

COMMUNITIES, HOUSING AND ENVIRONMENT COMMITTEE MEETING

Date: Tuesday 6 April 2021

Time: 6.30 pm

Venue: Remote Meeting: The public proceedings of the meeting will be broadcast live and recorded for playback on the Maidstone Borough Council Website

Membership:

Councillors M Burton, Joy, Khadka, Mortimer (Chairman), Powell (Vice-Chairman), Mrs Robertson, D Rose, M Rose and Young

The Chairman will assume that all Members will read the reports before attending the meeting. Officers are asked to assume the same when introducing reports.

AGENDA

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| 1. Apologies for Absence | |
| 2. Notification of Substitute Members | |
| 3. Urgent Items | |
| 4. Notification of Visiting Members | |
| 5. Disclosures by Members and Officers | |
| 6. Disclosures of Lobbying | |
| 7. To consider whether any items should be taken in private because of the possible disclosure of exempt information. | |
| 8. Minutes of the Meeting Held on 2 March 2021 | 1 - 4 |
| 9. Presentation of Petitions (if any) | |
| 10. Questions and answer session for members of the public (if any) | |
| 11. Questions from Members to the Chairman (if any) | |
| 12. Committee Work Programme | 5 |
| 13. Reports of Outside Bodies | |
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Issued on Monday 29 March 2021

Continued Over/:

Alison Broom

Alison Broom, Chief Executive

15. Private Sector Housing Enforcement Policy 2021	34 - 93
16. Access to Service Review Update	94 - 106
17. Declaration of Local Nature Reserves	107 - 117

PART II

To move that the public be excluded for the items set out in Part II of the Agenda because of the likely disclosure of exempt information for the reasons specified having applied the Public Interest Test.

Head of Schedule 12 A and Brief Description

18. Granada House	Paragraph 3 – information relating to the financial or business affairs of any particular person (including the authority holding that information).	118 - 134
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INFORMATION FOR THE PUBLIC

In order to ask a question at this remote meeting, please call **01622 602899** or email committee@maidstone.gov.uk by 5 p.m. one clear working day before the meeting (i.e. by 5 p.m. on Wednesday 31 March 2021). You will need to provide the full text in writing.

If your question is accepted, you will be provided with instructions as to how you can access the meeting.

In order to make a statement in relation to an item on the agenda, please call **01622 602899** or email committee@maidstone.gov.uk by 5p.m. one clear working day before the meeting (i.e. by 5p.m. on Wednesday 31 March 2021). You will need to tell us which agenda item you wish to speak on.

If you require this information in an alternative format please contact us, call **01622 602899** or email committee@maidstone.gov.uk.

To find out more about the work of the Committee, please visit www.maidstone.gov.uk.

Should you wish to refer any decisions contained in these minutes to the **Policy and Resources Committee**, please submit a Decision Referral Form, signed by **three** Councillors, to the **Head of Policy, Communications and Governance** by: **17 March 2021**

MAIDSTONE BOROUGH COUNCIL

COMMUNITIES, HOUSING AND ENVIRONMENT COMMITTEE

MINUTES OF THE MEETING HELD ON TUESDAY 2 MARCH 2021

Present: Councillors Joy, Khadka, Mortimer (Chairman), Powell, Purle, Mrs Robertson, D Rose, M Rose and Young

Also Present: Councillors Brice, Kimmance and Perry

145. **APOLOGIES FOR ABSENCE**

Apologies were received from Councillor M Burton.

146. **NOTIFICATION OF SUBSTITUTE MEMBERS**

Councillor Purle was present as a Substitute Member for Councillor Burton.

147. **URGENT ITEMS**

There were no urgent items.

148. **NOTIFICATION OF VISITING MEMBERS**

Councillors Brice and Perry were present as Visiting Members for Item 15.

Councillor Kimmance was present as a Visiting Member for Items 14 and 15.

149. **DISCLOSURES BY MEMBERS AND OFFICERS**

Councillor Purle disclosed a professional connection to a company that provides emergency accommodation to Maidstone Borough Council.

150. **DISCLOSURES OF LOBBYING**

Councillor M Rose had been lobbied on Item 12 – Committee Work Programme.

151. **EXEMPT ITEMS**

RESOLVED: That all items be taken in public as proposed.

152. **MINUTES OF THE MEETING HELD ON 2 FEBRUARY 2021**

RESOLVED: That the Minutes of the meeting held on 2 February 2021 be approved as a correct record and signed at a later date.

153. PRESENTATION OF PETITIONS

There were no petitions.

154. QUESTIONS AND ANSWER SESSION FOR MEMBERS OF THE PUBLIC

There were no questions from members of the public.

155. QUESTIONS FROM MEMBERS TO THE CHAIRMAN

Question from Councillor Brice to the Chairman of the Communities, Housing and Environment Committee

'What is the ratio of reports of fly-tipping to fines issued and / or prosecutions across Staplehurst?'

The Chairman responded to the question.

Councillor Brice asked the following supplementary question:

'What more can be done to support more fines and more prosecutions?'

The Chairman responded to the question.

The full responses were recorded on the webcast and made available to view on the Maidstone Borough Council Website.

To access the webcast recording, please use the link below:

<https://www.youtube.com/watch?v=3OT6PaMimwQ>

156. COMMITTEE WORK PROGRAMME

Concerns were raised at the number of items scheduled for the April meeting of the Committee, and the potential impact this could have on the time given to each item. It was suggested that the Heather House and Pavilion Update be moved to the following meeting of the Committee.

The Director of Regeneration and Place confirmed that the Anti-Idling Policy report would not be completed in time to be presented to the next meeting of the Committee.

RESOLVED: That the Committee Work Programme be noted.

157. REPORTS OF OUTSIDE BODIES

There were no reports of Outside Bodies.

158. HOMELESSNESS ACTIVITY DURING 2020

The Head of Housing and Community Services presented the report and explained that the number of homeless applications remained consistent

with previous years, however the number of successful preventions has increased significantly. The threat of homelessness due to loss of private rented accommodation had seen a decrease, largely impacted by the moratorium of possession proceedings. The increase in alternate threats of homelessness, including domestic abuse and family and/or friends no longer providing accommodation during the pandemic was highlighted.

There was an increase in the number of households in temporary accommodation through the Rough Sleeper Initiative (RSI) and the Winter Provision. Since the data in table 4 was gathered, the number of RSI cases had halved, with households having moved on to more sustainable accommodation.

In response to questions, the Head of Housing and Community Services confirmed that the Council could not prevent other Local Housing Authorities (LHAs) from housing their residents within the Borough. However ongoing communication between the Council and other LHAs would ensure that the latter provided the support necessary to reconnect their residents to the original area of residence.

RESOLVED: That the report be noted.

159. RE-PROCUREMENT OF THE COUNCIL'S WASTE & RECYCLING SERVICE

The Director of Regeneration and Place introduced the report which was based on the scoping report presented to the Committee in June 2020, and took into account the feedback received from the Member workshop exploring options for the waste contract. The waste and recycling service was contracted out to Biffa by Mid Kent Waste Partnership, with the contract ending in October 2023, with the street cleansing service carried out by an in-house Direct Labour Organisation (DLO).

Feedback from Members had indicated satisfaction with the current service, and therefore the report recommended retaining the current service delivery, however alternative options were explained. Recycling could be twin-streamed rather than the current co-mingled service, which would add £294,000 to the cost of the contract, and an additional £300,000 cost for provision of bin infrastructure. Kent County Council (KCC) could incentivise this change up to £180,000 however this sum would not be guaranteed.

The four delivery models were outlined, and an error in the table at 3.2.2 was noted, whereby Local Authority Trading Company (LATCO) and Direct Service Organisation (DSO) had been swapped.

Although a LATCO was the cheapest option, the preferred route was to continue with the current model due to price certainty, quality and discharge of service risks. It was noted that an increase of £600,000 was expected if the current model was retained, and this had been budgeted for in the Medium-Term Financial Strategy. Maintaining an in-house service for street cleansing would allow control and add resilience to the depot services.

In response to questions, Chris Stannard of Waste Management advised that partnerships were attractive to contractors and that continuing as part of the Mid Kent Waste Partnership would likely offer better value for the council, although it would be possible to procure a waste contract for Maidstone as an individual borough. It was also confirmed that performance monitoring was measured per borough rather than per partnership.

Concerns around service level agreements (SLA) and contractor accountability were raised, and it was confirmed that the facility for public access to read-only, real-time information on contractors' services is in progress, which would enable the public to self-serve. The Director of Regeneration and Place would investigate the feasibility of contacting the local Ward Member when a complaint to the service was received from a resident.

Following the concerns raised and questions arising from the recent purchase of the Litter Cam, it was confirmed that a briefing be arranged to update Members on the introduction of litter enforcement cameras to Maidstone, and to answer questions arising from the scheme.

RESOLVED: That

1. The collection of recycling be continued as a co-mingled stream;
2. In-House services be retained to provide street cleansing, and the waste collection contract be re-tendered; and
3. Maidstone Borough Council remains within the Mid Kent Waste Partnership.

160. DURATION OF MEETING

6.30 p.m. to 8.11 p.m.

Due to technical difficulties, the meeting adjourned between 7.58 p.m. and 8.10 p.m.

2020/21 WORK PROGRAMME

	Committee	Month	Origin	CLT to clear	Lead	Report Author
Refresh of Council Tenancy Strategy	CHE	01-Jun-21	Officer Update		John Littlemore	TBC
Heather House and Pavilion Update	CHE	01-Jun-21	Officer Update		William Cornall	Andrew Connors
Parks Delivery Plan for Biodiversity	CHE	01-Jun-21	Officer Update	No	Jennifer Shepherd	Andrew Williams
Provision of GP Services and Community Hub Update from the CCG	CHE	TBC	Cllr Request	No	Alison Broom	Alison Broom
Anti-Idling Policy	CHE	TBC	Cllr Request		John Littlemore	John Littlemore
Possible Provision of further Council owned G&T Sites	CHE	TBC	Cllr Request		William Cornall	TBC

Agenda Item 14

COMMUNITY, HOUSING AND ENVIRONMENT COMMITTEE

6 April 2021

Safeguarding Policy Refresh

Final Decision-Maker	CHE
Lead Head of Service	John Littlemore, Head of Housing & Community Services
Lead Officer and Report Author	Hannah Gaston, Policy & Information Manager
Classification	Public
Wards affected	All

Executive Summary

For the CHE Committee to endorse the refreshed and reviewed Policy for Safeguarding Children and Adults at Risk (Appendix 1). The policy has been streamlined to be more succinct and pertinent to the requirements of a local district council's level of responsibility.

Secondly, to agree to review the Safeguarding concerns raised through the new collection database tool on SharePoint. This will help to give overview of themes and trends coming through from our community, thus helping shape future services and support offers.

Purpose of Report

Decision

This report makes the following recommendations to this Committee:

1. That the refreshed safeguarding policy is adopted
2. To review safeguarding data collected across the organisation in twelve months

Timetable

Meeting	Date
Community, Housing and Environment Committee	Tuesday 6 April 2021

Safeguarding Policy Refresh

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	<p>The four Strategic Plan objectives are:</p> <ul style="list-style-type: none"> • Safe, Clean and Green <p>Accepting the recommendations will materially improve the Council's ability to achieve these. We have set out the reasons other choices will be less effective in section 2.</p>	Head of Housing & Community Services
Cross Cutting Objectives	<p>The report recommendation(s) supports the achievement(s) of the Health Inequalities and deprivation and social mobility are cross cutting objectives by enabling all those who touch our services to be provided with a robust Safeguarding response if required.</p>	Head of Housing & Community Services
Risk Management	<p>Already covered in the risk section.</p>	Head of Housing & Community Services
Financial	<p>The proposals set out in the recommendation are all within already approved budgetary headings and so need no new funding for implementation.</p>	Section 151 Officer & Finance Team
Staffing	<p>We will deliver the recommendations with our current staffing.</p>	Head of Housing & Community Services
Legal	<p>Accepting the recommendations will fulfil the Council's duties under the Care Act 2014 and the Children Act 2004.</p>	Legal Team
Privacy and Data Protection	<p>Accepting the recommendations will increase the volume of data held by the Council. We will hold that data in line with our retention schedules.</p>	Policy and Information Team

Equalities	The Equalities Impact Assessment was revisited as part of the Policy revision.	Senior Policy & Engagement Officer
Public Health	We recognise that the recommendations will not negatively impact on population health or that of individuals.	Senior Public Health Officer
Crime and Disorder	The recommendation will have a negative impact on Crime and Disorder. The Community Protection Team have been consulted and mitigation has been proposed	Head of Housing & Community Services
Procurement	No procurement activity required for this recommendation to be implemented.	Head of Housing & Community Services

2. INTRODUCTION AND BACKGROUND

- 2.1 The Safeguarding policy was initially written in 2016 in response to a recommendation made by Mid-Kent Audit who undertook an internal audit in 2015. That policy was again updated in 2019 but at nearly 50 pages long was well informed but challenging for staff, volunteers and others to navigate.
- 2.2 The refresh in 2020 was a response to feedback from the Safeguarding Champions, and a change of the Designated Safeguarding Officer. The policy has been reduced to 21 pages and is more pertinent for our responsibility for safeguarding as a local district council. The overall statutory responsibility for safeguarding lies with Kent County Council, but all districts and other professionals are an important part of safeguarding processes and the overall model.
- 2.3 The refreshed policy also has an updated flow chart/process map at the front to help Officers to seek the best route for reporting concerns.
- 2.4 Over the past ten to twelve months we have been refreshing not only the policy but also the Champions meeting and training. We have recruited new champions into the programme and have regular champions meetings and group supervision.
- 2.5 We also have developed a training schedule for those champions and moving forward we will be seeking to expand this training to the wider organisation.
- 2.6 Representatives from MBC also attend the Kent and Medway Safeguarding Adults Board and the Kent Safeguarding Children Multiagency Partnership, which is chaired by Alison Broom.

- 2.7 Finally, the Sharepoint central data collection point has been remodelled to again bring it up to date for requirements, and shrinking the amount of non-essential data collected. Alongside this a privacy notice has been issued on the MBC website which covers off our GDPR obligations.
-

3. AVAILABLE OPTIONS

- 3.1 To make no changes and continue to use the previous policy from 2019 which is very long winded and cumbersome to navigate. This is not the recommended route.
- 3.2 For the committee to endorse the refreshed and reviewed policy (dated January 2021) with immediate effect. Review the Safeguarding alerts raised internally via the Sharepoint system in April 2022 so Officers and members may see any themes or challenges arising from this. These findings can then be used to shape policy and services.
-

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 Our preferred option is for the committee to endorse the refreshed policy. This speaks to our aspirations of having a functional and practical robust response to safeguarding across the Council.
- 4.2 The policy is succinct and doesn't over burden the reader with information which is not pertinent for a district council obligations when managing a safeguarding concern or alert.
-

5. RISK

- 5.1 It is important that all customer facing organisations especially those that provide some level of social services have a Safeguarding Policy which is clear, concise and easy to understand. The refreshed version will enable the Council to fulfil its obligations and to support the safety of our local community.
- 5.2 Through the Safeguarding Champions meetings, we are trying to mitigate all potential risks and ensure staff are effectively and confidentially trained to provide a robust response to any concerns raised internally.

6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 6.1 None to report
-

7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 7.1 If the Committee endorses the policy, this will then be circulated to Safeguarding Champions to be discussed at the next Champions meeting. Also we will upload the document on to our MBC inter and intranet to ensure maximum coverage.
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8. REPORT APPENDICES

The following documents are to be published with this report and form part of the report:

Appendix 1: Policy for Safeguarding Children and Adults at Risk

Appendix 2: Draft safeguarding briefing note for staff



Maidstone Borough Council

Policy for Safeguarding
Children and Adults at Risk

DRAFT 2020

Version 3.0
January 2021



Document Purpose:	Guidance
Document Name	Policy for Safeguarding Children and Adults at Risk.
Author	Hannah Gaston, Housing & Inclusion Manager and Designated Safeguarding Officer
Target Audience	All staff and Members
Additional Audience	Contractors & commissioned services.
Description	This document sets out the requirements for Maidstone Borough Council to discharge its appropriate accountability to safeguarding children, young people and adults at risk.
Action Required	Read and embed Policy into normal practice.

