code of Practice Powers of Entry 2014 (Home Office)

Legislative and Regulatory Reform Act 2006

Regulatory and Enforcement Sanctions Act 2008.

All documents are available at <https://www.gov.uk/>.

Annex 1 – Operations Directorate Enforcement Policy (attached separately)

This page is intentionally left blank

Mid Devon District Council

Operations Directorate

ENFORCEMENT POLICY

Policy Number: PH/EP/01/19

Target audience:

Investigating Officers and Decision-Makers, Leadership Team, Cabinet, Legal Services and any person, organisation, company or business affected by regulatory action by the Operations Directorate. This includes Public Health and Regulatory Services, Street Scene Services and Housing Services

February 2019

Version Control Sheet

*Title: Operations Directorate Services Enforcement Policy
(Formerly Public Health Services Enforcement Policy PH/EP/02/16 August 2016)*

Purpose: The purpose of this policy is to ensure compliance with Regulators' Code and the principles of good enforcement. It also serves to inform investigating officers and decision-makers of the framework under which they operate, in addition to providing information to those people, organisations and businesses which are regulated and those protected by regulation.

Owner: **Group Manager for Public Health and Regulatory Services**
snewcombe@middevon.gov.uk
Telephone number 01884 244615

Date: **February 2019**

Version Number: 2.2

Status: Final

Review Frequency: **Every 10 years or sooner if required**

Next review date: **February 2029**

Consultation **This document was produced in consultation with the following:**

Public Health and Regulatory Service team leads
Street Scene Services
Housing Services
Director of Operations
Leadership Team
Legal Services

Document History

This document obtained the following approvals.

Title	Date	Version Approved
Head of Service	20/06/16	1.0
Management Team	28/06/16	1.0
Community Well-Being PDG	08/07/16	1.0
Decent and Affordable Homes PDG	08/07/16	1.0
Licensing and Regulatory Committees	18/07/16	1.0
Cabinet	04/08/16	1.0 (with addendum)
Council	31/08/16	1.1
Updated draft following formal review	06/12/18	2.0
Updated final draft following legal review	22/01/19	2.1
Updated final report following Leadership Team review	13/02/19	2.2

CONTENTS

PREFACE	4
1.0 INTRODUCTION	6
2.0 GENERAL PRINCIPLES AND STATEMENT OF INTENT	8
3.0 CHARGING FOR ENFORCEMENT ACTIONS	10
4.0 COMPLIANCE WITH THE PRINCIPLES OF GOOD ENFORCEMENT	11
4.1 Transparency	11
4.2 Accountability	11
4.3 Proportionality	11
4.4 Consistency	11
4.5 Targeting	12
4.6 Helpfulness	12
5.0 ENFORCEMENT OPTIONS AND FACTORS	14
5.1 Factors to be considered	14
5.2 No action	15
5.3 Informal action	15
5.4 Information Notices	15
5.5 Other Statutory Notices	15
5.6 Fixed Penalty Notices	16
5.7 Civil Fixed Penalty Notices	17
5.8 Prohibition Notices and Orders	17
5.9 Injunctions	17
5.10 Seizure of Goods, Equipment, Food, Articles or Records	17
5.11 Work in default	17
5.12 Management Orders	18
5.13 Compulsory Purchase Orders	18
5.14 Premises Licence Review	18
5.15 Simple Caution	19
5.16 Evidential and Public Interest Tests	20
5.17 Prosecution	20
5.18 Financial (Civil) Penalties	23
5.19 Proceeds of Crime Applications	24
5.20 Multi-agency approaches to enforcement	24
6.0 INVESTIGATIONS	25
6.1 Access and Powers of Entry	25
6.2 Notifying alleged perpetrators / offenders	25
6.3 Liaison with and referrals to other regulatory bodies and enforcement agencies	26
6.4 Surveillance and Human Sources: Human Rights Act 1998, Regulation of Investigatory Powers Act (RIPA) 2000 – Basis for Lawful Surveillance	26
6.5 Enforcement on Council premises or at events organised by the Council	28
7.0 IMPLEMENTATION, MONITORING AND REVIEW	30
7.1 Implementation and monitoring	30
7.2 Conflicts of interest and bribery	30
7.3 Complaints about service	30
7.4 Policy review	30
8.0 PUBLICITY AND INFORMATION REQUESTS	31
APPENDICES OF SUPPLEMENTARY ENFORCEMENT POLICY ISSUES	32

PREFACE

The Operations Directorate is responsible for several different broad enforcement functions across a number of services and teams:

Public Health and Regulatory Services

- **Licensing** (hackney carriage and private hire drivers, vehicles and operators, alcohol sales, entertainments, temporary events/festivals, gambling, charity collections, animal establishments, caravan sites, scrap metal dealers, sex establishments and skin piercing/tattooists)
- **Environmental Health** (food safety, health and safety, private water supplies, communicable disease control, environmental permitting, air/land quality, noise and other statutory nuisances, pest control, filthy premises and drainage)
- **Private Sector Housing** (private sector housing conditions/fitness and renewal, rogue landlords, empty homes and houses in multiple occupation)
- **Anti-social behaviour** (closure orders, civil injunctions, community protection notices and public protection orders)

Housing Services

- **Tenancy breaches** (tenancy breaches within the Council's own housing stock, anti-social or disruptive behaviour by tenants, evictions and possession)
- **General tenancy management** (including provisions to undertake mandatory inspections and safety checks)
- **Unlawful occupation** (illegal squatting and unlawful subletting)

Street Scene Services

- **Fly-tipping and littering** (illegal dumping of waste, littering, dog fouling and fixed penalty notices)
- **Civil parking** (off-street parking enforcement in Mid Devon District Council's car parks)

Each area of work uses different legislation to ensure compliance and each has its own extensive body of regulations, codes of practice and guidance. The majority of our duties and powers are set out under criminal legislation, however there are a number of areas covered by civil legislation (i.e. an offence under this legislation is not a criminal offence). We therefore ultimately may take action through the criminal and civil courts or engage with other tribunals or formal hearings. The exact nature of procedures used in each circumstance will vary and cannot be set out in full within this policy and will be applied as relevant on a case-by-case basis.

The functions undertaken by this Directorate assist the Council in achieving its ambition by contributing towards several priority outcomes including the health and resilience of our residents, growth of the economy and fairness. It strives to accomplish this by undertaking

its duties in a fair, consistent and equitable manner by requiring individuals, organisations and businesses to fulfil their legal responsibilities. It will achieve this using a combination of education, informal advice and regulation.

This policy details our approach to the use of our enforcement powers, whether that is criminal prosecution at one end of the spectrum or informal warnings and advice at the other. It also gives clarity as to how the unit will achieve compliance by setting out options and the criteria used to determine the most appropriate, effective and efficient response to breaches of legislation.

The purpose of this policy is also to ensure compliance with legal requirements and the principles of good enforcement. It also serves to inform investigating officers and decision-makers of the framework under which they operate, in addition to providing information to those people, organisations and businesses which are regulated and those protected by regulation. The policy cannot be absolutely prescriptive because the circumstances of each individual case and the evidence available are likely to vary. However, this policy should leave most readers in little doubt as to what they can expect by way of enforcement.

Particular regard has also been given to the provisions of the Regulators' Code 2014 (Department of Business Innovation and Skills), the Code of Practice Powers of Entry 2014 (Home Office) and the provisions outlined in the Legislative and Regulatory Reform Act 2006 and the Regulatory and Enforcement Sanctions Act 2008. All documents are available at <https://www.gov.uk/>. This new policy document supersedes any previous enforcement policies covering individual functions within the services separately.

In revising this policy we have considered how best we can:

- Understand and minimise negative economic impacts of our activities;
- Minimise the costs of compliance for those we regulate and ourselves as the regulator;
- Improve confidence in compliance for those we regulate; and
- Encourage and promote compliance.

The Housing Service is responsible for the management of the Council's housing stock. Our relationship with our tenants is therefore a contractual one, based on the tenancy agreement and also based on statute. We have a number of relevant policies which set out how we will enforce conditions of tenancy and these have regard to legislative and regulatory obligations as well as to good practice.

1.0 INTRODUCTION

1.1 This policy seeks to ensure that the application of any enforcement is undertaken in accordance with key over-arching principles and therefore is:

- transparent and accountable;
- proportionate;
- targeted;
- consistent in approach; and
- appropriate.

1.2 Further to these principles, that enforcement has regarded to the provisions of the Regulators' Code, in that it:

- supports those we regulate to comply and grow;
- provides for straightforward way for those we regulate to engage with us;
- recognises that we base our regulatory activities on risk;
- that we share information about compliance and risk;
- information, guidance and advice is made available or signposted to help those we regulate to meet their responsibilities to comply; and
- sets out our approach to transparent service standards, the provision of information and checks on compliance

More information on how we achieve this is set out in Section 2.

1.3 Past experience in the enforcement of statute and regulations shows that, in most cases, businesses and individuals comply with the law. Any failure to comply with legislative requirements often stems from ignorance, carelessness, lack of training, lack of effective management control and sometimes, from wilfulness or malice. In a social housing context (Council housing tenants), the reasons for non-compliance may differ and can include vulnerability issues and the service is tailored to meet the needs of tenants.

1.4 This policy must therefore guide all officers who are involved in taking enforcement action, investigating cases, serving notices and recommending or deciding upon the commencement of legal proceedings, when taking tenancy enforcement action or when regulating others.

1.5 What we mean by 'Regulatory' and 'Enforcement':

- 'Regulatory' encompasses the Council's numerous powers and duties enabling the behaviour of individuals and/or organisations to be controlled in the public interest.
- 'Enforcement' includes any action carried out in the exercise of, or against the background of, statutory powers and duties of regulation. This is not limited to formal enforcement action such as prosecution in the criminal Courts or the giving of Notices. It also includes, among other things, the inspection of premises for the purpose of checking compliance with regulations or conditions, the imposition of conditions on any licence, consent or similar formal permission, the issue of fixed penalty notices, the giving of Home Office cautions and the making of applications to the Courts for Orders to control the conduct of individuals and/or organisations, possession proceedings demoted tenancy proceedings closure orders

- 1.6** Whilst the general principles outlined below will apply in all cases it must be recognised that each individual case will vary and each must be considered on its own merits before a decision is reached. In certain instances for example, we may conclude that a provision in the Regulators' code is either not relevant or is outweighed by another provision.
- 1.7** In respect of our tenants, to ensure that any action taken to regain possession of a property is likely to succeed, Officers must be able to demonstrate that the tenant has been given an opportunity to modify their behaviour, that there is evidence to show the history and that the issues are ongoing despite attempts to resolve matters or that the matter is sufficiently serious even though limited to one incident to merit possession proceedings. The outcome sought must be reasonable and proportionate and if, for whatever reason, we decide that the chances of success are small, then we may decide not to proceed.
- 1.8** We will ensure that any decision to depart from the Code or any other of the general principles will be properly reasoned, based on material evidence and documented.

2.0 GENERAL PRINCIPLES OF ENFORCEMENT AND STATEMENT OF INTENT

- 2.1** We will carry out our activities in a way that supports those that we regulate to comply.
- 2.2** Officers will enforce against, or prosecute those who neglect, or wilfully fail, to comply with their legal obligations, where that failure constitutes a risk to the public, a breach of tenancy conditions or where action is required to minimise the risk.
- 2.3** Officers will seek to adopt efficient and effective approaches to regulatory inspection, tenancy management and enforcement, which improve regulatory outcomes, and enable us to deliver our obligations to all local residents and the wider community. The Housing Service has an obligation to provide support to those who may be vulnerable and any action taken will account of this.
- 2.4** The level of enforcement will be proportional to any alleged offence or breach of tenancy committed, consistent in application, (including consistency with other local authorities or enforcement agencies) transparent in its use and appropriate to the circumstances of the particular case in question.
- 2.5** Depending on the seriousness of a situation, the preference will be to enforce with moderation in the first instance, progressing through a graduated response to a tougher stance if offences are repeated. The nature and speed of this graduated response will vary depending on the statutory function/options available and the nature of the offence / tenancy breach. A tougher stance may also be taken for any offences or actions that have resulted in personal injury/harm, wide scale impacts on public health or to protect the vulnerable e.g. sale of alcohol to an underage child, a major food poisoning outbreak, domestic abuse or a family occupied property with Category 1 hazards.
- 2.6** Where it is applicable to our functions, we are also committed to Better Business for All (BBfA). This is a regulators alliance that includes Trading Standards, Environmental Health, Fire & Rescue along with Local Authority Economic Development Teams. It aims to:
- Simplify and rationalise business support in local areas, and ensure that national and local support offers are joined up for businesses.
 - Provide a single access point for business support, bringing together both Government offers and local offers, so businesses get what they need wherever they start their journey.
 - Bringing together public and private sector support, for example that offered by local authorities, universities, chambers of commerce and enterprise agencies.
 - Provides website/telephone/email support/the one door/no wrong door for businesses looking for business support.
 - Start-up workshops/clinics
 - Partnerships/facilitation support, working with national and local delivery partners.
 - FTE business advisors working across innovation centres and rural areas, organising clinics and ensuring join up with other delivery mechanisms.
- 2.7** In participating in this alliance we aim to create a local regulatory environment that helps to support business growth whilst not negating our enforcement responsibilities. The BBfA programme is an established approach to better

regulation. It provides a model for partnership working between businesses and regulators focusing on changing the culture of regulatory delivery at a local level. It encourages all parties to work together and share information to allow local economies to prosper and grow.

- 2.8** We will provide simple and straightforward ways to engage with those we regulate, and those tenants who live in our homes in order to hear their views
- 2.9** Where enforcement is necessary because of ignorance of the law (which is not of course a defence against criminal or civil proceedings), or the rights and responsibilities which derive from our tenancy agreements, rather than wilfulness, officers will give advice and attempt to facilitate the training of those involved, in addition to taking enforcement action. Will we undertake such an approach as far as is reasonable and practicable within the scope of our existing resources.
- 2.10** We believe that prevention is better than cure and therefore our role involves actively working with businesses and individuals to advise on, and assist with compliance. We will make clear not only what they have to do but, where relevant, what they do not. In practice, this means distinguishing between statutory and contractual requirements and advice or guidance about what is desirable but not compulsory, thereby minimising the cost of compliance by requiring proportionate action.
- 2.11** We will target our resources where they will have the greatest effect. We will carry out inspections only where there is a reason for doing so, for example, as a response to intelligence about particular premises or a particular issue/problem or as part of our risk assessment process. We will also undertake risk based inspections in line with at least our minimum statutory requirements. Accordingly, greatest effort will be focussed where failure to comply would pose a serious risk and there is a high likelihood of non-compliance.
- 2.12** We will apply a light touch approach to those businesses who comply with regulatory requirements and those who work with us to achieve compliance. However we will not hesitate to use the full range of enforcement tools at our disposal against those businesses or individuals whose activities are likely to cause material loss or harm to others, or endanger the health, safety and wellbeing of people or our neighbourhood. In undertaking formal enforcement action we may take into account previous informal advice and support that has not been given due diligence.
- 2.13** The Housing Service has a policy of regular tenancy audits as set out in our Tenant Inspection Policy. Some visits are carried out on a risk-assessment basis but we are still committed to visiting every property every 5 years
- 2.14** Enforcement decisions will be made in a fair, independent and objective way and will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, disability, political views or the sexual orientation of the alleged perpetrator, victim, witness or offender.

3.0 CHARGING FOR ENFORCEMENT ACTIONS

- 3.1** Where the legal powers exist to recover some of the Council's costs, consideration will be given to their use.
- 3.2** The recovery of our costs will be limited to the extent of the costs incurred (full cost recovery) but not more. Therefore charging will not be punitive. The recharge should also ensure that owners are not financially encouraged to delay in complying with their legal responsibilities.
- 3.3** The powers enabling Councils to charge for these functions are set out in the specific statute and formal guidance used. These provisions also provide for the recovery of the debts which arise.
- 3.4** Where legislation allows us to set our own fees for specific regulatory functions and activities then where possible we will take into account our proactive and reactive enforcement costs in addition to normal processing costs.
- 3.5** Where we are granting a license we will only charge the administration fees for processing the application but where an applicant is successful he or she will then be charged the wider costs of running (including enforcement costs) the licensing scheme
- 3.6** We will be transparent about our fees and charges whereby we publish and make available any schedule of charges and the basis on which these have been calculated. In respect of formal, statutory actions including notices costs will include officer time, travel time and costs and compliance visits/re-visits.
- 3.7** We will also regularly review our fees and charges in connection with enforcement actions.
- 3.8** Examples of where we can currently charge for enforcement action include some Licensing activities, housing improvements under the Housing Acts and Environmental Damage regulations. These are examples only and it is not an exhaustive list.
- 3.9** The Housing Service has a recharges policy which sets out the circumstances in which we will endeavour to recharge costs from tenants.

4.0 COMPLIANCE WITH THE PRINCIPLES OF GOOD ENFORCEMENT

4.1 Transparency

- We will make it clear what must be done, distinguishing between statutory requirements and what is desirable or recommended but not compulsory in written and verbal communication;
- We will write to confirm any verbal advice if requested;
- Any written advice given shall be provided in plain, accessible language and in a range of formats and media where possible;
- Where immediate action is necessary, give an explanation of why such action is to be taken and confirm this in writing;
- Adequate information will be provided to enable reference to be made to the relevant statutory and associated documents;
- Any service standards such as the content of inspections will be available, on request;
- We will make it clear what sort of conduct they may expect when an officer visits and what rights of complaint are open to them;
- Any relevant complaints or appeals procedures will be explained.

4.2 Accountability

- 4.2.1** Visits and inspections are usually made unannounced but, if appropriate and where necessary, appointments will be made. Where access cannot be obtained during the day, or in other appropriate circumstances, visits will be made outside normal working hours. Unless carrying out authorised covert surveillance work (see Section 6.4), or unless health and safety reasons at the time dictate otherwise, enforcement officers will identify themselves by name and their role within the Council and will produce their identity/authorisation documentation on request.
- 4.2.2** Housing services do not normally make unannounced visits may do so occasionally without an appointment but if the tenant refuses to give access, we need to give them notice in accordance with the terms of the tenancy agreement.
- 4.2.3** The decision to visit or inspect specific premises may be taken due to complaints, or problems that have been reported, e.g. general complaints about a certain type of premises, which are in need of investigation, or the premises need to be inspected due to its risk rating (which determines the frequency of enforcement inspections for high and medium risk premises).

4.3 Proportionality

The type of enforcement action taken by officers will, in part, depend on the risk of, or actual, negative impact on others arising from the activity in question. Action taken will be proportionate to the breach/offence which has occurred. Where the law requires that risks should be controlled “as far as reasonably practicable” officers, will take into account the cost as well as the degree of risk. However, some irreducible risks may be so serious that they cannot be permitted irrespective of the economic consequences.

4.4 Consistency

- 4.4.1** Decisions on enforcement always entail a degree of judgement and the circumstances of each case will inevitably differ in detail. Furthermore, guidance

upon which officers act does change over time and a decision made one day may differ from one made the next, for that reason. Consequently, there may be instances when enforcement may appear to be inconsistent for this reason. Officers will try to ensure that enforcement action is as consistent as possible by:

- following current internal policy, procedural and guidance notes;
- taking account of appropriate guidance from other authoritative bodies e.g. Food Standards Agency, Health and Safety Executive (HSE), Dept. of Business, Innovation and Skills (BIS), Department for Environment, Food & Rural Affairs (Defra), Environment Agency, the Institute of Licensing;
- taking due account of new case law relating to enforcement;
- taking account of any new legislation or guidance which impacts on their duties, liaising with other enforcement agencies as necessary;
- actively participating in joint local authority schemes to achieve greater consistency;
- having due regard to the HSE's Enforcement Management Model (when enforcing under Health & Safety legislation);
- having due regard for the Primary Authority Partnership Scheme;
- carrying out benchmarking and peer review exercises from time to time.
- taking into account the advice of other partners including the Police, Devon County Council and the Devon & Somerset Fire and Rescue Service.

4.4.2 The above measures will be supplemented by specific enforcement training for officers and managerial checks on performance.

4.5 Targeting

4.5.1 Enforcement generally will be targeted to those persons, premises or companies whose activities give rise to the risks that are the most serious or least well controlled. The Service therefore targets its enforcement action in three ways:

- Firstly officers carry out programmes of inspections or commence possession proceedings in cases involving tenants, on a risk rated basis. Premises or activities with the highest hazards, greatest risks, poorest compliance and worst management will be inspected more frequently than low risk premises. It follows that most of the enforcement activity arising from proactive programmes will be targeted on the cases most requiring it.
- The second targeting mechanism is the investigation of complaints where evidence, experience and this policy are used to determine enforcement action.
- The third targeting mechanism is planned, special surveys and enforcement initiatives carried out in response to national concerns as voiced by the government or its agencies, or local/regional concerns as voiced by Members of the Council, practitioner groups or resident.

4.6 Helpfulness

We will work with individuals and businesses to help them comply with the law and / or contractual obligations, in the following ways:

- Provide advice in different languages, if requested and where practicable;
- Actively advise businesses (especially small and medium sized businesses) and assist with compliance;

- Officers will identify themselves by name (always presenting an official identity card, or warrant card, which can be verified by a phone call if requested); and
- In every other way will provide a courteous and efficient service.

5.0 ENFORCEMENT OPTIONS AND FACTORS

5.1 Factors to be considered

5.1.1 The method of enforcement selected should be calculated to produce the highest reasonable standards of compliance within the least time where practicable. In assessing what enforcement action is necessary and proportionate, consideration may be given to some or all of the following factors and any others which may be relevant to a specific case or regulatory area:

- the seriousness of compliance failure;
- current business practices, including response to previous advice;
- the degree of risk from the situation;
- the particular circumstances of the case and likelihood of its continuation or recurrence;
- whether any harm was caused;
- the views of any victim/injured party, financial gain or benefit from a noncompliance;
- the general cooperativeness of the alleged perpetrator or offender;
- the past history of the person(s), company or premises involved;
- the impact of the enforcement choice in encouraging others to comply with the law or change the behaviour of the offender;
- the likely effectiveness of the various enforcement options;
- any relevant legislative provisions, policy or legal, official, professional guidance or advice;
- whether the situation undermines the licensing objectives;
- blatant or reckless disregard for the law, poor management;
- whether a conviction is likely to result in a significant sentence;
- whether the victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance (e.g. safeguarding issues or complainant in a noise nuisance case);
- whether the defendant has previous convictions or cautions which are relevant to the present offence;
- whether the offence, although not serious in itself, is widespread in the area where it was committed;
- whether an officer has been obstructed;
- whether the cumulative effect of such breaches would be serious even if the breach in itself was not;
- whether prosecution will have a significant deterrent effect;
- Local priorities of the service and Council (as may change)

5.1.2 Under normal circumstances, a process of escalation will be used until compliance is reached. Exceptions may occur where there is a serious risk to public safety or the environment or the offences have been committed deliberately or negligently or involve deception, or where there is significant economic detriment.

5.1.3 The level of enforcement action that may be taken varies from no action through to formal proceedings in court. The main types of action that can be considered are shown below.

5.2 No action

- 5.2.1** This is appropriate when it is a minor/technical non-compliance that is rectified immediately. Any details recorded about non-compliance may be used as a basis for judgement on future enforcement action.

5.3 Informal Action

- 5.3.1** Informal action involves the offering of advice, verbal warnings, letters/emails, education, training and the issue of technical reports, including those generated on a premises or on-site following an inspection or audit.
- 5.3.2** This sort of action will be appropriate where the degree of risk (or in some cases environmental impact) from any given situation is minor, but cannot be rectified immediately. The breach of legislation is often technical but significant enough to warrant a written letter of warning. Formal action may be taken if similar infringements are found in the future. The person, business or organisation responsible would have no recent history of non-compliance and the officer would have good reason to expect them to put right the matters in question without the need for further intervention and therefore confidence in management is high.
- 5.3.3** Informal action will be recorded on departmental files and will be used as a basis for judgements on future enforcement action if there are recurrent problems with an offender or premises.
- 5.3.4** We promote a programme of food courses and training interventions which can be viewed and accessed via the Council website www.middevon.gov.uk. Where possible we will also help signpost external training and education resources. Additional, plain language information on regulations, enforcement and compliance can be found on the universal www.gov.uk website.

5.4 Information Notices

- 5.4.1** Many pieces of legislation enforced by the Council enable officers to demand information which is essential in order to serve notices or summons correctly. When the officer is uncertain about the information it holds, or where certain details are unknown, it will serve an information notice on those that have an obvious connection to the case, requiring for instance ownership confirmation, or perhaps company or premises details. Failure to comply with an information notice may hinder the Council in discharging its duties and is regarded as a serious offence, which will be pursued.

5.5 Other Statutory Notices

- 5.5.1** In certain circumstances, legislation allows an officer to serve a notice requiring action to be taken or, that certain operations/activities be stopped immediately. In some instances the service of a statutory notice may be compulsory. The service of a legal notice may be followed by an investigation into the cause of the breach and further enforcement action, including prosecution may ensue, particularly where there is a deliberate failure to comply with the notice. Failure to comply with a legal notice will usually be taken as a disregard for the law and appropriate action will be taken. Legal notices are normally used where:

- there are specific legal requirements to serve a notice; and/or

- a serious threat to public health, safety, animal health, the environment or to amenity will arise or a situation deteriorate, if a breach is not remedied quickly; and/or
- there is a lack of confidence that the recipient will respond to informal approaches because of a history of non-compliance or other evidence; and/or
- an informal approach has failed, or in the opinion of the officer is likely to fail to achieve the necessary improvements; and/or
- standards are generally poor with little management awareness of statutory requirements;
- the breach is one of a number of matters prescribed under legislation.