Document History

09-01-2019	MBC Internal Safeguarding Board – Version 2
12-02-2019	Communities, Housing & Environment Committee – Version 2
January 2021	Draft – ready for CHE 6 th April 2021

Document Version

Version	Created By	Date	Main Changes
2.0	Matt Roberts	January 2019	New version including guidance on KCC's Integrated Front Door service, Mental Health, Suicide Awareness and Prevention guidance.
3.0	Hannah Gaston	January 2021	New version to accommodate changes within the procedure and staffing

QUICK VIEW – REFERRAL PROCEDURE

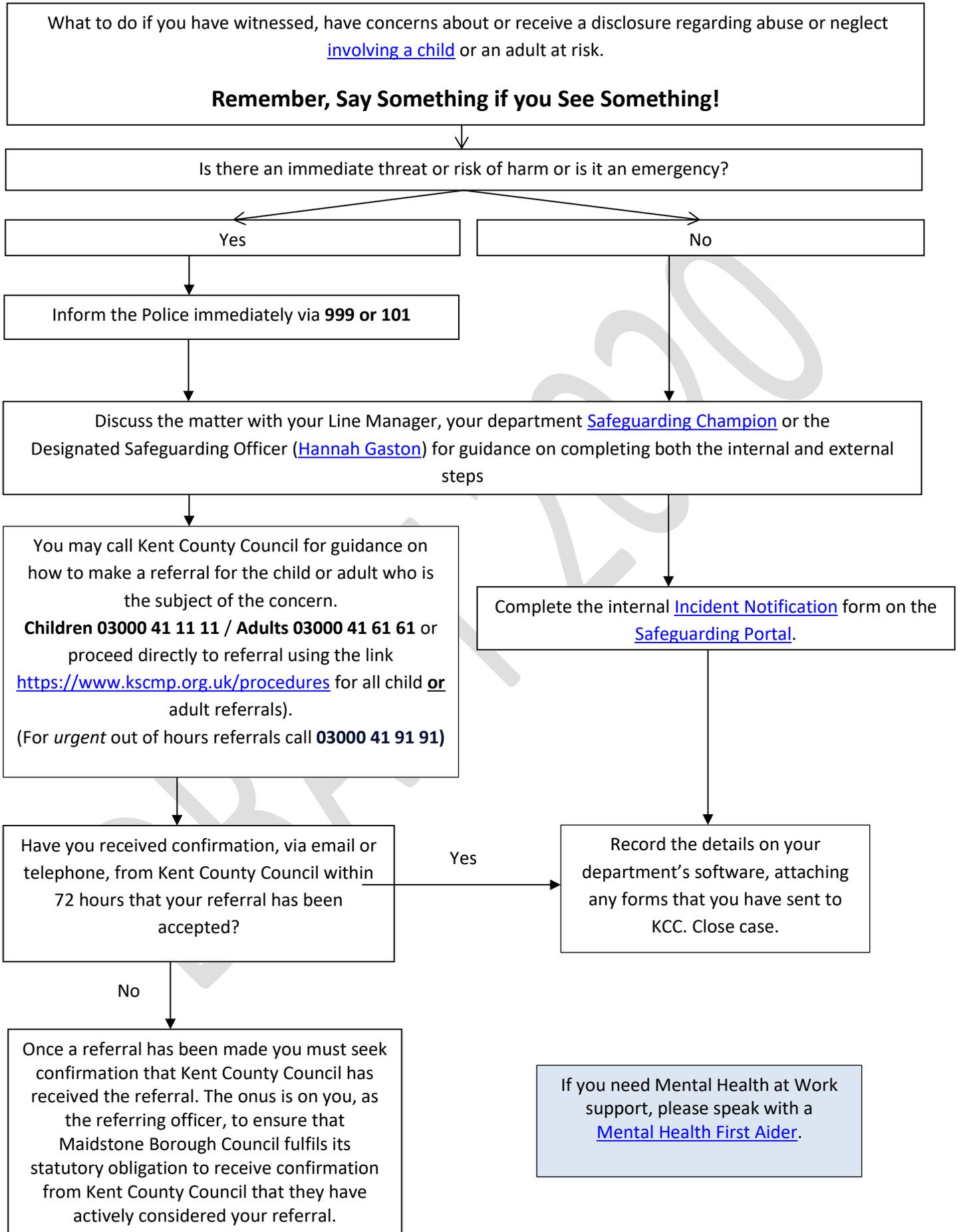


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DRAFT 2020

1. EXECUTIVE SUMMARY

- 1.1 This policy sets out Maidstone Borough Council's (MBC) commitment and intent towards its statutory and moral duties to safeguard children and adults who come into contact with its services and activities and ensure that they are protected from harm, exploitation and abuse. It follows the principles of the Kent Safeguarding Children's Board and the Kent & Medway Adult Safeguarding Board.
- 1.2 It is important that all members of staff, councillors and those operating as part of commissioned services, either at a strategic or operational level, understand that;

'Safeguarding is everyone's responsibility'

- 1.3 So whether you are a permanent member of staff, are on a temporary contract, are a casual or agency worker, volunteer, contractor or an elected Member, everyone carrying out the business of MBC has the same duty to report any witnessed or suspected concerns of abuse or neglect.
- 1.4 It is not the responsibility of the Council, its employees, elected members or contracted staff to determine whether abuse, neglect or exploitation have or are taking place nor investigate any claims made, rather it is our duty to inform the most appropriate authority. This policy sets out the procedures that must be followed to report a suspicion or allegation to Kent Police or to Kent County Council or to another service in order to meet MBC's responsibility.

Professional Curiosity

- 1.5 We ask that you be professionally curious in your role; if something seems out of place or does not feel right then seek to obtain enough information to reassure yourself that all is well. Maintain a good standard of documentation; record what you have seen or heard, be factual and avoid making assumptions. If you make use of paper records then ensure they are stored securely.
- 1.6 All concerns about safeguarding, and referrals made by MBC to KCC or other agencies and the responses received, need to be recorded centrally on the [Intranet Safeguarding Portal](#) and will be reviewed by the Designated Safeguarding Officer (DSO).
- 1.7 This policy will be reviewed in line with any changes in legislation, Government guidance and the periodical reviews of the Kent and Medway Safeguarding Policy, Protocols and Guidance.

2. SAFEGUARDING CHILDREN & YOUNG PEOPLE OVERVIEW

- 2.1 **The Children Act 1989** (as amended) states that every child has a right to protection from abuse, neglect and exploitation. Statutory guidance on making arrangements to safeguard and promote the welfare of children under the **Children Act 2004** came into force on 1 October 2005.
- 2.2 Maidstone Borough Council's duties under the Act are:
- 2.2.1 **To co-operate to improve children's wellbeing: Section 10 of the Act requires** as a relevant partner we will cooperate, so far as our statutory duties permit, to improving the child's wellbeing, as envisaged by Section 10 of the Act
- 2.2.2 **To safeguard and promote the welfare of children:** Section 11 requires a range of organisations (including district councils) to make arrangements for ensuring that their functions, and services provided on their behalf, are discharged with regard to the need to safeguard and promote the welfare of children.

2.3 Expectations on Maidstone Borough Council include:

- The **commitment of the Corporate Leadership Team (CLT)** to the importance of safeguarding and the promotion of wellbeing and clear accountability for work on safeguarding and promoting wellbeing.
- A **clear statement of responsibility** to employees and elected Members (contained in this policy),
- Take the **voice of children and young people** into account to help shape services.
- **Safe recruitment** procedures for those who work with or come into contact with children and young people and vulnerable adults.
- Provide **appropriate training**, learning and development for employees.
- Ensure **effective working relationships** are in place, both within the authority and with other agencies to safeguard and promote wellbeing, and to share information effectively and appropriately.

3. SAFEGUARDING ADULTS AT RISK OVERVIEW

3.1 The legal responsibilities for safeguarding adults at risk of abuse or neglect are set out in Part 1 of the Care Act 2014 with Care and Support Statutory Guidance issued in 2014 to support implementation.

3.2 Kent County Council is the lead agency which provides social care services. Maidstone Borough Council is a key partner and has a duty to co-operate in order to protect adults from abuse or neglect. In exercising their duties Kent County Council must:

- **Make Safeguarding Enquiries:** or request others to make them, if an adult is subject to or at risk of abuse or neglect.
- **Establish a Safeguarding Adults Board:** which develops, shares and implements a joint safeguarding strategy
- Carry out **Safeguarding Adult Reviews (SARs):** when an adult dies as a result of abuse or neglect, whether known or suspected, and there is concern that partner agencies could have worked more effectively to protect the adult. Or if an adult has not died, it is known or suspected that the adult has experienced serious abuse or neglect.
- **Arrange an independent advocate:** to represent and support an adult who is subject to a Safeguarding Enquiry or Adult Review
- **Co-operate with its relevant partners:** in order to protect adults experiencing or at risk of abuse or neglect.

3.3 All sectors, including district councils are expected to apply the following six key principles in their adult safeguarding role:

- **Empowerment:** people being supported and encouraged to make their own decisions and be able to give informed consent.
- **Prevention:** it is better and more cost effective to take action before harm occurs.
- **Proportionality:** provide the least intrusive response appropriate to the risk presented.
- **Protection:** support and representation for those in greatest need
- **Partnership:** local solutions through services working with their communities. Communities have a part to play in preventing, detecting and reporting neglect and abuse
- **Accountability:** accountability and transparency in delivering safeguarding

3.4 Safeguarding activity should be person-led and outcome-focused. It is about engaging the person in a conversation about how best to respond to their safeguarding situation in a way that enhances involvement, choice and control as well as improving quality of life, wellbeing and safety.

4. ROLES AND ACCOUNTABILITY

- 4.1. Whilst safeguarding is everyone's responsibility, there are several key roles that partner agencies and employees within MBC hold.
- 4.2. **Kent County Council (KCC)** is the lead authority for safeguarding children and adults at risk. The Specialist Children's Services and Adult Care and Support Service are responsible for making enquiries in to allegations of abuse and neglect, determining whether it has or has not taken place and taking action to protect the child or vulnerable adult.
- 4.3. **Kent Safeguarding Children Board** sets out how different partner agencies should co-operate to safeguard children and has a role in making sure that arrangements work effectively for the purposes of safeguarding and promoting the welfare of children.
- 4.4. **Kent and Medway Safeguarding Adults Board** makes sure that all member agencies are working together to help keep adults safe from harm and protect their rights.
- 4.5. **Kent Police** has a duty to investigate criminal offences and refer any suspicion, allegation or disclosure that a child or vulnerable adult is suffering and likely to suffer significant harm to Kent County Council.
- 4.6. **Maidstone Borough Council's** Chief Executive Officer has ultimate accountability for safeguarding; this means ensuring that employees and elected Members comply with the principles contained in this policy and providing assurance that the Council complies with its statutory requirements. The CEO discharges these functions by appointing a Designated Safeguarding Officer (DSO) who is the Housing and Inclusion Manager.
- 4.7. **MBC's Designated Safeguarding Officer (DSO) and Deputy Designated Safeguarding Officer (DDSO)** are senior officers who lead on all safeguarding issues and acts as the child and adult protection professional on behalf of MBC. Their responsibilities include:
 - Supporting the CEO and Wider Leadership Team to provide strategic direction for the safeguarding agenda including the protection of children and adults at risk.
 - Champion the importance of safeguarding and promote the welfare of children and adults at risk throughout the Council including providing quarterly updates to the Internal Safeguarding Board.
 - Ensure compliance with legislation including that contained within section 11 of the Children Act 2004, Part 1 of the Care Act 2014 and Government guidance.
 - Ensure that there is an up to date policy and procedure in place relating to MBC's roles and responsibilities for the safeguarding and protection of children and adults at risk.
 - Ensure that employee and Member training is both available, undertaken and refreshed as required.
 - Provide advice and support to staff to discuss concerns and ensure those concerns are respond to appropriately.
 - Represent MBC at inter-agency meetings and liaise with other organisations as necessary.
- 4.8. **MBC Safeguarding Champions** work with the Designated Safeguarding Officer to provide advice and support to colleagues to ensure that concerns are responded to quickly and correctly. Each Champion agrees to undertake additional training to be able to perform this role. The Champions meet on a quarterly basis to share best practice and awareness of current topics and issues.

- 4.9. **MBC's Internal Safeguarding Meeting:** monitors this policy and any safeguarding referrals which are made by the Council. Chaired by a senior officer, this group meets quarterly to discuss any reports of abuse or neglect raised through the reporting system, whilst ensuring that MBC is taking its safeguarding responsibilities seriously and complying with legal requirements.
- 4.10. **Human Resources:** works to ensure that stringent recruitment procedures are in place for ensuring safe working practices and that safe recruitment practices are followed for job roles that may involve working with children and adults.
- 4.11. **Line Managers:** ensure that appropriate checks are made for all job roles that involve working with children and adults at risk. They also carry out the correct induction process for all new employees including booking the appropriate training and ensuring they are made aware of this policy and have the appropriate ongoing training. Line managers will also be responsible for on-going discussions during day to day management of their teams.
- 4.12. **All employees, contractors, volunteers and Members:** ensure that the activities which they are involved in during the course of their work are carried out in accordance with this policy and that they follow any guidance relating to it and to have undertaken basic safeguarding training, such as the ELMS training packages.

5. SAFEGUARDING CHAMPIONS

- 5.1. Safeguarding Champions have been introduced across the authority to ensure that any safeguarding concerns are quickly and adequately responded to and to assist the DSO in ensuring the Council is compliant with its requirements.
- 5.2. Each Champion is required to be trained to a level which ensures they are competent and an understanding of Safeguarding with confidence. Their roles will include:
- Promoting awareness of good safeguarding practices in their department;
 - Be a source of advice and support to assist colleagues in responding to any concerns;
 - Ensure that referrals are made to the right agencies;
 - Ensure that an internal safeguarding notification is completed via the Safeguarding Portal on the intranet and;
 - Attend the quarterly Safeguarding Champions meetings as and when they're required.
- 5.3. The training covers professional curiosity, Child Sexual Exploitation (CSE) and good practices, such as keeping suitable case notes and the thresholds required for a referral to be made to children's services, the practices being virtually identical for adults.
- 5.4. The log of current safeguarding champion's is found [here](#)

6. CHILDREN: RECOGNISING ABUSE AND NEGLECT

- 6.1. Safeguarding children is defined in Working Together to Safeguard Children 2018 as:
- Protecting children from maltreatment
 - Preventing impairment of children's health or development
 - Ensuring that children grow up in circumstances consistent with the provision of safe and effective care; and
 - Taking action to enable all children to have the best outcomes.

- 6.2. A child is anyone under the age of 18 years. The fact that a child has reached 16 years of age, is living independently or is in further education, is a member of the armed forces, is in hospital or in custody in the secure estate, does not change his/her status or entitlements to services or protection.
- 6.3. If you are worried for a child or become aware of a child in need, then please contact Kent County Council on 03000 42 23 40 or via email MaidstoneEarlyHelp@kent.gov.uk
- 6.4. If you feel there is an urgent concern this should be addressed immediately please call the police on 999 or for non-emergencies 101.

Child Sexual Exploitation (CSE)

- 6.5. Sexual exploitation of children and young people involves exploitative situations, contexts and relationships where young people (or a third person or persons) receive ‘something’ (e.g. food, accommodation, drugs, alcohol, cigarettes, affection, gifts, money) as a result of them performing, and/or another or others performing on them, sexual activities.
- 6.6. If you have any concerns in relation to CSE these should be discussed immediately with your Safeguarding Champion, Line Manager or the DSO within the Council. Appropriate follow up will then commence most probably with a report to the police or via the Kent Safeguarding Board. In Maidstone, the Community Safety Unit from the local police station sits within the Community Protection Team, so advice can be sought through this means too.

Missing Children

- 6.7. Every situation is different and there are no set rules about when a child should be considered missing; however if you are concerned about a very young child you should contact the emergency services immediately via 999. For young people, if you have any doubts about whether to formally report them missing, for example, when a teenager fails to return after a time they have agreed, contact the police.

7. SAFEGUARDING ADULTS AT RISK

- 7.1. An adult is anyone aged 18 or over. Where someone is 18 or over but is still receiving children’s services and a safeguarding issue is raised, the matter should be dealt with through adult safeguarding arrangements. For example, this could occur when a young person with substantial and complex needs continues to be supported in a residential educational setting until the age of 25.
- 7.2. Safeguarding duties apply to an adult who has care and support needs (whether or not the local authority is meeting any of those needs) and is experiencing or is at risk of, abuse or neglect and as a result of those care and support needs is unable to protect themselves from either the risk of, or the experience of abuse or neglect.
- 7.3. If you are concerned about an Adult please speak to your Safeguarding Champion, the Designated Safeguarding Officer or Kent County Council, contact details are in section 22 (Page 19) of this policy.

Abuse and Neglect

- 7.4. The [Multi-Agency Safeguarding Adults Policy, Protocols and Practitioner Guidance for Kent & Medway](#), provides a guide to the various categories of abuse and details the indicators. The main categories of abuse include:
 - Physical
 - Sexual
 - Psychological
 - Financial or material
 - Discriminatory
 - Exploitation
 - Female Genital Mutilation

- Isolation or withdrawal from services or support networks
- Neglect and acts of omission
- Self-neglect and self-injurious behaviour
- Modern Slavery (incl. Human Trafficking)
- Domestic Abuse

7.5. **Abuse** is a violation of an individual's human and civil rights by any other person or persons. Abuse can happen to anyone, regardless of age, gender, class or ethnicity. Abuse may be a single act or repeated over a period of time and affect one person or more. It may take one form or a multiple of forms or follow a pattern of abuse. The lack of appropriate action can also be a form of abuse.

7.6. **Neglect** is a failure to care for someone with whom you have a responsibility to care for or represent, for example, by failing to provide adequate food, clothing, medical aid or accommodation. It can be a form of abuse if it is intentional, however, not all incidents of neglect are intentional and may be because a care giver is finding it hard to cope or is not receiving sufficient help.

Self-Neglect & Hoarding

7.7. **Self-neglect or self-injurious behaviour** covers a wide range of behaviour where a person neglects to care for one's own personal hygiene, health or surroundings, this can often have a negative effect on the wider community and sometimes exhibits as anti-social behaviour, while not exhaustive the list includes behaviours such as;

- Obsessive hoarding;
- Living in very unclean, sometimes verminous circumstances;
- Neglecting household maintenance, thereby creating hazards within and surrounding the property;
- Erratic or eccentric behaviour/lifestyles;
- Declining or refusing prescribed medication and / or other community healthcare support;
- Repeated episodes of anti-social behaviour – either as a victim or perpetrator.