5.5.2 Notices will not be served for minor technical contraventions. The time limit on notices will be realistic yet reflect the nature and urgency of the situation and recipients of notices will be given the opportunity, if they wish, to discuss the requirements. If a form has been prescribed this must be used.

5.5.3 Officers must have sufficient evidence to justify service and be prepared to pursue non-compliance through the courts.

5.5.4 The response of the offender will be monitored to ensure a satisfactory outcome including follow-up checks as soon as possible after expiry. In most cases there is right of appeal against a notice either to a Court or Residential Property Tribunal. Where there is a right of appeal, advice on the appeal mechanism will be set out in writing at the time the notice is served.

5.5.5 Failure to comply with a statutory notice will, in general, result in prosecution and/or work in default.

5.6 Fixed Penalty Notices

5.6.1 Certain offences are subject to Fixed Penalty Notices (FPNs) where prescribed by legislation. They are normally appropriate for offences at the minor end of the scale and avoid the defendant gaining a criminal record. Where legislation permits an offence to be dealt with by way of a FPN, we may choose to administer one on a first occasion, without issuing a warning. A FPN would not normally be appropriate for repeat offences. FPNs may be issued to offer the person or business the opportunity of discharging any liability to conviction for the offence to which the notice relates by paying a penalty.

5.6.2 There is provision for the person to be tried for the offence should he/she elect this process or the matter may proceed to trial or be dealt with by way of a simple caution should the penalty not be paid. Additionally a notice may be given, withdrawing a penalty notice if it is considered that the penalty notice ought not to have been given.

5.6.3 FPNs will, whenever possible, be served at the time of the offence or shortly afterwards.

5.6.4 The level of fine attached to a specific FPN will be applied consistently in accordance with either national or locally adopted prescriptions. Where permitted, there may be a reduced fine payable for FPNs paid quickly within a specified number of days or through other qualifying criteria. This information will be included on the FPN.

5.7 Civil Fixed Penalty Notices

- 5.7.1** Local authorities can issue a civil penalty notices to the keeper of a vehicle from which litter is thrown. This may therefore be used where the identity of the person who threw the litter is not known.

5.8 Prohibition Notices and Orders

- 5.8.1** These powers may be used where there are statutory grounds and where the requirements of any relevant statutory Codes of Practice regarding the use of such notices are fulfilled.

- 5.8.2** The Council may prohibit the use of a particular piece of equipment, a treatment, or a specific activity, or it may close part or all of a premises, where the risk is more widespread. It would do so where the proprietor, owner or other responsible person or body is unwilling to voluntarily close, or the Council has a lack of confidence that a voluntary closure would be maintained as required or a voluntary closure would otherwise not be suitable.

- 5.8.3** There is a wide range of different statutory powers with the provision to undertake prohibition and similarly referenced actions.

5.9 Injunctions

- 5.9.1** Injunctions may be sought as an alternative, or in addition to other enforcement mechanisms such as prosecutions.

5.10 Seizure of Goods, Equipment, Food, Articles or Records

- 5.10.1** Authorised Officers will use the relevant statutory powers to take possession and detain articles, substances, records or equipment where:

- there are reasonable grounds for suspecting that the article, substance or equipment is a cause of imminent danger to human or animal health, serious personal injury or pollution of the environment; and/or
- food is suspected of failing to meet the requirements of the relevant food safety legislation; and/or
- the article or all other relevant items are required in the investigation of a potential offence or for use as evidence in proceedings; and/or
- to secure the abatement of a statutory nuisance.

5.11 Work in Default

- 5.11.1** Work required in the interests of public health, safety or the environment may be undertaken by a service and the cost recovered from the duty holder where the notice allows. This may be appropriate when:

- it is necessary to carry out the work in the public interest and/or the costs are not prohibitive;
- there is a failure to carry out work covered by a statutory notice;
- immediate action is required; or
- it is unlikely that the work will be carried out unless done in default.

- 5.11.2** The Council will make every effort to recover the full cost of the work carried out 'in default' including exercising the option of placing a land charge on a property where relevant and appropriate.

5.12 Management Orders

- 5.12.1** Under the Housing Act 2004 the Council may and in some circumstance must make an Interim or Final Management Order to take over the management of a licensable HMO or a property which should be subject to selective licensing under Part 3 of the Housing Act 2004. The management order allows the Council to take over the running of a property. Rights of appeal exist in relation to these powers and compensation provisions may also arise in some cases. The purposes of the order are to secure proper management of the property

- 5.12.2** In some cases an authority can make an order in relation to premises which do not need to be licensed. Such an order must be authorised by the First tier Tribunal. In the case of an HMO which does not need to be licensed authorisation can only be given if the order is necessary to protect the health, safety or welfare either of the occupiers or of persons in the HMO's vicinity. In the case of other premises which are occupied by tenants or licensees the tribunal must be satisfied that the anti-social behaviour of the occupiers is causing significant problems in the area and that the landlord is failing to take action against it.

- 5.12.3** The authority may make Interim and Final Management Orders in respect of any property let in breach of a banning order under section 16 of the Housing and Planning Act 2016.

- 5.12.4** Under the Housing Act, the Council may also issue an Empty Dwellings Management Order (EMDO). The purpose of an Empty Dwelling Management Order is partly to bring vacant dwellings in the private sector back into occupation and partly to address the impact that empty dwellings can have on a neighbourhood. The scheme for EDMOs is similar to that for management orders.

5.13 Compulsory Purchase Orders

- 5.13.1** The Council may compulsorily purchase property under Section 17 of the Housing Act 1985 and other provisions. These powers may be used as a last resort to acquire empty properties in order to bring them back into use. The consent of the Secretary of State is required and compensation provisions for the owner apply.

5.14 Premises Licence Review

- 5.14.1** Responsible Authorities and 'Other Persons' have the power under the Licensing Act 2003 to apply to have a Premises Licence reviewed by the Licensing Committee where activities at the premises appear to be undermining one or more of the four Licensing Objectives (the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm).

- 5.14.2** This option is also open to officers of the Licensing Authority (Licensing Team acting as a Responsible Authority) - in such circumstances the distinct functions of the licensing authority and of the responsible authority will be exercised by different officers to ensure a proper separation of responsibilities, procedural fairness and to eliminate conflicts of interest. Officers will generally only seek a review if they feel

that there are good reasons for a licence to be the subject of a review and no other 'body' has made the relevant application.

5.14.3 Each application for a review will be considered on its own merits at a hearing by a licensing sub-committee and take into account locally adopted licensing policy. The instigation of a review may lead to the undertaking of other enforcement action by the appropriate parties. Possible review outcomes include; the modification of licence conditions, licence suspension or revocation, or removal of the Designated Premises Supervisor (DPS), exclude a licensable activity from the scope of the licence for a limited period of time only, to a maximum period of three months .

5.15 Simple Cautions

5.15.1 We may consider issuing a simple caution as an alternative to prosecution. Where there is a criminal offence, but the public interest does not warrant a prosecution, a simple caution may be an appropriate course of action. The Ministry of Justice guidance, 'Simple Caution for Adult Offenders' sets out the aims of a simple caution:

- to offer a proportionate response to low level offending where the offender admits the offence;
- to deliver swift, simple and effective justice which carries a deterrent effect;
- to record an individual's criminal conduct for possible reference in future criminal proceedings or in criminal record or other similar checks;
- to reduce the likelihood of re-offending;
- to increase the amount of time officers spend dealing with more serious crime and reduce the amount of time officers spend completing paperwork and attending court, whilst simultaneously reducing the burden on the courts.

5.15.2 Before inviting an offender to receive a simple caution, the case officer must discuss the proposed action with service management and cautions can only be formally issued by authorised officers delegated to do so. In practice this means some lead officers and the service or Group Manager.

5.15.3 The use of simple cautions will be in accordance with the guidance issued by the Ministry of Justice, 'Simple Cautions for Adult Offenders'. There are four preconditions, which must all be satisfied if a matter is to be dealt with by simple caution, as follows:

- There is sufficient evidence to give a realistic prospect of conviction (see paragraph 5.16.1 for further guidance on the evidential test)
- The offender admits his or her guilt,
- The person being cautioned agrees to it, having been made aware by us of the consequences and having been given adequate opportunity to consider their decision and obtain legal advice if desired.
- It is not in the public interest for the offender to be prosecuted (see paragraph 5.16.2 for further guidance on the public interest test)

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

5.15.5 If a simple caution were to be offered and refused by the offender then the case would proceed to court or an alternative enforcement action considered.

5.15.6 Following the acceptance of a caution, the offender may be invited to contribute towards the Council's costs in investigating and preparing the case, if these are significant. A caution cannot be granted on condition that the Council's costs are paid.

5.15.7 Where relevant, primary authorities and originating authorities will be notified of any caution issued.

5.16 The Evidential and Public Interest Tests

5.16.1 The Evidential Test

- We must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. In considering the evidence, officers should have regard to any lines of defence which are open to or have been indicated by the accused, as well as any other factors likely to affect the prospects of conviction including admissibility of the evidence and reliability of witnesses. This must be an objective test since a conviction will only be obtained if the Court or the jury is sure of a defendant's guilt. It should be noted that the evidence level required varies between criminal legislative cases (beyond reasonable doubt) and civil legislation cases (balance of probability).

5.16.2 The Public Interest Test

- The public interest test must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. We will balance factors for and against a caution or a more serious enforcement action (e.g. prosecution) carefully and fairly. Public interest factors that can affect the decision usually depend on the seriousness of the offence or the circumstances of the defendant. Some factors may increase the appropriateness of a caution whilst others may suggest that another course of action would be more appropriate.

5.16.3 More consideration of both the evidential test and the public interest test is carried out as part of any final decision to prosecute for an offence (see 5.17).

5.17 Prosecution including merit and legal tests

5.17.1 Prosecution is appropriate for individuals, businesses or other duty holders who blatantly disregard the law, or refuse to achieve even basic minimum legal requirements, often following previous contact with the authority, and who put any persons such as the public, visitors, customers or workers at serious risk.

5.17.2 The circumstances which warrant prosecution are varied and include:

- where the offence involves a significant breach of the law such that public health, safety, animal welfare or the environment is or has been put at risk; or
- where the offence involves a failure by the offender to correct an identified serious potential risk having been given a reasonable opportunity to comply with the lawful requirements; or

- where the offence involves the failure to comply in full or in part with the requirements of a statutory notice; and/or
- where there is a history of similar offences; or
- obstruction or assault of an officer; or
- a simple caution has been offered but has been declined; or
- providing false or misleading information to us or others; or
- failure to pay a fixed penalty notice.

5.17.3 For cases involving criminal legislation, at all times the requirements of the Police and Criminal Evidence Act 1984 (PACE) and the Criminal Procedure and Investigation Act 1996 will be adhered to. The relevant service team leader will determine the designated Authorised Officer in charge of the investigation (the case officer).

5.17.4 The case officer will consider all relevant information and evidence when circumstances may warrant their recommendation for a prosecution, to enable a consistent, fair and objective decision to be made.

5.17.5 The service manager must then carry out a **merit test** on the case officer recommendation and the case file to be satisfied, before further preparation for prosecution proceeds, that there is relevant, admissible, substantial and reliable evidence that the offence was committed by the accused. There must be a realistic prospect of conviction. A bare prima facie case is not enough. The merit test should therefore encompass a review of the following and must be completed by the service manager or another more senior officer other than the case officer who (other than in exceptional circumstances) has neither been involved in the investigation nor has directed management of the case:

- The case context (understand the problem/event/situation)
- The legal framework (has the relevant framework been applied/are other legal frameworks more applicable?)
- Compliance with this enforcement policy and any other internal policies as relevant
- The delegation and powers of the case/investigating officer (are these current and correct?)
- Analysis of the facts and supporting evidence in the specific context of the relevant legal framework (see also 5.16.1 and 5.17.8)
- The standard of the witness statements, continuity of evidence and overall case management
- Key strengths and any weaknesses of the facts
- The public interest test (see also 5.16.2 and 5.17.6 and 5.17.8)
- Alternative sanctions to prosecution if applicable under this policy e.g. formal caution (see 5.15) or civil penalty (see 5.18)

5.17.6 Under the **merit test** the service manager must make an initial decision that it appears to be in the public's interest to prosecute, following the guidance in the Code for Crown Prosecutors and internal or external counsel where required including:

- seriousness of the offence;
- risk to public health, safety, animal welfare or the environment;
- identifiable victims;
- failure to comply with a statutory notice served for a significant breach of legislation;
- disregard for public health, safety, animal welfare or the environment for financial reward;
- previous history of the defendant;
- offences following a history of similar offences;
- failure to respond positively to past warnings;
- whether a due diligence defence exists and the likelihood of the defendant being able to establish such a defence;
- ability of important witnesses and their willingness to co-operate;
- the willingness of the defendant to prevent a recurrence;
- the probable public benefit of a prosecution and the importance of the case e.g. whether it may create a legal precedent;
- whether other formal action would be more appropriate or effective; and
- any explanations offered by the defendant. Officers should invite the defendant to offer an explanation before a decision to prosecute is made.

5.17.7 The **merit test** should therefore conclude with a clear decision supported by reasons as to whether to:

- refer back the case to the case officer recommending further work and investigation to ensure all reasonable lines of enquiry have been followed and concluded, to address any relevant identified issues and/or ensure the case recommendation is reviewed before a further merit test is undertaken again; or
- support the case officer recommendation under the legal framework applied; or
- make an alternative recommendation such as an alternative to prosecution or prosecution under a different legal framework (for which the Council has statutory powers and officers have delegated authority);
- where appropriate, to refer the case file to the legal services team to carry out a legal test and final decision as whether to proceed with a prosecution

5.17.8 The **final decision to prosecute** will be made by the Group Manager Legal Services and Monitoring Officer who will review the merit test conclusions and also consider the following as part of a **legal test** of the case:

- Is there is sufficient evidence to provide a realistic prospect of conviction? The test must be applied to each proposed charge and for each defendant. This is a further consideration of the evidential test as the prosecutor including the following different factors:
 - Whether the evidence is admissible.
 - Whether the evidence is reliable.
 - Whether the evidence is credible.
 - What the defence case may be and how it may impact the prospects of conviction.
 - Whether there is any material that may affect the assessment of the sufficiency of evidence, including all material in the possession of the Council, and material that may be obtained as a result of further reasonable lines of enquiry being pursued.

The evidential test is not subject to the same standard as the burden of proof. The burden of proof requires a jury to be convinced of a defendant's guilt beyond reasonable doubt. The evidential stage requires only that the prosecutor must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction taking into account what the defence may be and how this is likely to affect the prospects of conviction. The test is met when the prosecutor is satisfied that an objective, impartial and reasonable jury, bench of magistrates or judge, properly directed, would be more likely to convict of the charge alleged.

- Is it in the public interest to prosecute? This is a further consideration of the public interest test as the prosecuting authority, which can include the following different factors. The public interest stage only needs to be considered if the evidential stage is met and is where we must be satisfied that the public interest factors in favour of a prosecution outweigh those against. When making this decision, prosecutors must consider each of the following questions:
 - How serious is the offence committed?
 - What is the suspect's level of culpability? This question includes consideration of whether the suspect has benefitted from the alleged criminal conduct.
 - What is the harm caused to the victim and the circumstances surrounding it?
 - Was the suspect under the age of 18 at the time of the offence and what was their level of maturity?
 - What is the impact of the offence on the community?
 - Is prosecution a proportionate response?
 - Do sources of information require protecting in cases where public interest immunity does not apply?

This list of factors is not exhaustive and the weight given to the questions may vary.

5.17.9 Where appropriate, disqualification of directors may be sought under the Company Directors Disqualification Act 1986. Consideration will also be given to prosecution of Directors if a significant risk continues after warnings have been given by employees (e.g. if an offence was committed through consent, connivance or neglect by the Director).

5.17.10 Where there has been death at work resulting from a failure to comply with health and safety law, the matter may be referred to the police if the circumstances of the case might justify a charge of manslaughter. If the police decide not to pursue the case the Council would consider a health and safety prosecution. In order to ensure decisions on investigation and prosecution are closely coordinated, the Work-Related Deaths Protocol, agreed between the relevant enforcing authorities will be followed.

5.18 Financial (Civil) Penalties

5.18.1 These are an alternative to prosecution relevant to Private Sector Housing Enforcement.

5.18.2 A financial civil penalty can only be imposed as an alternative to prosecution. The Housing and Planning Act 2016 Section 126 and schedule 9 makes provision for the Council as the local housing authority to be able to issue a financial penalty for certain Housing Act 2004 offences. It does not permit the Council to impose a civil

penalty and prosecute for the same offence. If a person has been convicted or is currently being prosecuted the Council cannot impose a civil penalty in respect of the same offence. Similarly, if a civil penalty has been imposed, a person cannot then be convicted of an offence for the same conduct.

5.18.3 The offences include;

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

5.18.4 Refer to Appendix J for more details on financial (civil) penalties.

5.19 Proceeds of Crime Applications

5.19.1 Applications may be made under the Proceeds of Crime Act (POCA) 2002 for confiscation of assets in serious cases. Their purpose is to recover the financial benefit that the offender has obtained from their criminal conduct. Proceedings are conducted according to the civil standard of proof.

5.19.2 We will use only accredited financial investigators in respect of POCA applications.

5.20 Multi agency approaches to enforcement

5.20.1 Wherever possible we will work with other agencies to determine the most appropriate agency to take action. In some circumstances an alternative enforcing agency may be better placed to take action than the Council. Action will be taken in consultation with the other agency.

5.20.2 Where another agency is leading on taking enforcement action but requires the support from the Council we will provide the relevant expert advice.

5.20.3 Where the Council is leading on the enforcement other agencies are expected to provide support and advice as necessary.

6.0 INVESTIGATIONS

6.1 Access and Powers of Entry

6.1.1 At times officers may have to access premises or land to investigate or undertake inspections in accordance with legislative duties. The majority of officers exercising Licensing, Environmental Health and some Private Sector Housing functions are not legally required to give advance notice about inspections and may not therefore do so e.g. The Food Safety Code of Practice requires officers to carry out some inspections without prior notice (notices of intent to enter). Officers will give adequate notice of intended entry where practicable or required but at times dependent on the risk or to avoid alerting perpetrators may do so without prior warning. On occasion officers may have to force entry and will apply to the courts for a warrant. There will be occasional situations that would warrant prior notification such as a project based intervention. Officers may also seek entry by invitation without notice and in such circumstances the purpose and possible consequences of permitting access will be explained in advance to the relevant parties.

6.1.2 In respect of our housing services tenants, the provisions of our tenancy agreements state we (our employees or contractors) must be allowed access to the property at all reasonable hours to carry out repairs, improvements, planned programmes, gas servicing and any safety checks, to inspect its condition and to complete new Tenancy visits and Tenancy Home checks. If we believe there to be a risk of personal injury or a risk of damage to the property or an adjoining property or in order to comply with our statutory duties, we must be allowed immediate access to the property. In these circumstances or if we consider there to be an emergency we will force entry into the property if necessary.

6.1.2 In determining the need for prior notification, officers will also have due regard to the provisions for the Home Office Code of Practice (CoP) on Powers of Entry 2014 as relevant. This code sets out considerations that apply to the exercise of powers of entry including, where appropriate, the need to minimise disruption to business. It will ensure greater consistency in the exercise of powers of entry, and greater clarity for those affected by them, while upholding effective enforcement.

6.1.3 Overall, the officer should have regard to the Home Office CoP in determining whether a notice of intent to enter is required and in respect of the wider areas of guidance that the CoP covers, for example:

- Providing notice of rights to occupiers
- Entering premises
- Number of persons present
- Private dwellings
- Entry without consent or a warrant
- Entry under warrant
- Timing of exercise of powers
- Seizure of property
- Retention of property
- Other persons
- Conduct
- Assistance from occupiers
- Leaving premises
- Action after exercise of powers

6.2 Notifying Alleged Perpetrators / Offenders

- 6.2.1** If we receive information (for example from a complainant) that may lead to enforcement action we will notify those concerned as soon as is practicable of any intended enforcement action, unless this could impede an investigation or pose a safety risk to anyone concerned. Throughout the course of an investigation business proprietors or individuals and witnesses will be kept informed of progress. Confidentiality will be maintained and personal information about individuals will only be released to a court when required and/or in accordance with the Data Protection Act 2018. See also section 8.4.

6.3 Liaison with and referrals to other regulatory bodies and enforcement agencies

- 6.3.1** Where there is wider regulatory interest, officers will refer information received to other relevant regulators. Where appropriate, enforcement activities will be planned and coordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness and consistency of any enforcement including undertaking joint or parallel investigations and inspections.
- 6.3.2** We will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies. These may include (but is not limited to) Government Agencies and Departments, other Local Authorities, Police Forces and Fire Authorities. This will be done in accordance with wider Data Protection legislation, data sharing agreements and policy as relevant.
- 6.3.3** Within the Council itself, officers investigating complaints and carrying out inspections may find their work has relevance to the work of other departments and services. Officers will work together as appropriate in these circumstances. Adequate liaison will be maintained and where necessary consideration given to ways of cooperation in co-ordinating investigations and outcomes.
- 6.3.4** In respect of health and safety matters, the Enforcement Management Model (EMM), together with the procedure for its application, provides the Council with a framework for making enforcement decisions that meet the principles of the HSE Executive Board Enforcement Policy Statement. It captures the issues officers consider when exercising their professional judgement and reflects the process by which enforcement decisions are reached.
- 6.3.5** Officers will liaise with Primary Authorities and Home Authorities when applicable.

6.4 Surveillance and Human Sources: Human Rights Act 1998, Regulation of Investigatory Powers Act 2000 (RIPA) – Basis for Lawful Surveillance

6.4.1 Human Rights Act and RIPA

- 6.4.4** Officers will endeavour to carry out the investigation using overt methods, unless the only means of effective investigation is by way of covert directed surveillance and/or using covert human information sources (in very exceptional circumstances – see 6.4.17 and in accordance with the Council's RIPA Policy).
- 6.4.5** Where we undertake overt surveillance including the use of recording and sampling equipment we will ensure notice is provided to those alleged to be the source of the complaint being investigated informing them of our intentions. Such notice will be no

less than 24-hours before surveillance commences which may then be undertaken over a period of up to six-months before further notice is given.

- 6.4.6** Any covert directed surveillance must be carried out in accordance with Council procedures, RIPA (Regulation of Investigatory Powers Act 2000) and The Protection of Freedoms Act 2012. This is the statutory framework for covert surveillance. Authorisation for this type of pre-planned investigation may only be given in writing by formally appointed Authorised Officers (AO) within the Council and before being formally authorised by a Justice of the Peace (JP).
- 6.4.7** Officers should consult the latest internal corporate RIPA policy and forms before considering covert surveillance.
- 6.4.8** Officers should also be mindful that in certain circumstances conducting Open Source Research (OSR) for the purpose of gathering enforcement intelligence i.e. viewing web pages, social networks, chat rooms, information networks (e.g. twitter) and/or web based electronic mail may constitute covert directed surveillance and therefore a RIPA authorisation must be considered. Particular attention will be given to repeat visits to obtain/check or review publicly available information in addition to more in-depth research including where profiles/personas are created to gain access to networking sites and this may become a covert surveillance activity requiring prior RIPA authorisation. Any covert interaction with other users including making/accepting friends requests, 'poking' or commenting on post will require authorisation.
- 6.4.9** Surveillance of publicly accessible areas of the internet should be treated in a similar way, recognising that there may be an expectation of privacy over information which is on the internet, particularly where accessing information on social media websites. Websites and other social media accounts set up purely for commercial and/or business (including charities and the voluntary sector) are not considered to consider an assessment of privacy and will not require RIPA or other authorisation to monitor.
- 6.4.10** Officers will not use personal accounts for purposes of enforcement based OSR, however simple the search. An official, open service profile should be used unless covert surveillance under a RIPA authorisation is required whereby a false account or profile is required.
- 6.4.11** Where OSR is carried out under a RIPA authorisation then officers are required to complete an Open Source Log/Register including details of any account, profile/persona used.
- 6.4.12** Covert surveillance that does not require an RIPA authorisation (for example does not meet the maximum sentence threshold or is required for general purpose) may still be permissible but should be conducted under other legislation if relevant. If no other legislation is directly applicable then officers must still take into account privacy and collateral intrusion and conduct a privacy impact assessment and document this for later scrutiny if required. Therefore the same procedure should be followed for RIPA and amended RIPA authorisation forms used and approval advance obtained from an AO (subsequent approval of the court is not required in this circumstance).
- 6.4.13** Any application made under RIPA should meet the following minimum criteria:
- Be required for prevention and detection of crime, for the protection of health or public safety

- In the case of directed surveillance, meet the crime threshold (an offence for which the maximum sentence is 6 months + or where an offence involves the sale of alcohol to a minor). For example, it cannot be used for littering, dog control or fly-posting offences
- Be related or relevant to a specific investigation or operation
- Likely to result in obtaining private information
- In the case of a Covert Human Intelligence Source (CHIS, see 6.4.14 and 17), adequately consider use (what is being asked), conduct (how it gets done/clear boundaries of action) in addition to the security and welfare of the person involved and any foreseeable outcomes to others
- Adequately consider and manage collateral intrusion
- Be proportionate (are lesser/alternative means that are less intrusive available?)
- Be cost-effective
- Be in accordance with the Council's RIPA policy

6.4.14 In accordance with RIPA, authorities for directed surveillance are valid for up to 3-months from the date of the signature and up to 12-months for CHIS (1-month in the case of a minor under CHIS).

6.4.15 Further guidance on the application of RIPA including directed surveillance, CHIS and OSR is available from the Home Office/Office of Security Commissioners and the National Police Chiefs Council/College of Policing.

6.4.16 The covert recording of noise where the recording is of decibels only or constitutes non-verbal noise (such as music, machinery or an alarm), or the recording of verbal content is made at a level which does not exceed that which can be heard from the street outside or adjoining property with the naked ear. In the latter circumstance the perpetrator would normally be regarded as having forfeited any claim to privacy. In either circumstance, an authorisation is unlikely to be required or available under RIPA. Officers would in any case typically make monitoring overt (see 6.4.5).

6.4.17 Covert Human Information Sources (CHIS)

6.4.18 The use of any CHIS must also be carried out in accordance with Council procedures and RIPA. It is considered unlikely that there will be any circumstances which would require the council to use CHIS and advice should be sought from the RIPA Monitoring Officer before any authorisation is applied for or considered granted

6.5 Enforcement on Council premises, or at events organised by the Council

6.5.1 In principle the Council cannot legally enforce against itself. Where infringements on Council premises or land including housing stock, or at events organised by the Council are identified, the matter will be formally notified to the appropriate Group Manager and Service Director. In serious cases then the Chief Executive will be advised. If the problem relates to health and safety matters then the Health and Safety Executive (HSE) will be notified. If the potential breaches of the law are the responsibility of contractors employed by the Council, enforcement action will be taken against the contractor in the same way as in other cases not involving the Council.

6.5.2 With respect to Health and Safety enforcement, we recognise a potential conflict of interest may occur where Mid Devon District Council is the relevant enforcing

authority in relation to premises in which it also has an ownership or management interest. Therefore we will:

- Follow the guidance in Local Authority Circular 22/10
- Carry out our enforcement policy and practice in exactly the same way we do for all other premises and duty holders;
- Have arrangements in place to identify and resolve potential conflicts of interest;
- Inform the HSE if we identify a split in enforcement responsibility e.g. in an Local Authority (LA) owned and managed shopping precinct, LA enforces within retail outlets but HSE enforces those areas under direct LA control.

7.0 IMPLEMENTATION, MONITORING AND REVIEW

7.1 Implementation and monitoring

- 7.1.1** This policy reflects the essential principles and requirements of good enforcement as specified in the Regulators' Code 2014 (Department of Business Innovation and Skills), the Code of Practice Powers of Entry 2014 (Home Office) and the provisions outlined in the Legislative and Regulatory Reform Act 2006 and the Regulatory and Enforcement Sanctions Act 2008. Therefore adherence to this policy by officers is essential to demonstrate compliance.
- 7.1.2** The Service Director, Group Manager and Team Leaders, will be responsible for ensuring that all officers are familiar with the requirements of and carry out their duties in accordance with, this Enforcement Policy.

7.2 Conflicts of interest and bribery

- 7.2.1** As with other actions, decisions and activities of the Council, undertaking enforcement work can give rise to actual or perceived potential conflicts of interest which should be avoided. Officer must therefore comply with this general principle in addition to the Financial Regulations Part 18 and internal policies including; Anti-fraud and Corruption Policy; Officer Code of Conduct and Whistleblowing Policy

7.3 Complaints about service

- 7.3.1** Any complaint about a service carried out by the Council including our enforcement activities should be made in accordance with our Complaint policy available at www.middevon.gov.uk or by contacting Customer First via customerfirst@middevon.gov.uk or 01884 255255.
- 7.3.2** Our complaints policy does not affect any other statutory rights or entitlements a person or entity may have in respect of our enforcement decisions.

7.4 Policy review

- 7.4.1** This policy shall be reviewed at least every 2-years. Other triggers for review include any significant apparent short-coming, case law, new statutory guidance or relevant legislative demand.

8.0 PUBLICITY AND INFORMATION REQUESTS

- 8.1.** We will normally publicise details of any convictions, which could serve to draw attention to the need to comply with the law or deter others. Where appropriate, the media will also be provided with factual information about charges that have been laid before the Courts, any pending formal action and any enforcement action already taken.
- 8.2** In keeping with the spirit of the Freedom of Information Act and the Environmental Information Regulations, the Council publishes an increasing amount of information on its website: www.middevon.gov.uk.
- 8.3** Anyone wishing to make an official request for information under this legislation should see the contact form on our website (under Freedom of Information) or call our Customer First team on 01884 255255.
- 8.4** During hearings, especially Licensing and Regulatory Sub-Committees, involving enforcement decisions and formal sanctions in the context of this policy, it may be necessary to pass a resolution to exclude the press and public having reflected on Article 12 12.02(d) (a presumption in favour of openness) of the Mid Devon District Council Constitution. This decision may be required because consideration of this matter in public may disclose information falling within one of the descriptions of exempt information in Schedule 12A to the Local Government Act 1972. The Cabinet will need to decide whether, in all the circumstances of the case, the public interest in maintaining the exemption, outweighs the public interest in disclosing the information. Reports heard and minutes made in this manner will therefore not be available for disclosure upon request and will remain confidential.
- 8.5** This policy document is freely available to the public on the Council's website, or as a paper copy on request to the Group Manager for Public Health and Regulatory Services, Phoenix House, Phoenix Lane, Tiverton EX16 6PP (telephone: 01884 255255), or via email health@middevon.gov.uk. A reasonable charge may apply to cover the cost of producing paper copies of this policy.

APPENDIX A

GENERAL ENFORCEMENT POLICY DECISION MATRIX (CRIMINAL LEGISLATION)

Summary of we consider when taking enforcement action for under criminal legislation?

Officer(s) carry **out investigations/inspections**. This can be done in response to a complaint or request for assistance, as part of routine planned inspections of business premises or survey work.

Investigating Officer discovers evidence and is satisfied that a **criminal offence** may have been committed or is about to be committed. This is called *Prima facie* evidence.

Investigating Officer considers a range of factors including:

- Previous History - whether any similar situation has been found before.
- Seriousness of the alleged offence(s), including:
 - Risks to the public or the environment
 - Any intent or recklessness of the person(s) committing the offence
 - Any obstruction of the Investigating Officer
 - Whether the alleged offence(s) are considered a special area of priority by Central Government and/or Mid Devon District Council
- Is there enough evidence to provide a realistic prospect of conviction
- Would any further action be in the public interest

For **LESS SERIOUS** infringements of the law and/or where there is no previous history of offences/non-compliance with legislation the following options are considered:

- **Informal Action** – verbal or written advice/warning
- **Statutory Notice** – service of a legal notice that will require certain specified action to be taken by the recipient

In all cases we will advise the alleged offender what he/she needs to do in order to comply with the law.

In all cases the alleged offender will be informed of the matters under investigation and may be invited to attend a formal interview in accordance with the Police and Criminal Evidence Act 1984.

For **MORE SERIOUS** offences the following options will also be considered:

- **Seizure of goods or equipment** – In certain cases, goods or equipment may be seized to protect the public and/or employees, for example unsafe food or sound equipment being used to cause a nuisance
- **Formal Caution** – a Formal Caution is an alternative to prosecution and can only be issued if strict criteria are met. The Home Office of Central Government sets these criteria. A Caution stays on public record for three years. If a Formal Caution is offered to an offender, but he/she refuses to accept it then we may prosecute instead
- **Prosecution** – legal proceedings are taken against the offender that results in the offender being summonsed to appear in Court. Any decision to prosecute is based upon guidelines set by the Crown Prosecution Service

APPENDIX B

SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – LICENSING

Licensing policies

There are a number of specific policies covering the different regulatory functions that licensing are responsible for. These include policies for the Licensing Act 2003, the Gambling Act 2005, hackney carriage & private hire licensing and sex establishments. These policies can be found here: <https://www.middevon.gov.uk/business/licensing/licensing-policies/>

General information about the full range of activities we are required to licence or regulate can be found at <https://www.middevon.gov.uk/business/licensing/>

Licensing and Regulatory Committees

The Licensing and Regulatory Committees are made up of 12 and 11 elected members respectively. The Licensing Committee is responsible for the Licensing Act 2003 and the Gambling Act 2005. The Regulatory Committee is essentially responsible for the rest, the main part of which is hackney carriage and private hire related. The Committees meet as a whole to determine policy related matters and Sub-Committees, usually made up of 3 elected members, meet to consider individual applications (including reviews of licences), breaches of conditions and any other issues which may result in an individual no longer being considered fit and proper to hold a particular licence.

Suspension or revocation licences

The Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act 1847 provides the regulatory framework for the Council as the licensing authority to carry out its functions in respect of Hackney Carriage and Private Hire Licensing. Under this regulatory framework the Council can suspend, revoke or refuse a licence on a number of grounds. The Council's Hackney Carriage and Private Hire Licensing Policy provides in detail how the Council will approach these matters.

When a licence is to be suspended or revoked, the Council will provide clear notice of this to the individual / premises concerned, outlining any rights of appeal they may have.

Out of hours enforcement activities

Due to the nature of some of the activities authorised it is necessary to conduct out of hour visits and inspections. This can apply to late night establishments that sell alcohol / provide takeaways and also to the hackney carriage & private hire trade. Certain businesses are at their busiest during these times and late night visits allow officers of the Council to see how they function and comply with the relevant pieces of legislation and conditions 'in action'.

Overt operations

Officers will conduct overt inspections of licensed premises, individuals and the hackney carriage & private hire trade. Such inspections may be in partnership with relevant authorities including the Police, Devon County Council and the Driver Vehicle Standards Agency (DVSA) and others.

Test purchases

Due to the nature of certain offences it is sometimes necessary to conduct test purchases. This is normally complaint or information led and may follow on from less severe enforcement actions which have proved ineffective. Examples include test purchasing unlicensed taxi drivers and premises selling alcohol to underage individuals.

Conditions

The Council have the ability to place conditions on a number of licences either at the application stage or via a review of a licence. Although different under each piece of legislation the Council may (generally) apply standard conditions and/or tailored conditions. Standard conditions guarantee a similar standard of activity across the district (i.e. animal establishments) and tailored conditions allow for the individual nature of certain premises to be catered for (i.e. premises licence).

Byelaws

The Byelaws for acupuncture, tattooing, ear-piercing, semi-permanent skin-colouring, and electrolysis specify the standards practitioners and premises must meet in order to get a licence to operate. Contravening a byelaw can result in a fine upon successful conviction in a Magistrates Court.

APPENDIX C

SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – ENVIRONMENTAL HEALTH (NUISANCES AND ANTI-SOCIAL BEHAVIOUR)

The purpose of this appendix is to provide more information on the provisions of statutory nuisance legislation under the Environmental Protection Act 1990 and its relationship with Anti-social behaviour legislation.

Statutory Nuisance Enforcement

Proactive Inspections

Whilst much statutory nuisance work will involve reactive responses to complaints from the public, the Council also has an important responsibility to carry out pro-active regulation to protect the amenity of residents. In particular, we will carry out proactive inspections, and take all necessary actions in the following circumstances:

- To control the emission of dusts, smoke, odour or effluvia where there is a very high likelihood of nuisance occurring and/or history of complaints or an on-going investigation
- To control potential nuisance from planned events, specific operations or activities, with a potential to cause significant disturbance
- To assist the Planning Department in assessing, and controlling, the impact of potential nuisance from proposed developments

Pro-active inspections may be conducted out-of-hours (e.g. during the evening or weekends) as well as normal working hours.

Abatement Notices

We have a duty to investigate complaints related to statutory nuisance and to serve an Abatement Notice if a statutory nuisance exists. It is an offence not to comply with an Abatement Notice without a reasonable excuse.

Legislation provides that various activities and circumstances which may constitute statutory nuisances if they result in a state of affairs which is "prejudicial to health" or a nuisance. This encompasses the keeping of premises; the emission of smoke, fumes, gases, dust, steam, smells, effluvia; the accumulation of material; the keeping of animals; the emanation of insects from commercial premises; the emission of artificial light; noise from premises; noise from vehicles or machinery in the street; any other matter declared to be a statutory nuisance by enactment.

The majority of statutory nuisance service requests relate to individuals and are usually due to the behaviour of a neighbour for example playing music too loud. These requests for service can be due to a clash of lifestyles or a consequence of a long-standing neighbour dispute. It is expected that the complainant/s will be willing to give evidence in court if necessary unless there are extenuating circumstances.

The Council receives many complaints about different types of noise including alarms, loud music, construction sites, barking dogs, DIY, kitchen extract systems, and air conditioning units.

Moving vehicles on the highway are not relevant premises for the purposes of statutory nuisance. Parked vehicles, machinery or equipment in the street can give rise to noise nuisance under the statutory nuisance legislation.

Out-of-hours actions

We do not currently operate an out-of-hours reactive complaint investigation service. We will therefore investigate any nuisance complaints during normal working hours and respond initially within 5-working days. As indicated above, proactive inspections can be carried out outside of normal hours if justified and we can also carry out overt surveillance (i.e. where we have warned the person(s) likely giving rise to the complaint notice of our intention to carry out monitoring) including the use of monitoring equipment such as noise recording devices or our Noise app service available for smartphone users.

Nuisances and anti-social behaviour

Anti-Social Behaviour (ASB) is a broad term used to describe the day-to-day incidents of crime, nuisance and disorder. We work closely with many other agencies in Mid Devon to tackle and reduce ASB. The ASB legislation puts victims of crime first by having effective powers for tackling ASB that act as a real deterrent to perpetrators.

These enforcement powers under the Anti-Social Behaviour Crime and Policing Act 2014 include:

- Civil injunction
- Criminal Behaviour Order
- Community Protection Notice
- Public Spaces Protection Order
- Closure Powers

Many of these powers overlap with Nuisance and Licensing laws acting as an alternative less punitive/rehabilitation action against offenders, other than proceeding through the courts (a possible action with statutory nuisance cases).

When investigating nuisance complaints we will therefore work within the options available to us under both Statutory Nuisance and Anti-social behavior legislation.

Generally, Statutory Nuisance provisions will take precedence over the ASB powers. This is because there was nothing in the ASB powers that discharge the Council from its duty to issue an Abatement Notice where the behaviour is deemed to be a Statutory Nuisance. Therefore, we continue to have a duty to issue the notice, however the ASB powers are discretionary. Nonetheless, whilst we will in almost all circumstances, only need to resort to the Statutory Nuisance powers, we cannot be certain that, in some rare circumstance, we would need to issue an abatement notice AND seek an ASB injunction or other ASB provision. For example, we may still find a scenario where noise nuisance is occurring, but it might be allied to other forms of ASB by the same individual.

Mediation may also be offered as an alternative to statutory nuisance or ASB action where it is appropriate.

Offence and Defences

If a person on whom an abatement notice is served, without reasonable excuse, contravenes or fails to comply with any requirement or prohibition imposed by the notice, he shall be guilty of an offence.

There is a statutory defence where the defendant can show that he used "best practical means" (BPM) to prevent the harm from occurring

The BPM concept is well established in environmental law and requires the polluter to show that he has used the best means available to reduce the harm taking into account practicalities and cost.

Procedures and closing investigations

We will follow set procedures when undertaking nuisance investigations following a common or related set of stages.

Initially where a report of an alleged nuisance has been received the person affected will be asked to complete a referral form. The case will be closed until such a time as the referral form is returned to the department.

Once the referral form has been returned a letter will be sent to the alleged perpetrator and at the same time the person affected will be asked to keep a diary record of the issues.

If the diary is not returned within 8-weeks then it will be assumed that the issue has been resolved informally and the case will be closed.

Individual action not involving the Council

If you are the occupier of premises affected by noise, you can under section 82 of the Environmental Protection Act 1990 complain directly to a Magistrates Court. You may wish to do this because you do not want to involve us or that we are unable to help having investigated your complaint.

Other legislation dealing with nuisances and harmful emissions

We may draw upon a wide range of other regulatory powers as appropriate to deal with nuisances or other harmful emissions. These include (not an exhaustive list):

- Public Health Acts 1936 and 1961 – for example in respect of sanitary complaints, noxious premises, drainage and verminous provisions
- Prevention of Damage by Pests Act 1949 – for example for dealing with damage and nuisance caused by infestations of rats and mice
- Control of Pollution Act 1974 – for example in respect of noise from construction sites
- Building Act 1984 – for example in respect of defective drainage
- Clean Air Act 1993 – for example in respect of dark smoke from chimneys and bonfires
- Environment Act 1995 – for example in respect of imminent danger of serious pollution

- Environmental Damage Regulations 2009 – for example in respect of pollution to land from commercial activities (not historic land contaminated prior these regulations coming into effect)

In applying these various regulatory powers we will take into account best practice and codes of practice issued by the relevant agencies and bodies including DEFRA, Environment Agency and Chartered Institute of Environmental Health for example.

APPENDIX D

SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – ENVIRONMENTAL HEALTH (PRESCRIBED PREMISES FOR POLLUTION CONTROL)

The purpose of this appendix is to give further guidance on the provisions of the above legislation.

More information regarding prescribed premises for pollution control (also known as permitted installations) can be found at

<https://www.middevon.gov.uk/residents/environment/air-quality/regulated-installations/>

Prescribed premises for pollution control

We are one of relevant enforcing authorities for the purposes Environmental Permitting Regulations 2016 (EPR) made under the Pollution Prevention Control Act 1999 in respect of installations prescribed for local authority control within our district.

Under EPR we regulate “installations” that carry out certain industrial activities. Permits are issued for these installations containing conditions that are intended to achieve a high level of protection for the environment as a whole. The powers cover two regimes, Local authority Integrated Pollution Prevention and Control (LA-IPPC) “A2 Installations” and Local authority Pollution Prevention and Control, “Part B installations”. For A2 installations the Regulations require that emissions to air, water (including discharges to sewer) and land, plus a range of other environmental effects, must be considered in the permit and that sites that cease to be permitted are restored to their original condition. For Part B installations the Regulations require that emissions to air should be considered.

Operators of prescribed installations are required by the EPR to comply with both procedural and operational conditions. A failure to do so in either case might constitute an offence.

Enforcement of regulated installations

The purpose of enforcement is to ensure that preventative or remedial action is taken to protect the environment or to secure compliance with the regulatory system. The need for enforcement may stem from an unauthorised “incident” or activity or from a breach of the conditions of a permitted activity. Although we expect full voluntary compliance with relevant legislative requirements or permit provisions, we will use our enforcement powers where necessary. The powers available include:

Preventative /remedial actions

- Enforcement Notices
- Suspension Notices
- Variation of permit conditions
- Revocation Notices

Criminal enforcement responses

- Prosecution
- Formal caution
- Warnings

Enforcement Notices

Enforcement Notices may be served under the EPR where the operator is contravening or likely to contravene permit conditions. We will consider in each case the advantages of serving an Enforcement Notice, using warning letters or taking court proceedings. The use of an Enforcement Notice may not be appropriate merely to restate what is required by an existing condition. Warning letters will usually be sent and in the event of non-compliance prosecution will be considered.

Suspension Notices

We may serve a Suspension Notice under the EPR where, in respect of an installation permitted by it, there is a risk of serious pollution. This may or may not involve a contravention of a condition of the permit. Once the Council is satisfied that the requisite action has been taken, written notification shall be given to the operator and the Notice withdrawn.

Under the provisions of EPR, we may also serve a Suspension Notice for non-payment of the annual permit subsistence fee (see also Revocation Notice).

Variation Notices

We will consider the issue of a Variation Notice in respect of permitted installations in the following cases;

- where the operator formally requests a specific variation
- where the operator notifies the Council of a proposed change to the process or installation and the Council determines that a variation is required to accommodate that change
- where the Council believes that the existing conditions attached to an authorisation or permit require amending or additional conditions are required

When issuing a Variation Notice, we will include as part of that notice a copy of the consolidated authorisation or permit. Where the operator makes an application for a variation and we decide not to vary the permit then we will notify the operator of our decision and the right of appeal against that decision.

Revocation Notices

We may revoke a permit in whole or in part, at any time by service of a Revocation Notice for appropriate reasons. These also include non-payment of the annual subsistence fee.

When issuing a Revocation Notice the Council will provide an accompanying letter stating the reasons and effect of the Revocation Notice. We will give prior notice and appropriate warning of our intention issue a Revocation Notice giving the operator of the permitted installation appropriate notice to address the issue.

Failure to comply with permit conditions or Notices

Failure to comply with permit conditions or the requirements of a notice may lead to a criminal enforcement response.

Operating without a permit

The Council would expect any operator to be aware of the need for a permit and to obtain one before commencing operation. Should an operation be being carried on without a permit the operator will be invited to make a timely application and the additional fee for operating without a permit will apply. Failure to complying after the warning may lead to prosecution of the operator.

Operating whilst under the provisions of a permit Suspension or Revocation Notice may also be considered as operating without a permit and also lead to prosecution of the operator.

Other Actions

Requisitions for Information

The Council may require any person to provide such information as it may reasonably require discharging its functions under the EPR. Where such a notice is not complied with the Council may instigate legal proceedings.

APPENDIX E

SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – ENVIRONMENTAL HEALTH (FOOD SAFETY)

The purpose of this appendix is to give further guidance on the provisions of the Food Safety Act 1990 and food legislation made under the European Communities Act 1972. The principles of enforcement are clearly set out in the main enforcement policy. The policy will be followed in conjunction with the Food Standards Agency's (FSA) Statutory Codes of Practice including the current Food Law Code of Practice and guidance.

We will work closely with other agencies including the FSA, Public Health England, the Department of Food and Rural Affairs (Defra), Primary Authorities and Home Authorities to ensure consistent and coherent regulation.

The ultimate purpose of the Council's food safety enforcement function is to ensure that those persons with a statutory duty manage and control risks effectively, thus preventing harm.

Food Safety information

More information on the regulation and enforcement of food safety and hygiene can be found at <https://www.middevon.gov.uk/business/food-safety-and-hygiene/>

General food safety enforcement

The Council regards prevention as better than cure. As such officers will offer information and advice to those the Council regulates and seek to secure compliance avoiding bureaucracy or excessive cost. Individuals and businesses are encouraged to put food safety first and integrate safe and hygienic practices into normal working methods.

Enforcement action will be based primarily on an assessment of risk to public health. Formal action will be focused on situations where the public is put at risk, where food businesses are negligent of their obligations or intentionally infringe the law.

Only officers who are deemed competent by training, qualification and experience and who meet the criteria in the Statutory Code of Practice will be authorised to undertake enforcement action. The Council will also ensure that all appointed officers are trained in the use of this policy.

The purpose of enforcement is to:

- ensure that businesses take action to deal immediately with serious food safety risks;
- promote and achieve sustained compliance with the law;
- ensure that businesses which breach food safety requirements are held to account. This may include bringing alleged offenders before the courts.

The Council has a range of tools at its disposal in order to secure compliance with the law and to ensure a proportionate response to criminal offences. The powers available include:

Preventative / remedial action

- Informal action (advice, verbal action, request for action)

- Hygiene Improvement Notice
- Hygiene Emergency Prohibition Notice
- Remedial Action Notice
- Seizure/detention
- Refusal / Suspension / Removal of Approved Premises status
- Hygiene Prohibition Order

Criminal enforcement responses

- Prosecution
- Simple caution

Food safety enforcement notices

Informal action may be taken where:

- The act or omission is not serious enough to warrant formal action.
- Past history indicates that informal action can be expected to achieve full compliance.
- The officers' confidence in the management of the premises is high.
- The consequences of non-compliance will not pose a significant risk to public health.
- Even when some of the above criteria are not met, there may be circumstances in which informal action will be more effective than a formal approach.
- The availability of a due diligence defence (acting with reasonable care).

Statutory Notices will be used only where the guidance criteria specified in the Statutory Code of Practice is fulfilled. Authorised Officers will only sign Improvement Notices if they have personally witnessed the contravention and are satisfied that it meets the criteria given in this policy.

The use of a Hygiene Emergency Prohibition Notice will be considered when an imminent risk of injury to health can be demonstrated. The officer will consider the guidance criteria specified in the FSA Statutory Code of Practice concerning the conditions when prohibition may be appropriate before service of the Notice.

The offer of Voluntary Closure of a premises, use of any equipment, process or treatment will only be accepted where the nature and extent of the offer would have at least the equivalent effect of the service of a Hygiene Emergency Prohibition Notice.

Remedial Action Notices will be used if a continuing offence in any food premises subject to approval under Regulation 853 / 2004 requires urgent action owing to a risk to food safety. The officer will consider the guidance criteria specified in the FSA Statutory Code of Practice concerning the conditions when a Remedial Action Notice may be appropriate before service of the Notice.

We will liaise with, where appropriate, other agencies including local authorities involved with the Primary Authority Scheme or Home Authority Scheme, before enforcement action is taken to ensure consistent and coherent regulation.

Food detention/seizure

When food has not been produced, processed or distributed in compliance with the Hygiene Regulations an Authorised Officer may detain or seize the food. Following the

detention/seizure the Authorised Officer will follow the advice set out in the FSA Statutory Code of Practice.

Food will be detained where there are suspicions or indications that food at a particular establishment is unsafe and therefore examination is necessary. Such action will be proportionate to the risk to public health and where immediate action is required to ensure food safety. Decisions on whether to release or seize the food will be made as quickly as is reasonably practicable.

The Authorised Officer will provide written notification of the detention/seizure as soon as is reasonably practicable.

A Food Condemnation Notification will be given to the person in charge and/or the owner of the food where the officer intends to have the food dealt with by a Justice of the Peace. If the Magistrate does not condemn the food, it will be returned to the owner, who will be entitled to compensation for any loss encountered,

A Withdrawal of Detention of Food Notice will be served as quickly as possible when evidence or information indicates that detained food can be released, and in any case within 21 days.

Refusal / Suspension / Removal of food approvals

Certain food premises that handle products of animal origin require the approval under Regulation 853 / 2004 prior to conducting a business. Formal action will be taken against those premises which require approval but knowingly fail to gain approval before operation. An establishment will be refused approval where it does not fully meet the requirements of Regulation 853 / 2004.

Where serious deficiencies are identified or production stopped repeatedly and the food business operator is not able to provide adequate guarantees regarding future production the Council will withdraw approval and the establishment must not be used for any activities which would render it subject to approval under regulation 853 / 2004 with immediate effect. Suspension of approval will be considered where the food business operator can guarantee that it will resolve deficiencies within a reasonable time limit.