7.8. An individual may be considered as self-neglecting and therefore maybe at risk of harm where they are:

- Either unable, or unwilling to provide adequate care for themselves,
- Not engaging with a network of support,
- Unable to or unwilling to obtain necessary care to meet their needs,
- Unable to make reasonable, informed or mentally capacitated decisions due to mental disorder (including hoarding behaviours), illness or an acquired brain injury,
- Unable to protect themselves adequately against potential exploitation or abuse,
- Refusing essential support without which their health and safety needs cannot be met, and the individual lacks the insight to recognise this.

7.9. If you identify someone who you believe is self-neglecting seek advice from a Safeguarding Champion or the DSO. A referral to Adult Social Services may be needed. Any concerns or referrals must be recorded on the Safeguarding Portal on the intranet.

Modern slavery

7.10. This encompasses slavery, servitude, forced and compulsory labour and human trafficking. Traffickers and slave drivers coerce, deceive and force individuals against their will into a life of abuse, servitude and inhumane treatment.

7.11. From 1 November 2015, public authorities have a duty to notify the Secretary of State of any individual identified in England and Wales as a suspected victim of modern slavery. This duty includes district

councils and applies to both children and adult victims. The information provided in a notification will be used to build a better picture of modern slavery in England and Wales, and to improve law enforcement response, by sharing the information with the National Crime Agency and other law enforcement agencies.

- 7.12. The Home Office [Guidance: duty to notify the Home Office of potential victim of slavery](#), should be referred to and a notification to dutytonotify@homeoffice.gsi.gov.uk made via email or call the Modern Slavery Helpline: 0800 0121 700.
- 7.13. This notification does not replace a safeguarding referral and should not be relied upon to safeguard an individual at risk. The existing safeguarding processes, as set out in this policy, should therefore still be followed in tandem with a notification.

8. DOMESTIC ABUSE

- 8.1. The term domestic abuse has replaced domestic violence, because it includes any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members regardless of gender or sexuality. The abuse can encompass, but is not limited to psychological, physical, sexual, financial or emotional abuse.
- 8.2. Other forms of domestic abuse can include so called 'honour' based violence, female genital mutilation and forced marriage.
- 8.3. Maidstone Borough Council has trained employees who are able to complete the Risk Indicator toolkit (DASH) where it is identified that an adult at risk is in a domestic abuse situation. Contact a Safeguarding Champion or the DSO for advice.

One Stop Shop

- 8.4. A person who maybe the victim of domestic abuse can be signposted to the **One Stop Shop (OSS)** Which operates every Tuesday morning between 09:30 and 11:30 at the Salvation Army, Union Street, Maidstone. **(Currently this service is not operational due to Covid-19)**. The OSS offers free advice, information and support from a range of agencies including legal advice from a qualified solicitor, specialist police officers, housing advice and signposting to counselling and therapeutic services.
- 8.5. The **National Domestic Violence Helpline (0808 2000 247)** is a 24hr helpline for women experiencing domestic abuse, their family, friends, colleagues, and others calling on their behalf. The Helpline can give support, help and information wherever the caller might be in the Country.

Clare's Law

- 8.6. The [Domestic Violence Disclosure Scheme \(DVDS\)](#) is often called '**Clare's Law**' after the landmark case that led to it. Clare's Law gives any member of the public the right to ask the police if their partner may pose a risk to them. Under Clare's Law, a member of the public can also make enquiries into the partner of a close friend or family member.
- 8.7. Once an application is made, police and partner agencies will carry out a range of checks. If these reveal that their partners has a record of abusive offences, or suggest a risk of violence or abuse, the police will consider sharing this information.

9. EXTREMISM AND RADICALISATION

- 9.1. The Counter Terrorism and Security Act 2015 places a duty on authorities to have due regard to the need to prevent people from being drawn into terrorism, referred to under the term 'Prevent'. This statutory duty includes district councils and applies to both children and adults. Prevent forms part of Contest, the Governments plan for tackling terrorism; Prevent, Prepare, Protect and Pursue.
- 9.2. If a child or adult are identified as being at risk radicalisation, either by themselves, the actions of others, or drawn into committing act of terrorism, then employees should first discuss their concerns with their Line Manager or the Safeguarding Champion. The DSO should also be consulted to assist the Community Safety Unit with intelligence gathering. Please also follow the link for up to date advice on who to contact. <https://www.kscmp.org.uk/procedures/prevent>

10. MENTAL HEALTH & SUICIDE AWARENESS

What is Mental Health?

- 10.1. The term mental health can be defined in a number of ways, some centre on a person's positive psychological wellbeing; others describe it as the absence of mental illness or mental health issues.
- 10.2. There are different types of mental illness, some of which are common, such as depression and anxiety disorders, and some which are not as common, such as schizophrenia and bipolar disorder. However, mental illness, as with any health difficulty, cause disability, which is sometime severe. This is not always well understood by people who have never experienced a mental illness.

About Suicide

- 10.3. Suicide is a major public health issue, each year people of all ages, ethnicities and backgrounds die as a result of taking their own life. Many more experience suicidal thoughts at one time or another.
- 10.4. Suicide is preventable. Most suicidal people do not want to die; they simply do not want to live with the pain they are experiencing any longer. We can learn to spot the warning signs so we can help identify and support someone experiencing suicidal thoughts and sign post them to agencies and services who can help them.
- 10.5. The Council is committed to ensuring that all employees are fully supported with mental health therefore in partnership with Mental Health England the Council has trained some staff in Mental Health First Aid (MHFA). The MHFA will also help them to deal with mental health situations with external customers/general public, however this is not the primary purpose of the role. The first aid is given until appropriate professional help is received or the crisis resolves.
- 10.6. More information on MHFA can be found on the intranet or read the [MHFA Policy](#).
- 10.7. A list of MHFA providers can be found in the kitchen area within Maidstone House or online [here](#). At this time with staff working predominately from home, due to Covid 19, colleagues should email or ring first aiders for support and guidance.

11. SUICIDE PREVENTION

- 11.1. It is important to act promptly if you think that a client or someone you are in communication with is suffering from mental health issues and who may be considering suicide. Tell the person your concerns about them however understand the person may not want to talk to you, in this situation offer to help find them someone else to talk to. See Appendix 1

- 11.2. If you can do so without breaking communication with the person contact a MHFA, a Safeguarding Champion or the DSO for advice. However if you suspect the person is actively seeking to take their own life and is at imminent risk call 999.

12. RESPONDING TO A DISCLOSURE

- 12.1. If anyone discloses abuse or neglect, tell the person that:
- You will treat the information seriously;
 - Reassure them that they did the right thing to tell you;
 - You have to inform an appropriate person;
 - You/the service will take steps to protect and support them;
- 12.2. Pass on the information to those with a legitimate need to know, such as your Line Manager, a Safeguarding Champion or the DSO.

Information Gathering

- 12.3. Any referrals made must be as comprehensive as possible, hence the necessity for making a detailed report at the time of the disclosure/concern. Information included should cover the following as a minimum:
- The nature of the allegation and a through account of the risk concern raised
 - The child or adult at risk's account, if it can be given, of what has happened and how any bruising or other injuries occurred,
 - Witnesses to the incident(s),
 - Any times, dates or other relevant information,
 - A clear distinction between what is fact, opinion or hearsay.
- 12.4. When recording the incident of abuse or neglect:
- Note what was said,
 - Describe the circumstances in which the disclosure came about,
 - Note the setting and anyone else who was there at the time,
 - Be aware that your report may be required later as part of a legal action or disciplinary procedure,

Consent

- 12.5. If you are making a referral to access Kent County Council's Children's Services then consent should be obtained from the parent or guardian, unless there is an immediate or urgent risk concern. Should a parent or guardian refuse to consent to a referral being made, consideration should be given to the impact this may have on the level of concern for the child's welfare, and the parent's or guardian's ability to meet the child's needs. If the child is likely to be placed at increased risk by the lack of a referral then one should be made despite the lack of consent.
- 12.6. If you are making a referral, immediate advice should be sought from either a Safeguarding Champion or the Designated Safeguarding Officer on whether to advise the parent or carer about the referral. If you remain unsure you should seek a consultation from the KCC Integrated Front Door service.
- 12.7. Remember that the safety of the child is of paramount importance and consider whether informing a parent or guardian may place the child at increased risk or may compromise evidence gathering.

Mental Capacity

- 12.8. Every adult has the right to make their own decisions and it is assumed they have mental capacity unless it is proved otherwise by a formal mental capacity assessment undertaken by a trained professional.
- 12.9. Mental capacity is the ability to understand and retain the information relevant to a specific decision, to use the relevant information as part of the process of making that specific decision, to weigh up potential consequences and to communicate the decision, at the time the decision needs to be made. When in communication with someone you must establish, to the best of your ability, whether the person understands what you are telling them and the risks that may apply to them.

13. MAKING REFERRALS FOR CHILDREN

- 13.1. The Kent County Council Integrated Front Door brings together the Central Duty Team and Early Help Triage Team into a single integrated team that has been established to seek to ensure that KCC sends service requests to the appropriate destination and get the service need right first time for the majority of families.
- 13.2. The telephone number for the Integrated Front Door is **03000 41 11 11**. Out of Hours Services can be contacted on **03000 41 91 91**. The KCC website with pertinent information is <https://www.kscmp.org.uk/guidance/worried-about-a-child>
- 13.3. **If there are concerns that a child may be suffering significant harm**, or where seeking consent for a referral from the parent or guardian and discussing the concerns may place the child at an increased risk of harm, the information must be **telephoned directly through on 03000 41 11 11 or to Kent Police via 999**.

14. Making Referrals for Adults

- 14.1. [The Kent and Medway Multi-agency Safeguarding Adults Policy, Protocols and Guidance](#) document has been re-developed to meet and work within the safeguarding adult lawful requirements set out in the [Care Act 2014](#).
- 14.2. To check whether an adult at risk is known to Social Care Health and Wellbeing, please call the Central Referral Unit for a consultation: **03000 41 61 61**. They will be able to confirm whether the adult is already has a Case Manager or Care Coordinator.
- 14.3. It is expected that professionals who raise a concern will complete the KASAF Stage 1 as fully as possible using all of the prompts provided within the form, to support the timely evaluation of the risks. Failure to do so may impede the process.
- 14.4. The Kent Adult Safeguarding Alert Form (KASAF) can be found on this link <https://www.kent.gov.uk/social-care-and-health/information-for-professionals/adult-safeguarding/adult-protection-forms>
- 14.5. If the adult is already known to Kent County Council, they will send the referral directly to the relevant Case Management Team, either the Learning Disability, Mental Health or Older Persons and Physical Disability Team.
- 14.6. Reporting a concern should not be delayed by an attempt to obtain more information. A summary of any consultation with, or referral to, the Central Referral Unit will be issued to the referring officer.

This needs to be held on file and included on the alert raised on the Safeguarding Portal. Speak to a Safeguarding Champion or the DSO if you have any questions about how to do this.

- 14.7. If your concerns require urgent attention outside of normal office hours (8.30am-5.00pm Monday-Friday, excluding bank holidays) and cannot wait until the next working day contact the **Out of Hours Team on 03000 41 91 91**.
- 14.8. If a response is not received within 72 hours of making a referral, the referring officer should follow up with the Central Referral Unit or the relevant case management team. If a case has been referred to the Police due to an immediate risk of harm or emergency, the Police crime report number should be noted and included in case notes and on the Safeguarding Portal.
- 14.9. Before making a referral consider speaking to a Safeguarding Champion or the DSO for advice (see section 5.4 above). Any referrals made need to be recorded on the [Safeguarding Portal](#).

15. ESCALATING A REFERRAL

- 15.1. On rare occasions MBC employees may feel that the response to a referral does not represent, in their opinion, the best course of action in relation to the referred case. If so, then concerns should be raised with the DSO.
- 15.2. The DSO will make the final decision as to whether a case will be referred back to Kent County Council, expressing MBC's continuing concerns in relation to the welfare of the individual(s) concerned and may bring the case in question to the attention of the Internal Safeguarding Board members.

16. ALLEGATIONS OF ABUSE INVOLVING STAFF

- 16.1. Any accusation made about an employee, volunteer or member being involved in abuse towards a child or adult should be reported to their Line Manager, a Head of Service, Corporate Leadership Team or the Designated Safeguarding Officer immediately. Alternatively concerns may also be reported according to MBC's Whistleblowing Policy. At times Kent Police, Kent County Council or the regulatory authorities may be alerted regarding the suspected abuse.
- 16.2. Formal HR and investigative procedures will be followed if an allegation of abuse is made. Irrespective of the findings of the Kent County Council or of Police inquiries, MBC will assess all individual cases under disciplinary procedures to decide whether an employee has breached MBC policy and will reach a decision based on the available information and decide on a balance of probability whether an allegation is founded. The welfare of the child or adult at risk will always remain paramount.

17. COMPLAINTS

- 17.1. On occasions members of the public, partner agencies or MBC employees may feel that insufficient action has been taken by MBC in relation to a specific case or concern.
- 17.2. **Members of the public and partner agencies:** should be encouraged to first raise their concerns directly with the staff member they have been dealing with or contact our Customer Services team if they are unsure who they have been dealing with. If the matter is not resolved informally then they should be directed to [Maidstone Borough Council's Corporate Complaints Procedure](#).
- 17.3. **Maidstone Borough Council employees:** should report their concerns to their Line Manager or the Designated Safeguarding Officer. Alternatively, employees may also report this through MBC's Whistleblowing Policy.

- 17.4. If employees do not wish to raise their concerns internally they can report their concerns to the national Child Abuse Whistleblowing Helpline (0800 028 0285 or email help@nspcc.org.uk).

18. INFORMATION SHARING, DATA PROTECTION AND GDPR

- 18.1. MBC is committed to complying with the data protection principles when processing personal data and special categories data or sensitive data under the General Data Protection Regulation 2018 (GDPR) and the Data Protection Act 2018 (DPA).
- 18.2. MBC also have a privacy notice setting out the parameters of when information will be shared if a safeguarding concern is raised <https://maidstone.gov.uk/home/privacy-and-cookies/service-level-privacy-notice/safeguarding>
- 18.3. Both the GDPR and the Human Rights Act (1998) (HRA) Article 8, make it clear that the processing of personal data must respect the rights and freedoms of the data subject (the individual), but at the same time be adequate enough for the council to carry out its functions effectively.
- 18.4. The sharing of information is vital to safeguarding, a key factor in many case reviews has been a failure to record information, to share it or to understand its significance and then take appropriate action.
- 18.5. Government guidance, [Safeguarding Practitioners: Information Sharing Advice \(July 2018\)](#), highlights the seven golden rules for information sharing regarding children, young people, parents and carers. This advice is for all frontline practitioners and senior managers who have to make decisions about sharing personal information on a case-by-case basis.
- 18.6. The first of these rules is to remember that **the General Data Protection Regulation (GDPR), Data Protection Act 2018 and human rights law are not barriers to justified information sharing**, but provide a framework to ensure that personal information about living individuals is shared appropriately.

The Kent & Medway Information Sharing Agreement

- 18.7. MBC is a signatory of the [Kent & Medway Information Sharing Agreement](#) (ISA) which provides a framework to enable a number of organisations and public bodies across Kent and Medway to share personal information. Their form can be used to record and evidence why information sharing was necessary for audit purposes.
- 18.8. The Agreement provides for openness and transparency in information sharing, as well as appropriate governance and support, in order to assist signatory organisations and public bodies to share personal information lawfully, safely and securely and reflects the requirements of the General Data Protection Regulation (GDPR) and the UK Data Protection Act 2018 (DPA 2018).

19. SAFE RECRUITMENT

- 19.1. All MBC employees will be appointed in accordance with its Recruitment and Selection Policy and Procedures and its policy on Disclosures Barring Service (DBS) checks on employees. These are designed to provide a rigorous and thorough selection process and to carry out all necessary checks, particularly on individuals seeking to work with children, young people and adults at risk.
- 19.2. There are three types of Disclosure Barring Service (DBS) checks: standard, enhanced and enhanced with a barred list check. MBC requires employees to have an enhanced DBS check if they have unsupervised contact with children, young people and adults at risk or fulfil a safeguarding role such as a Designated Safeguarding Officer.

- 19.3. Line Managers are responsible for deciding which of their employees require a DBS check and for ensuring that DBS checks are kept up to date, through liaising with Human Resources.
- 19.4. For contractors and agency staff, MBC has a policy of requiring all relevant contractors and agency staff who have access/contact with children, young people and adults at risk to undergo an enhanced DBS check. The contract must stipulate whether a current DBS disclosure is required.

20. TRAINING

- 20.1. Employees must accept and be able to recognise their responsibilities with regard to their own good practice and the reporting of signs of suspected abuse or neglect to either the Police or Kent County Council and understand MBC's statutory obligation to ensure confirmation is received from Kent County Council that any referrals made are being actively dealt with.
- 20.2. MBC provides training and development opportunities to all members of staff and Members. As a minimum level of training all staff are expected to complete the ELMS eLearning courses for Safeguarding Children, Safeguarding Adults and Prevent. Managers are expected to ensure that staff have completed the eLearning packages and that they themselves have completed the Safer Recruitment training.
- 20.3. More in-depth training is available which is provided through the Kent Safeguarding Children's Board. This training is set over four levels as set out below;

Level 0 – No contact with children/young people, vulnerable adults and/or their parents or carers.
Level 1 - Limited contact with children/young people, vulnerable adults/and/or parents/carers with no unsupervised contact.
Level 2 - Regular contact with children/young people/vulnerable adults and/or parents/carers or any unsupervised contact
Level 3 - Professional advisers and designated leads for children's and/or vulnerable adults safeguarding irrespective of the level of contact with children/young people/vulnerable adults and/or parents/carers.
- 20.4. Staff acting as Safeguarding Champions will be required to refresh their training every two years, and should be documented within their appraisals.

21. EQUAL OPPORTUNITIES

- 21.1. The Equality Act 2010 places a legal obligation on public authorities to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation; to advance equality of opportunity; and to foster good relations, between persons with different protected characteristics.
- 21.2. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
- 21.3. Maidstone Borough Council will have full and proper regard to the Equality Act 2010 when making safeguarding referrals under this policy, so to avoid any possible indirect discriminatory impact on particular groups.

22. CONTACT INFORMATION

Maidstone Borough Council

John Littlemore
Chair of the MBC Internal Safeguarding Board
Maidstone Borough Council, Maidstone House, King Street, ME15 6JQ
Tel: 01622 60 2019
Email: Johnlittlemore@maidstone.gov.uk
Hannah Gaston – Designated Safeguarding Officer (DSO)

Housing Inclusion Manager,
Housing & Communities
Tel: 01622 60 2262
Email: HannahGaston@maidstone.gov.uk
Sarah Ward – Deputy Designated Safeguarding Officer (DDSO)
Housing & inclusion Team Leader
Email: sarahward@maidstone.gov.uk
Tel: 01622 602157

Kent County Council – <https://www.kent.gov.uk/social-care-and-health/report-abuse>

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Appendix 1 – Suicide Prevention Information

<p>The Samaritans</p> <p>Freephone 116 123 These services are available 24/7 all year round. Visit www.samaritans.org/</p>	
<p>Release the Pressure</p> <p>A 24/7 helpline with trained professionals. Call 0800 107 0160 A webchat is also available at; www.kent.gov.uk/social-care-and-health/health/release-the-pressure</p>	
<p>Maidstone Community Mental Health Team</p> <p>Call 01622 766900 or email Kamnascpt.maidstonecmht@nhs.net</p>	<p>CRISIS Team</p> <p>Call 0300 222 0123 for urgent support for someone who is not already open to services.</p>
<p>The Hope Café Maidstone</p> <p>Hope Café is an out-of-hours crisis support service in Maidstone. It operates from Fridays 5pm to 8:45pm & Sundays 1pm to 4:45pm At the Mid Kent Mind wellbeing center: 23 College Road, Maidstone, ME15 6YH Contact Mid-Kent Mind 01622 692 383 or email mindhelp@mmkmind.org</p>	
<p>The Silver Line</p> <p>Helpline for older people, they offer a service which is available 24/7.</p> <p>Call 08004 708090 www.thesilverline.org.uk/</p>	<p>Campaign Against Living Miserably (CALM)</p> <p>CALM is a charity dedicated to preventing male suicide.</p> <p>Call 0800 58 58 58 5pm to midnight every day.</p> <p>They also offer a live webchat; www.thecalmzone.net/help/webchat/</p>
<p>Papyrus</p> <p>Are the national charity for the prevention of suicide by young people (people under 35), they run HOPE Line UK, a dedicated suicide prevention hotline for anyone up to the age of 35 who maybe feeling suicidal or anyone who is concerned about a young person.</p> <p>Call 0800 068 41 41 Monday to Friday 10am to 10pm, Weekends 2pm to 10pm, Bank holidays 2pm to 5pm.</p> <p>You can also text 07786 209 697 or email pat@papyrus-uk.org</p>	

<p>Grassroots</p> <p>Grassroots is a small charity focused on suicide prevention.</p> <p>Email: office@prevent-suicide.org.uk</p> <p>They have developed a mobile app for those at risk of suicide and people worried about someone. Available from the Apple Apps store or Google Play.</p> <p>www.prevent-suicide.org.uk/stay_alive_suicide_prevention_mobile_phone_application.html</p>	
<p>Student Minds</p> <p>Student Minds is the UK’s student mental health charity.</p> <p>Email: info@studentminds.org.uk or visit www.studentminds.org.uk</p>	<p>Childline</p> <p>For children and young people under 19. Call 0800 1111</p> <p>The number will not show up on a phone bill.</p>
<p>Place 2 Be</p> <p>Place2Be is a children's mental health charity providing school-based support and in-depth training programmes to improve the emotional wellbeing of pupils, families, teachers and school staff.</p> <p>Call: 0207 923 5500 or Email: enquiries@place2be.org.uk</p>	<p>Young Minds</p> <p>Young Minds is the UK’s leading charity championing the wellbeing and mental health of young people.</p> <p>They offer a parents helpline, call: 0808 802 5544 Mon-Fri. 09:30am to 4pm Email: ymentquiries@youngminds.org.uk</p>

Briefing Note Maidstone Borough Council Policy for Safeguarding Children and Adults

At Maidstone Borough Council we take Safeguarding seriously. We recognise the need to ensure the safety and wellbeing of all those who we come into contact with the services we provide this includes both children and adults. Our services touch many individuals from across our district through a number of teams including customer services, revenues and benefits and housing services.

This briefing note aims to give staff a short overview of the processes for reporting and managing a safeguarding concern and our responsibilities as a district council.

There are two different aspects to Safeguarding processes; children and adults. Even though each requires a slightly different response, essentially both require colleagues to be diligent, concerned and responsible.

At times we will have contact with members of the public who we will become concerned about. We will be worried about what they may have said, or how they have presented so as an employee, Councillor or volunteer we need to take action to ensure they are safe. All individuals have a right to live safely, peacefully and without the threat of abuse. Safeguarding covers many aspects of abuse and neglect and if we have any concerns about a disclosure by an individual or what we have seen we must act.

Safeguarding is everyone’s responsibility

Our role as a district council is not to investigate an alleged safeguarding concern, but report it to the correct authority – which could be either the police, if the matter has criminal ramifications or to Kent County Council if the issue is more related to the Care Act e.g. self-neglect, mental ill health, a child in need. Often both the Police and KCC will be involved in the same cases as both parties will play a role in managing the alert.

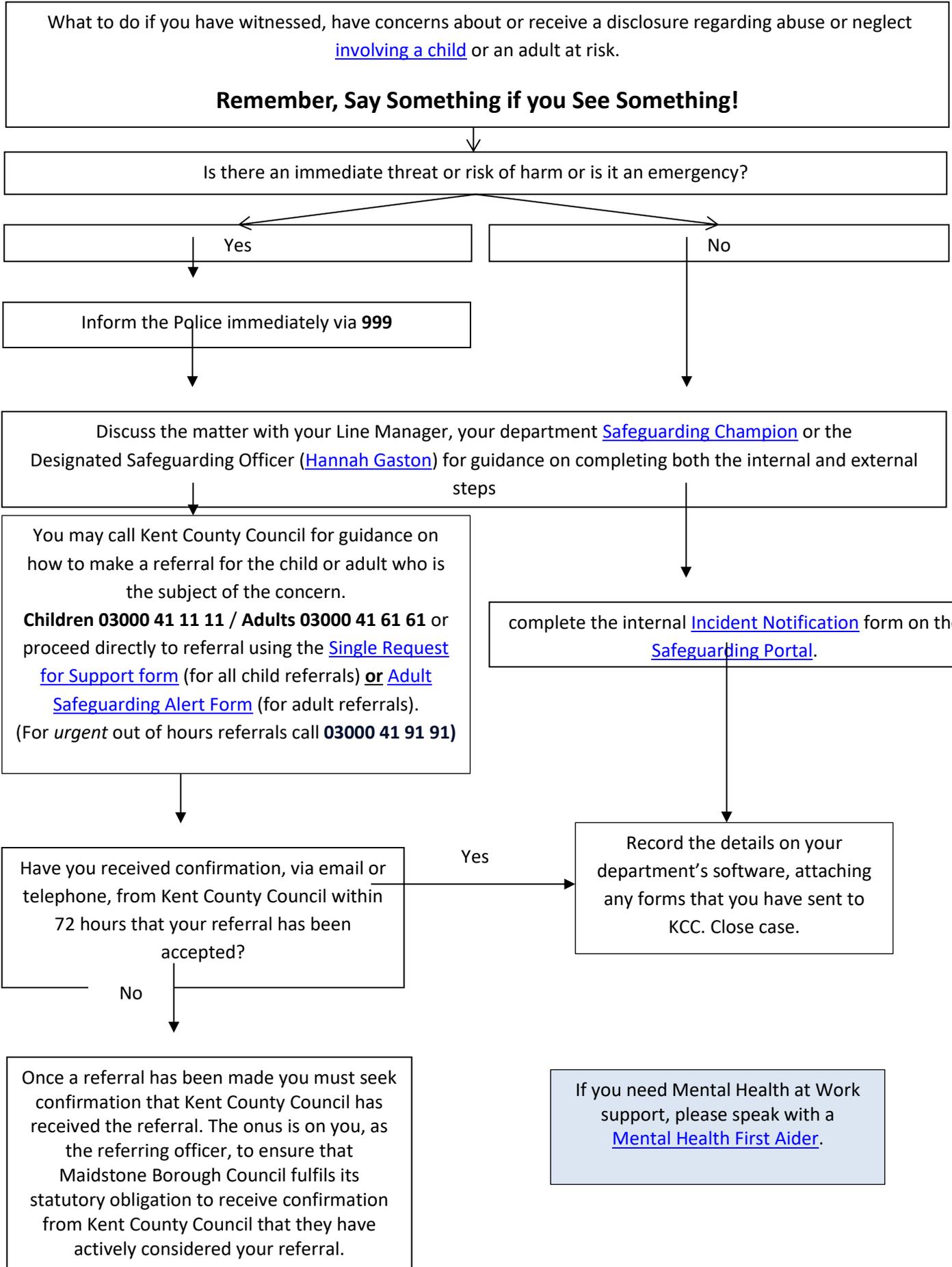
Areas of safeguarding concern – may fall into one of the following:

Physical Sexual Psychological Financial or material Discriminatory Exploitation Isolation or withdrawal from services or support networks	Neglect and acts of omission Self-neglect and self-injurious behaviour Modern Slavery (incl. Human Trafficking) Domestic Abuse Female Genital Mutilation
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Below you will see the process for raising a safeguarding alert if you feel worried or concerned. Your team should also have a Safeguarding Champion allocated and if you have any concerns you should discuss with the Champion, or your line manager in the first instance. You can also seek out support from the Designated Safeguarding Officer (DSO) (Hannah Gaston) or the Deputy DSO’s (Sarah Ward or John Littlemore).

For further information on Safeguarding please read the MBC Policy on Safeguarding Children and Adults at Risk, January 2021.

QUICK VIEW – REFERRAL PROCEDURE



Agenda Item 15

Communities Housing and Environment Committee

6 April 2021

Private Sector Housing Enforcement Policy 2021-2025

Final Decision-Maker	Communities Housing and Environment Committee
Lead Head of Service	John Littlemore, Head of Housing & Communities
Lead Officer and Report Author	Nigel Bucklow Housing & Health Manager & Philip Jennings Senior Housing & Health Officer
Classification	Public
Wards affected	ALL

Executive Summary

The Private Sector Housing Enforcement Policy 2021-2025 updates the previous policy agreed in 2016. This updated policy reflects new legislative and regulatory changes placed upon the authority since that time and ensures consistency of approach in line with the Regulators' code.

Purpose of Report

For decision.

This report makes the following recommendations to this Committee:

1. The Committee approve the updated Private Sector Housing Enforcement Policy 2021-2025 attached at appendix A including the table of financial penalties to be applied under sections 23, 126 and Schedule 9 of the Housing and Planning Act 2016 as drafted.

Timetable

Meeting	Date
Communities Housing and Environment Committee	6 April 2021

Private Sector Housing Enforcement Policy 2021-2025

CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	<p><i>The four Strategic Plan objectives are:</i></p> <ul style="list-style-type: none"> • <i>Embracing Growth and Enabling Infrastructure</i> • <i>Safe, Clean and Green</i> • <i>Homes and Communities</i> • <i>A Thriving Place</i> <p><i>Approval of the revised policy supports our priority in relation to Homes and Communities for the importance of improving housing to promote good health and wellbeing</i></p>	Head of Housing & Community Services
Cross Cutting Objectives	<p><i>The four cross-cutting objectives are:</i></p> <ul style="list-style-type: none"> • <i>Heritage is Respected</i> • <i>Health Inequalities are Addressed and Reduced</i> • <i>Deprivation is reduced and Social Mobility is Improved</i> • <i>Biodiversity and Environmental Sustainability is respected</i> <p><i>The report recommendation support the achievement of Health Inequalities being addressed and reduced by ensuring appropriate enforcement action is taken to reduce serious hazards in private sector homes across the Borough</i></p>	Head of Housing & Community Services
Risk Management	<ul style="list-style-type: none"> • <i>Having a current enforcement policy would mean that the Council would be compliant with the requirements of the Regulators' code. Enforcement actions introduced to broaden the range of options to deal with the requirements of new legislation and regulations introduced since 2016 would be lawful.</i> 	Housing & Health Manager
Financial	<ul style="list-style-type: none"> • <i>The proposals set out in the recommendation are all within already approved budgetary headings and so</i> 	Section 151 Officer &

	<i>need no new funding for implementation.</i>	Finance Team
Staffing	<ul style="list-style-type: none"> <i>We will deliver the recommendations with our current staffing establishment.</i> 	Housing & Health Manager
Legal	<ul style="list-style-type: none"> <i>The recommendations provide a comprehensive enforcement policy in respect of private sector housing enforcement.</i> <i>The legal implications are set out in the body of the report and in particular pages five and six of the draft policy, Governance and Ethics and references to relevant legislation throughout.</i> 	Contentious Team Leader, Legal Team
Privacy and Data Protection	Accepting the recommendations will not increase the volume of data held by the Council. We will hold that data in line with our retention schedules.	Policy and Information Team
Equalities	The Equalities Impact Assessment has been revisited as part a Policy revision.	Senior Equalities and Policy Officer
Public Health	<ul style="list-style-type: none"> <i>We recognise that the recommendations will have a positive impact on population health or that of individuals.</i> 	Housing & Health Manager
Crime and Disorder	<ul style="list-style-type: none"> <i>The recommendation will contribute towards tackling Crime and Disorder.</i> 	Housing & Health Manager
Procurement	<ul style="list-style-type: none"> <i>Not applicable</i> 	Section 151 Officer

1. INTRODUCTION AND BACKGROUND

- 1.1 The Council's Strategic Plan (2019-2045) identifies our vision "Maidstone: a vibrant, prosperous, urban and rural community at the heart of Kent where everyone can realise their potential". Under the priority for Homes and Communities the Council places particular importance on improving housing to promote good health and wellbeing
- 1.2 As a regulatory service the Housing and Health team's role is to maintain and improve housing conditions in the Borough across a range of tenures.
- 1.3 The Team use a range of methods to achieve these outcomes including assessing properties and enforcement using the Housing Health and Safety Rating System; improving the management of and licensing of Houses in Multiple Occupation; overcrowding; Public Health matters and provision of housing assistance programmes.
- 1.4 Where possible the team's approach is to give informal advice and information to those seeking assistance.
- 1.5 Where this approach fails, or it is necessary to protect the health, safety or welfare of residents in line with the Council's statutory responsibilities the team will take the necessary enforcement action.
- 1.6 The draft Private Sector Housing Enforcement policy 2021-2025 set out in in the attachment (appendix 1) updates the previous policy approved in 2016.
- 1.7 It sets out what enforcement action we can take and when we will take it; so it is clear, proportionate, consistent, transparent and accountable.
- 1.8 The draft policy reflects changes in legislative responsibilities and regulation changes. These responsibilities are the Tenant Fees Act 2019; the Minimum Energy Efficiency Standards (Private Rented Property)(England and Wales) Regulations 2015; The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 and the Housing & Planning Act 2016.
- 1.9 Civil penalties were introduced in the Housing and Planning Act 2016 as an alternative to prosecutions for non-compliance with certain offences set out in the Housing Act 2004. The draft policy sets out the Council's approach on deciding when to impose a civil penalty notice and how we will determine the penalty amount.
- 1.10 Local Authorities are required by the Regulators' Code (published by the Better Regulation Delivery Office, part of the Department for Business, Energy and Industrial Strategy in 2014) to publish their policy setting out their approach to compliance and enforcement.
- 1.11 The Regulators' Code establishes how Local Authorities and many other defined regulatory bodies should interact with those they regulate.

1.12 The purpose of this document is to provide a policy framework that outlines the overarching principles that will be applied by officers when making enforcement decisions in the regulation of housing standards in the Housing & Health service. Officers will have regard to the policy when deciding what action to take when carrying out their statutory duties on behalf of the Council. The policy is not intended to be a practice document and is not a definitive procedural guide but aims to outline the issues associated with enforcement decision making. It defines the approach to enforcement and instances when enforcement powers are initiated and under what circumstances each action is taken.