A Hygiene Prohibition Order may be imposed by the Court, following a successful prosecution, where it considers that the premises, equipment or processes put the public health at risk. The Court may also ban the Food Business Operator, and/or manager, from managing a food business.

Where an enforcement officer is satisfied that a case for prosecution is in the public interest and is supported by sufficient relevant evidence that is admissible and reliable, prosecution will be considered for:

- Non-compliance with a hygiene improvement notice, except where the remaining contraventions detailed in the notice are minor and do not pose a risk to public health or where the outstanding works are in hand
- A flagrant breach of law such that public health, safety or well-being is put at risk, or there is a serious offence under food safety legislation.
- A failure by the offender to correct an identified serious potential risk to food safety after having been given a reasonable opportunity to do so.
- The sale of the food unit for human consumption or not of the quality demanded by the purchaser.

- A failure to comply in full or part with a Statutory Notice, approval or registration.
- A continuing history of similar offences related to risk to the public.
- A Simple Caution has previously been issued for a similar offence.

A person will only receive a Simple Caution when the circumstance of the offence meet the criteria identified in Home Office Circular 016 / 2008.

APPENDIX F

SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – ENVIRONMENTAL HEALTH (COMMUNICABLE DISEASE CONTROL)

The purpose of this appendix is to give further guidance on the arrangements for communicable disease control under the Health Protection legislation.

General infection control enforcement

We are actively involved in the surveillance, reporting and raising public awareness of the causes and prevention of communicable diseases across the district. A memorandum of understanding sets out the framework for a working relationship between Mid Devon District Council and Public Health England, South West Centre (PHE SWC).

PHE SWC will lead on the development, maintenance, and dissemination of policies and procedures for the management of communicable disease and on the public health aspects of control of chemical and radiological hazards across Mid Devon. These policies and procedures will be developed as appropriate in association with other relevant local agencies including Environmental Health Departments, Environment Agency, Public Health Departments, Health and Safety Executive, primary health care, microbiology laboratories, water companies, etc. PHE SWC will also provide the gateway to a range of expert national advice in the areas of infectious diseases, chemical, radiation and nuclear hazards.

PHE SWC and Mid Devon will collaborate to provide specialist advice to health professionals, the public and the media on issues of public health protection that are of mutual concern across the district.

Notifications of infectious disease

PHE SWC and Mid Devon recognise that effective liaison is needed and agree to collaborate with partners, e.g. Care Quality Commission, HSE, to provide advice and support for control of infection in relevant premises including community settings, residential care homes, schools, nurseries, hotels and tattoo parlours.

PHE SWC and Mid Devon will liaise where necessary with each other where either agency becomes aware of adverse conditions or situations which may have contributed to a notified single case or outbreak of infectious disease such as filthy or verminous premises, poor housing conditions, lack of fire precautions in a house in multiple occupation, overcrowded housing, poor hygiene in a communal kitchen, unsafe working conditions, dilapidated drainage system, rodent infestation, a potential statutory nuisance, etc..

We will notify PHE SWC of any infections reported to us directly through alternative sources such as GPs, members of the public, government agencies, water companies, where they have identified a potential for a person or persons to become infected and as appropriate where they come across circumstances where there is actual contamination or the potential for contamination of a person or persons from a chemical or radiological agent.

We will only investigate and enforce infection control within our field of responsibility, including:

- Investigation of individual cases of notifiable diseases as defined in the single case management plan
- Provision of advice to affected individuals

- Inspection of suspected sources including work places and food premises within our field of responsibility
- Sampling of possible sources of infection
- Leading investigations of norovirus outbreaks within non care establishments e.g. hotels with PHS SW support where required
- Supporting PHE SWC with community outbreaks of diseases that are not usually investigated by Environmental Health e.g. non-food borne/food poisoning cases, providing local knowledge
- Enforce relevant food safety and or health and safety legislation where appropriate
- Enforce the Health Protection (Local Authority Powers) Regulation 2010, the Health Protection (Part 2 A Orders) Regulation 2010 where appropriate.
- Assist in distribution of faecal pots during outbreaks
- Supporting multi agency teams
- Disseminating information
- Rodent / pest control

More information on infectious diseases can be found at

<https://www.middevon.gov.uk/business/food-safety-and-hygiene/infectious-disease/>

Health protection legislation

The revision of the Public Health (Control of Disease) Act 1984, as amended by the Health and Social Care Act 2008, and the introduction of the Health Protection Regulations 2010 require us to appoint Proper Officers to receive notifications of infectious disease but do not need to be medically qualified. Proper Officers are not required for the implementation of Part 2A Orders.

We will appoint Proper Officers for the purposes of the Public Health (Control of Disease) Act 1984 (as amended) and associated communicable disease legislation, for the Mid Devon area. Public Health England Consultants are given delegated authority by this Council to act as Proper Officers.

These health protection powers provide us with a range of measures that can be used to prevent, protect against, control or provide a health protection response to an incident, including by chemicals and radiation, or spread of infection or contamination that presents, or could present, significant harm to health. They will be used where voluntary cooperation to avert a health risk cannot be secured and where other methods of control are ineffective, unsuitable or disproportionate to the risk involved.

Local authority powers

Local authority powers are available for use where voluntary cooperation to avert a health risk cannot be secured and where other methods of control are ineffective, unsuitable or disproportionate to the risk involved. When exercising these powers consideration will be given to:

- Risk of transmission
- Impact of transmission
- Necessity
- Proportionality
- Context

These powers allow us to serve, vary or revoke a notice to:

- require that a child is kept away from school;
- require a head teacher to provide a list of contact details of pupils attending their school;
- disinfect/decontaminate premises or articles on request;
- request (but not require) individuals or groups to co-operate for health protection purposes;
- restrict contact with, or relocate, a dead body for health protection purposes.

Health Protection (Part 2A Orders) Regulations 2010

We may apply to a Justice of the Peace (JP) for a Part 2A order that imposes restrictions or requirements on a person, a thing, a body or human remains, or premises. The order requires action to be taken to protect human health against infection or contamination that presents, or could present, significant harm to human health.

In deciding whether to apply for an order the officer will need to determine that the application is a proportionate, necessary and appropriate response to the risk to human health. The Public Health (Control of Disease) Act 1984 (as amended) sets out the criteria that a JP must be satisfied about before they can make an order. These are:

- that the person, thing, dead body or premises is, or may be, infected or contaminated;
- that the infection or contamination presents, or could present, significant harm to human health;
- there is a risk that the person, thing, dead body or premises might infect or contaminate others; and
- an order is necessary to remove or reduce the risk.

Evidence to support these four criteria must be provided to the court by a person suitably qualified to do so. Depending on the circumstances this may be an authorised officer, a doctor or scientist, and we will arrange for this person to provide evidence.

Request for compensation

Exclusion is a power under regulation 8 of the Health Protection (LA Powers) Regulations 2010 where the local authority may request a person to do, or refrain from doing, something and we may offer compensation. Mid Devon District Council would only consider compensation payments in exceptional circumstances where hardship is demonstrated and providing we made the decision to exclude a person for a given period of time.

APPENDIX G

SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – ENVIRONMENTAL HEALTH (PRIVATE WATER SUPPLIES)

The purpose of this appendix is to give further guidance on the provisions of private water supplies and the requirements and standards for drinking water enforced through the Private Water Supplies Regulations 2016, as amended.

Private water supplies information

A private water supply is any water supply which is supplied to a property that is not provided by a water company that may come from a spring, well, borehole, pond, river, stream or rainwater harvesting. Most of these supplies are situated in remote, rural parts of Mid Devon and can originate from a range of sources including; boreholes, natural springs, and watercourses.

We will work closely with formal guidance provided by the Drinking Water Inspectorate (DWI) to ensure consistent and coherent regulation. The DWI is the competent authority for ensuring drinking water requirements are met and has a statutory role to act as technical and scientific advisors to local authorities on all aspects of drinking water quality.

More information on our sampling and regulation of private water supplies can be found at <https://www.middevon.gov.uk/residents/environment/private-water-supplies/>

Private Water Supplies legislation

The Water Industry Act 1991 defines the powers and responsibilities of Mid Devon District Council to act as the regulator for private water supplies across the district. Section 77 includes a requirement to check the wholesomeness and sufficiency of every private water supply within Mid Devon. Where a private water supply is deemed to be unwholesome and/or insufficient then a Section 80 notice will be served on the relevant person(s).

Under the Private Water Supplies (England) Regulations 2016, as amended, we are required to ensure that any private supply of water intended for human consumption does not constitute a potential danger to human health. We achieve this by conducting our statutory duties which includes:

- risk assessments (regulation 6);
- investigations (regulation 16);
- authorisations (regulation 17); and
- monitoring (sampling and analysis) (regulation 7)

Risk assessment

We are required to undertake a risk assessment of all private water supplies, except supplies to single non-commercial domestic dwellings, every 5 years. The purpose is to establish whether there is a significant risk of supplying water that could constitute a potential danger to human health and to establish whether there is a risk of non-compliance with any of the standards or indicator parameter values. Risk assessments involve looking at the whole private water supply including the source, storage tanks, treatment systems and the premises using the supply.

Investigation

Investigations are conducted whenever there is a failure to meet a standard or if it suspected for other reasons (risk assessment, operational incident, or complaint). The investigation has to determine whether the cause of the failure occurred within the private water supplier's system (raw water, treatment or distribution) or whether it occurred within the pipe work (domestic plumbing and fittings) within premises. Once the cause of the failure has been established action will be taken to restore the water quality so that it is wholesome. If we cannot secure action by informal negotiation and an authorisation has not been granted, a Section 80 Notice will be served.

Authorisation

In exceptional circumstances an authorisation may be issued to supply water to a lower standard on a temporary basis while remedial action is taken as part of an agreed and timed programme of work. We will issue authorisations, assessed and evidenced on a case-by-case basis and only after consultation with the DWI.

Sampling and monitoring

The type and frequency of sampling is determined by the following category and size of the supply:

Category of Water Supply

1. Commercial Supply - where the water is used for a commercial activity;
2. Large Supplies – where the average daily volume of water is more than 10 cubic meters;
3. Private Distribution System – where the water is supplied by a water undertaker or licensed water supplier and then further distributed by a another person;
4. Small Supply – where the water is supplied to more than one domestic dwelling;
5. Single Domestic Supply - a domestic dwelling.

Category	Volume	Sample Type*	Frequency
Private Distribution System	As outlined below		
Large Supplies (>10 ³ m per day) and Commercial Supplies	<10 ³ m per day	Group A and B	Once annually
	>10 ³ m ≤100 ³ m per day	Group A	Twice annually
	>10 ³ m ≤3300 ³ m per day	Group B	Twice annually
Small Supplies	varies	Group A and B	Every 5 years

*Group A sampling involves looking at a suite of basic parameters and Group B sampling covers a much larger suite of parameters.

Fees and Charges

The private water supply regulations enable us to charge for risk assessments and all sampling within rules set out by the Government. The current charges reflect current service delivery and can be seen on our website at the link for private water supplies.

APPENDIX H

SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – ENVIRONMENTAL HEALTH (SMOKING ENFORCEMENT)

The purpose of this appendix is to give further guidance on the provisions of smoke free legislation prescribed by the Health Act 2006 as updated in 2015.

Part I of the Health Act 2006 makes provision for the prohibition of smoking in certain enclosed or substantially enclosed premises, and allows for regulations to be made providing for other places (which need not be enclosed) and vehicles to be smoke-free. The Smoke-free (Exemptions and Vehicles) Regulations 2007 provide for enclosed vehicles used by the public or as a workplace by more than one person to be smoke free. The Smoke-free (Private Vehicles) Regulations 2015 will require all private vehicles to be smoke-free when they are enclosed, contain more than one person and a person under 18 is present in the vehicle.

Exemptions to the requirements for premises and vehicles to be smoke free are also contained in the Smoke-free (Exemptions and Vehicles) Regulations 2007.

Smoke free enforcement

It is our policy as the enforcing authority, to protect people working in or visiting an enclosed or substantially enclosed public place from exposure to second hand smoke. This policy also applies to vehicles used in connection with work and public service.

We will not embark upon a rigid proactive inspection programme under this legislation however, visits to check compliance will be undertaken at the same time as other enforcement visits or following receipt of a complaint. Enforcement activities by inspection will involve different approaches depending upon the circumstances including announced or unannounced inspections.

Authorised officers will assess compliance by observation within the premises, subsequently announce themselves and show appropriate identification to the person in charge of the premises at the end of the period of inspection.

Enforcement

Enforcement powers available include:

Preventative / remedial action

A verbal warning, an informal letter or fixed penalty notice

Licensed premises and drivers

For licensed premises and drivers matters can be referred to a Licensing or Regulatory sub-committee respectively. This will take precedence over other enforcement responses excluding preventative/remedial actions outlined above.

Criminal enforcement responses

- Prosecution

- A fixed penalty notice may be issued when an offence has been committed.
- Fixed penalty notices apply to persons who smoke in a smoke free place,
- Premises or vehicle, or where the appropriate signage is not displayed at such places.
- A fixed penalty notice will be issued at the time when the contravention is identified or if appropriate at a later date.

Where repeat breaches of the legislation are witnessed or where fixed penalty notices are not paid in full, then prosecution proceedings will be taken. Prosecution will be considered against an individual found smoking in a smoke free premise or against a person in control of a smoke free premise who fails to erect the correct signage, where informal action and fixed penalty notices have failed to secure compliance. A prosecution will be considered against a person in control of a smoke free premise who fails to prevent smoking after informal action has been taken and liaison will be undertaken with the Licensing Team in respect of any licenced premises.

A general duty of care will apply under the Health and Safety at Work etc. Act 1974. This may be applied when checking, or giving advice on, smoking shelters, ventilation of non-smoke-free rooms, and people working in non-smoke-free rooms and private dwellings.

Smoking in private vehicles

The existing smoke-free law, which makes public places and work premises and vehicles smoke-free, was extended in 2015. The Smoke-free (Private Vehicles) Regulations 2015 requires all private vehicles to be smoke-free when they are enclosed, contain more than one person and a person under 18 is present in the vehicle. It will be an offence for someone to smoke in a private vehicle with someone under age 18 present and for a driver not to stop someone smoking.

Note that electronic cigarettes and all forms of nicotine vaporisers are not included within the definition of smoking. The purpose is to protect children from the harm to their health caused by exposure to second-hand smoke in vehicles.

The police will be responsible for enforcing the legislation in vehicles on the road and have the power to serve fixed penalty notices. As the local authority, we have powers to carry out investigations together with providing information and raising awareness to ensure compliance. In doing so, we will take into account Chartered Institute of Environmental Health (CIEH) guidance: Implementation of Smoke-free Legislation in England - The Smoke-free (Private Vehicles) Regulations 2015.

APPENDIX I

SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – ENVIRONMENTAL HEALTH (HEALTH AND SAFETY)

The purpose of this appendix is to give further guidance on the provisions of the Health and Safety at Work etc. Act 1974 and subordinate legislation.

Health and Safety at Work etc. Act 1974

Our policy is to protect the health, safety and welfare of people at work and to safeguard others, mainly members of the public, who may be exposed to risks from the way work is carried out.

We will put into place adequate arrangements and procedures for enforcement by complying with the National Local Authority Enforcement Code – Health and Safety at Work issued under section 18 (4) (b) of the Health & Safety at Work etc. Act 1974. This Council will also follow the guidance issued to local authorities by the Health and Safety Commission in its Enforcement Policy Statement.

We will only enforce health and safety within our field of responsibility, defined as;

- Activities/premises being within the Councils geographical boundary which are so stipulated in the Health and Safety (Enforcing Authority) Regulations 1988 (as amended)
- Activities/premises locally agreed with the Health and Safety Executive.
- Activities/premises which fall within the memorandum of understanding to the flexible warranting scheme. (Local agreement between local authority officers and HSE inspectors).

The ultimate purpose of our health and safety enforcement function is to ensure that employers and those having a duty under the Act, manage and control risks effectively thus preventing harm.

The Authorised Officer of the Council will liaise with other agencies where appropriate, including the Health and Safety Executive, local authorities involved with the Primary Authority Scheme or Lead Authority Partnership Scheme (LAPS) and any other appropriate agency before enforcement action is taken to ensure consistent and coherent regulation.

Support is given to the Health and Safety Executive / Local Authority Liaison Committee (HELA) in its role liaising between local authorities and the Health and Safety Executive to ensure that a co-ordinated and progressive approach to health and safety takes place. To secure health and safety compliance, this Council will take part in national and local initiatives depending upon the resources available.

Enforcement of regulated premises

The appropriate use of enforcement powers, including prosecution, is important both to secure compliance with the law and to ensure that those who have a duty under it may be held to account for failures to safeguard the health, safety and welfare of employees or the public. Enforcement is distinct from civil claims for compensation and is not undertaken in all circumstances where civil claims may be pursued, nor to assist such claims.

The purpose of enforcement is

- to ensure that duty holders take action to deal immediately with serious risks and
- to promote and achieve sustained compliance with the law,
- to ensure that duty holders who breach health and safety requirements and directors or managers who fail in their responsibility, are held to account. This may include bringing alleged offenders before the courts.

The Authorised Officer has a number of options available to secure compliance with the law and demonstrate a proportionate response to criminal offences. The powers available include:

Preventative / remedial action

- Informal action (advice, verbal action, request for action)
- Improvement Notices
- Prohibition Notices
- Seizure

Criminal enforcement responses

- Prosecution
- Simple Caution

A person will only receive a Simple Caution when the circumstances of the offence meet the criteria identified in Home Office Circular 016/2008.

Informal action is taken where an act, omission or contravention is not serious enough to warrant formal action and previous history with the management of health and safety would suggest this will achieve compliance.

Improvement notices will be served when one or more of the criteria below apply:

- Where one or more significant health and safety contraventions has occurred and they are likely to continue or to be repeated.
- The business/proprietor has a history of non-compliance.
- Standards are generally poor and the business/proprietor has little awareness or appreciation of their legal duties or of statutory requirements.
- Effective action needs to be taken to remedy conditions that are serious and deteriorating.
- Where there is a risk of ill health or injury, but not so as to warrant a prohibition notice

Prohibition notices will be served in the following circumstance:

- When an officer is of the opinion that an activity (or activities) carried on at a premises involves or may involve a risk of serious personal injury.
- Whilst the risk does not have to be imminent before an immediate prohibition notice can be served; such notices will generally only be served where the risk of serious personal injury is such as to require action to be taken without delay to control that risk.
- Immediate prohibition notices may be served not only where the risk is one of traumatic (acute) injury, but also where the risk is from a long term health hazard of a cumulative nature which may ultimately contribute to damage to health.

- Deferred prohibition notices may be served when a greater risk would result if that activity was stopped immediately.

All improvement and prohibition notices served will be placed on the Authority's public register if they relate to matters of a public concern. This is a requirement of the Environment and Safety Information Act 1988.

The Authorised Officer acting on behalf of the Council has powers to seize unsafe goods or equipment to prevent it causing harm to people. When goods or equipment are seized an officer will leave an appropriate receipt.

Subject to the application of the evidential and public interest tests, this Council will normally prosecute in the following circumstance:

- Death was a result of a breach of the legislation;

(NOTE: Health and Safety sentencing guidelines regard death resulting from a criminal act as an aggravating feature of the offence. If there is sufficient evidence that the breach caused the death, this Authority considers that normally such cases should be brought before the court. However, there will be occasions where the public interest does not require a prosecution, depending on the nature of the breach and the surrounding circumstances of the death.)

- The gravity of the alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants prosecution;
- There has been reckless disregard of health and safety requirements;
- There have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance;
- Work has been carried out without or in serious non-compliance with an appropriate licence;
- A duty holder's standard of managing health and safety is found to be far below what is required by health and safety law giving rise to significant risk of actual or potential harm;
- There has been a failure to comply with an improvement or prohibition notice;
- There has been a repetition of a breach that was subject to a simple caution;
- Where false information has been supplied wilfully, or there has been an intention to deceive, in relation to a matter which gives rise to significant risk;
- Inspectors have been intentionally obstructed or assaulted in the lawful course of their duties
- Where it is appropriate in the circumstances to draw general attention to the need for compliance with and maintenance of the standards required by law, and conviction may deter others from similar failures to comply with the law.
- Where a breach giving rise to significant risk has continued despite relevant warnings from employees, or their representatives, or from others affected by a work activity

Primary Authority Partnerships

A Primary Authority Partnership allows businesses to form a statutory partnership with a single local authority, providing access to assured advice on compliance which must be respected by local regulators. It also allows for co-ordination of inspection and enforcement activity. Where there is a Primary Authority Partnership in existence with a company, contact will be made with the Authority once enforcement action is being considered.

We recognise the status of the Primary Authority Partnership scheme, made under the Regulatory Enforcement and Sanctions Act 2008. Section 25c of this Act requires an enforcing authority that wishes to take enforcement action against a business which has a primary authority, to first notify the primary authority of the proposed action. Enforcement action is widely defined for the purposes of the Act by the Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009, as amended.

Statutory guidance on the scheme requires that the notification of proposed enforcement action by the enforcing authority:

- should be made via the Primary Authority Register;
- should be itemised, where multiple enforcement actions are being proposed; and
- should include specified details. These are set out in the statutory guidance and in the notification template on the Primary Authority Register.

The statutory guidance also requires that, when making a notification, an enforcing authority should ensure that, during the 5 working days following the notification, it is able to respond to requests from the primary authority for further information or clarification.

The Primary Authority has 5 working days to decide if it objects to the proposed enforcement action. If the Primary Authority or Regulated Business objects, they are entitled to refer the matter to the Secretary of State for consideration within 28 days. Secretary of State determinations must be adhered to.

The legislation recognises that there will be times when the need to act swiftly is critical and it allows for notification to the primary authority to be retrospective in certain defined circumstances. In brief, this applies for:

- Emergency prohibition notices under specified food safety legislation;
- Enforcement action that is required urgently to avoid a significant risk of harm to human health.

Investigations

The Authorised Officer of the Council shall determine whether incidents, cases of ill health, or complaints should be investigated. Investigations are undertaken in order to determine:

- causes,
- whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with the law,
- lessons to be learnt and to influence the law and guidance,
- what response is appropriate to a breach of the law.

In deciding what resources to devote to investigations, we will have regard to the principles of enforcement set out in this statement and the objectives published in the Health and Safety Executive / Local Authority Enforcement Liaison Committee (HELA) strategic plans.

In particular, in allocating resources the Council will strike a balance between investigations and mainly preventative activity.

To maintain a proportionate response, most resources available for investigation of incidents will be devoted to the more serious circumstances. The Council recognises that it is neither possible nor necessary for the purposes of the Act, to investigate all issues of non-compliance with the law which are uncovered in the course of preventive inspections, or in the investigation of reported events.

In selecting which complaints or reports of injury or occupational ill health to investigate and in deciding the level of resources to be used, the officer will take account of the following factors:

- the severity and scale of potential or actual harm,
- the seriousness of any potential breach of the law,
- knowledge of the duty holder's past health and safety performance,
- the enforcement priorities,
- the practicality of achieving results,
- the wider relevance of the event, including serious public concern

In considering whether the law has been complied with, the Authorised Officer will have regard to relevant Approved Codes of Practice (ACOP) and guidance issued by the Health and Safety Executive and HELA. The officer will apply sensible judgement about the extent of the risks and the effort that has been applied to counter them.

Decisions involving significant resources will need approval from the Service Director or Service Manager.

The Enforcement Management Model (EMM) will be referred to when considering formal action for breaches of the law. Where action taken differs from that indicated by the EMM the reasons for this will be documented and reasonable.

Representations to the courts

In cases of sufficient seriousness, and when given the opportunity, we will consider indicating to the Magistrates that the offence is so serious that they may send it to be heard or sentenced in the higher court where higher penalties can be imposed. In considering what representations to make, the Authorised Officer/Solicitor will have regard to Court of Appeal guidance.

Death at work

The Authorised Officer will carry out a site investigation of all reportable work-related deaths that have taken place in a local authority enforced premises. Where there has been a breach of the law leading to a work-related death, the Council will consider whether the circumstances of the case might justify a charge of corporate manslaughter.

The police and Crown Prosecution Service (CPS) have legal responsibility to pursue a charge of manslaughter if appropriate. The Council are responsible for investigating contraventions of health and safety. If in the course of their health and safety investigation an Authorised Officer finds evidence suggesting that a manslaughter incident may have occurred, they will pass it to the police for their consideration. If the police or the CPS decide not to pursue a manslaughter case we will normally bring a health and safety prosecution in accordance with this policy.

To ensure decisions on investigation and prosecution are closely co-ordinated following a work-related death, the HSE, the Association of Chief Police Officers (ACPO) and the CPS have jointly agreed and published "Work-Related Deaths: A Protocol for Liaison". The Authorised Officer acting on behalf of the Council will take account of this protocol when responding to work-related deaths.

Lead/Primary Authority

The Health and Safety Executive (HSE) established the Lead Authority Partnership Scheme (LAPS) to improve safety management systems of organisations with multiple outlets that are subject to local authority regulation and promote the consistency of health and safety enforcement for such organisations

Where there is a Lead Authority Partnership in existence with a company where enforcement action is taken copies of letters, notices and other relevant matters will be sent to that Authority for their information/action.

A Primary Authority Partnership allows businesses to form a statutory partnership with a single local authority, providing access to assured advice on compliance which must be respected by local regulators. It also allows for co-ordination of inspection and enforcement activity. Where there is a Primary Authority Partnership in existence with a company, contact will be made with the Authority once enforcement action is being considered (see the above paragraphs under the heading "Primary Authority Partnerships")

APPENDIX J

SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – PRIVATE SECTOR HOUSING

The purpose of this appendix is to give further guidance on the provisions of specific legislation and enforcement powers in respect of housing that is privately rented (excluding social housing).

Private rented homes

- On receipt of an enquiry from a tenant a 'tenant referral form' will be sent out.
- When the form has been returned the tenant, the landlord and any other relevant person will be notified of a formal inspection date.
- Following the formal inspection an assessment of the condition of the property will be undertaken and appropriate enforcement action taken if necessary.

Owner Occupied homes

- On receipt of an enquiry the owner will be contacted to provide advice.
- A formal inspection may be arranged depending on the circumstances
- Following the formal inspection an assessment of the condition of the property will be undertaken and appropriate advice or enforcement action taken if necessary.

Empty Homes

- On receipt of an enquiry the empty property will be investigated within 4 weeks.
- The person reporting the property **will not** be kept informed of progress due to the nature of such investigations and the risk of sharing personal data.
- Where intervention is required, the team will pursue the most suitable form of enforcement action to either improve the property or bring it back into use.

Houses in Multiple Occupation (HMO)

- Licensed properties will be inspected on a regular basis to check for breaches of the licence conditions. This will be determined on a risk basis.
- Where notification is received alleging a HMO it will be visited to determine if there are breaches of the Management Regulations or whether the property should be licensed.
- Identification of properties that require a licence will be carried out using local data, information from other agencies and proactive inspection programmes.
- Where an enquiry is made by a tenant in relation to disrepair or potential hazards, then the approach mentioned above (private rented homes) will be followed.

Anonymous Enquiries

- These enquiries will be risk assessed and dealt with as and when resources allow
- Where a problem is found to exist one of the approaches above will be followed depending on the circumstances.

Proactive inspections

- Notification from other agencies such as the Police or Fire and Rescue Service may result in proactive inspections of properties that lead to formal action

- Specific areas may be identified as requiring proactive targeting resulting in a number of properties in a defined area being inspected and any necessary action undertaken.

All tenure types will be investigated in the same way, however the most appropriate course of action to deal with the individual circumstances will be determined on a case by case basis as detailed in this policy. Local authority owned property will only be inspected at the request of the housing department.

Legislative Overview for Private Sector Housing

Housing Act 2004

Since April 2006, the Housing Act 2004 (“the Act”) has been the primary legislative tool for dealing with private sector housing conditions. Regulations made under the Act also play a significant role. The Act is divided into a number of parts, of which the following are most relevant in this context:

Part 1: Housing conditions

This Part covers the assessment of housing conditions being the Housing Health and Safety Rating System (“HHSRS”) and regulations made under section 2 prescribed this as being the method for assessing the severity of hazards.

It also introduces Category 1 and Category 2 hazards. Category 1 hazards are the most serious and likely to cause harm to health and/or safety. Where the Council has identified a Category 1 hazard it is under a mandatory duty to take the appropriate enforcement action. Where it has identified a Category 2 hazard it has a discretionary power to take action.

This Part also sets out the available enforcement options for dealing with Category 1 and 2 hazards. They include:

- Improvement Notice - requires the taking of remedial action within a specified time period. Such notices can, on service, be suspended to come into effect at a later date or at a point in time when a specified event takes place.
- Prohibition Order - prohibiting or restricting some or all uses of all or part of a residential premises. Such orders may also be suspended on service.
- Hazard Awareness Notice - highlighting that there are hazards existing on a residential premise which should be considered for further action. Such a notice does not place a legal obligation on the recipient to carry out works.
- Emergency Remedial Action – action taken by the Council where there is a hazard which involves an imminent risk of serious harm. This action can only be taken in respect of Category 1 hazards.
- Emergency Prohibition Order - prohibiting or restricting some or all uses of all or part of a residential premises with immediate effect. Such an order can only be made in respect of Category 1 hazards involving an imminent risk of serious harm.
- Demolition Order under the Housing Act 1985 (“the 1985 Act”) - this option is only available for residential premises containing Category 1 hazards and is not available in respect of listed buildings.
- Clearance Area under the 1985 Act - requiring the clearing of all buildings in a specified area. Under s47 of the 2004 Act, a clearance area is applicable when all the residential premises in the area concerned contain Category 1 hazards.

Part 2: Licensing of houses in multiple occupation

This Part requires the Council to introduce a mandatory licensing regime for certain types of HMOs.

The Licensing of Houses in Multiple Occupation (Prescribed Description)(England) Order 2018 has extended the scope of mandatory licensing from that contained in the 2004 Act. Any property occupied by five or more people, comprising of two or more households where there is some sharing of facilities now requires a licence.

This Part also empowers local housing authorities (“LHAs”) to introduce “additional HMO licensing” schemes to extend the scope of mandatory licensing to those HMOs not covered by the above regulations.

Part 3: Selective licensing of other residential accommodation

This Part empowers local housing authorities to introduce “selective licensing” schemes in all or part of their area requiring all private rented accommodation to be licensed, unless it is subject to exemption. An area may be designated if it is, or may become, an area of low housing demand and/or it has a significant and persistent problem with anti-social behaviour where the inaction of private landlords is a contributory factor.

Part 4: Additional control provisions in relation to residential accommodation

This Part empowers the Council to make Interim and Final Management Orders and take over the management of privately-rented residential premises. Such orders can be made when a residential premises is not licensed and there is no prospect of it being licensed, or when there is some other management problem requiring Council intervention. Interim Management Orders can be in force for up to a year, whereas Final Management Orders can last up to five years.

This Part also provides for Interim and Final Empty Dwelling Management Orders (“EDMOs”). EDMOs are similar to Interim and Final Management Orders, but relate to empty properties and are designed to ensure that dwellings become and stay occupied.

This Part also provides for the service of overcrowding notices in respect of HMOs that are not required to be licensed.

Section 26 and Schedule 3 of the Housing and Planning Act 2016 provides that a local housing authority can also make a management order in circumstances where a banning order has been made and where a privately rented property is being let in breach of a banning order.

Part 7: Supplementary and final provisions

This Part includes a number of provisions, such as the definition of an HMO. It also empowers the Council to enforce the HMO management regulations, to authorise officers to enter premises, and to require documents to be produced.

Housing and Planning Act 2016

The Housing and Planning Act 2016 has introduced a number of additional powers for dealing private rented accommodation.

- Banning orders – introduced by regulation in April 2018. This permits local housing authorities to seek banning orders where landlords or property agents have been

convicted of a banning order offence. Refer to The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017 for details on the offences.

- Database of rogue landlords and property agents - under section 30 of the 2016 Act a local housing authority must make an entry on the database where a landlord or property agent has received a banning order. They have the discretion to make entries where a landlord or property agent has been convicted of a banning order offence or has received 2 or more civil penalties within a 12 month period.
- Rent repayment orders – Chapter 4 or Part 2 of the Housing and Planning Act 2016, extends the scope of rent repayment orders to cover eviction: breach of a banning order; failure to comply with an Improvement Notice; failure to comply with a Prohibition Order and using violence to secure entry to a property under section 6 of the Criminal Law Act 1977; and
- Financial penalties – Section 126 and schedule 9 of the Housing and Planning Act 2016 makes provisions for the local housing authority to use the power to issue a financial penalty for certain Housing Act 2004 offences as an alternative to prosecution.

The offences include:

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

Housing Act 1985

The 1985 Act empowers the making of Demolition Orders and the declaring of Clearance Areas.

Part X concerning statutory overcrowding remains in force. A dwelling is statutorily overcrowded when the number of persons sleeping in it is such as to contravene the room or space standard. These standards are described in Part X of the 1985 Act.

Section 17 of the 1985 Act concerns the compulsory acquisition of land or property for housing purposes. This power may be used to acquire under-used or ineffectively used land or property by means of a compulsory purchase order (“CPO”). Before taking such action, the Council must show that there is a general housing need in the area and that a quantitative or qualitative housing gain will be made by making the order. CPOs must be approved by the Secretary of State.

Building Act 1984

Section 59 relates to the drainage of buildings. Where drainage serving any building is defective, insufficient, or prejudicial to health or a nuisance, the Council may, by notice, require the owner of the building to remedy the situation.

If a water closet in a residential building is in such a state as to be prejudicial to health or a nuisance and cannot be adequately repaired, the Council may, by notice under section 64, require the owner of the building to reconstruct the water closet.

Section 76 makes provision for defective premises which are in such a state as to be prejudicial to health or a nuisance. If, by following the procedures set out in section 80 of the Environmental Protection Act 1990, there would be an unreasonable delay in remedying the defective state, the Council may, after having given nine days' warning to the relevant person, enter the premises to carry out the works required to remedy the defective condition.

Under section 77, the Council can apply to the Magistrates' Court for an order requiring the owner of a dangerous building to either make the building safe or (if the owner chooses) demolish it. If the owner fails to comply with the order, the Council can carry out the works-in-default and recover the reasonable expenses incurred in doing so from the owner. In emergency situations, the Council can (without obtaining a court order) take immediate steps to make safe a dangerous building under section 78. In such circumstances, the Council must, if possible, attempt to give prior notice to the owner and occupier. Again, reasonable expenses can be recovered from the owner. Although such intervention may concern private sector housing, the Council's Building Control section is responsible for action under sections 77 and 78.

Section 79 concerns ruinous and dilapidated buildings and neglected sites. If a building is, by reason of its ruinous or dilapidated condition, seriously detrimental to the amenities of the neighbourhood, the Council may serve a notice requiring the owner to carry out remedial works or (if the owner chooses) demolish the building. If the owner fails to comply with the notice, the Council can carry out the works-in-default and recover the reasonable expenses incurred in doing so from the owner. This section also makes provision for dealing with any debris resulting from the collapse or demolition of a building, which by its nature is seriously detrimental to the amenities of the neighbourhood. If this condition is met, the Council may serve a notice on the owner requiring the clearance of the site. As above, if the owner fails to comply with the notice, the Council can carry out the works-in-default and recover the reasonable expenses incurred in doing so from the owner.

Public Health Act 1936

If a water closet provided in residential premises is in such a state as to be prejudicial to health or a nuisance, and it can, without reconstruction, be put into a satisfactory condition, the Council may serve notice under section 45 requiring the owner or occupier to repair or cleanse the water closet as necessary.

Public Health Act 1961

Section 17 concerns defective and blocked drainage. If it appears to the Council that a drain, private sewer, water-closet, waste pipe or soil pipe is not sufficiently maintained and kept in good repair, and can be sufficiently repaired at a cost not exceeding £250, it may, after giving seven days' notice, carry out the necessary repairs and recover the expenses incurred from the person(s) concerned, namely the owner(s) or occupier.

In cases where the drain, private sewer, water-closet, waste pipe or soil pipe is stopped up, the Council may, by notice, require the owner or occupier to remedy the problem within 48 hours. If such a notice is not complied with, the Council may undertake the works-in-default and recover the costs incurred in doing so.

Law of Property Act 1925

In cases where the Council is owed monies, as a result of the Council undertaking works-in-default under relevant legislation and the legislation provides that the cost of carrying out the works is a charge on the property the Council can exercise the power of sale conferred by the charge to recover the money if it is not paid. There is a requirement to serve notice under section 103 of the Law of Property Act 1925. This notice explains that money is owed under charge and that if it is not paid off within 3 months, the Council may then sell the property to recover the money. Depending on the wording of the particular relevant legislation the charge maybe a priority charge. This means that the Council's charge takes precedence against all other existing charges

Local Government (Miscellaneous Provisions) Act 1976

When the Council requires information relating to the ownership of land in connection with the discharge of its statutory duties, it may, by notice under section 16, require certain persons to provide information within a specified timescale. In connection with the land concerned, such information can be demanded from any one or more of the following: the occupier, freeholder, mortgagee, lessee, any person receiving the rent (either directly or indirectly), and any managing or letting agent.

If water, gas or electricity supply to a dwelling has been cut off, or is likely to be cut off, owing to the non-payment of a bill by the owner, the Council may, under section 33, step in and make arrangements with the supplier to ensure that the supply is reconnected and/or maintained.

Local Government (Miscellaneous Provisions) Act 1982

Sections 29 to 32 relate to the protection of buildings. If a building is unoccupied, or the occupier is temporarily absent, and it is insecure or likely to become a danger to public health, the Council may take action to ensure that it is adequately secured to prevent unauthorised entry and made safe. The Council can recover the costs from taking such action from the owner of the building.

Prevention of Damage by Pests Act 1949

The Council is under a duty to ensure, as far as is practicable, that its district is kept free from rats and mice. If residential premises are in such a condition as to attract rats or mice, the Council may, by notice, require appropriate treatment to be undertaken and/or require remedial works to ensure that harbourage is no longer provided. For example, such a notice may require the removal of rubbish and furniture that has been discarded in the external grounds of a privately-owned property which has or is likely to attract rats and mice.

Health Act 2006

Under the Health Act 2006, it became an offence to smoke in public places or places of work which are enclosed or substantially enclosed. Furthermore it is an offence not to display no-smoking signs in smoke-free premises. It is also an offence to be a manager of smoke-free premises and allow persons to smoke in them.

For the purposes of private sector housing, the common parts of HMOs and the common parts of buildings containing flats are deemed to be smoke-free premises.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 - private sector landlords are required to ensure that at least one smoke alarm is installed on every storey of their rented property and that a carbon monoxide alarm is installed in any room containing a solid fuel burning appliance. They also require landlords to ensure that such alarms are in proper working order at the start of each new tenancy. In addition, the regulations amend the conditions which must be included in a licence under Part 2 or 3 of the Housing Act 2004 ("the 2004 Act") in respect of smoke and carbon monoxide alarms.

The Energy Efficiency (Private Rented Property) (England and Wales) regulations 2015 - the Regulations are designed to tackle the least energy-efficient properties in England and Wales – those rated F or G on their Energy Performance Certificate (EPC). The Regulations establish a minimum standard for both domestic and non-domestic privately rented property, effecting new tenancies from 1 April 2018.

The minimum level of energy efficiency means that, subject to certain requirements and exemptions:

- a) From the 1st April 2018, landlords of relevant domestic private rented properties may not grant a tenancy to new or existing tenants if their property has an EPC rating of band F or G (as shown on a valid Energy Performance Certificate for the property);
- b) From the 1st April 2020, landlords must not continue letting a relevant domestic property which is already let if that property has an EPC rating of band F or G (as shown on a valid Energy Performance Certificate for the property).

Local authorities will enforce compliance with the domestic minimum level of energy efficiency. They may check whether a property meets the minimum level of energy efficiency, and may issue a compliance notice requesting information where it appears to them that a property has been let in breach of the Regulations (or an invalid exemption has been registered in respect of it).

Where a local authority is satisfied that a property has been let in breach of the Regulations it may serve a notice on the landlord imposing financial penalties. The authority may also publish details of the breach on the national PRS Exemptions Register. A local authority may also serve a penalty notice for the lodging of false information on the Exemptions Register.

Deregulation Act 2015 and Retaliatory eviction

Where a tenant has a legitimate complaint about the condition of their property they are protected from retaliatory eviction. It is also a requirements that landlords provide all new tenants with information about their rights and responsibilities as tenants. This legislation has been incorporated into the tenant referral form process to ensure that both landlords and tenants are aware of their responsibilities under this Act. The effect of this legislation is that a landlord is unable to evict the tenant for 6 months using the 'no-fault' eviction procedure (a section 21 eviction) where the council has served an improvement notice or taken emergency remedial action. There are various exemptions to this contained within the Act.

Houses in Multiple Occupation

A building, or a part of a building, is an HMO if:

- It meets "the standard test"; or
- It meets "the self-contained flat test"; or
- It meets "the converted building test"; or
- It is a "converted block of flats" to which section 257 of the Act applies.

The standard test

There are six parts to the standard test. A building (or any part of a building) will meet the test if:

- a) It consists of one or more units of accommodation that are not self-contained; and
- b) It is occupied by more than one household; and
- c) It is occupied by persons who use the accommodation as their only or main residence; and
- d) The accommodation is not used for purposes other than living accommodation; and
- e) At least one person is paying rent (or providing other consideration) for their use of the accommodation; and
- f) Two or more households share one or more basic amenity, or the accommodation is lacking in one or more basic amenity.

The self-contained flat test

A self-contained flat will be an HMO if it meets tests b) to f) of “the standard test” above.

The converted building test

There are six parts to the converted building test. A building (or any part of a building) will meet the test if:

- a) It is a converted building; and
- b) It consists of one or more units of accommodation that are not self-contained (whether or not there are self-contained flats in the building); and
- c) It is occupied by more than one household; and
- d) It is occupied by persons who use the accommodation as their only or main residence; and
- e) The accommodation is not used for purposes other than living accommodation; and
- f) At least one person is paying rent (or providing other consideration) for their use of the accommodation.

Certain converted blocks of flats

This HMO definition applies to certain buildings (or parts thereof) that have been converted entirely into self-contained flats. As such, there is no sharing of basic facilities in this type of HMO. However, not all buildings converted into self-contained flats are HMOs. For a building of this type to be an HMO, it must meet both of the following tests:

- a) The building was not converted in accordance with the “appropriate building standards” (they being the Building Regulations 1991 or later versions of these Regulations); and
- b) Less than two-thirds of the self-contained flats are owner-occupied.

Single Household

A household is generally considered to be a single family unit, comprised of members of the same family. Couples whether married or not are deemed to be of the same family. Relatives that may form part of a single household include: parents, grandparents, children, grandchildren, brother, sisters, uncles, aunts, nephews, nieces, and cousins.

Basic Facilities

Toilets, personal washing facilities (e.g. showers, baths and washbasins) and cooking facilities (e.g. kitchens) are considered to be basic facilities.

HMO declarations

Sometimes, a building (or part of a building) is not solely used as living accommodation. In this situation, the HMO tests set out above (concerning sole use as living accommodation) cannot be met. However, if the building concerned is primarily used as living accommodation, and meets all the other relevant HMO tests, it may be appropriate for the Council, in the public interest, to declare the building as an HMO.

HMO declarations can be made by the Council in respect of buildings that would otherwise meet the “the standard test”, “the self-contained flat test”, and “the converted building test”. An HMO declaration cannot be made in respect of “converted block of flats”.

A relevant person can appeal to the Residential Property Tribunal against any decision of the Council to declare a building as an HMO.

Exemptions

Schedule 14 of the Act specifies buildings which are not HMOs for the purposes of the Act. However, when considering action under Part 1 of the Act (HHSRS and enforcement of housing conditions), the specified exemptions do not apply. This allows for risk assessment to reflect the true nature of occupation. The exemptions are:

- Buildings managed or controlled by LHAs, registered social landlords (“RSLs”) and certain other public sector bodies, such as the Police.
- Buildings that are otherwise regulated under prescribed legislation, such as care homes (see Schedule 1 of The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 (SI 2006/373) for the full list of enactments).
- Buildings that are managed and controlled by certain educational establishments and are occupied by students. As of January 2014, only those establishments specified in The Houses in Multiple Occupation (Specified Educational Establishments) (England) Regulations 2013 (SI 2013/1601) are exempt. These regulations are regularly updated, usually on an annual basis.
- Certain buildings occupied by religious communities.
- Any building occupied by its owner and his/her family, and in which no more than two lodgers or tenants reside. HMOs defined by section 257 of the Act are excluded from this exemption.
- Buildings occupied by only two persons forming two households.

Exempt buildings are not subject to HMO licensing under Part 2 of the Act, or either of the two sets of HMO management regulations (see below). Furthermore, the provisions of Chapter 3 of Part 4 of the Act, which relate to the service of overcrowding notices in respect of HMOs not subject to licensing, do not apply to exempt buildings.

Public registers of housing licences

The Council is required to maintain a public register of all licences issued. The information required to be contained within a public register is prescribed by legislation.

The Council maintains a public register for mandatory HMO licensing. This can be viewed at the Council's main offices during working hours, by appointment. Paper copies of the registers are available; for which a fee may be charged.

The public registers includes the names and addresses of all licence holders and named managers. A summary of licenced premises may be published on the Council website, however this will exclude this information.

Licensed HMO Property inspections

The Council will inspect all properties subject to licensing and make an assessment under the HHSRS. The inspection will be carried out before, or as soon as possible after, the granting of a licence; however, the timing will depend on the priorities of the Council's inspection programme. The inspection will always take place during the licence period.

The licence holder, manager and occupiers will be given at least 24 hours' notice of the date and time that an HHSRS inspection will be undertaken. Any hazards identified will be dealt with following the enforcement principles in this policy.

The Council will also make unannounced inspections of licensed premises to ensure compliance with licence conditions and the Management Regulations.

Penalties for non-compliance with HMO licensing

There are two offences associated with HMO licensing.

Failing to obtain a licence for a property which is required to be licensed is an offence. The offence is committed by the person having control of and/or the person managing the premises. A person committing such an offence is liable on summary conviction to a fine.

Once a licence has been issued, the licence holder and any named manager (if applicable) must adhere to the licence conditions. The licence holder and/or the licence manager will commit an offence if they breach any of the licence conditions. A person committing such an offence is liable on summary conviction to a fine.

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 introduced unlimited fines for these offences.

In respect of licensing offences there is a defence of "reasonable excuse".

Prosecution

When a person fails to licence a property, or breaches a licence condition, the Council will begin an investigation to consider whether or not an offence has been committed.

Financial penalty

See above.

Restriction on terminating tenancies

No section 21 notice may be given in respect of unlicensed premises.

In this context, a "section 21 notice" is a notice served under section 21(1)(b) or (4)(a) of the Housing Act 1988 in order to regain possession of a property subject to a shorthold tenancy.

The following are not "unlicensed premises":

- A property subject to a valid temporary exemption notice;
- A property subject to a valid licence application that is being determined by the Council.

Rent Repayment Orders

In certain situations, the Council or a resident may make an application to the Residential Property Tribunal for a Rent Repayment Order (“RRO”).

If a property is licensable under the mandatory HMO or selective licensing regimes and the Council is of the opinion that an offence has been committed the Council may make an RRO application. An application can be made irrespective of whether the Council decides to prosecute for the offence.

Council applications will concern the repayment of housing benefit monies paid in respect of an unlicensed property. Applications may only relate to periods of up to 12 months.

RROs made in favour of the Council are a local land charge and the Council may use the enforced sale procedure under the Law of Property Act 1925 to recover its debt.

As detailed above, the scope of rent repayments orders has been extended to cover more than just HMO licensing offences.

HMO Management Regulations

Section 234 of the Act provides for the making of HMO management regulations by the Secretary of State.

If a person managing an HMO does not comply with the HMO management regulations issued by the Secretary of State, they are guilty of an offence (unless they have a reasonable excuse).

The Secretary of State has issued two sets of regulations:

- The Management of Houses in Multiple Occupation (England) Regulations 2006 (SI 2006/372). These regulations apply to all HMOs, except those defined as converted blocks of flats under section 257 of the Act.
- The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 (SI 2007/1903). These regulations apply only to HMOs defined as converted blocks of flats under section 257 of the Act.

Both sets of regulations impose duties on the persons managing HMOs in respect of:

- Providing information to occupiers;
- Taking safety measures, including fire safety measures;
- Maintaining the water supply and drainage;
- Supplying and maintaining gas and electricity, including having it regularly inspected;
- Maintaining common parts;
- Maintaining living accommodation; and
- Providing waste disposal facilities.

The regulations also impose duties on occupiers to ensure that they do not hinder the effective management of HMOs.

HMO licensing is an entirely separate legislative regime. The regulations apply to all types of HMOs, both licensable and non-licensable.

Enforcement of the Management Regulations

In general terms, the Council will seek to ensure compliance with the regulations by means of an educative and informal approach. Initiating prosecution as a first response will not normally be the Council's approach. Therefore, where contraventions have been identified, the Council will usually send an informal notice to the person(s) managing the HMO, setting out the nature of the failings and requiring the taking of remedial action within prescribed timescales. Further legal action would not be taken if such a notice is complied with satisfactorily. However, failing to comply with the timescales set out in an informal notice without reasonable excuse may lead to prosecution proceedings being initiated by the Council.

In some situations, the Council may decide to initiate a prosecution without recourse to informal procedures. Immediate prosecution may be considered for contraventions that:

- Are so serious that the failings have exposed occupiers to significant risk or caused actual harm;
- Are related to other forms of enforcement action being taken by the Council; or
- Have been repeated and the manager has already been subject to informal intervention under the HMO regulations.

Charging for enforcement and other fees

There are various provisions within the legislation stated above that allow the council to recover costs, or set fees.

Detailed below are the areas that the council will make changes for and any associated penalties:

HMO Licensing – Section 63(3) of the Housing Act 2004 Act provides that the authority may, in particular, require the application to be accompanied by a fee fixed by the authority.

Charging for enforcement action – The Housing Act 2004 section 49 gives the local housing authority the power to charge for administrative and other expenses related to certain enforcement action. The provisions are clear that only the costs associated with determining whether enforcement action is necessary, identifying the type of action and the serving of the notice can be recovered.

Charges will be applied to enforcement action under part one of the Act, to improvement notices, prohibition orders, emergency remedial action, emergency prohibition orders and demolition orders.

It is not considered appropriate to charge for the service of hazard awareness notices as these do not require the work to be carried out and are placed as a local land charge.

Demand for payment of the charge will be applied where a prohibition order is served, emergency remedial action is taken or an emergency prohibition order is served.

A demand will also be sent where there is non-compliance with any part of an improvement notice.

Demolition orders will be charged for and the cost of instructing a surveyor to carry out the Neighbourhood Renewal Assessment (NRA) will also be added.

Penalty Charges for offences under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015

The maximum penalty for an offence under these regulations is £5000. It is proposed that the Council introduces the maximum penalty with a 25% reduction if payment is made within 14 days of the demand for payment.

Financial penalties for offences under the Electrical Safety Standards

Section 123 of the Housing and Planning Act 2016 makes provision for the local housing authority to impose a financial penalty on an owner of a property where they have failed to comply with the electrical safety standards.