2. AVAILABLE OPTIONS

- 2.1 The Committee approve the Private Sector Housing Enforcement Policy 2021-2025 attached at appendix A including the table of financial penalties to be applied under sections 23, 126 and Schedule 9 of the Housing and Planning Act 2016 as drafted.
- 2.2 The Committee approve the Private Sector Housing Enforcement Policy 2021-2025 attached at appendix A including the table of financial penalties to be applied under sections 23, 126 and Schedule 9 of the Housing and Planning Act 2016 subject to amendments.
- 2.3 The Committee do not adopt the draft policy. Not adopting the policy would mean that the Council would not be complying with the requirements of the Regulators' code. Additionally, enforcement actions created to deal with the requirements of new legislation and regulations introduced since the last policy in 2016 would not be lawfully operable.

3. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 3.1 The preferred option is the approval and adoption of the Private Sector Housing Enforcement Policy 2021-2025 (appendix 1) including the table of financial penalties to be applied under sections 23, 126 and Schedule 9 of the Housing and Planning Act 2016 as drafted. This will ensure that the policy includes all private sector housing enforcement options contained in legislation and that it complies with the requirements of the Government's Regulators' Code. This will enable staff in the Housing & Health team to consider a range of options to achieve regulatory compliance to ensure the health and safety of tenants and occupiers and improve standards in the private sector.

4. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 4.1 No consultation has been sought as the amendments to this policy have been brought about in order to comply with the amended statutory provisions that the Council must implement.

5. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 5.1 Should the revised policy be approved then it will be published on the Council's web pages.
-

6. REPORT APPENDICES

Appendix 1: Private Sector Housing Enforcement Policy 2021

7. BACKGROUND PAPERS

None

Maidstone Borough Council

Private Sector Housing Enforcement Policy 2021-2025

FINAL DRAFT VERSION: February 2021

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1.0 Introduction

- 1.1 Maidstone is the county town of Kent. The Borough covers 40,000 hectares and is largely rural with approximately 50% of the Borough's population living in a parished area. The Borough comprises the large urban area of Maidstone town and a rural area containing a number of smaller villages and the Kent Downs Area of Outstanding National Beauty.
- 1.2 In 2019, according to estimates from the Ministry of Housing, Communities and Local Government (MHCLG) Maidstone has the largest number of dwellings in the County at 72,130 dwellings with 87% of them being privately owned or rented (not including Social Housing sector). We have a key role to play to support investment and improvement within the sector for the benefit of Maidstone's residents.
- 1.3 The Council's Strategic Plan (2019-2045) identifies our vision "Maidstone: a vibrant, prosperous, urban and rural community at the heart of Kent where everyone can realise their potential". Under the priority for Homes and Communities the Council places particular importance on improving housing to promote good health and wellbeing.
- 1.4 This policy details how we intend to use our mandatory and discretionary powers and resources to improve housing in Maidstone Borough.
- 1.5 We have a direct duty or authority to enforce relevant legislation. We are committed to the statutory principles of good regulation when this applies. Each case is unique and must be considered on its own merits.
- 1.6 General principles apply to each situation. This policy sets out factors to be taken into account when considering the type of enforcement action we take. The policy must be followed except in exceptional circumstances.
- 1.7 Priority will be given to addressing poor housing conditions that threaten the safety and wellbeing of occupiers. Resources will be targeted particularly at situations where occupiers have little influence over the condition of the accommodation they occupy.
- 1.8 This policy replaces the previous Housing Enforcement Policy 2016 adopted by this committee in 2016.

2.0 Background

- 2.1 The right home environment is critical to our health and wellbeing. Good housing helps people stay healthy and provides a base from which to sustain a job, contribute to the community, and achieve a decent quality of life. Safe and suitable housing also aids recovery from periods of ill health and enables people to better manage their health and care needs.
- 2.2 Housing is a key determinant of health, and by promoting good quality housing this policy will contribute to reducing health inequalities for Maidstone's residents and contribute to the key action area of encouraging good health and wellbeing.

- 2.3 Poor housing also has the potential to impact negatively on both the local neighbourhood but also on the wider housing market and by supporting investment in private sector housing we will contribute to the key action areas of securing a successful economy and providing a clean and safe environment.

3.0 Aims of policy

- This policy details how the Council will regulate housing standards across all sectors within the local authority area of Maidstone Borough Council. It provides a background to the legislation and guidance upon which it is based;
- How we will work to maintain and improve housing conditions and how we will meet our statutory obligations;
- To ensure that housing enforcement decisions are always consistent, balanced, fair, transparent, proportionate, and relate to common standards;
- To inform the community at large of the principles by which enforcement action is taken;
- To empower Officers to deliver our objectives to ensure that the housing conditions comply with statutory standards, making the most effective use of capital and staffing resources.
- To provide customer focused, effective, intelligence driven services that support empower and secure a safe and healthy environment for all our residents;
- To support a growing economy where all landlords meet their legal responsibilities; and
- To set out the factors to be taken into account when considering enforcement action.

4.0 Partners

- 4.1 Officers shall consider if there are relevant internal or external partners. Some of these are listed below:

- Ministry of Housing, Communities & Local Government
- Building Control
- Community Protection
- Environmental Health
- Planning / Planning Enforcement
- Kent Fire and Rescue
- Kent Police
- Maidstone Mediation Service
- Voluntary sector organisations
- UK Border Agency

5.0 Governance and ethics

- 5.1 We will take into account the legal and procedural implications of both The Human Rights Act 1998 and European Convention on Human Rights.

- 5.2 We will also have regard to our responsibilities as described in the Equality Act 2010 and our own MBC Equality Policy. We recognise there is diversity within the community. Care will be taken to ensure enforcement actions are clearly understood by all. For example, we will provide documents in an appropriate language wherever possible. We may also arrange for an interpreter.
- 5.3 The Code for Crown Prosecutors and legislative and regulatory reform sets out what people being regulated can expect from us. It commits us to good enforcement practice with effective procedures and clear policies.
- 5.4 This document has been prepared with regard to the current principal legislation and statutory guidance including:
- The Regulatory Enforcement and Sanctions Act 2008;
 - Legislative and Regulatory Reform Act 2006;
 - Legislative and Regulatory Reform (Regulatory Functions) Order 2007;
 - Regulators' Code;
 - Housing Health & Safety Rating System Enforcement Guidance.
- 5.5 The Regulatory Enforcement and Sanctions Act 2008 requires us to:
- Have regard to any statutory guidance given to us,
 - Comply with guidance where we are directed by the Secretary of State, and
 - Have regard to any list of enforcement priorities from the Secretary of State.
- 5.6 The Legislative and Regulatory Reform Act 2006, Part 2, requires us also to have regard to the Principles of Good Regulation. We recognise that our regulatory activities should be carried out in a way which is:
- Proportionate,
 - Accountable,
 - Consistent,
 - Transparent,
 - Targeted to those situations that need action.
- 5.7 We have had regard to the Regulators' Code in the preparation of this policy and when we take enforcement action we aim to:
- Change the behaviour of the offender,
 - Change attitudes in society to offences which may not be serious in themselves, but which are widespread,
 - Eliminate any financial gain or benefit from non-compliance,
 - Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction,
 - Be proportionate to the nature of the offence and the harm caused,
 - Restore the harm caused by regulatory non-compliance, where appropriate,
 - Deter future non-compliance.

5.8 Our primary function is to achieve regulatory compliance in order to protect residents. However, we may take enforcement action in some cases after compliance has been achieved if it is in the public interest to do so.

5.9 When considering enforcement action, we will, where appropriate/reasonably practicable, discuss the circumstances with those suspected of a breach. We will consider these discussions when deciding on the best approach. This paragraph does not apply where immediate action is required to prevent or respond to a breach or where to do so is likely to defeat the purpose of the proposed enforcement action.

6.0 Methods of enforcement

6.1 We recognise that prevention is better than cure. However, where it becomes necessary we will take enforcement action. The term "enforcement" has a wide meaning and applies to all dealings between us and those on whom the law places a duty. The range of actions available include:-

- No action
- Informal action and advice
- Enforcement action (see appendixes)
- Charges for enforcement
- Works in default
- Interview under caution
- Simple Caution
- Prosecution or financial penalty

7.0 No action

7.1 Before considering taking any action in tenanted properties, we will require the tenant to have contacted their Landlord. This applies to both private and housing association tenants. Legislation covering landlord and tenant issues requires that tenants notify their landlords of any problems with the property. Landlords can only carry out their repairing obligations once they are made aware of any problems. Any copies of correspondence between the tenant and landlord should be provided to officers.

7.2 Tenants will be expected to keep officers informed of any contact they have with their landlord (or landlords agent, builder etc.) that may have an effect on what action we take.

7.3 The following situations may lead us to withdraw the service or not provide the service, are as follows:

- Where tenants of their own free will shortly move out of the property;
- Where the tenants unreasonably refuse access to the landlord, landlords agent or builder to arrange or carry out the works;
- Where the tenants, in our opinion, have clearly caused the damage they are complaining about, and there is no other disrepair;
- Where the tenant has requested a service, then failed to keep an appointment, and not responded to a follow-up letter or appointment card.

8.0 Informal action and advice (Owners)

- 8.1 Owner/Occupiers generally have control over the repair of their property. Taking formal action, serving notices and requiring works may appear heavy handed and it is for this reason that we may adopt a policy of notifying owner/occupiers of risks by letter rather than by notice. (Even Hazard awareness notices may seem officious to elderly owners).
- 8.2 We usually inspect Owner/Occupied properties when owners are requesting some financial assistance under our Housing Assistance Policy and we may identify hazards that the owner has not been aware of, (electrical wiring being old or dangerous is a typical example). Owners may be reluctant to have this work done particularly if they have requested assistance to address more cosmetic and less serious repairs for example. Every effort should be made to encourage the owners to carry out works to deal with the most serious hazards first, but if this fails then grant aid will be refused.
- 8.3 Where category 1 hazards are left after maximum financial assistance has been applied we would inform the owner by letter or if very serious hazards we would consider the service of a more formal notice. If the defects are considerable we may consider other actions such as re-housing the occupant/owner.
- 8.4 Where category 2 hazards, band D-F remain after maximum financial assistance has been applied we would inform the owner of the hazards by letter.
- 8.5 Where an owner qualifies for financial assistance for dealing with hazards, but does not want work done, maybe wanting lesser hazards dealt with we will inform the owner by letter/notice of the category 1 hazards, and informed that they will not get a grant if they do not deal with category 1 hazards first.
- 8.6 Where an owner does not qualify for any financial assistance due to their financial circumstances we will inform the owner of the category 1 hazards by notice and the category 2 hazards by letter.

9.0 Informal action and advice (Tenants)

- 9.1 We may initially take informal action to secure improvements. This will be most likely where the assessed level of risk to current occupiers is low and cooperation is being received from the person having control of the property.

10.0 Enforcement action

- 10.1 For information on the different forms of enforcement action, please see the appendices at the end of this report.

11.0 Charges for enforcement action

- 11.1 We can charge the reasonable expenses incurred in taking formal enforcement action against property owners. Whilst this has not generated surplus income, it has proved to be a valuable deterrent and has

encouraged prompt cooperation from landlords in carrying out required works.

11.2 Landlords have a duty of care to their tenants and should provide accommodation that is both free from significant hazards and properly maintained, thus avoiding the need for our intervention. The Housing Act 2004 enables us to recover our reasonable expenses associated with Hazard Awareness Notices, Improvement Notices, Prohibition Notices and other enforcement activity.

11.3 Charges will therefore normally be made when the following types of notice are served:

- Improvement Notices,
- Prohibition Notices,
- Emergency Prohibition Orders, and
- Emergency Remedial Action.

11.4 Charges for enforcement action will include all expenses incurred from the point that enforcement action was deemed necessary including the cost of preparing and serving the notice.

11.5 Charges in respect of us taking enforcement action will be notified to recipients by way of a formal demand for expenses on which there is a right of appeal to the First-tier Tribunal.

11.6 Charges in respect of Suspended Improvement Notices or Prohibition Orders will not be invoked until such notices and orders come into force.

11.7 Charges in certain circumstances can be waived by agreement in the following circumstances:

- The Landlord / Person having control of the property could not reasonably have known about the existence of the hazard or the need for the remedial works;
- The Notice was served as the result of a consultation or request for assistance;
- The Notice relates to matters caused solely by the actions of tenants;
- The person responsible for carrying out the remedial works / prohibiting its use is cooperating fully with us.

12.0 Works in default

12.1 Most notices allow carrying out work in default. This ensures ultimately that the work is completed if the recipient of any notice does not carry out the work required by the notice. We may employ a contractor to enter the property and carry out the work required. We may charge the appropriate person for the cost of works together with the costs involved in arranging for the work to be done.

12.2 The decision as to whether to carry out works in default we will take into account the following (not exclusive) matters:

- The prospect of the person responsible carrying out the work e.g. if the owner is absent or infirm;
- There is imminent risk to an individuals or public health and safety;
- A prosecution has been brought, is successful, but the works have not been carried out;
- A prosecution is not appropriate; or
- It is appropriate to carry out the works quickly.

12.3 Following the completion of works in default we will send the appropriate person an invoice requesting payment. If this is not paid the matter may be referred to our legal team for further action. We will place a charge on the property or may enforce the sale of the property or take other recovery methods.

13.0 Simple cautions

13.1 A simple caution may be an appropriate course of action where there is a criminal offence but the public interest does not require a prosecution. Ministry of Justice guidance – simple cautions for adult offenders 2015 states that the purpose of the caution is:

- To offer a proportionate response to low level offending where the offender has admitted the offence;
- To deliver swift, simple and effective justice that 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.

13.2 In considering whether a caution is appropriate, we will consider the following questions:-

- Has the suspect made a clear and reliable admission of the offence (either verbally or in writing)?
- Is there a realistic prospect of conviction if the offender were to be prosecuted?
- Is it in the public interest to use a caution as the appropriate means of disposal?
- Does the offender consent to being cautioned?

13.3 The decision to issue a simple caution will be made by the Head of Housing & Community Services in consultation with the Head of Legal Services.

13.4 Where a simple caution is offered and declined we are likely to consider prosecution.

14.0 Interviewing under caution

14.1 As soon as it is determined that an offence has been committed we will caution the person(s) suspected of the offence if they are present. We will normally invite the person(s) suspected of committing the offence to our offices to carry out an interview under caution.

14.2 The interview will normally be recorded in accordance with the Police and Criminal Evidence Act. The interview is to question a subject about an offence and offer them the opportunity to give their account. If the person suspected of committing the offence does not attend the interview we will prepare a case for prosecution with the help of our Legal Team.

15.0 Prosecution or financial penalty

15.1 If there is enough evidence for a prosecution or a financial penalty (if available) the Housing & Health Manager with the Head of Housing & Community Services will decide which course of action to take.

15.2 Each offence will be assessed on a case-by-case basis. However, the starting position is that we will seek to impose a financial penalty for a relevant offence if this is available unless there are circumstances relating to the offence that advocate pursuing a criminal prosecution instead.

15.3 If a prosecution is considered appropriate we will refer the case to our Legal Team who will determine if there is enough evidence and if the prosecution is in the public interest. If the decision is to award a financial penalty the relevant procedure given in the Appendixes will be followed.

16.0 Monitoring

16.1 All notices will be signed by an authorised officer, normally a different officer than the one who prepared it. This allows the opportunity to review cases to ensure compliance with this policy.

16.2 All enforcement activity will be monitored regularly.

17.0 Service of notices

17.1 If the service of a notice is appropriate and the recipient of the notice lives within the Borough, the Case Officer may hand deliver the notice either by handing it to them in person or by posting the notice through their letterbox or by first class mail. We may email notices if the recipient has agreed to receive notices via email.

17.2 If the recipient of the notice lives outside of the Borough, the Case Officer will normally send the notice by first class mail. We may email notices if the recipient has agreed to receive notices via email (if legislation allows).

18.0 Authorisations

- 18.1 Only Officers who are competent by training, qualification and/or experienced will be authorised to undertake enforcement action. The authorisations will be in writing and in accordance with delegations.
- 18.2 Unless expressed elsewhere in this policy, the decision to take no action; informal action; or enforcement action will be taken by the investigating officer of at least a Housing & Health Officer level. Contentious matters and those situations that may be life threatening or lead to serious injury should be discussed jointly with the Senior Housing & Health Officer or more senior manager within the Housing & Community Service. Decisions and the rationale behind them must be recorded onto the appropriate Council's software and officer's notebook.
- 18.3 Individuals delegated by the Head of Housing & Community Services to be authorised to sign and serve various documents shall have the level of competence and ability as required in their job descriptions and specifications. Individuals authorised will carry identification and evidence of their authorisation.
- 18.4 From time to time, the job titles of officers are altered and any reference to the Housing & Health Manager or the Head of Housing and Community Services may be deemed to include a reference to any future equivalent post.

19.0 Application of this policy

- 19.1 The principles contained within this policy shall be applied to the enforcement of legislation relating to investigations by the Housing & Health Team. This policy provides the overarching principles applied by our Housing and Health Team when enforcing the legislation within its remit.

20.0 Access to the policy

- 20.1 The policy is available on our website and at our offices. The Case Officer will be able to provide a copy of this policy given suitable notice. On request and where practicable this policy (or relevant passages) may be made available on tape, in braille, large type, or in a language other than English.

21.0 Review of policy

- 21.1 The policy will be kept under review to take into account changes in legislation and amendments found necessary because of internal monitoring. Minor revisions of this policy may be authorised by the relevant Director for the service on receipt of a report documenting proposed changes.

22.0 Complaints

- 22.1 If you are dissatisfied with the service you receive, please let us know. We are committed to providing quality services and your suggestions and

criticisms about any aspect of our service will help us to improve. We will deal with all complaints in the strictest confidence.

22.2 Wherever possible we will attempt to resolve your complaint informally through the Case Officer or the Housing & Health Manager. If we cannot resolve your complaint you will be referred to the Council's complaints procedure. Details of this are available on request and on our website.

22.3 If you are still unhappy you can discuss your complaint with your local ward Councillor, MP or you can complain to the Local Government Ombudsman.

23.0 Help and advice

23.1 If you would like further advice or clarification on this policy, please contact the Housing & Health Team at the address given below.

24.0 Contact details

24.1 Housing & Health
Maidstone Borough Council housingandhealth@maidstone.gov.uk
King Street
Maidstone
ME15 6JQ

24.2 First-tier Tribunal (Property Chamber)
Residential Property
Havant Justice Centre Email: rpsouthern@justice.gov.uk
The Court House
Elmleigh Road Tel: 01243 779 394
Havant
Hampshire Fax: 0870 7395 900
PO9 2AL

24.3 The address of the First-tier Tribunal may change from time to time, but the latest address will be detailed on any appealable notice served and can be found at: <https://www.gov.uk/courts-tribunals/first-tier-tribunal-property-chamber>

Appendix 1: Housing Act notices

1.1. Housing Act 2004

1.2. The Housing Act 2004 replaced provisions under the Housing Act 1985 and is the main tool that regulates rented accommodation in England and Wales. The main way housing conditions are determined is by way of the Housing Health & Safety Rating System.

1.3. Housing Health and Safety Rating System (The Rating System)

1.4. The Housing Health and Safety Rating System (The Rating System) assesses the risk to the health & safety of occupiers posed by certain specified housing related hazards.

1.5. The Rating System involves the assessment of 29 potential hazards and scoring of their severity to decide whether improvements are needed. Assessed hazards are banded Category 1 or Category 2 depending on the seriousness of the risk. Where Category 1 hazards are found we have a duty to take action. If Category 2 hazards are found, we have a discretionary power to take action.

1.6. The process can be summarised as:

- Determine hazards present.
- Assess hazard score.
- Power or duty to take action?
- Determine the most appropriate action to deal with the hazard(s).

1.7. Enforcement options

1.8. A range of enforcement options are available to us, how these discretionary powers are used will depend on the circumstances of each case. In making decisions the following will be taken into account excepted that where a category 1 hazard exists within a property we must take some action:

- The nature of the hazard;
- The nature and circumstances of the current occupier (Age, vulnerability etc.);
- Views of Occupiers;
- Local priorities for improving housing conditions;
- Availability of other forms of Housing Assistance;
- Action must be proportionate to the risk.

1.9. When a hazard is identified, we must decide the most practical course of action to take. We can choose to deal with the matter informally as an alternative to enforcement action. This will be most likely where the assessed level of risk to current occupiers is low and cooperation is being received from the person having control of the property or in the case of Owner Occupiers where they have control over their circumstances. This does not prevent subsequent service of enforcement notices.

- 1.10. We will, other than in exceptional cases, for instance where it will result in an unacceptable delay in alleviating a serious hazard, always ensure that landlords, tenant(s) and owners have the opportunity to discuss our proposed action before a notice is served.
- 1.11. The Housing Act requires us to produce a Statement of reasons justifying the type of action we are taking. This must accompany all improvement notices and orders served.
- 1.12. **Notices available**
- Power to require documents to be produced (s235)
 - Power of entry (s239)
 - Warrant (s240)
 - Improvement Notice (s.11 + s.12);
 - Prohibition Order (s.20 + s.21);
 - Emergency Remedial Action Notice (s.40 + s.41);
 - Emergency Prohibition Order (s.43);
 - Demolition Order (Housing Act 1985);
 - Clearance Areas (Housing Act 1985);
 - Statutory Overcrowding Notice (Housing Act 1985)
 - HMO Overcrowding Notice (s139)
 - Management Orders / Interim Management Orders;
 - Hazard Awareness Notice (s.28 + s.29);
 - Suspended Orders / Notices
- 1.13. **Power to require documents to be produced**
- 1.14. This notice allows us to require the relevant person to provide documents that they may hold to help us determine the course of action we may take. The notice is useful for requiring documents such as tenancy agreements, gas safety certificates, and electrical inspection reports.
- 1.15. The documents must be produced on (or before) the date specified in the notice. If the relevant person does not comply with the notice, we may prosecute them, which could result in a fine.
- 1.16. **Power of entry**
- 1.17. This notice enables us to enter premises at any reasonable time. If the premise is being entered in order to ascertain whether an offence has been committed under section 72 (failing to licence an HMO), section 95 (failing to selectively licence a premises, not relevant in Maidstone), or section 234(3) Management of Houses in Multiple Occupation we do not need to give 24 hours' notice to the owner or the occupier of the premises.
- 1.18. If we are entering the premises for other reasons, we must give the owner and occupier at least 24 hours' notice. We may give notice by phone, text or in person but we will normally give notice via a letter or a more formal notice.
- 1.19. If we fail to enter the premises, we may serve another notice giving the owner and occupier at least 24 hours' notice of our intended visit.

- 1.20. It is an offence if an owner or occupier obstructs us in the course of our duties. We may therefore take evidence such as witness statements. We may also caution the relevant person.
- 1.21. If we fail to enter the property after one or two attempts of using our powers, we may apply for a warrant at the Magistrate's Court to gain entry to the premises by force.
- 1.22. **Warrant**
- 1.23. We may apply for a Warrant to the Magistrate's Court to enter premises for the purposes of carrying out our functions.
- 1.24. We may apply for a warrant if we have failed to inspect a property after giving notice of our intention to inspect. We may also apply for a warrant if the purpose of the entry would be defeated by giving the owner or occupier prior warning. Such as the collection of evidence of an offence.
- 1.25. We may take a Police Officer or Police Community Support Officer with us when we gain entry. We will leave the premises as secure as it was before we entered.
- 1.26. **Improvement Notices**
- 1.27. Improvement Notices are the most practical formal remedy for most hazards, particularly in tenanted property. Repair or renewal will generally be cost-effective because of the high value of property in Maidstone.
- 1.28. An improvement notice can be used for Category 1 or 2 hazards and can deal with more than one hazard of either type.
- 1.29. The notice will be placed as a charge on the property and failure to comply with it is an offence which may lead to a prosecution or a financial penalty.
- 1.30. After an improvement notice is served Housing Act 1988 (as amended) Section 21 notices are invalid for up to 6 months.
- 1.31. **Prohibition Orders**
- 1.32. Prohibition Orders may be applied to part or all of a dwelling, for example, where it is not practical or cost effective to alleviate an identified hazard. In addition, where there are other restrictions on the improvement of the property e.g. Listed Building status they may be used in conjunction with Improvement Notices to prohibit parts of a premise that cannot reasonably be improved. An example might be where there is inadequate natural lighting to a basement or where there is no possible safe means of fire escape from an attic room.
- 1.33. A Prohibition Order must specify whether the prohibition relates to Category 1 or 2 hazards, must detail the remedial works deemed necessary to alleviate the hazard(s), and may allow the owner / occupier to apply for compensation.

- 1.34. The order will be placed as a charge on the property and failure to comply with it is an offence which may lead to a prosecution and/or a rent repayment order.
- 1.35. **Emergency Remedial Action**
- 1.36. Emergency Remedial Action will be used where immediate action is required to remove an unacceptable and imminent risk to occupiers or other persons. This action enables us to carry out remedial works ourselves and recover all expenses incurred.
- 1.37. To carry out Emergency Remedial Action there must be a Category 1 Hazard + an imminent risk, and notices must be served within seven days of taking action.
- 1.38. **Emergency Prohibition Orders**
- 1.39. Emergency Prohibition Orders are the same as Prohibition Orders but they have immediate effect to prevent occupation of all or part of the premises.
- 1.40. To carry out an Emergency Prohibition there must be Category 1 Hazard + an imminent risk, notices should be served on the day the order is made and may allow the owner / occupier to apply for compensation.
- 1.41. **Demolition Orders**
- 1.42. Demolition Orders enable the compulsory demolition of an individual property where it is considered to be beyond economic repair. Such action is considered unlikely in Maidstone where property values are high. Demolition of property will only be considered on housing grounds after a full Neighbourhood Renewal Assessment has been completed which indicates that this is the most appropriate course of action.
- 1.43. Compensation will be payable to the owner / occupier in all cases.
- 1.44. **Clearance Areas**
- 1.45. Clearance Areas enable the compulsory clearance of neighbourhoods where the housing is considered to be beyond economic repair. Such action is considered unlikely in Maidstone where property values are high. Clearance will only be considered on housing grounds after a full Neighbourhood Renewal Assessment has been completed which indicates that this is the most appropriate course of action.
- 1.46. Compensation will be payable to the owner / occupier in all cases.
- 1.47. **Overcrowding Notices**
- 1.48. If a premise is statutory overcrowded, Part X of the Housing Act 1985 still applies and we may serve a notice.

- 1.49. We will measure the floor areas of each bedroom and living room. We will determine the ages and sexes of the occupants and determine whether the premises is statutorily overcrowded having regard to the room sizes and maximum number of persons per room as given below.

Room size	Maximum number of persons
5m ² to 6.5m ²	0.5
6.5m ² to 9m ²	1 person
9m ² to 11m ²	1.5 persons
11m ² +	2 persons

Age	Calculation of persons
0 to 1 year	0
1 to 10 years	0.5 persons
10 years+	1 person

1.50. **HMO Overcrowding Notices**

- 1.51. If a premise is an HMO, which is not licensable, and is crowded we may serve an HMO Overcrowding Notice.

- 1.52. We will measure the floor areas of each bedroom / living room. We will count the number of facilities provided such as bathrooms and kitchens. We will determine the number of occupants and whether the premises is overcrowded having regard to:

- 1.53. Room sizes:

Use of room:	Minimum Room Size:
Bedroom occupied by 1 person	9m ²
Bedroom occupied by 2 people	14m ²
Kitchen used by up to 5 people	7m ²
Kitchen used by up to 10 people	10m ²
Living room used by up to 5 people	11m ²
Living room used by up to 10 people	16.5m ²

- 1.54. Amenities:

Use of room:	Number required:
Bathroom	1 for every 5 people
WC	1 for every 5 people
Kitchen	1 for every 5 people

1.55. Facilities:

Facility:	Number required:
Bath or shower and wc	1 for every 5 people
Separate WC	1 for every 5 people
Shared wash hand basin	1 for every 5 people
Wash hand basin	In every unit where possible
Kitchen sink	1 for every 5 people
Fridge	1 for every 5 people
Freezer	1 for every 5 people
Cooker (4 hot ring, grill and oven)	1 for every 5 people
Food storage	1 base unit per person (or equivalent)
Worktop (shared)	2 meters for every 5 people
Worktop (individual)	1 meter for every unit

1.56. If the premises is, or is likely to be overcrowded, we may serve an intention to serve an overcrowding notice on each person with an interest in the property such as occupiers; owners; managers; and mortgagee's.

1.57. The intention to serve an overcrowding notice gives the recipient of the notice at least fourteen days to make representations.

1.58. After the consultation period has ended, we may serve an overcrowding notice, which will require the relevant person to either not add additional occupants or to seek possession of the property back from the occupants.

1.59. The notice will be placed as a charge on the property and failure to comply with it is an offence which may lead to a prosecution or a financial penalty.

1.60. **Management Orders / Interim Management Orders**

1.61. We may use Management Orders / Interim Management Orders if Houses in Multiple Occupation (HMO's) are not licensed, do not comply with the required standards or if the person in control is not a "Fit and Proper" person.

1.62. If a landlord fails to bring an HMO up to the required standard or fails to meet the Fit and Proper person criteria, we can take over the management of the property. An Interim Management Order (IMO) allows us to manage the property for up to a year, until suitable management arrangements have been made. The owner does keep their right as an owner.

1.63. If the IMO expires and no improvement in management has been made, then we can issue a Final Management Order (FMO). This can last up to five years and be renewed following this period.

1.64. **Hazard Awareness Notices**

1.65. Hazard Awareness Notices are advisory notices only. They may be appropriate where the hazard is minor or where remedial action is

unreasonable and impractical. They may also be used as an alternative to informal action where the owner has agreed to take remedial action.

1.66. This does not prevent subsequent formal action should an unacceptable hazard remain.

1.67. We may choose to use Hazard Awareness Notices where significant hazards have been identified in owner occupied accommodation, or in other circumstances where we consider the occupier has some control over his circumstances. In these cases other forms of enforcement action may be inappropriate.

1.68. **Suspended Notices**

1.69. Improvement Notices / Prohibition Orders may be suspended until such time or event specified. We may consider this:

- As an alternative to a Hazard Awareness Notice;
- Where the most vulnerable age group for particular hazard are not present;
- As a consequence of the current occupiers views;
- As an option for a more strategic approach;

1.70. Suspended Notices and Orders must be reviewed (not less than annually). In deciding what action is necessary and appropriate in each case we will take account of:

- The severity of hazard;
- Nature of hazard;
- Risk posed to existing occupants;
- Practicality of remedial action;
- Cooperation of the Person Having Control;
- Tenure;
- Occupiers wishes;
- All relevant Local Housing Strategies / Policies. Fees & Charges.

Appendix 2: Other legislation

- 2.1. **Local Government (Miscellaneous Provisions) Act 1982, section 33.**
- 2.2. This section enables us to re-connect or prevent the disconnection of gas, electricity or water supply in tenanted properties. These powers will be used in exceptional circumstances when all other negotiation has failed. These powers will only be used where the tenant is not responsible for the payment of the bill.
- 2.3. We may re-charge our costs and place a charge on the property.
- 2.4. **Local Government (Miscellaneous Provisions) Act 1982, section 29.**
- 2.5. This section enables us to board up insecure empty properties. We will attempt to contact the owner to carry out the work. We may serve a notice giving the owner 48 hours to make the property secure.
- 2.6. If the property remains unsecured after this, we may carry out the work, re-charge our costs and place a charge on the property.
- 2.7. **Local Government (Miscellaneous Provisions) Act 1976, section 16**
- 2.8. This section enables us to obtain information about the interest in land. The notice is used to determine who owns, manages, and occupies a dwelling. The information must be provided within 14 days of service of the document.
- 2.9. Failure to provide the information may result in a prosecution of the relevant person. On summary conviction, the Magistrates Court can issue a fine.
- 2.10. **Public Health Act 1936, section 17**
- 2.11. This section enables us to require owners / occupiers to unblock or repair toilets. If negotiation fails, we may serve a notice requiring the toilet to be unblocked within 7 days. If the toilet remains blocked, we may carry out the work and re-charge our costs.
- 2.12. If the toilet requires repair we may serve a notice requiring the toilet to be repaired within 14 days. If the toilet remains in disrepair, we may carry out the work and re-charge our costs.
- 2.13. **Building Act 1985, section 59**
- 2.14. This section allows us to require owners to provide new, repair, or upgrade existing: drains, guttering, cesspools, sewers, drains, soil pipes, and rainwater pipes etc.
- 2.15. We must give the owner of the property at least 21 days to carry out the work. If the owner fails to carry out the work, we may carry out the work ourselves and prosecute the owner. The fine on summary conviction is level 4 on the standard scale.
- 2.16. **Protection from Eviction Act 1977**

- 2.17. We are responsible for enforcing the Protection from Eviction Act 1977. This is when landlords unlawfully evict or harass tenants with the intention of causing their tenant to vacate their home. The maximum penalty on summary conviction is up to 6 months imprisonment and a fine of up to £400. On conviction of an indictment to a fine and/ or to imprisonment of up to 2 years.
- 2.18. We will normally negotiate with the landlord in order to prevent an illegal eviction from occurring. If this fails, we may provide advice to the tenant in order to allow re-entry into the dwelling.
- 2.19. We may decide not take further action if the landlord desists with their actions and the tenant remains in the dwelling. If the landlord does not desist with their actions and the tenants are unable to remain in the dwelling we will consult with legal services and determine whether it is in the public interest to take forward a prosecution.
- 2.20. We may advise the tenant to apply for a rent repayment order to obtain up to 12 months of rent back from the landlord. We may apply for a rent repayment order to obtain up to 12 months rent back from the landlord (where rent has been paid by us).
- 2.21. **Compulsory Purchase Orders**
- 2.22. Making a Compulsory Purchase Order is an option that will only be taken in exceptional circumstances and must be approved by the relevant Secretary of State before it can be made. It may be an option: -
- Where a property has been derelict for some time and is having a detrimental effect on the local environment or neighbouring properties,
 - Where the property appears to have been abandoned and the owner cannot be traced,
 - Where all other avenues for bringing the property back into use have been exhausted, or
 - Where the property is suitable for immediate residential use but it is unlikely to be occupied for residential purposes unless bought by us.
- 2.23. **Deregulation Act 2015 Retaliatory Evictions**
- 2.24. Retaliatory eviction is where a tenant makes a legitimate complaint to their landlord about the condition of their property and in response, instead of effecting the repair, the landlord serves them with a notice seeking possession under section 21 (no fault eviction procedure) of the Housing Act 1988. On 1stOctober 2015 provisions in the Deregulation Act 2015 came into force. These provisions are designed to protect tenants against unfair eviction.
- 2.25. Where a tenant makes a genuine complaint about the condition of their property that has not been addressed by their landlord and their complaint has been validated by a Local Authority inspection and consequently serve a Housing Act 2004 section 11 or 12 Improvement Notice or Emergency Remedial Action under section 40, any section 21 notice served on a tenant

by a landlord under the provisions of the Housing Act 1988 will become invalid for a period of six months from the date of service of the notice.