This part of the Act has not yet come into force however it is the intention of the council to implement the regulations and set the penalty in line with this policy.

Works in default

As set out by provisions contained in Schedule 3 Part 3 of the Housing Act 2004, interest is to be paid on all costs associated with carrying out works in default (including the costs of the work itself) where the demand for payment remains unpaid after the initial 28 days. A £100 administrative fee is proposed with an interest rate of 3% to be applied annually.

APPENDIX K

SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – HOUSING SERVICE

The purpose of this appendix is to provide more information about how the Council, as a registered provider of social housing, will enforce tenancy breaches. The Housing Service has a contractual/statutory relationship with tenants but has certain obligations relating to the provision of support to those who may be vulnerable or who may need it for other reasons. It should be noted that work to manage and support those who breach their conditions of tenancy should be balanced with our responsibilities to those other people who live on our estates and the wider community.

As a social landlord, the Council has statutory obligations. The following list of relevant legislation is not exhaustive; and these references are to be regarded as including references to them as amended, varied, replaced or re-enacted from time to time.

- Housing Act 1985
- Localism Act 2011
- Protection from Eviction Act 1977
- Landlord and Tenant Act 1997
- Civil Procedure Rules 1998
- Equality Act 2010
- Human Rights Act 1998
- Anti-social behaviour, Crime and Policing Act 2014
- Data Protection Act 2018

The regulatory framework for social housing, which is operated by the Regulator for Social Housing (RSH), contains a number of standards. Only those standards categorised as consumer standards apply to the Council as a registered provider of social housing, but they contain a number of required outcomes and specific expectations: <https://www.gov.uk/government/publications/regulatory-standards>

Objective

We will provide a flexible, effective and efficient tenancy management service that reflects best practice, complies with legislative and regulatory requirements and recognises the rights of our tenants, in order to manage our homes efficiently and effectively.

We will provide advice and assistance to tenants to help them to sustain their tenancy:

- To ensure we comply with all legal and regulatory requirements and standards.
- To reduce tenancy fraud and subletting within our stock.
- To seek possession of the homes in our management where appropriate
- To ensure that their security of tenure is only reduced as a result of a Court Order or by way of mutual exchange.
- To support them exercising their rights under the terms of their tenancy agreement.

Prevention of Tenancy Breaches

We will use a range of preventative measures to reduce breaches of tenancy. These will include but are not limited to:

- Identifying risk factors prior to allocating a home to a housing applicant using a home visit, wherever possible.

- Seeking landlord references and other background information in accordance with the provisions of the Devon Home Choice scheme, where possible.
- Using introductory and flexible tenancies
- Clearly explaining tenants' obligations at the start of the tenancy
- Closely monitoring new tenancies, and offering advice to new tenants, where appropriate
- Identifying tenants who need extra support and making appropriate referrals to external agencies
- Attending regular meetings and working in partnership with local Police, Early Help initiatives, and other agencies, as appropriate
- Undertaking regular inspections of properties with communal areas
- Undertaking Neighbourhood Walkabouts on a regular basis, inviting local people, Ward Councillors and other stakeholders, as appropriate
- Involving other agencies, as appropriate, to assist with addressing specific issues including those associated with non-payment of rent, anti-social behaviour, safeguarding and other serious issues
- Publicising our successes in tackling previous incidents of anti-social behaviour, in order to encourage people to report problems, and as a deterrent.

Tenancy Inspections

In accordance with our policy relating to tenancy inspections, the Housing Service will visit properties in the housing stock regularly. These visits are known as "Tenancy Home Checks". Regular inspections allow the Council to:-

Check that tenants are complying with the terms and conditions of their tenancy:

- Investigate alleged tenancy fraud;
- Identify abandonment and non-occupancy of a property;
- Prevent unauthorised subletting or assignment;
- Identify concerns around property condition, such as potential health and safety risks such as hoarding and disrepair;
- Identify opportunities for service improvement, and tenants who wish to become involved;
- Provide support to tenants;
- Increase customer profiling information; and
- Raise concerns about the condition of a property, or safeguarding issues following an inspection

For more information, please refer to the tenant inspection policy which is available to view on the housing pages of the Council's website:

<https://www.middevon.gov.uk/residents/housing/council-housing/strategies-and-policies/>

If tenancies are not managed effectively and monitored by use of a robust tenancy inspection regime, there could be an increase in tenant arrears and anti-social behaviour which could have a negative impact upon neighbours and other residents in the local community.

Tenure Type

Our tenancy policy sets out our approach to the use of different types of tenancy.

The Council also has an introductory tenancy policy which is available to view on the housing pages of the Council's website:
<https://www.middevon.gov.uk/residents/housing/council-housing/strategies-and-policies/>

This type of tenancy enables the Council to closely monitor the "trial period" of a tenancy. If the tenant complies with the conditions of the tenancy agreement, they will automatically become a flexible or secure tenant after 12 months, depending on their tenancy agreement. The introductory tenancy policy sets out how we will respond to tenancy breaches involving those who have an introductory tenancy.

The aim of the tenancy policy is to enable the Housing Service to make the best use of available social housing stock. This will include reducing overcrowding, tackling under-occupation and making best use of adapted housing for those with a disability. This will support the development of sustainable communities in the District.

For more information, please refer to the tenancy policy which is available to view on the housing pages of the Council's website:
<https://www.middevon.gov.uk/residents/housing/council-housing/strategies-and-policies/>

This policy describes the different types of tenancies which are used by the Housing Service when letting properties, and the circumstances when we may use them. In particular, it explains when we might use a fixed term rather than a lifetime tenancy. It clarifies how a tenant or prospective tenant may appeal against a decision made about the type of tenancy offered.

It acknowledges that housing applicants may be vulnerable at the point when they are being allocated a new home and that this must influence the decision relating to the tenancy type which they will be offered. It states that advice and assistance will be made available to help tenants to manage their tenancies.

In addition, this policy sets out the circumstances under which flexible tenancies may not be renewed.

It is important for the Housing Service to review, to manage, to exchange or to end tenancies in accordance with relevant legislation and regulation. Failure to do so could result in delays in securing possession where this is being sought, or result in complex challenges which could be costly and which could also lead to risks associated with increased complaints and reputational damage. The Council must make best use of the housing stock and failure to manage the end of flexible tenancies, in particular, may have an impact upon the availability of suitable accommodation for those in housing need.

Tenancy Management

Our approach to tenancy management is also described in the tenancy policy. This policy states that our tenancy agreements will set out the rights and obligations of both tenant and landlord.

In addition, it defines our approach to tenancy fraud, mutual exchanges and supporting tenancies.

Our tenancy changes policy, which is available to view on the housing pages of the Council's website: <https://www.middevon.gov.uk/residents/housing/council-housing/strategies-and-policies/> reinforces our approach to dealing these and with other tenancy matters including

succession rights, tenancy changes such as requests for a tenancy to become a joint one, and assignments.

It should be noted that unlawful occupation of one of our homes is not permitted. We will seek possession of the property through the County Court. The unlawful occupier will be liable for use and occupation charges along with any costs associated with legal proceedings.

Some tenants have the right to sublet their property and permission will be granted in accordance with the tenancy agreement. If a tenant does not have the right to sub-let all or part of their property, they will be in breach of the terms of their tenancy agreement. Where unlawful subletting is identified, legal action will be taken to regain possession of the property.

We will use all available tools and powers to remove any squatters found at any property in our management.

The Housing Service has a number of other policies which set out our approach to general tenancy management.

These include the following policies, which are all available to view on the housing pages of the Council's website: <https://www.middevon.gov.uk/residents/housing/council-housing/strategies-and-policies/>

- Aids and adaptation policy
- Car parking management policy
- Decant policy
- Fire risk in communal areas policy
- Garage management policy
- Gas safety policy
- Hoarding policy
- Improvements to Council properties policy
- Leasehold management policy
- Neighbourhood management policy
- Pets and animals policy
- Recharges policy
- Tenant involvement strategy
- Tenant involvement policy
- Void management policy
- Vulnerability policy

Anti-Social Behaviour in our social housing

The Housing Service of the Council is committed to prevent, investigate, respond to and monitor incidents of anti-social behaviour (ASB) involving our tenants. It states that: "By being responsive to complaints, and tackling issues in a fair, consistent and proportionate way, we can provide safe and secure environments around our homes and neighbourhoods, where people want to live".

The ASB policy and procedures can be found on the housing pages of the Council's website together with our policies relating to domestic abuse and harassment: <https://www.middevon.gov.uk/residents/housing/council-housing/strategies-and-policies/>

The ASB policy sets out how:

- we will investigate complaints of ASB and nuisance
- we will tailor action plans to take account of the circumstances of each case
- we will make best use of the remedies available
- we will involve vulnerable tenants, victims and perpetrators, to resolve ASB problems
- we will support victims, witnesses and perpetrators
- we will work in partnership with other agencies to resolve problems and to prevent ASB happening on our estates

Income Management

The Housing Revenue Account (HRA) supports the work of the Council's Housing Service. Most of the income into the HRA is derived from rents collected from tenants. The costs associated with managing and maintaining approximately 3,000 homes are significant and the HRA must balance. Therefore it is important that income is maximised in order to ensure that there are funds available to maintain the main asset of the Council, in good order.

We have an income management policy which relates to the Council's debt collection policy. These policies are able to view on the housing pages of the Council's website: <https://www.middevon.gov.uk/residents/housing/council-housing/strategies-and-policies/>

The aim of our income management policy is to create a rent payment culture, ensuring that rent and charges are collected quickly and effectively, whilst supporting our tenants in matters relating to financial inclusion and the ability to manage their money.

Our income management policy describes how we will oversee the management and recovery of arrears and other unpaid sums.

It states that we will adopt a "firm but fair" approach to recovery of rent arrears and that this will be sensitive to individuals' circumstances. It specifies that: "Proactive steps are to be taken to prevent and minimise the build-up of unpaid sums on rent and sub accounts where possible, recognising that from time to time tenants may experience financial difficulties". It states that in these circumstances: "Officers aim to support and work with tenants at the earliest opportunity to help tackle financial exclusion and to provide assistance to individuals experiencing financial difficulty".

Breaches of tenancy

We will take steps to prevent and manage breaches of tenancy quickly and effectively, taking a multi-agency approach where necessary, based on the principles of prevention, investigation, evaluation, response and monitoring.

APPENDIX L

SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – STREET SCENE SERVICES (CIVIL PARKING ENFORCEMENT – OFF STREET)

The purpose of this appendix is to give further guidance on the provisions of the Traffic Management Act 2004 s82. The principles of the Civil Enforcement are clearly set out in the main Civil Parking Enforcement – off street) policy. The policy will be followed in conjunction with the Civil Enforcement of Parking Contraventions (England) General Regulations 2007 and the Civil Enforcement of Parking Contraventions (England) Representations and Appeal Regulations 2007.

General parking enforcement

Mid Devon District Council enforces Council owned car parks and as such are considered the Enforcement Authority in those locations only. The policy set out in this document is intended to provide guidance and information to the public and Council employees carrying out car park enforcement duties. The policies and approach are consistent with current best practice and aim to provide clarity, consistency and transparency within the enforcement process and compliance with the aspirations of the legislation and associated guidance, the Traffic Penalty Tribunal (TPT) and the Local Government Ombudsman. These policies represent a foundation upon which fairness, openness, transparency and discretion can be applied. The importance of flexibility in these matters has been recognised by the courts and, as a consequence, decisions made by councils must not be unduly rigid in their application.

By carrying out Civil Parking Enforcement within its own car parks Mid Devon District Council will:

- Maintain its car parks to a standard that encourages drivers to park legally and safely thereby improving traffic flow on the highway and making the Borough a more pleasant and environmentally safe place in which to live and visit.
- Provide parking at reasonable cost to the public so as to encourage the local economy.
- Actively support the needs of disabled people bearing in mind that, in some cases, they are unable to use public transport and are entirely dependent upon the use of a car. This will ensure that people with disabilities are able to have equal access to all facilities within the District.

APPENDIX M

SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – STREET SCENE SERVICES (FIXED PENALTY POLICY – DOG FOULING, LITTERING AND FLY-TIPPING)

The purpose of this appendix is to give further guidance on the provisions of the fixed penalty notice for offences contained within the Clean Neighbourhoods and Environment Act 2005 and the Environmental Protection Act 1990.

General Fixed Penalty Enforcement

Fixed penalty Notices are a means of punishing offenders for unlawful behaviour and offer a quick, flexible means of dealing with certain offences. It avoids overloading the judicial system with unnecessary cases. They allow a person who admits to the committing of an offence to end the matter promptly, avoid Court action and possibility of a criminal record. As well as an enforcement tool the use of fixed penalty notices is intended to encourage behaviour change and bring improvements to local environmental quality and protect public safety.

Fixed Penalty notices can be issued for:

- Dog fouling
- Littering
- Fly tipping

This page is intentionally left blank

CABINET

4 APRIL 2019:

PERFORMANCE AND RISK FOR 2018-19

Cabinet Member Cllr Clive Eginton
Responsible Officer Director of Corporate Affairs & Business Transformation,
Jill May

Reason for Report: To provide Members with an update on performance against the corporate plan and local service targets for 2018-19 as well as providing an update on the key business risks.

RECOMMENDATION: That the Committee reviews the Performance Indicators and Risks that are outlined in this report and feeds back any areas of concern.

Relationship to Corporate Plan: Corporate Plan priorities and targets are effectively maintained through the use of appropriate performance indicators and regular monitoring.

Financial Implications: None identified

Legal Implications: None

Risk Assessment: If performance is not monitored we may fail to meet our corporate and local service plan targets or to take appropriate corrective action where necessary. If key business risks are not identified and monitored they cannot be mitigated effectively.

Equality Impact Assessment: No equality issues identified for this report.

1.0 Introduction

- 1.1 Appendices 1-5 provide Members with details of performance against the Corporate Plan and local service targets for the 2018-19 financial year.
- 1.2 When benchmarking information is available it is included.
- 1.3 Appendix 6 shows the higher impact risks from the Corporate Risk Register. This includes Operational and Health & Safety risks where the score meets the criteria for inclusion. See 3.0 below.
- 1.4 Appendix 7 shows the risk matrix for the Council.
- 1.5 All appendices are produced from the Corporate Service Performance And Risk Management system (SPAR).

2.0 Performance

Environment Portfolio - Appendix 1

- 2.1 Regarding the Corporate Plan Aim: **Increase recycling and reduce the amount of waste: % of household waste reused, recycled and composted**; the recycling rate for the year so far is on target at 53% compared to 52.6% for the same period last year.
- 2.2 The residual waste continues to be better than target at 313.84Kg. The performance regarding missed collections remains the same with recycling better than refuse.
- 2.3 Regarding the Corporate Plan Aim: **Protect the natural environment**: There have been 13 Fixed Penalty Notices (FPNs) issued so far this year with one offender having appeared in court resulting in a fine of £800 for non-payment of the FPN. All fly-tipping incidents are also being investigated, 120 in the last quarter.
- 2.4 Members of Cabinet have voted to recommend a preferred route for the Cullompton town centre relief road, which was option B.

Homes Portfolio - Appendix 2

- 2.5 Regarding the Corporate Plan Aim: **Build more council houses**: Birchen Lane (4 units) is completed and the first tenants have moved in. Burlescombe (6 units) is due March 2019 and for Palmerston Park; practical completion is due in March for 12 units with handover of all 26 units due August 2019.
- 2.6 Regarding the Corporate Plan Aim: **Facilitate the housing growth that Mid Devon needs, including affordable housing**: Last year was very successful with both measures well above target. This year the **Affordable homes** delivered figure is currently well below target but 10 units are due in Q4. Bringing **Empty homes** into use has now well exceeded the annual target.
- 2.7 Regarding the Corporate Plan Aim: **Planning and enhancing the built environment: Performance Planning Guarantee determined within 26 weeks** was just below target for Q3 but all 4 speed and quality measures were well above the required target. These are all reported quarterly.
- 2.8 Regarding the Corporate Plan Aim: **Other: % Properties with a valid Gas Safety Certificate**; one property's Gas Safety Certificate has expired; the tenant is deceased so this will be remedied while the property is void.
- 2.9 Rent Arrears: **Rent collected as % of Annual Rent Debit** is only just outside target at 99.9%. **Current tenant arrears** remain steady at around 1.3%.
- 2.10 The **Average days to re-let** remains better than target. This is reflected in the **Dwelling rent lost due to voids** which has decreased steadily throughout the year and is now at the same level as this time last year i.e. 0.5%.

Economy Portfolio - Appendix 3

- 2.11 An Economic Development Service Update which covers specific projects is a separate item on this agenda.
- 2.12 Regarding the Corporate Plan Aim: **Focus on business retention and growth of existing businesses:** we record **Businesses assisted** which is above target; they have to be assisted for a minimum of an hour to be included in this figure. MDDC has also been instrumental in two successful bids for LEADER funding for Mid Devon businesses so far this year.
- 2.13 Regarding the Corporate Plan Aim: **Improve and regenerate our town centres with the aim of increasing footfall, dwell-time and spend in our town centres:** for Empty Shops, the vacancy rates in Tiverton and Cridton have improved for the last quarter but Cullompton's have deteriorated being the only PI on the appendix showing as "red".
- 2.14 Corporate projects to provide incubator space for businesses and the Tiverton Town Centre Improvements are progressing with MDDC's application being considered at Planning Committee on 6 March and tendering for the work by Cabinet on 7 March.
- 2.15 **Other:** The Local Plan Hearings concluded in February, the Planning Inspector's report is now awaited.

Community Portfolio - Appendix 4

- 2.16 Regarding the Corporate Plan Aim: **Promote physical activity, health and wellbeing:** The first Trim Trail in Amory Park Tiverton has been completed.
- 2.17 **Other: compliance with food safety law** there has been some reclassification of premises which has reduced the number of higher risk premises this PI relates to.
- 2.18 Digital inclusion work has commenced with the Web Accessibility legislation impact being assessed. This is because of an EU directive regarding new website accessibility requirements being introduced over the next 2 years.

Corporate - Appendix 5

- 2.19 The **Response to FOI requests** remains slightly below target despite reminders being sent to respondents. This is being actively monitored by Leadership Team.
- 2.20 The occupancy rate at Market Walk has now fallen back below 100% with 2 units empty and notice given on another 2 w.e.f. September 2019.
- 2.21 The cash collection project achieved the 1 December go live date. Some constituents have raised concerns with Councillors.

3.0 Risk

- 3.1 The Corporate risk register is reviewed by Management Team (MT) and updated; risk reports to committees include risks with a total score of 10 or more. (Appendix 6)
- 3.2 Appendix 7 shows the risk matrix for MDDC for this quarter. If risks are not scored they are included in the matrix at their inherent score which will be higher than their current score would be.

4.0 Conclusion and Recommendation

- 4.1 That the Committee reviews the performance indicators and any risks that are outlined in this report and feeds back any areas of concern.

Contact for more Information: Catherine Yandle Group Manager for Performance, Governance and Data Security ext 4975

Circulation of the Report: Leadership Team and Cabinet Member

Corporate Plan PI Report Environment

Monthly report for 2018-2019
 Arranged by Aims
 Filtered by Aim: Priorities Environment
 For MDDC - Services

Key to Performance Status:

Performance Indicators:

No Data

Well below target

Below target

On target

Above target

Well above target

*
 indicates that an entity is linked to the Aim by its parent Service

Corporate Plan PI Report Environment

Priorities: Environment

Aims: Increase recycling and reduce the amount of waste

Performance Indicators

Title	Prev Year (Period)	Prev Year End	Annual Target	Apr Act	May Act	Jun Act	Jul Act	Aug Act	Sep Act	Oct Act	Nov Act	Dec Act	Jan Act	Feb Act	Mar Act	Actual to Date	Group Manager	Officer Notes
<u>Residual household waste per household (measured in Kilograms) (figures have to be verified by DCC)</u>	321.83 (10/12)		378.00	32.70	64.94	93.67	121.38	156.22	186.30	219.50	247.43	278.12	313.84				Stuart Noyce	(April - January) Social media campaigns and publicity encouraging recycling and reuse together with a convenient kerbside collection service has helped to ensure a continued reduction in residual waste tonnage. (LD)
<u>% of Household Waste Reused, Recycled and Composted (figures have to be verified by DCC)</u>	52.6% (10/12)		53.0%	54.3%	55.0%	56.5%	56.1%	54.5%	54.2%	53.8%	53.8%	53.1%	53.0%				Stuart Noyce	(January) An increase in the amount of dry recycling generated over the Christmas holidays together with higher leaf sweeping tonnage sent for composting has contributed to the recycling rate remaining on target. (LD)
<u>Net annual cost of waste service per household</u>			£45.31	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a		n/a	Stuart Noyce	
<u>Number of Households on Chargeable Garden Waste</u>	9,330 (10/12)		9,500	9,613	9,848	9,912	9,953	9,978	10,034	9,967	9,837	9,688	9,712				Stuart Noyce	(January) The number of garden waste customers has increased by 382 compared to the same period last year. (LD)
<u>% of missed collections</u>	0.04% (10/12)		0.03%	0.02%	0.02%	0.03%	0.03%	0.03%	0.04%	0.04%	0.04%	0.04%	0.04%				Stuart Noyce	(January) Improving missed

Corporate Plan PI Report Environment**Priorities: Environment****Aims: Increase recycling and reduce the amount of waste****Performance Indicators**

Title	Prev Year (Period)	Prev Year End	Annual Target	Apr Act	May Act	Jun Act	Jul Act	Aug Act	Sep Act	Oct Act	Nov Act	Dec Act	Jan Act	Feb Act	Mar Act	Actual to Date	Group to Manager	Officer Notes
<u>reported (refuse and organic waste)</u>																		collection performance has been a focus for the newly appointed Operations Manager. (LD)
<u>% of Missed Collections logged (recycling)</u>	0.03% (10/12)		0.03%	0.01%	0.01%	0.01%	0.01%	0.02%	0.02%	0.02%	0.02%	0.02%	0.02%				Stuart Noyce	(January) The % of missed collections attributed to kerbside recycling remain on target for the year. (LD)

Aims: Protect the natural environment**Performance Indicators**

Title	Prev Year (Period)	Prev Year End	Annual Target	Apr Act	May Act	Jun Act	Jul Act	Aug Act	Sep Act	Oct Act	Nov Act	Dec Act	Jan Act	Feb Act	Mar Act	Actual to Date	Group to Manager	Officer Notes
<u>Number of Fixed Penalty Notices (FPNs) Issued (Environment)</u>	41 (10/12)			3	4	7	8	9	11	12	12	12	13				Stuart Noyce	

Corporate Plan PI Report Homes

Monthly report for 2018-2019
Arranged by Aims
Filtered by Aim: Priorities Homes
For MDDC - Services

Key to Performance Status:

Performance Indicators:

No Data

Well below
target

Below target

On target

Above target

Well above
target

* indicates that an entity is linked to the Aim by its parent Service

Corporate Plan PI Report Homes

Priorities: Homes

Aims: Build more council houses

Performance Indicators

Title	Prev Year (Period)	Prev Year End	Annual Target	Apr Act	May Act	Jun Act	Jul Act	Aug Act	Sep Act	Oct Act	Nov Act	Dec Act	Jan Act	Feb Act	Mar Act	Actual to Date	Group to Manager	Officer Notes
<u>Build Council Houses</u>	0 (10/12)		26	0	0	0	0	0	0	0	4	4	4				Angela Haigh	(January) Birchen Lane complete (CY

Aims: Facilitate the housing growth that Mid devon needs, including affordable housing

Performance Indicators

Title	Prev Year (Period)	Prev Year End	Annual Target	Apr Act	May Act	Jun Act	Jul Act	Aug Act	Sep Act	Oct Act	Nov Act	Dec Act	Jan Act	Feb Act	Mar Act	Actual to Date	Group to Manager	Officer Notes
<u>Number of affordable homes delivered (gross)</u>	72 (3/4)		80	n/a	n/a	8	n/a	n/a	12	n/a	n/a	13	n/a	n/a			Angela Haigh	
<u>Deliver homes by bringing Empty Houses into use</u>	111 (10/12)		72	13	19	26	29	56	70	92	107	121	134				Simon Newcombe	

Aims: Other

Performance Indicators

Title	Prev Year (Period)	Prev Year End	Annual Target	Apr Act	May Act	Jun Act	Jul Act	Aug Act	Sep Act	Oct Act	Nov Act	Dec Act	Jan Act	Feb Act	Mar Act	Actual to Date
<u>% Decent Council Homes</u>	100.0% (10/12)		100.0%	99.8%	99.9%	99.7%	99.9%	99.9%	99.9%	99.9%	99.9%	99.9%	99.9%			
<u>% Properties With a Valid Gas Safety Certificate</u>	99.64% (10/12)		100.00%	99.69%	99.78%	99.73%	99.91%	99.91%	99.91%	99.87%	99.91%	100.00%	99.96%			
<u>Rent Collected as a Proportion of Rent Owed</u>	99.37% (10/12)		100.00%	95.34%	96.76%	97.09%	97.68%	99.26%	99.59%	99.40%	98.61%	100.24%	99.90%			
<u>Current Tenant Arrears as a Proportion of Annual Rent Debit</u>	1.28% (10/12)		1.00%	1.13%	1.17%	1.29%	1.34%	1.32%	1.31%	1.33%	1.51%	1.07%	1.31%			
<u>Dwelling rent lost due to voids</u>	0.5% (10/12)			0.71%	0.67%	0.70%	0.65%	0.57%	0.55%	0.52%	0.50%	0.50%	0.51%			
<u>Average Days to Re-Let Local Authority Housing</u>	16.0days (10/12)		14.0days	16.6days	15.9days	16.1days	15.6days	14.9days	14.2days	13.8days	13.9days	13.8days	13.9days			