- 2.26. We may inform the landlord and tenant about the effect of the Deregulation Act in relation to section 21 notices during our consultation and/or when we serve the notice. If we become aware that a tenant has received a section 21 notice within six months of the date of service of an improvement notice, we may advise the tenant or landlord of the section 21 notice's invalidity.

Appendix 3: Smoke and Carbon Monoxide Alarm Regulations

- 3.1. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the regulations) require landlords to install smoke detectors and carbon monoxide alarms in privately rented accommodation.
- 3.2. **Penalties**
- 3.3. If the landlord fails to carry out the work we will within 28 days following the end of the notice period carry out the work (if there is consent by the occupier) after giving the occupier 48 hours' notice.
- 3.4. If a landlord fails to carry out the work we may impose a penalty charge (amount as agreed in the Smoke and Carbon Monoxide Alarms Statement of Principles), within 6 weeks of determining that the landlord has breached the regulations.
- 3.5. **Reduction for early payment or after written representations**
- 3.6. If the landlord pays the charge or provides written representations within 14 days following service of the notice the fixed penalty notice is reduced to an amount as detailed in the Smoke and Carbon Monoxide Alarm Statement of Principles.
- 3.7. **Appeals**
- 3.8. The landlord may appeal to the First-tier Tribunal (Property Chamber) following a decision by us to confirm or vary a penalty charge notice if the decision was based on an error of fact, the decision was wrong in law, the amount of penalty charge was unreasonable, or the decision was unreasonable for any other reason. The Tribunal may quash, vary or confirm the penalty charge notice, but may not increase the amount of penalty charge.
- 3.9. **Statement of principles for determining financial penalties Smoke and Carbon Monoxide Alarm Regulations**
- 3.10. The purpose of this statement is to set out the principles, which we will apply in exercising our powers to require a relevant landlord to pay a financial penalty.
- 3.11. **The legal framework**
- 3.12. Regulation 8 of The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the regulations) provides that we may require a landlord to pay a penalty charge if we are satisfied on the balance of probabilities that when served with a remedial notice under regulation 5 they failed to take the required action within the period specified.
- 3.13. **The scope of this document**
- 3.14. Regulation 13 of the regulations requires us to prepare and publish a statement of principles, which we propose to follow in determining the amount of a penalty charge.

- 3.15. We may revise our statement of principles and, when we do so, we must publish the revised statement.
- 3.16. Where a penalty charge is made, we must have regard to the statement of principles published and in place at the time when the breach in question occurred, when determining the amount of the penalty charge.
- 3.17. This document sets out the principles, which we will apply and will have regard-to when exercising our powers under regulation 8.
- 3.18. **Applicable principles**
- 3.19. The primary purpose of the exercise of our regulatory powers is to protect the interests of the public, although they may have a punitive effect.
- 3.20. The primary aims of financial penalties will be to:
- Change the behaviour of the landlord,
 - Eliminate any financial gain or benefit from non-compliance with the regulations,
 - Be proportionate to the nature of the breach of the regulations and the potential harm outcomes,
 - Aim to deter future non-compliance, and
 - Reimburse the costs incurred in undertaking work in default.
- 3.21. **Criteria for the imposition of a financial penalty**
- 3.22. By virtue of regulation 8, a failure to comply with the requirements of a remedial notice allows us to require payment of a penalty charge. In considering the imposition of a penalty we will have regard to:
- The evidence of a breach of the requirement of the remedial notice.
- 3.23. In deciding whether it would be appropriate to impose a penalty, we will take full account of the particular facts and circumstances of the breach under consideration. Factors which we will take into consideration are:
- That we are satisfied on the balance of probabilities that the landlord on whom was served a remedial notice has failed to take the remedial action specified in the notice within the period specified.
- 3.24. A financial penalty allows us, amongst other things, to eliminate financial gain or benefit from non-compliance. A financial penalty charge will be considered appropriate in the following circumstances:
- Where the landlord has failed to comply with the requirements of a remedial notice.
- 3.25. **Criteria for determining the quantum of a financial penalty**
- 3.26. Regulation 8(2) states the amount of the penalty charge must not exceed £5,000. The penalty charge comprises two parts, a punitive element for failure to comply with the absolute requirement to comply with a remedial

notice (subject to any representation made by a landlord to us) and a cost element relating to the works carried out by us.

3.27. The period within which the penalty charge is payable is 30 days beginning with the day on which the penalty charge notice is served.

3.28. **Early repayment period**

3.29. We have discretion to specify that if a landlord pays the penalty charge within a specified earlier period a reduction in the penalty charge may be applied. We will exercise this discretion to reduce the penalty charge in relation to payment within a specified "early payment" period.

3.30. The specified period for early payment is within 14 days beginning with the day on which the penalty charge notice was served. Early repayment will attract a discount of 50% on the charge.

3.31. **Review of penalty charge**

3.32. We may also exercise a similar discretion where the landlord gives written notice to us that they wish the authority to review the penalty charge notice. We may exercise the discretion to reduce the penalty charge where a landlord gives written notice, including evidence of mitigating factors, to us to review the penalty charge notice.

3.33. The mitigating factors are that the landlord has taken all reasonable steps to comply; the landlord has been actively co-operating with us; has effective systems in place for monitoring compliance; and has been proactive on their approach to the legislation. Each case will be considered by officers on the basis of the information available.

3.34. **Landlord has taken all reasonable steps to comply**

3.35. Landlords will not be able to provide evidence that they have taken all reasonable steps to comply if they have done nothing, have not written to the tenant to explain the legal requirement and that it is for their own safety, or they have not checked the alarms are in good working order on the first day of the tenancy.

3.36. **Landlord has been actively co-operating.**

3.37. Landlords will not be able to provide evidence that they have actively been co-operating with us if they have not provided officers, when requested access to the property; alarm service records; and tenancy records. Landlords are expected to respond promptly, honestly and accurately to officers and disclose any evidence which may assist us in our investigations.

3.38. **Landlord has effective systems in place for monitoring compliance**

3.39. Landlords will not be able to provide evidence that they have effective systems in place for monitoring compliance if they do not have robust document checking systems in place; records of alarms for the premises; or records of testing the alarms on the first day of the tenancy (i.e. an

inventory showing the alarm has been checked as working and signed by the tenant).

3.40. **Landlord has been pro-active on their approach to the legislation**

3.41. Landlords will not be able to provide evidence that they have been proactive on their approach to the legislation if they have not informed, preferably in writing, the Housing & Health Team, that they have had difficulty with complying with the legislation before a notice is served under regulation 5 of the regulations.

3.42. **Levels of fine**

3.43. For a first breach, the penalty charge applied will be £2,500.

3.44. For subsequent breaches, the penalty charge will be £3,000 to deter continued non-compliance.

3.45. If a landlord provides evidence of mitigating factors, we may reduce the penalty charge notice by £500 for each mitigating factor. Therefore, the fine may be reduced by a maximum of £2,000.

3.46. Early repayment of the penalty charge will attract a discount of 50%.

3.47. **Procedural matters**

3.48. The regulations impose a number of procedural steps that must be taken before we can impose a financial penalty.

3.49. Before imposing a requirement on a landlord to pay a penalty charge we must, within a period of six weeks from the point at which we are satisfied that the landlord has failed to comply with the requirements of the Remedial Notice, serve a penalty charge notice setting-out:

- The reasons for imposing the penalty charge;
- The premises to which the penalty charge relates;
- The number and type of prescribed alarms (if any) installed at the premises;
- The amount of the penalty charge;
- The obligation to pay that penalty charge or to give written notice of a request to review the penalty charge;
- How payment of the charge must be made; and
- The name and address of the person to whom a notice requesting a review may be sent.

3.50. The landlord can request a review in writing within 28 days of service of the notice. In conducting the review, we will consider any representations made by the landlord, and serve notice of our decision whether to confirm, vary or withdraw the penalty charge to the landlord.

3.51. A landlord who having requested a review of a penalty charge notice, is served with a notice confirming or varying the penalty charge, may appeal to the First-tier Tribunal (Property) against our decision.

Appendix 4: Houses in multiple occupation

- 4.1. The definition of a House in Multiple Occupation (HMO) is contained in section 254 to 259 of the Housing Act 2004.
- 4.2. **Inspection of the premises**
- 4.3. We will inspect Houses in Multiple Occupation having regard to the Housing Health and Safety Rating System, our own standards and the Management Regulations. If after the inspection it is found that the property does not meet our HMO standards, or has hazards under the Rating System, enforcement action will be considered.
- 4.4. **Consultation with Kent Fire & Rescue Service**
- 4.5. If works are required in relation to the Hazard of Fire, we will normally consult with the Kent Fire and Rescue Service as to the works required. A letter will be sent to the interested parties of the property stating what works are required.
- 4.6. **Enforcement**
- 4.7. If the work remains outstanding, we may serve an Improvement Notice or if an Improvement Notice is not appropriate, a Prohibition Order may be considered to reduce the risk. If the HMO is overcrowded, or may be overcrowded, we may serve an intention to serve an overcrowding notice on the interested parties. Following representations (if any), we may serve an overcrowding notice.
- 4.8. **Management of houses in multiple occupation**
- 4.9. The Management of Houses in Multiple Occupation (England) Regulations 2006 applies to Houses in Multiple Occupation ("HMOs") in England apart from Housing Act 2004 section 257 HMOs to which the Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 apply.
- 4.10. The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 apply to converted blocks of flats to which section 257 of the Act applies. These are buildings that have been converted into, and consist of self-contained flats, where the building work undertaken in connection with the conversion did not comply with the appropriate building standards and still does not comply with them, and less than two-thirds of the self-contained flats are owner occupied.
- 4.11. **Procedure**
- 4.12. If after the property is inspected there are issues related to the management of the property that in our opinion requires further action the we will write to the owner/manager of the HMO detailing the defects which should be addressed and under what regulation. We will give the owner/manager a period of time to carry out the work, dependant on the severity of the defect and the work involved to eliminate it. For example, rectify faulty alarm system – up to 7 days.

- 4.13. We will determine who is responsible for remedying the defect. If the property is licensed this would be through the licence details, if not, we may serve a Notice requiring this information.
- 4.14. If after the period of time to remedy the defect has expired and the defect has not been rectified we may, collate evidence for a prosecution or impose a financial penalty. If a prosecution is deemed appropriate, the evidence will be passed to our Legal Department.
- 4.15. A person who fails to comply with these Regulations commits an offence under section 234(3) of the Housing Act 2004, punishable on conviction with a fine not exceeding level 5 on the standard scale (currently unlimited).
- 4.16. **Licensing of houses in multiple occupation**
- 4.17. Mandatory Licensing of Houses in Multiple Occupation (HMO) is contained under Part 2 of the Housing Act 2004. We are required to have a licensing scheme in place, seek properties that require licences and licence those properties that are licensable (currently HMO's occupied by five or more people, and where there is sharing of an amenity or the units are not self-contained). Flats in Multiple Occupation are exempt if they are purpose built flats and there are three or more flats in the same block.
- 4.18. Failure to licence a 'licensable' property is an offence with the maximum fine on summary conviction being an unlimited fine. The other actions that could be taken are rent repayment orders to recover up to one years' worth of rent and section 21 notices (Notice requiring possession) are invalid.
- 4.19. If we identify a house in multiple occupation which should be licensed but is not we may send out a letter and application pack. The letter will inform the owner/manager of the need to licence their property.
- 4.20. If the owner/manager has not returned the licensing application form and fee within 1 month, we may send a reminder letter with another copy of the licence application form and give another month. If no licence application or fee is received after a further month, we may inspect the property and gain evidence.
- 4.21. **Prosecution or financial penalty**
- 4.22. Once evidence is collected, the case may be prepared for prosecution or for the imposition of a financial penalty. If a property is identified as a licensed house in multiple occupation but there is a breach of the licence conditions or that the property is occupied by more people than allowed by the licence, we may collect evidence for a prosecution or a financial penalty.
- 4.23. At this time, we will also consider the implementation of a Management Order to take over the management of the property. Our use of HMO management orders will be in accordance with Government guidance.
- 4.24. We may advise the tenant(s) to apply for a rent repayment order to obtain up to 12 months of rent back from the landlord.

Appendix 5: The Redress Schemes for Letting Agents/Managers

5.1. Under The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 letting agents and managers of privately rented dwellings must belong to either the Property Redress Scheme (www.theprs.co.uk) or The Property Ombudsman (www.tpos.co.uk).

5.2. Penalties

Where the Council is satisfied on the balance of probabilities that a person has failed to belong to a redress scheme as required by article 3 or 5 of the 2014 Order it may by notice require that person to pay a monetary penalty.

- For first time breaches we may impose a financial penalty of £2,500,
- For subsequent breaches we may impose a financial penalty of £3,000,
- We may repeat the process until the letting agent or manager has registered with a redress scheme.

5.3. Withdrawing / reduction of the fine

5.4. We may withdraw a notice of intent or final notice or reduce the penalty charge subject on a case-by-case basis at our discretion. We will reduce the amount of the penalty charge if the charge is paid within 14 days of the date of service of the penalty charge notice.

5.5. Typical reason for reducing the penalty charge include the letting agent / manager providing evidence that they have taken all reasonable steps to comply with the notice.

5.6. Appeals

5.7. The letting agent or manager can appeal the penalty charge notice to the First-tier Tribunal (Property Chamber).

Appendix 6: Rent repayment orders

- 6.1. The Housing and Planning Act 2016 introduced powers on the First-tier Tribunal to make a rent repayment order where a landlord has committed a relevant repayment offence. The legislation is contained in chapter 4 of Part 2 of the Housing and Planning Act 2016. The powers came into force on 10th March 2017 and 6th April 2017 (SI 2017 No. 281).
- 6.2. **Guidance**
- 6.3. We will have regard to the guidance given by the Department of Communities and Local Government contained in the publication titled Civil Penalties under the Housing and Planning Act 2016, guidance for local authorities published in April 2017.
- 6.4. **Before deciding to apply for a rent repayment order, we will:**
- Consider each case on its own merits,
 - Ensure that there is sufficient, reliable evidence to justify the action taken,
 - Ensure that action meets the public interest test,
 - Consider any mitigating circumstances, and
 - Be fair and consistent in reaching decisions.
- 6.5. **Amount of order (local housing authorities)**
- 6.6. The amount of Rent Repayment Order must relate to the amount of Universal Credit (or Local Housing Allowance) paid during 12 months until the date of the offence for offences for entering and remaining on property (Criminal Law Act 1977, section 6(1)), and Unlawful Eviction and harassment of occupier (Protection from Eviction Act 1977). For all other relevant offences the amount of Rent Repayment Order must relate to the amount of Universal Credit (or Local Housing Allowance) paid during the period in which the landlord was committing the offence, not exceeding 12 months.
- 6.7. **Enforcement of rent repayment orders.**
- 6.8. The amount of the rent repayment order is recoverable as a debt. If it is in relation to Universal Credit, it does not constitute an amount recovered by the authority. The Secretary of State may make regulations as to how we deal with amounts recovered under rent repayment orders, but to date there are no such regulations.
- 6.9. **Helping tenants apply for a rent repayment order**
- 6.10. We may help a tenant to apply for a rent repayment order, for example by conducting proceedings or by giving advice to the tenant.
- 6.11. **Appeals**
- 6.12. A person aggrieved by a decision of the First-tier Tribunal, may appeal to the Upper Tribunal. For the appeal to be brought the First-tier Tribunal or Upper Tribunal must give permission.

Appendix 7: Minimum Energy Efficiency Standards

7.1. The Energy Act 2011 introduced the Minimum Energy Efficiency Standards which are further detailed in the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (SI 2015 No. 962). The regulations came into force after 1st April 2018 for new (or renewed) tenancies and after 1st April 2020 for all relevant tenancies.

7.2. Guidance

7.3. We will have regard to the guidance issued for landlords www.gov.uk/government/uploads/system/uploads/attachment_data/file/669587/Domestic_Private_Rented_Landlord_Guidance_-_Updated_Version.pdf

7.4. Exemptions

Landlord may apply for an exemption (for up to five years) to the regulations on specific grounds. The exemption must be applied for online at www.gov.uk/guidance/domestic-private-rented-property-minimum-energy-efficiency-standard-landlord-guidance If a valid exemption is applied for then the landlord will not have breached the regulations. We may still take action under the Housing Act 2004 for dwellings which have a valid exemption.

7.5. Penalties

- Regulation 23 (under 3 months) - up to £2,000 + publication penalty.
- Regulation 23 (over 3 months) up to £4,000 + publication penalty.
- Regulation 36(2) – up to £1,000 + publication penalty.
- Regulation 37(4a) – up to £2,000 + publication penalty.

7.6. The maximum penalty cannot be more than £5,000 for each individual breach of the regulations. We may still take action under the Housing Act 2004 for dwellings in breach of the regulations.

7.7. We may publish the following information on the PRS Exemptions Register for 12 months (or longer if decided):

7.8. Right to review

7.9. Landlords served with a penalty notice may request a review of the notice. We will accept the review if it is received within 28 days from the date of service of the notice.

7.10. Representations may be submitted by a private landlord to support their request for a review. A request for a review, together with any representations received, will be carefully considered before we make a final decision as to whether to confirm or withdraw the Penalty Notice. Once we have made a decision, we will notify the private landlord of that decision by serving a Notice of Decision.

7.11. To ensure fairness and transparency, every decision to confirm a Penalty Notice following a request for review will be subject to approval. In the first instance, the decision to confirm a Penalty Notice will be proposed by the Housing & Health Manager, who will provide an assessment of any written

representations received. The proposal will be reviewed by the Head of Housing & Community Services.

7.12. **Reduction for an early acceptance of guilt**

7.13. As with criminal prosecutions, we are of the opinion that an early acceptance of guilt is in the public interest as it saves public time and money.

7.14. An offender can demonstrate an early acceptance of guilt by paying a financial penalty within 21 days of the date the Penalty Notice was served. If cleared payment is made within this time period, the offender can benefit from a 25% reduction in the amount of financial penalty payable.

7.15. A Penalty Notice will set out the financial penalty amount having regard to this policy and an amount equal to 75% of that sum, which would be accepted if received within the 21-day period.

7.16. An offender would not be demonstrating an early acceptance of guilt if they decided to request a review of our decision to serve a Penalty Notice. If we confirm a Penalty Notice after such a request, the full amount of the financial penalty will be payable and the option to make a payment in the reduced sum will not be available.

7.17. **Appeals**

7.18. The landlord may appeal to the First-tier Tribunal that the issue of the penalty was based on an error of fact or law; the penalty notice does not comply with the regulations; or in the circumstances, it was inappropriate for the penalty to be served on the landlord.

7.19. **Recovery of financial penalty**

7.20. If the landlord fails to pay all or part of the financial penalty we may recover the penalty or part on order of the County Court as if it were payable under an order of that Court. For relevant enforcement of unpaid financial penalties see Financial penalty as an alternative to prosecution.

Appendix 8: Tenant Fees Act 2019

- 8.1. The Tenant Fees Act 2019 came into force on 1st June 2019 for an applicable new (or renewed) tenancy agreement. Under this Act landlords or agents are no longer able to require tenants in the private rented sector in England or any persons acting on behalf of a tenant or guaranteeing the rent to make certain payments in connection with a tenancy.
- 8.2. **Guidance**
- 8.3. We will have regard to the statutory guidance issued for enforcement authorities www.gov.uk/government/publications/tenant-fees-act-2019-guidance
- 8.4. **Enforcing authorities**
- 8.5. Kent County Council Trading Standards have a duty to enforce the Act in their area. We can enforce the Act in our area. The lead enforcement authority (Bristol City Council) has the power to take steps to enforce where necessary or expedient to do so.
- 8.6. **Penalties**
- 8.7. A first breach of the legislation will usually be a civil breach with a financial penalty of up to £5,000. If a further breach is committed, within five years of the imposition of a financial penalty or conviction for a previous breach, it will become a criminal offence. Upon conviction, the penalty is an unlimited fine and a banning order offence under the Housing and Planning Act 2016. We may impose a financial penalty of up to £30,000 as an alternative to prosecution.
- 8.8. A breach of the requirement to repay the holding deposit is a civil offence and is subject to a financial penalty of up to £5,000. Each request for a prohibited payment is a breach and where the landlord or agent has not previously been fined, the financial penalty is up to £5,000 each.
- 8.9. **Procedure**
- 8.10. We will initially refer cases to Kent County Council Trading Standards to determine if they are already taking action or have the capacity to deal with the case.
- 8.11. We will have regard to relevant guidance and general principles as indicated in this policy and whether a prosecution is in the public interest on a case-by-case basis.
- 8.12. **Determining the appropriate financial penalty**
- 8.13. We will consider the following factors to help ensure that the financial penalty is set at an appropriate level:
- 8.14. **Severity of the breach**
- 8.15. The more serious the breach, the higher the penalty should be. The track record of the landlord or agent will be considered and whether the landlord

or agent has a history of failing to comply with their obligations and/or their actions were deliberate or where they knew, or ought to have known that their actions were in breach of their legal responsibilities. Landlords and agents are expected to be aware of their legal obligations.

8.16. Harm caused to the tenant, the greater the harm, the greater the monetary amount should be when imposing a financial penalty.

8.17. **Punishment of the landlord or agent**

8.18. The financial penalty should not be regarded as an easy or lesser option compared to prosecution. The penalty should have a real economic impact on the landlord or agent and demonstrate the consequences of not complying with their legal obligations.

8.19. The penalty should deter repeated breaches, deter others from committing similar breaches, and remove financial benefit the landlord or agent may have obtained because of committing the breach.

8.20. **Aggravating and mitigating factors**

8.21. Aggravating factors include, but are not limited to:

- Previous convictions or record of non-compliance,
- Motivated by financial gain,
- Obstruction of the investigation
- Deliberate concealment of the activity or evidence,
- Vulnerability of the tenant.

8.22. Mitigating factors include, but are not limited to:

- Co-operation with the investigation,
- Prompt repayment of the prohibited charge to the tenant,
- Health reasons preventing reasonable compliance with repayment of prohibited charge,
- No previous breaches,
- Landlord or agent is vulnerable, where the vulnerability is linked to the breach being committed,
- Good character / exemplary conduct,
- Admission of guilt
- Whether the landlord or agent's primary trade or income is not connected with the private rented sector.

8.23. **Fairness and proportionality**

8.24. The penalty should be fair and proportionate but in all instances act as a deterrent and remove any gain as a result of the breach. Factors include:

- Totality principle, where more than one breach or penalty is the total penalty just and proportionate,
- Impact of the financial penalty on the landlord or agent's ability to comply with legislation, and whether is proportionate to their financial situation (e.g. risk of loss of home),

- Impact of the financial penalty on third parties (staff or other customers)

8.25. **Failure to pay a financial penalty**

8.26. If a landlord or agent fails to pay all or part of a financial penalty we may recover the outstanding amount on order of the County Court, as if it were payable under the order of that Court.

8.27. **Income received from a financial penalty**

8.28. Income received from a financial penalty will be retained by the Council provided that it is used to further our statutory functions in relation to our enforcement activities covering the private rented sector. Any excess must be paid to the Secretary of State.

8.29. **Assistance to recover amount paid**

8.30. We may help a tenant or other relevant person to make an application under section 15 to the First-tier Tribunal. We may help a tenant or other relevant person in the event that the landlord or agent does not comply with the order of the First-tier Tribunal and needs to apply to the County Court.

8.31. **Duty to notify**

We will notify Kent County Council Trading Standards of our intention to take action and if we subsequently do not take action. We will notify the lead enforcement authority whenever we impose a financial penalty; when a financial penalty is withdrawn; or when a penalty is quashed on appeal.

8.32. **Publicity**

8.33. We may publicise a successful penalty. For a first breach, we may publicise the breach if this would have a beneficial effect on awareness of the legislation for the public. For further breaches, we may make public successful convictions, banning orders or financial penalties.

8.34. We may disclose criminal convictions on a landlord or agent on request by a tenant where these are a matter of public record (conviction or after an appeal to the First-tier Tribunal). We will decide in each case if there is a lawful basis to process personal data and in the public interest. We will have regard to the Data Protection Act 2018.

Appendix 9: Banning orders

- 9.1. Under Chapter 2 of the Housing and Planning Act 2016 Local Authorities can apply to the First-tier Tribunal to impose a banning order on a landlord or managing agent, following conviction for a 'banning order offence as contained in the current Banning Order Offences Regulations.
- 9.2. A landlord or managing agent subject to a banning order is prevented from:
- Letting housing in England,
 - Engaging in English letting agency work,
 - Engaging in English property management work, or
 - Doing two or more of those things
- 9.3. **Guidance**
- 9.4. We will have regard to the non-statutory guidance issued by the Ministry of Housing, Communities and Local Government www.gov.uk/government/publications/banning-orders-for-landlords-and-property-agents-under-the-housing-and-planning-act-2016
- 9.5. **Factors to consider when to apply for a banning order**
- 9.6. The following factors will be considered in deciding whether or not to apply for a banning order, and when recommending the length of a banning order:
- The seriousness of the offence,
 - Previous convictions/rogue landlord database,
 - Harm caused to the tenant,
 - Punishment of the offender,
 - Deterrence to the offender from repeating the offence, and
 - Deterrence to others from committing similar offences
- 9.7. The decision to commence the procedure to apply for a banning order and length of proposed time for any such order will be authorised by the Head of Housing and Community Services.
- 9.8. Where a banning order is made, the individual will be determined not to be 'fit and proper' to hold a licence under Part 2 or 3 under the Housing Act 2004 and any licences in force under those parts will be revoked.
- 9.9. **Publicity**
- 9.10. Where a successful banning order has been made, we will consider whether to publish details of these, including the names of individual landlords. Legal advice will be sought prior to this where appropriate, and consideration will be given to the Ministry of Justice guidance as to whether to publish sentencing outcomes.
- 9.11. Information on banned landlords will be made available to tenants on request.

Appendix 10: Financial penalty as an alternative to prosecution

- 10.1. The Housing and Planning Act 2016 amended the Housing Act 2004 so that instead of prosecution in some cases we can impose a financial penalty.
- 10.2. The legislation is contained in sections 23, 126 and Schedule 9 of the Housing and Planning Act 2016. The powers came into force on 6th April 2017 (SI 2017 No. 281).
- 10.3. Under section 249A of the Housing Act 2004, we may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a "relevant housing offence".
- 10.4. **Relevant housing offences**
- 10.5. The relevant housing offences are:
- Failing to comply with an improvement notice (Housing Act 2004 section 30);
 - Failing to licence a House in Multiple Occupation under Part 2 (Housing Act 2004 section 72(1));
 - Knowingly permitting the over-occupation of an HMO licensed under Part 2 (Housing Act 2004 section 72(2));
 - Failing to comply with a condition of an HMO licence issued under Part 2 (Housing Act 2004 section 72(3));
 - Failing to licence a house subject to selective licensing under Part 3 (Housing Act 2004 section 95(1));
 - Failing to comply with a condition of an HMO licence issued under Part 3 (Housing Act 2004 section 95(2));
 - Failing to comply with an HMO overcrowding notice in respect of a non-licensable HMO (Housing Act 2004 section 139(7));
 - Failing to comply with the HMO Management Regulations (Housing Act 2004 section 234(3)); and
 - Breaching a Banning Order (Housing and Planning Act 2016 section 21).
- 10.6. A person who commits any of the above offences without reasonable excuse is liable on summary conviction to a fine in the Magistrates' Court. A financial penalty imposed as an alternative must not exceed £30,000.
- 10.7. **Breaches of banning orders**
- 10.8. The Housing and Planning Act 2016 also introduced banning orders under Chapter 2 of Part 2. We may apply to a First-tier Tribunal for a banning order against a person who has been convicted of a banning order offence. A banning order offence is an offence set out in the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 (SI 2018/216). A range of offences under 14 different acts are listed, including those listed above as relevant housing offences.
- 10.9. A banning order made by a First-tier Tribunal may prohibit a person from engaging in one or more of the following activities:
- Letting housing;
 - Engaging in letting agency work;

- Engaging in property management work
- 10.10. A person who breaches a banning order commits an offence under section 21(1) of the Housing and Planning Act 2016 and is liable on summary conviction to imprisonment, or to a fine, or both. However, we may instead impose a financial penalty under section 23 of Housing and Planning Act 2016 of an amount not exceeding £30,000.
- 10.11. **Prosecution or financial penalty**
- 10.12. We cannot both prosecute and impose a financial penalty in respect of the same offence. We must decide which course of action is most appropriate.
- 10.13. **Burden of proof**
- 10.14. The same criminal standard of proof is required for a financial penalty as for a prosecution. Before taking formal action, we must therefore be satisfied that if the case were to be prosecuted in the Magistrate’s Court, there would be a realistic prospect of conviction.
- 10.15. In order to actually achieve a conviction in the Magistrates’ Court, we would need to be able to demonstrate beyond reasonable doubt that the offence has been committed. Similarly, where a civil penalty is imposed and an appeal is subsequently made to the First-tier Tribunal, we would need to be able to demonstrate beyond reasonable doubt that the offence had been committed.
- 10.16. We should consult the Code for Crown Prosecutors’ for this purpose as it provides advice on the extent to which there is likely to be sufficient evidence to secure a conviction. The Code has two stages: (i) the evidential stage and (ii) the public interest stage.
- 10.17. **Statutory guidance**
- 10.18. In exercising their functions in respect of financial penalties, we must have regard to any statutory guidance issued under section 23(10) and Schedules 1 and 9 of the Housing and Planning Act 2016. The Ministry of Housing, Communities & Local Government issued such as statutory guidance in April 2018, Civil penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities.
- 10.19. The guidance requires us to develop and document a policy which sets out:
- When we should prosecute and when we should impose a financial penalty; and
 - The level of financial penalty we should impose in each case.
- 10.20. The guidance states that we should consider the following factors to help ensure that any financial penalty is set at an appropriate level:
- Severity of the offence;
 - Culpability and track record of the offender;
 - The harm caused to the tenant (actual and potential);

- Punishment of the offender (the penalty should be proportionate of the offence and have a real economic impact);
- Deter the offender from repeating the offence;
- Deter others from committing similar offences;
- Remove any financial benefit the offender may have obtained as a result of committing the offence.

10.21. This policy sets out how we will impose financial penalties in accordance with relevant legislation and statutory guidance.

10.22. **When a financial penalty is to be imposed**

10.23. The Government announced the introduction of financial penalties for relevant housing offences with a press release entitled: "Tougher measures to target rogue landlords – new rules will help crackdown on rogue landlords that flout the rules and improve safety and affordability for renters". The Government is obviously keen to see enforcement action taken against the small minority of rogue landlords who neglect their responsibilities.

10.24. Significantly, these powers allow us to retain the income received from financial penalties to further private rented sector enforcement activities.

10.25. We will use the powers robustly wherever it is appropriate to do so.

10.26. **Determining an appropriate sanction**

10.27. Each offence will be assessed on a case-by-case basis. However, the starting position is that we will seek to impose a financial penalty for a relevant offence, unless there are circumstances relating to the offence that advocate pursuing a criminal prosecution instead.

10.28. We may choose to prosecute for a relevant offence if it is of a particularly serious nature. The imposition of a financial penalty in accordance with the policy set out below may not constitute a sanction of sufficient severity in relation to some offences, as the policy has prescribed ranges and is further restricted by the statutory maximum of £30,000. If we are of the opinion that an offence is of such a serious nature that it warrants a more significant financial penalty than that which could be imposed by this policy, we will normally seek to prosecute the offender(s).

10.29. The breach of a banning order under the 2016 Act is a serious offence, and the we will give careful consideration to the option of prosecution in such cases, as the Courts have the power to impose a prison sentence as a punishment.

10.30. Prosecution may also be an appropriate course of action when an offender has previously committed a housing offence in the past. Preventing reoffending is an important consideration and a successful prosecution resulting in a criminal record might be a more significant deterrent in some circumstances.

10.31. Wider public awareness may also be a key consideration. Prosecutions are held in the public domain and can be publicised by us and local media.

Such publicity in respect of an offender may be in the public interest in certain circumstances. Naming and shaming also helps to deter others from committing similar offences.

10.32. There may be other situations in which prosecution may be the most appropriate sanction. Accordingly, we will carefully review the merits of every offence to decide when to prosecute and when to issue a financial penalty.

10.33. **Determining the starting point for a financial penalty**

10.34. **Severity of the offence**

10.35. A financial penalty may be any amount up to the statutory maximum of £30,000. However, we are expected to reserve the higher amounts for the worst offenders and take a logical and proportionate approach to setting the level of financial penalties more generally. The overarching principle is that the more serious the offence, the higher the penalty should be. The penalty for each offence must therefore be determined on a case-by-case basis.

10.36. Having due regard to the statutory guidance published by Government, a Table of Financial Penalties has been developed as set out below. The table specifies a range of starting points from £1,000 to £30,000. The starting point is determined by the severity of the offence, which is based on an assessment of the following factors:

- Culpability;
- Track record;
- Portfolio size;
- Risk of harm

10.37. **Culpability**

10.38. Culpability is a key factor in determining the severity of an offence. Therefore, the level of any penalty will initially be set by calculating the culpability category, which then determines the culpability premium. There are four culpability categories, namely:

- Very High;
- High;
- Medium;
- Low

10.39. Very High

10.40. This category applies to offences where the offender has deliberately breached or flagrantly disregarded the law. This category is subject to a 100% culpability premium.

10.41. High

10.42. This category applies to offences where the offender had foresight of a potential offence, but through wilful blindness, decided not to take

appropriate and/or timely action. This category is subject to an 80% culpability premium.

10.43. Medium

10.44. This category applies to offences committed through an act or omission that a person exercising reasonable care would not commit. Any person or other legal entity operating as a landlord or agent in the private rented sector is running a business and is expected to be aware of their legal obligations. This category is subject to a 60% culpability premium.

10.45. Low

10.46. This category applies to offences where there was fault on the part of the offender, but significant efforts had been made to secure compliance with the law, but those efforts were not sufficient. This category may also apply to situations where there was no warning of a potential offence. This category is subject to a 40% culpability premium.

10.47. **Track record**

10.48. We would expect a good landlord or agent to have very little contact with the Council's Housing & Health Team, other than for advice or for licensing obligations. They would be expected to maintain their properties in a good and safe condition and keep up-to-date and comply with all relevant legal requirements. Unfortunately, there are landlords and agents who are regularly subject to enforcement action owing to their failure to maintain their properties in an acceptable condition.

10.49. The second step in determining the amount of financial penalty relates to the offender's track record. An historically non-compliant landlord or agent should be subject to