This page is intentionally left blank

Corporate Plan PI Report Economy

Monthly report for 2018-2019
 Arranged by Aims
 Filtered by Aim: Priorities Economy
 For MDDC - Services

Key to Performance Status:

Performance Indicators:

No Data

Well below
target

Below target

On target

Above target

Well above
target

* indicates that an entity is linked to the Aim by its parent Service

Corporate Plan PI Report Economy

Priorities: Economy

Aims: Attract new businesses to the District

Performance Indicators

Title	Prev Year (Period)	Prev Year End	Annual Target	Apr Act	May Act	Jun Act	Jul Act	Aug Act	Sep Act	Oct Act	Nov Act	Dec Act	Jan Act	Feb Act	Mar Act	Actual to Manager Date	Group to Manager	Officer Notes
<u>Number of business rate accounts</u>	3,004 (10/12)		3,000	3,004	3,004	3,044	3,049	3,049	3,054	3,055	3,061	3,075	3,081				Andrew Jarrett, Fiona Wilkinson	

Aims: Focus on business retention and growth of existing businesses

Performance Indicators

Title	Prev Year (Period)	Prev Year End	Annual Target	Apr Act	May Act	Jun Act	Jul Act	Aug Act	Sep Act	Oct Act	Nov Act	Dec Act	Jan Act	Feb Act	Mar Act	Actual to Manager Date	Group to Manager	Officer Notes
<u>Businesses assisted</u>	227 (10/12)		250	25	49	72	93	113	129	162	190	197	214				None	(February) current:5 (MF)

Aims: Improve and regenerate our town centres

Performance Indicators

Title	Prev Year (Period)	Prev Year End	Annual Target	Apr Act	May Act	Jun Act	Jul Act	Aug Act	Sep Act	Oct Act	Nov Act	Dec Act	Jan Act	Feb Act	Mar Act	Actual to Manager Date	Group to Manager	Officer Notes
<u>Increase in Car Parking Vends</u>	51,051 (9/12)			49,410	51,507	51,931	53,629	53,627	51,547	52,273	51,821	50,589					Andrew Jarrett	
<u>The Number of Empty Shops (TIVERTON)</u>	21		18	n/a	n/a	22	n/a	n/a	21	n/a	n/a	20	n/a	n/a	18		Adrian Welsh	(Quarter 3) Vacancy Rate is 8.6% representing 20 vacant units (JB)
<u>The Number of Empty Shops (CREDITON)</u>	11		8	n/a	n/a	10	n/a	n/a	8	n/a	n/a	9	n/a	n/a	7		Adrian Welsh	(Quarter 3) A vacancy rate of 7.8 % representing 9 vacant units (JB)
<u>The Number of Empty Shops (CULLOMPTON)</u>	8		8	n/a	n/a	6	n/a	n/a	7	n/a	n/a	9	n/a	n/a	11		Adrian Welsh	(Quarter 3) 10.6 % vacancy rate representing 9 units (JB)

Aims: Other

Performance Indicators

Title	Prev Year (Period)	Prev Year End	Annual Target	Apr Act	May Act	Jun Act	Jul Act	Aug Act	Sep Act	Oct Act	Nov Act	Dec Act	Jan Act	Feb Act	Mar Act	Actual to Manager Date	Group to Manager	Officer Notes
<u>Funding awarded to support economic projects</u>	£35,899 (3/4)			n/a	n/a	£0	n/a	n/a	£160,395	n/a	n/a	£160,395	n/a	n/a			Adrian Welsh	(Quarter 3) There was no new funding awarded in Q3 (JB)

This page is intentionally left blank

Corporate Plan PI Report Community

Monthly report for 2018-2019

Arranged by Aims

Filtered by Aim: Priorities Community

Filtered by Flag: Exclude: Corporate Plan Aims 2016 to 2020

For MDDC - Services

Key to Performance Status:

Performance Indicators:

No Data

Well below
target

Below target

On target

Above target

Well above
target

*

indicates that an entity is linked to the Aim by its parent Service

Corporate Plan PI Report Community

Priorities: Community

Aims: Promote physical activity, health and wellbeing

Performance Indicators

Title	Prev Year (Period)	Prev Year End	Annual Target	Apr Act	May Act	Jun Act	Jul Act	Aug Act	Sep Act	Oct Act	Nov Act	Dec Act	Jan Act	Feb Act	Mar Act	Actual to Date	Group Manager	Officer Notes
<u>GP Referrals</u>	22 (9/12)			22	22	22	22	22	22	22	22	22					Corinne Parnall	(December) 22 (K)

Aims: Other

Performance Indicators

Title	Prev Year (Period)	Prev Year End	Annual Target	Apr Act	May Act	Jun Act	Jul Act	Aug Act	Sep Act	Oct Act	Nov Act	Dec Act	Jan Act	Feb Act	Mar Act	Actual to Date	Group Manager	Officer Notes
<u>Number of social media communications MDDC send out</u>	133 (9/12)		30	69	66	66	75	77	86	125	160	94					Jane Lewis	(December) No. of Facebook Posts Published = 5 No. of Tweets Tweeted = 43 (MA)
<u>Number of web hits per month</u>	24,152 (9/12)			35,191	33,432	29,453	30,317	31,082	29,611	31,193	29,782	28,428					Jane Lewis	
<u>Compliance with food safety law</u>	89% (9/12)		90%	85%	85%	85%	85%	85%	86%	86%	87%	87%					Simon Newcombe	(April - August) The reduction to 85% compliance is statistical issue. The cycle of inspection and interventions has meant a 3-yearly review of the lowest category risk premises has been completed this financial year. This has resulted in a number being identified as no longer active/preparing food and require deregistration. Such low-risk premises (e.g. village halls/pre-prepared food) have the most straight-forward compliance targets and typically score above 90% as a result. Having fewer such premises means the overall % compliance across the district is now

Corporate Plan PI Report Community																		
Priorities: Community																		
Aims: Other																		
Performance Indicators																		
Title	Prev Year (Period)	Prev Year End	Annual Target	Apr Act	May Act	Jun Act	Jul Act	Aug Act	Sep Act	Oct Act	Nov Act	Dec Act	Jan Act	Feb Act	Mar Act	Actual to Manager Date	Group to Manager	Officer Notes
																		lower. The higher risk premises are still performing as before and the number of food retail premises scoring 4 or 5 on Scores-on-door remain unaffected. (CY)

Corporate Plan PI Report Corporate

Monthly report for 2018-2019
 Arranged by Aims
 Filtered by Aim: Priorities Delivering a Well-Managed Council
 For MDDC - Services

Key to Performance Status:

Performance Indicators:

No Data

Well below
target

Below target

On target

Above target

Well above
target

* indicates that an entity is linked to the Aim by its parent Service

Corporate Plan PI Report Corporate																
Priorities: Delivering a Well-Managed Council																
Aims: Put customers first																
Performance Indicators																
Title	Prev Year (Period)	Prev Year End	Annual Target	Apr Act	May Act	Jun Act	Jul Act	Aug Act	Sep Act	Oct Act	Nov Act	Dec Act	Jan Act	Feb Act	Mar Act	Actual to Date
% of complaints resolved w/in timescales (10 days - 12 weeks)	92% (10/12)		90%	94%	96%	89%	89%	90%	91%	93%	93%	94%	93%			
Number of Complaints	19 (10/12)			18	28	32	37	28	32	38	24	25	28			
New Performance Planning Guarantee determine within 26 weeks	99% (3/4)		100%	n/a	n/a	100%	n/a	n/a	100%	n/a	n/a	99%	n/a	n/a		
Major applications determined within 13 weeks (over last 2 years)	83% (3/4)		60%	n/a	n/a	86%	n/a	n/a	91%	n/a	n/a	86%	n/a	n/a		
Minor applications determined within 8 weeks (over last 2 years)	79% (3/4)		65%	n/a	n/a	73%	n/a	n/a	75%	n/a	n/a	77%	n/a	n/a		
Major applications overturned at appeal (over last 2 years)	4% (3/4)		10%	n/a	n/a	3%	n/a	n/a	3%	n/a	n/a	3%	n/a	n/a		
Minor applications overturned at appeal (over last 2 years)	0% (3/4)		10%	n/a	n/a	0%	n/a	n/a	0%	n/a	n/a	0%	n/a	n/a		
Response to FOI Requests (within 20 working days)	69% (10/12)		100%	97%	98%	98%	98%	98%	97%	97%	96%	95%	95%			
Working Days Lost Due to Sickness Absence	6.55days (9/12)		7.00days	0.64days	1.34days	2.17days	2.81days	3.49days	4.20days	4.86days	5.61days	6.36days				
Return on Commercial Portfolio			7.5%	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a		n/a
% total Council tax collected - monthly	93.72% (10/12)		98.50%	11.32%	20.63%	29.48%	38.51%	47.43%	56.33%	66.14%	75.22%	84.11%	93.09%			
% total NNDR collected - monthly	89.31% (10/12)		99.20%	12.15%	23.60%	32.20%	40.39%	47.45%	56.32%	64.83%	70.81%	76.36%	88.27%			
Page 183																
Printed by: Catherine Yandle SPAR.net Print Date:																

Corporate Plan PI Report Corporate**Priorities: Delivering a Well-Managed Council****Aims: Put customers first****Performance Indicators**

Title	Prev Year (Period)	Prev Year End	Annual Target	Apr Act	May Act	Jun Act	Jul Act	Aug Act	Sep Act	Oct Act	Nov Act	Dec Act	Jan Act	Feb Act	Mar Act	Actual to Date
<u>Number of visitors per month</u>	2,604 (10/12)		2,750	2,172	2,351	2,323	2,393	2,341	2,338	2,360	2,315	2,152	2,068			
<u>Satisfaction with front-line services</u>	97.14% (10/12)		80.00%	0.00%	0.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%			
<u>Increase Number of Digital payments</u>	68,383 (10/12)		70,960	6,908	14,226	20,885	27,772	34,330	40,987	51,144	60,233	66,265	72,781			

Printed by: Catherine Yandle

SPAR.net

Print Date: 0

Risk Report Appendix 6

Report for 2018-2019

Filtered by Flag: Include: * CRR 5+ / 15+

For MDDC - Services

Filtered by Performance Status: Exclude Risk Status: Low
Not Including Risk Child Projects records or Mitigating Action records

Key to Performance Status:

Risks: No Data (0+) High (15+) Medium (6+) Low (1+)

Risk Report Appendix 6

Risk: 3 Rivers Disclosure requirements The disclosure arrangements for the new wholly owned SPV are posing technical accounting questions which are exercising our external auditors and Finance department

Effects (Impact/Severity):

Causes (Likelihood):

Service: Financial Services

Current Status: Medium (12)

Current Risk Severity: 4 - High

Current Risk Likelihood: 3 - Medium

Service Manager: Jo Nacey

Review Note: We have addressed the original concerns we had regarding the accounting for the SPV. We will continue to consult with our technical adviser if there are any further queries.

Risk: 3 Rivers Governance Arrangements Maintaining arms-length status and not falling foul of state aid legislation, successfully countermanning challenge.

Effects (Impact/Severity):

Causes (Likelihood):

Service: Governance

Current Status: High (15)

Current Risk Severity: 5 - Very High

Current Risk Likelihood: 3 - Medium

Service Manager: Catherine Yandle

Review Note: Being closely monitored internally and by our External auditors. Aware of relevant legislation

Risk: 3 Rivers Loan 3 Rivers are unable to service and repay the loan from MDDC, this will depend on Economic factors and their success in the marketplace commercially.

Effects (Impact/Severity):

Causes (Likelihood):

Service: Financial Services

Current Status: High (15)

Current Risk Severity: 5 - Very High

Current Risk Likelihood: 3 - Medium

Service Manager: Jo Nacey

Risk Report Appendix 6

Review Note: We continue to monitor the progress of the projects relating to the loans we have advanced. An impairment review will take place at year end as part of new accounting standards IFRS 9. Our position on the risk of default will need to be agreed with the auditors.

Risk: Asset Management • The Council may not be optimising its portfolio of assets

- Assets purchased without prior approval may not be supported by Council policies and systems
 - Misuse of assets could have a financial impact to the Council
 - Inadequate inventory records could invalidate insurance claims, disrupt the business continuity process and hide instances of theft
 - Failure to maintain the Asset Management Strategy could result in an inefficient use of resources
- Not making a commercial ROI

Effects (Impact/Severity): • Theft of stocks and stores

Causes (Likelihood): • Mismanagement of stocks and stores

Service: Property Services

Current Status: Medium
(12)

Current Risk Severity: 3 -
Medium

Current Risk Likelihood: 4 -
High

Service Manager: Andrew Busby

Review Note: Capital Asset Management Strategy on the website

Risk: Commercial Land supply Failure to identify commercial land supply will stunt economic growth

Effects (Impact/Severity):

Causes (Likelihood):

Service: Planning

Current Status: Medium
(10)

Current Risk Severity: 5 - Very
High

Current Risk Likelihood: 2 -
Low

Service Manager: Jenny Clifford

Review Note: When local plan adopted this will assist supply. GED team working proactively with businesses and landowners to assist in signposting.

Risk: Contingency - Business Continuity Having an ineffective Business Continuity Plan in place to complement the Emergency Plan, Disaster Recovery Plan and Risk Management Plan leading to service failure and loss in reputation.

- Effects (Impact/Severity):** • Staff are not enabled or adequately prepared to deal with incidents in the event that senior managers are unavailable
- Poor management of a major incident will affect the Council's reputation
 - There is a risk to decision-making processes and maintaining quorate committees in the event of loss of Members.
 - Software Failure, leading to potential inability to pay staff, creditors, benefits etc and inability to access key data affecting service delivery and customer experience
 - Increase in workforce homeworking

Causes (Likelihood): • Severe weather including snow, flooding and heatwaves can cause disruption to normal service operation

- Severe space weather can cause disruption to a range of technologies and infrastructure, including communications systems, electronic circuits and power grids.

Risk Report Appendix 6

- Fuel strikes

- Industrial action

Failure to plan for this and implement contingency procedures will affect service delivery.

Service: Governance

Current Status: Medium (12)

Current Risk Severity: 4 - High

Current Risk Likelihood: 3 - Medium

Service Manager: Catherine Yandle

Review Note: Carried out a useful controlled live exercise on 25/26 February. Important issues identified and action plan in preparation; will be discussed at GMT on Monday 11 March.

Risk: Corp RA - Recycling Income Reduction in material income levels due to market forces.

Effects (Impact/Severity):

Causes (Likelihood):

Service: Street Scene Services

Current Status: No Data

Current Risk Severity: 4 - High

Current Risk Likelihood: 3 - Medium

Service Manager: Stuart Noyce

Review Note: Process monitored each month. Prices seem to have stabilised a possible effect of Brexit.

Risk: Culm Garden Village Financial risk if bid for capacity funding fails as costs are being incurred already

Effects (Impact/Severity):

Causes (Likelihood):

Service: Planning

Current Status: High (15)

Current Risk Severity: 5 - Very High

Current Risk Likelihood: 3 - Medium

Service Manager: Jo Nacey

Review Note: A decision would need to be made about future funding and the appetite to proceed with the Project.

Risk: Dangerous Equipment Risks associated with using powered equipment and machinery or that which has moving parts eg fans, woodworking machines, abrasive wheels. Also risks with using powered portable tools eg electric drill, off-hand grinders as well as manual tools eg knife, guillotine.

There are risks that some equipment may produce electromagnetic interference with pace-makers.

Effects (Impact/Severity): High if no PPE worn or risk assessments not followed

Causes (Likelihood): medium if procedures followed.

Service: Property Services

Risk Report Appendix 6

Current Status: Medium (12)

Current Risk Severity: 4 - High

Current Risk Likelihood: 3 - Medium

Service Manager: Andrew Busby

Review Note:

Risk: Evictions Tenants being evicted could become violent.

Effects (Impact/Severity):

Causes (Likelihood):

Service: Housing Services

Current Status: Medium (10)

Current Risk Severity: 5 - Very High

Current Risk Likelihood: 2 - Low

Service Manager: Claire Fry

Review Note: The assessment of the risk remains the same, as the Housing Service is required to house vulnerable people with complex needs who may exhibit challenging behaviour if they feel threatened. An eviction can be a very traumatic event for such people.

Risk: Funding Insufficient resources to deliver growth aspirations of Corporate Plan.

Effects (Impact/Severity): Reputational

Local impact on service provision to Mid Devon businesses resulting in reduced opportunities for those businesses, which other Districts may be able to offer = business migration

Causes (Likelihood): Loss of EU funding

Loss of Central Government funding

Changes to funding priorities

Service: Growth, Economy and Development

Current Status: Medium (12)

Current Risk Severity: 4 - High

Current Risk Likelihood: 3 - Medium

Service Manager: Adrian Welsh

Review Note: Multiple work streams requiring staff resource and wide skill set, lack of success to lever in funding to deliver growth and associated infrastructure.

Consequence: Failure to realise growth aspirations, hampers economic growth, insufficient housing to meet needs, lack of progress on strategic sites, failure to secure business rate growth, Garden Village project does not happen or does not meet GV quality aspirations.

Mitigation: Prioritisation of staff resource, bids and expression of interest submissions to suitable Government funding streams to deliver infrastructure, unlock sites and cover costs of staff resource, effective utilisation of s106 monies, develop collaborative and partnership working

Risk Report Appendix 6

Risk: GDPR compliance That the Council cannot demonstrate that we are prepared for GDPR

Effects (Impact/Severity):

Causes (Likelihood):

Service: Governance

Current Status: Medium (10)

Current Risk Severity: 5 - Very High

Current Risk Likelihood: 2 - Low

Service Manager: Catherine Yandle

Review Note: Information audit work now suspended until the New Year, Several departments have been reviewed Building control and Street scene next priorities.

Risk: H&S RA - Carlu Close Depot Inherent risk at Carlu Close site - highest scoring risk

Effects (Impact/Severity):

Causes (Likelihood):

Service: Street Scene Services

Current Status: No Data

Current Risk Severity: 5 - Very High

Current Risk Likelihood: 2 - Low

Service Manager: Stuart Noyce

Review Note: Changes have been made to operations at Carlu Close such as not idling engines inside the building, varying fan use, leaving main doors open to improve ventilation etc. Air Quality testing results prove CO2 readings are at an acceptable level.

Risk: H&S RA - Enforcement Officer Enforcement Officer Risk assessment

Effects (Impact/Severity):

Causes (Likelihood):

Service: Street Scene Services

Current Status: No Data

Current Risk Severity: 5 - Very High

Current Risk Likelihood: 2 - Low

Service Manager: Stuart Noyce

Review Note: Alert system updated (new provider)

Risk: H&S RA - Litter picking Litter picking - Risk of accident/injury from vehicles when working roadside

Effects (Impact/Severity):

Causes (Likelihood):

Service: Grounds Maintenance

Current Status: Medium (10)

Current Risk Severity: 5 - Very High

Current Risk Likelihood: 2 - Low

Service Manager: Darren Beer

Review Note:

Risk Report Appendix 6

Risk: H&S RA - Recycling Depot Operatives Risk assessment for role - Highest Risks scored - Vehicle Movements inside Depot/Risk of Fire

Effects (Impact/Severity):

Causes (Likelihood):

Service: Street Scene Services

Current Status: No Data

Current Risk Severity: 5 - Very High

Current Risk Likelihood: 2 - Low

Service Manager: Stuart Noyce

Review Note: SSoW/designated walkways/PPE/Reversing Assistants/Equipment servicing. Regular alarm testing and equipment checks/flammable materials outside.

Risk: H&S RA - Refuse Driver/Loader Risk Assessment for Role - Highest risk from role RA. - Risk of RTA from severe weather conditions

Effects (Impact/Severity):

Causes (Likelihood):

Service: Street Scene Services

Current Status: No Data

Current Risk Severity: 5 - Very High

Current Risk Likelihood: 2 - Low

Service Manager: Stuart Noyce

Review Note: SSoW/Training & Instruction/Mobile phones

Risk: H&S RA - Street Cleansing Operative Risk assessment for role - highest risk from role - Risk of accident/injury when working roadside

Effects (Impact/Severity):

Causes (Likelihood):

Service: Street Scene Services

Current Status: No Data

Current Risk Severity: 5 - Very High

Current Risk Likelihood: 2 - Low

Service Manager: Stuart Noyce

Review Note: Risk assessment for role - highest risk from role - Risk of accident/injury when working roadside. Work is carried out following Chapter 8 Guidance

Risk Report Appendix 6

Risk: H&S RA - Tractor Operations Tractor with Side Arm Flail Operations (Where applicable this RA is to be used in conjunction with the Working by roadside RA and the Hand Held Hedge Cutter RA)

Effects (Impact/Severity):

Causes (Likelihood):

Service: Grounds Maintenance

Current Status: Medium (10)

Current Risk Severity: 5 - Very High

Current Risk Likelihood: 2 - Low

Service Manager: Darren Beer

Review Note: SS of W in place for tractor operations.

Risk: H&S RA - Tree Operations including the use of a chainsaw Tree Operations

Effects (Impact/Severity):

Causes (Likelihood):

Service: Grounds Maintenance

Current Status: Medium (12)

Current Risk Severity: 4 - High

Current Risk Likelihood: 3 - Medium

Service Manager: Darren Beer

Review Note: Team only complete work on small or fallen trees from the ground.
SSOW in place for Tree Operations

Risk: H&S RA - Use of GM vehicles (inc. loading, tipping, trailers and use of water bowser) Loading vehicles + unloading on site

Effects (Impact/Severity):

Causes (Likelihood):

Service: Grounds Maintenance

Current Status: Medium (10)

Current Risk Severity: 5 - Very High

Current Risk Likelihood: 2 - Low

Service Manager: Darren Beer

Review Note: SS of W in place for MDDC vehicles.

Risk: H&S RA - Working at height Use of Ladders

Effects (Impact/Severity):

Causes (Likelihood):

Service: Grounds Maintenance

Current Status: Medium (12)

Current Risk Severity: 4 - High

Current Risk Likelihood: 3 - Medium

Service Manager: Darren Beer

Review Note: Using a MWEF removed from current practice
SSOW in place for Working at Height

Risk Report Appendix 6

Risk: H&S RA - Working by Roadside Urban/Rural Carrying out activities and tasks by the roadside.

Effects (Impact/Severity):

Causes (Likelihood):

Service: Grounds Maintenance

Current Status: Medium
(10)

Current Risk Severity: 5 - Very
High

Current Risk Likelihood: 2 -
Low

Service Manager: Darren Beer

Review Note: SS of W in place for working at roadside.

Risk: H&S RA -Waste Collection - Health and Safety Risk of other vehicle users becoming involved in RTA's

Effects (Impact/Severity):

Causes (Likelihood):

Service: Street Scene Services

Current Status: No
Data

Current Risk Severity: 5 - Very
High

Current Risk Likelihood: 2 -
Low

Service Manager: Stuart Noyce

Review Note: SSoW/Training and instruction/Accident and incident reporting system/Mobile phone communication

Risk: Hoarding Some tenants are known hoarders but we have policies in place and we do regular inspections.

Effects (Impact/Severity):

Causes (Likelihood):

Service: Housing Services

Current Status: Medium
(10)

Current Risk Severity: 5 - Very
High

Current Risk Likelihood: 2 -
Low

Service Manager: Claire Fry

Review Note: The assessment of the risk remains the same but it should be noted that the Housing Service works closely with partners including the Devon and Somerset Fire and Rescue Service to help those who hoard to understand the possible consequences of their behaviour and to help them to commence addressing the issues.

Risk: Homelessness Insufficient resources to support an increased homeless population could result in failure to meet statutory duty to provide advice and assistance to anyone who is homeless.

Effects (Impact/Severity): - Dissatisfied customers and increase in complaints.

- This will involve an increase in officer time in dealing with Homelessness prevention and early

Risk Report Appendix 6

intervention.

- Possible increase in temporary accommodation usage.

Causes (Likelihood): New legislation implemented in April 2018 introduced new statutory duties and as a result the numbers of people presenting as homeless are increased, having an impact upon workloads.

Service: Housing Services

Current Status: Medium (12)

Current Risk Severity: 4 - High

Current Risk Likelihood: 3 - Medium

Service Manager: Claire Fry

Review Note: The new referral procedure implemented in accordance with the provisions of the Homelessness Reduction Act is now resulting in more cases, therefore we monitor this risk as a matter of routine. Mitigating factors are still effective and the team is managing the work load.

Risk: Impact of Welfare Reform and other emerging National Housing Policy Changes to benefits available to tenants could impact upon their ability to pay. Other initiatives could impact upon our ability to deliver our 30 year Business Plan.

Effects (Impact/Severity):

Causes (Likelihood):

Service: Housing Services

Current Status: Medium (6)

Current Risk Severity: 3 - Medium

Current Risk Likelihood: 2 - Low

Service Manager: Claire Fry

Review Note: Managed migration of all benefit claimants onto Universal Credit has been delayed, there are approximately 230 Current Tenants in receipt of this benefit at the present time and this is being managed effectively following the restructure of the Neighborhood Teams. Although we anticipate that the Government will introduce a new form of tenure these plans appear to have been delayed due to other pressing matters.

Risk: Information Security Inadequate Information Security could lead to breaches of confidential information, damaged or corrupted data and ultimately Denial of Service. If the council fails to have an effective information strategy in place.

Risk of monetary penalties and fines, and legal action by affected parties

Effects (Impact/Severity):

Causes (Likelihood):

Service: I C T

Current Status: High (20)

Current Risk Severity: 5 - Very High

Current Risk Likelihood: 4 - High

Service Manager: Alan Keates

Review Note: Although technical controls are in place to help to mitigate this risk, there is still a high probability that human error could potentially cause a severe data breach or malware infection. User awareness training is regularly taking place to help reduce this risk.

Risk Report Appendix 6

Risk: Legionella Legionella

Effects (Impact/Severity):

Causes (Likelihood):

Service: Leisure Services

Current Status: No Data

Current Risk Severity: 5 - Very High

Current Risk Likelihood: 2 - Low

Service Manager: Darren Beer, Heather Hargreaves

Review Note:

Risk: Localism Act - Community Right to Buy / Challenge Transference of services to the community could enable the Council to identify cost savings

Effects (Impact/Severity):

Causes (Likelihood):

Service: Financial Services

Current Status: Medium (12)

Current Risk Severity: 4 - High

Current Risk Likelihood: 3 - Medium

Service Manager: Jo Nacey

Review Note:

Risk: Lone Working Risks associated with working alone (eg on site visits, call-outs, evening, weekend and emergency work and working from home).

Effects (Impact/Severity):

Causes (Likelihood):

Service: Property Services

Current Status: Medium (12)

Current Risk Severity: 4 - High

Current Risk Likelihood: 3 - Medium

Service Manager: Andrew Busby

Review Note: Health & Safety Officer trailing new Lone Working equipment.

Risk: Management of Legionella within Corporate Assets The risk assessment covers the Management control, including practises and procedures, of Legionella across all Commercial Assets

Effects (Impact/Severity):

Causes (Likelihood):

Service: Property Services

Current Status: High (15)

Current Risk Severity: 5 - Very High

Current Risk Likelihood: 3 - Medium

Service Manager: Andrew Busby

Review Note: Updated for improvement potential - refer to comments submitted 07.03.19

Risk Report Appendix 6

Risk: Multi Storey Car Park Injury may result from vehicle movements

Effects (Impact/Severity):

Causes (Likelihood):

Service: Property Services

Current Status: High (15)

Current Risk Severity: 5 - Very High

Current Risk Likelihood: 3 - Medium

Service Manager: Andrew Busby

Review Note: The MSCP is now 24/7 opening that has resulted in numerous instances of anti social behavior, vandalism and mis-use of the building. Meeting held 06.03.19 with various agencies to produce an action plan, the Police were present.

Risk: Overall Funding Availability Changes to Revenue Support Grant, Business Rates, New Homes Bonus and other funding streams in order to finance ongoing expenditure needs.

Effects (Impact/Severity):

Causes (Likelihood):

Service: Financial Services

Current Status: High (15)

Current Risk Severity: 5 - Very High

Current Risk Likelihood: 3 - Medium

Service Manager: Jo Nacey

Review Note:

Risk: Palmerston Park Development of 26 houses - liquidator exploring a claim against us regarding losses and damages re previous contractor.

Effects (Impact/Severity):

Causes (Likelihood):

Service: Property Services

Current Status: High (15)

Current Risk Severity: 5 - Very High

Current Risk Likelihood: 3 - Medium

Service Manager: Andrew Busby

Review Note: Protocol being followed - meeting taken place and detailed response letter(s) sent.

Risk: Plant Room Plant Room

Effects (Impact/Severity):

Causes (Likelihood):

Service: Leisure Services

Current Status: Medium (10)

Current Risk Severity: 5 - Very High

Current Risk Likelihood: 2 - Low

Service Manager: Darren Beer, Heather Hargreaves

Review Note: No Change

Risk Report Appendix 6

Risk: Pool Inflatable Pool Activities

Effects (Impact/Severity):

Causes (Likelihood):

Service: Leisure Services

Current Status: Medium
(10)

Current Risk Severity: 5 - Very High

Current Risk Likelihood: 2 - Low

Service Manager: Darren Beer, Heather Hargreaves

Review Note: No Change

Risk: Premier Inn Construction site Increased difficulty in management of the car parking facility while the Premier Inn is being built

Effects (Impact/Severity):

Causes (Likelihood):

Service: Property Services

Current Status: Medium
(6)

Current Risk Severity: 3 - Medium

Current Risk Likelihood: 2 - Low

Service Manager: Andrew Busby

Review Note: Demolition work complete - construction phase underway that includes a crane being erected on site. Contractor has control measures in place, alongside project management.

Risk: Reduced Funding - Budget Cuts We are subject to continuing budget reductions. If we concentrate on short term cost savings, it may increase long term impact of decisions

Effects (Impact/Severity):

- Increased workforce stress and declining morale can add to the dangers of a major incident if staff come under pressure as budget cuts force changes in operational models
- Budget cuts may limit the financial resources that we can dedicate to network security potentially making us more vulnerable to cyber-attacks
- Use of reserves to supplement reduced funding for budgets could put a strain on reserves in future, with inability to maintain them
- The Council could significantly over or underspend against budget on the provision of Council services
- There may be inefficient use of public money and a failure to comply with the Council's objectives
- The relative scale of impact in an incident will be higher due to decreased organisational resilience as a result of diminishing financial reserves and workforce response capacity

Causes (Likelihood):

- Severe financial pressure caused by a significant reduction to the Council's Revenue Support Grant
- Ceasing of other grants

Service: Financial Services

Current Status: High
(20)

Current Risk Severity: 5 - Very High

Current Risk Likelihood: 4 - High

Service Manager: Jo Nacey

Review Note: We continue to search for efficiencies within our services to bring forth savings. Due to the savings we have implemented in the past the scope for further savings is limited. We have a significant gap to close for 2020/2021 and this will be a difficult challenge.

Risk Report Appendix 6

Risk: Reduced Funding - Service Cuts With continued reductions in funding, there may be a long-term need to plan reduced or cease non-statutory services.

Effects (Impact/Severity): • With the economic downturn there is risk of balancing reduced services with customer expectations in an increasing demand-led environment.
• Financial costs arising from reduced services (eg insurance claims due to flicking stones when cutting long grass)

Causes (Likelihood): • Severe financial pressure caused by a significant reduction to the Council's Revenue Support Grant

Service: Financial Services

Current Status: High (16)	Current Risk Severity: 4 - High	Current Risk Likelihood: 4 - High
----------------------------------	--	--

Service Manager: Jo Nacey

Review Note: We now receive no RSG and the upcoming Fair Funding Review makes planning more difficult until we receive notification of what this means to our funding. We are unlikely to see significant increases in our Central Government funding and therefore we may have to look to our own funding streams and at our discretionary services to see if they are viable.

Risk: Reputational damage - social media impact of reputational damage through social media is a significant risk that warrants inclusion on the Authority's risk register.

Effects (Impact/Severity):

Causes (Likelihood):

Service: Communications

Current Status: Medium (10)	Current Risk Severity: 5 - Very High	Current Risk Likelihood: 2 - Low
------------------------------------	---	---

Service Manager: Jane Lewis

Review Note: Now that there is a full time Communication Officer in post this provides the council with improved social media monitoring and we are more likely to respond in a timely manner. The media policy and social media guidelines are also currently being reviewed and will be taken to the Community PDG in November 2018.

Risk: Reputational re Council Housing Stock Failure in handling a disaster/mistake properly

Effects (Impact/Severity):

Causes (Likelihood):

Service: Housing Services

Current Status: Medium (10)	Current Risk Severity: 5 - Very High	Current Risk Likelihood: 2 - Low
------------------------------------	---	---

Service Manager: Claire Fry

Review Note: the assessment of the risk remains the same but there are adopted policies and procedures which should mitigate the risk of a disaster happening. Furthermore, we have trained and experienced staff.

Risk Report Appendix 6

Risk: S106 Agreement Inability of the legacy systems to provide a full overview of the 'trigger points' for all of the s106 agreements

Effects (Impact/Severity):

Causes (Likelihood):

Service: Planning

Current Status: No Data

Current Risk Severity: 5 - Very High

Current Risk Likelihood: 3 - Medium

Service Manager: Jenny Clifford

Review Note: Project to update records is progressing and will allow better tracking of payments due /made and trigger dates.

Risk: Safeguarding Young Persons and Vulnerable Adults Safeguarding/Child Protection associated risks, including accusations of, in situations where a person may come into contact with children or vulnerable adults. Also, psychological and emotional impact on officer in contact with such situation as well as having robust policies and knowledge of by officers and Members when faced with a safeguarding/child protection situation.

Effects (Impact/Severity): Medium

Causes (Likelihood): medium due to supervisory arrangements

Service: Property Services

Current Status: Medium (12)

Current Risk Severity: 4 - High

Current Risk Likelihood: 3 - Medium

Service Manager: Andrew Busby

Review Note: Activities in the MSCP are increasing this risk at present a multi agency plan is being formulated.

Risk: School Swimming Sessions School Swimming Sessions

Effects (Impact/Severity):

Causes (Likelihood):

Service: Leisure Services

Current Status: Medium (10)

Current Risk Severity: 5 - Very High

Current Risk Likelihood: 2 - Low

Service Manager: Darren Beer, Heather Hargreaves

Review Note: No Change

Risk: Stress The physical and mental well-being of Officers could be affected by work environment and pressures caused by work demands and work relationships.

Effects (Impact/Severity):

Causes (Likelihood):

Service: Housing Services

Current Status: Medium (12)

Current Risk Severity: 4 - High

Current Risk Likelihood: 3 - Medium

Service Manager: Claire Fry

Risk Report Appendix 6

Review Note: The risk assessment remains the same due to the nature of the work. Whilst we have a strong supervision framework in place, provide appropriate training and access to support as necessary, Officers are often required to work with challenging people, make key decisions which can have a profound impact upon individuals and juggle conflicting priorities.

Risk: Swimming Lessons Swimming Lessons

Effects (Impact/Severity):

Causes (Likelihood):

Service: Leisure Services

Current Status: Medium
(10)

Current Risk Severity: 5 - Very High

Current Risk Likelihood: 2 - Low

Service Manager: Darren Beer, Heather Hargreaves

Review Note: No Change

Risk: Swimming Pool Swimming pool & spectator walkway

Effects (Impact/Severity):

Causes (Likelihood):

Service: Leisure Services

Current Status: Medium
(10)

Current Risk Severity: 5 - Very High

Current Risk Likelihood: 2 - Low

Service Manager: Darren Beer, Heather Hargreaves

Review Note: No Change

Risk: Tenants with Complex Needs As our housing stock shrinks, the proportion of such tenants will increase.

Effects (Impact/Severity):

Causes (Likelihood):

Service: Housing Services

Current Status: Medium
(12)

Current Risk Severity: 4 - High

Current Risk Likelihood: 3 - Medium

Service Manager: Claire Fry

Review Note: The risk assessment remains the same because vulnerable people may need support and may also exhibit challenging behaviour which could impact staff wellbeing. We provide appropriate training for staff and have good links with other agencies including the Police, social services, Wiser£money, CHAT, the CA etc

This page is intentionally left blank

Risk Matrix

Report For MDDC - Services Current settings

Risk Likelihood	5 - Very High	No Risks	No Risks	No Risks	No Risks	No Risks
	4 - High	No Risks	3 Risks	2 Risks	1 Risk	2 Risks
	3 - Medium	No Risks	2 Risks	10 Risks	14 Risks	9 Risks
	2 - Low	1 Risk	24 Risks	48 Risks	32 Risks	16 Risks
	1 - Very Low	4 Risks	7 Risks	10 Risks	14 Risks	16 Risks
		1 - Very Low	2 - Low	3 - Medium	4 - High	5 - Very High
		Risk Severity				

Printed by: Catherine Yandle

SPAR.net

Print Date: 07 March 2019 17:19

This page is intentionally left blank

MID DEVON DISTRICT COUNCIL – NOTIFICATION OF KEY DECISIONS

May 2019

The Forward Plan containing key Decisions is published 28 days prior to each Cabinet meeting

Title of report and summary of decision	Decision Taker	Date of Decision	Officer contact	Cabinet Member	Intention to consider report in private session and the reason(s)
Tiverton Eastern Urban Extension Area B Masterplanning To consider the outcome of the tender process	Cabinet	30 May 2019	Jenny Clifford, Head of Planning, Economy and Regeneration Tel: 01884 234346	Cabinet Member for Planning and Economic Regeneration (Councillor Richard Chesterton)	Part exempt
Design Supplementary Planning Document To consider a report seeking approval to consult on the draft Supplementary Planning Document.	Cabinet	30 May 2019	Jenny Clifford, Head of Planning, Economy and Regeneration Tel: 01884 234346	Cabinet Member for Planning and Economic Regeneration (Councillor Richard Chesterton)	Open
Statement of Community Involvement Review 2018 Report to seek authority to consult on the draft revised text	Cabinet Council	30 May 2019 24 Jul 2019	Jenny Clifford, Head of Planning, Economy and Regeneration Tel: 01884 234346	Cabinet Member for Planning and Economic Regeneration (Councillor Richard Chesterton)	Open

Title of report and summary of decision	Decision Taker	Date of Decision	Officer contact	Cabinet Member	Intention to consider report in private session and the reason(s)
Cullompton Town Centre Masterplan To consider the contract award	Cabinet	30 May 2019	Jenny Clifford, Head of Planning, Economy and Regeneration Tel: 01884 234346	Cabinet Member for Planning and Economic Regeneration (Councillor Richard Chesterton)	Open
Greater Exeter Strategic Plan for Consultation To consider a report of the Head of Planning, Economy and Regeneration regarding draft strategic plan.	Cabinet	Not before 30th May 2019	Jenny Clifford, Head of Planning, Economy and Regeneration Tel: 01884 234346	Cabinet Member for Planning and Economic Regeneration (Councillor Richard Chesterton)	Open
Tiverton Regeneration Scheme - works to Fore Street and the market access - Award of Contract To approve the outcome of the procurement exercise.	Cabinet	30 May 2019	Andrew Busby, Group Manager for Corporate Property and Commercial Assets Tel: 01884 234948	Cabinet Member for Housing (Councillor Ray Stanley)	Part exempt
Blackdown Hills - Area of Outstanding Natural Beauty (AONB) Management Plan To consider adopting the Management Plan following the consultation process.	Cabinet	30 May 2019	Jenny Clifford, Head of Planning, Economy and Regeneration Tel: 01884 234346	Cabinet Member for Planning and Economic Regeneration (Councillor Richard Chesterton)	Open

Title of report and summary of decision	Decision Taker	Date of Decision	Officer contact	Cabinet Member	Intention to consider report in private session and the reason(s)
Environment Educational Enforcement Policy To receive a report from the Group Manager of Street Scene and Open Spaces on the updates to the Environment Education and Enforcement Policy	Environment Policy Development Group Cabinet	11 Jun 2019 27 Jun 2019	Stuart Noyce, Group Manager for Street Scene and Open Spaces Tel: 01884 244635	Cabinet Member for the Environment	Open
Play Area Safety Inspection Policy To receive a 3 year review from the Director of Operations of the Play Area Safety Inspection Policy	Environment Policy Development Group Cabinet	11 Jun 2019 27 Jun 2019	Andrew Pritchard, Director of Operations Tel: 01884 234950	Leader of the Council (Councillor Clive Eginton)	Open
National Assistance Burial Procedure 3 yearly review	Environment Policy Development Group Cabinet	11 Jun 2019 27 Jun 2019	Andrew Jarrett, Deputy Chief Executive (S151) Tel: 01884 234242	Leader of the Council (Councillor Clive Eginton)	Open
Market Schedule of Tolls To receive a report recommending a schedule of market tolls for 2019/20.	Cabinet Member for Planning and Economic Regeneration	April 2019	Adrian Welsh, Group Manager for Growth, Economy and Delivery Tel: 01884 234398	Cabinet Member for Planning and Economic Regeneration (Councillor Richard	Open

Title of report and summary of decision	Decision Taker	Date of Decision	Officer contact	Cabinet Member	Intention to consider report in private session and the reason(s)
				Chesterton)	
Market Rights Policy To receive a report presenting the Market Rights Policy	Economy Policy Development Group Cabinet Council	13 Jun 2019 27 Jun 2019 24 Jul 2019	Stephen Walford, Chief Executive Tel: 01884 234201	Cabinet Member for Planning and Economic Regeneration (Councillor Richard Chesterton)	Open
Cost Recovery & Commercialisation in Growth, Economy & Delivery To receive a report presenting Members with steps to introduce cost recovery into the Growth, Economy and Delivery Service and to look at issues relating to further commercialisation within the service.	Economy Policy Development Group Cabinet	13 Jun 2019 27 Jun 2019	Jenny Clifford, Head of Planning, Economy and Regeneration Tel: 01884 234346	Cabinet Member for Planning and Economic Regeneration (Councillor Richard Chesterton)	Open
Homelessness Strategy To receive a report from the Group Manager for Housing presenting the revised	Homes Policy Development Group	18 Jun 2019	Claire Fry, Group Manager for Housing Tel: 01884 234920	Cabinet Member for Housing (Councillor Ray Stanley)	Open

Title of report and summary of decision	Decision Taker	Date of Decision	Officer contact	Cabinet Member	Intention to consider report in private session and the reason(s)
Homelessness Strategy.	Cabinet	27 Jun 2019			
Pets and Animals Policy To consider a revised policy.	Homes Policy Development Group Cabinet	18 Jun 2019 27 Jun 2019	Andrew Pritchard, Director of Operations Tel: 01884 234950	Cabinet Member for Housing (Councillor Ray Stanley)	Open
Housing Revenue Account Asset Management Strategy To consider a revised strategy.	Homes Policy Development Group Cabinet	18 Jun 2019 27 Jun 2019	Andrew Pritchard, Director of Operations Tel: 01884 234950	Cabinet Member for Housing (Councillor Ray Stanley)	Open
Boarding Policy To consider a revised policy.	Homes Policy Development Group Cabinet	18 Jun 2019 27 Jun 2019	Andrew Pritchard, Director of Operations Tel: 01884 234950	Cabinet Member for Housing (Councillor Ray Stanley)	Open
Harassment Policy To consider a revised policy.	Homes Policy Development Group Cabinet	18 Jun 2019 27 Jun 2019	Andrew Pritchard, Director of Operations Tel: 01884 234950	Cabinet Member for Housing (Councillor Ray Stanley)	Open
Allocations Policy and Procedures To consider a revised policy.	Homes Policy Development Group	18 Jun 2019	Andrew Pritchard, Director of Operations Tel:	Cabinet Member for Housing (Councillor Ray Stanley)	Open

Title of report and summary of decision	Decision Taker	Date of Decision	Officer contact	Cabinet Member	Intention to consider report in private session and the reason(s)
	Cabinet	27 Jun 2019	01884 234950	Stanley)	
Tenancy Strategy To consider a revised strategy.	Homes Policy Development Group Cabinet	18 Jun 2019 27 Jun 2019	Andrew Pritchard, Director of Operations Tel: 01884 234950	Cabinet Member for Housing (Councillor Ray Stanley)	Open
Corporate Asbestos Policy To consider a revised policy.	Homes Policy Development Group Cabinet	18 Jun 2019 27 Jun 2019	Andrew Pritchard, Director of Operations Tel: 01884 234950	Cabinet Member for Housing (Councillor Ray Stanley)	Open
Regulation of Investigatory Powers To receive the annual review of Regulation of Investigatory Powers from the Director of Corporate Affairs and Business Transformation.	Community Policy Development Group Cabinet	25 Jun 2019 25 Jul 2019	Jill May, Director of Corporate Affairs and Business Transformation Tel: 01884 234381	Cabinet for the Working Environment and Support Services (Councillor Margaret Squires)	Open
S106 Governance To agree governance arrangements for S106 agreements	Cabinet	27 Jun 2019	Jenny Clifford, Head of Planning, Economy and Regeneration Tel: 01884 234346	Cabinet Member for Planning and Economic Regeneration (Councillor	Open

Page 209

Title of report and summary of decision	Decision Taker	Date of Decision	Officer contact	Cabinet Member	Intention to consider report in private session and the reason(s)
				Richard Chesterton)	
Beech Road, Tiverton - Design and Build Tender To consider the award of the tender	Cabinet	27 Jun 2019	Andrew Jarrett, Deputy Chief Executive (S151) Tel: 01884 234242	Cabinet Member for Housing (Councillor Ray Stanley)	Part exempt
Data Protection Policy To consider the policy as part of an annual review	Cabinet	27 Jun 2019	Catherine Yandle, Group Manager for Performance, Governance and Data Security Tel: 01884 234975	Leader of the Council (Councillor Clive Eginton)	Open
Revenue and Capital Outturn To consider a report presenting the revenue and capital outturn figures for the financial year 2018/19	Cabinet	27 Jun 2019	Andrew Jarrett, Deputy Chief Executive (S151) Tel: 01884 234242	Cabinet Member for Finance (Councillor Peter Hare-Scott)	Open
Annual Treasury Management Report To consider a report providing members with a review of activities and the actual prudential treasury indicators	Cabinet Council	27 Jun 2019 24 Jul 2019	Andrew Jarrett, Deputy Chief Executive (S151) Tel: 01884 234242	Cabinet Member for Finance (Councillor Peter Hare-Scott)	Open

Title of report and summary of decision	Decision Taker	Date of Decision	Officer contact	Cabinet Member	Intention to consider report in private session and the reason(s)
Freedom of Information Policy To consider the policy as part of an annual review	Cabinet	27 Jun 2019	Catherine Yandle, Group Manager for Performance, Governance and Data Security Tel: 01884 234975	Leader of the Council (Councillor Clive Eginton)	Open
Income Management Policy To consider a revised policy.	Homes Policy Development Group Cabinet	13 Aug 2019 22 Aug 2019	Andrew Pritchard, Director of Operations Tel: 01884 234950	Cabinet Member for Housing (Councillor Ray Stanley)	Open
Penalty Policy To consider a revised policy.	Homes Policy Development Group Cabinet	13 Aug 2019 22 Aug 2019	Andrew Pritchard, Director of Operations Tel: 01884 234950	Cabinet Member for Housing (Councillor Ray Stanley)	Open
Single Equalities Policy and Equality Objective To receive the annual review of the Single Equalities Policy and Equality Objective from the Director of Corporate Affairs and Business Transformation	Community Policy Development Group Cabinet	20 Aug 2019 19 Sep 2019	Jill May, Director of Corporate Affairs and Business Transformation Tel: 01884 234381	Cabinet for the Working Environment and Support Services (Councillor Margaret Squires)	Open

Page 21

Title of report and summary of decision	Decision Taker	Date of Decision	Officer contact	Cabinet Member	Intention to consider report in private session and the reason(s)
Design Supplementary Planning Document for adoption To consider the SPD following consultation for adoption	Cabinet	22 Aug 2019	Jenny Clifford, Head of Planning, Economy and Regeneration Tel: 01884 234346	Cabinet Member for Planning and Economic Regeneration (Councillor Richard Chesterton)	Open
Compensation Policy To consider a revised policy.	Homes Policy Development Group Cabinet	1 Oct 2019 23 Oct 2019	Andrew Pritchard, Director of Operations Tel: 01884 234950	Cabinet Member for Housing (Councillor Ray Stanley)	Open
Community Safety Partnership To consider a report from the group Manager for Public Health and Regulatory Services outlining the Council's Community Safety Action Plan, and to seek Members recommendation to acknowledge and accept the priorities action plan	Community Policy Development Group Cabinet	8 Oct 2019 17 Oct 2019	Simon Newcombe, Group Manager for Public Health and Regulatory Services Tel: 01884 244615	Cabinet Member for Community Well Being (Councillor Colin Slade)	Open
Design Supplementary Planning Document - post consultation To consider the	Cabinet	17 Oct 2019	Jenny Clifford, Head of Planning, Economy and Regeneration Tel:	Cabinet Member for Planning and Economic Regeneration	Open

Page 21

Title of report and summary of decision	Decision Taker	Date of Decision	Officer contact	Cabinet Member	Intention to consider report in private session and the reason(s)
Supplementary Planning Document post consultation			01884 234346	(Councillor Richard Chesterton)	
Cleaning Contractors To approve the outcome of the procurement exercise.	Cabinet	17 Oct 2019	Andrew Jarrett, Deputy Chief Executive (S151) Tel: 01884 234242	Cabinet for the Working Environment and Support Services (Councillor Margaret Squires)	Open
Treasury Management Strategy and Mid Year Review To consider a report with information regarding the treasury performance in the first 6 months of the municipal year.	Cabinet Council	21 Nov 2019 8 Jan 2020	Andrew Jarrett, Deputy Chief Executive (S151) Tel: 01884 234242	Cabinet Member for Finance (Councillor Peter Hare-Scott)	Open
Domestic Abuse Policy To consider a revised policy.	Homes Policy Development Group Cabinet	 3 Dec 2019 19 Dec 2019	Andrew Pritchard, Director of Operations Tel: 01884 234950	Cabinet Member for Housing (Councillor Ray Stanley)	Open
Improvements to Council Property Policy To consider a revised policy.	Homes Policy Development Group	3 Dec 2019	Andrew Pritchard, Director of Operations Tel:	Cabinet Member for Housing (Councillor Ray	Open

Title of report and summary of decision	Decision Taker	Date of Decision	Officer contact	Cabinet Member	Intention to consider report in private session and the reason(s)
	Cabinet	19 Dec 2019	01884 234950	Stanley)	
ASB Policy and Procedures To consider a revised policy	Homes Policy Development Group Cabinet	3 Dec 2019 19 Dec 2019	Andrew Pritchard, Director of Operations Tel: 01884 234950	Cabinet Member for Housing (Councillor Ray Stanley)	Open
Leasehold Management Policy To consider a revised policy	Homes Policy Development Group Cabinet	3 Dec 2019 19 Dec 2019	Andrew Pritchard, Director of Operations Tel: 01884 234950	Cabinet Member for Housing (Councillor Ray Stanley)	Open
Corporate Health & Safety Policy To receive the annual review of the Corporate Health & Safety Policy from the Director of Corporate Affairs and Business Transformation.	Community Policy Development Group Cabinet	10 Dec 2019 16 Jan 2020	Jill May, Director of Corporate Affairs and Business Transformation Tel: 01884 234381	Cabinet for the Working Environment and Support Services (Councillor Margaret Squires)	Open

This page is intentionally left blank

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank

Document is Restricted

This page is intentionally left blank

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank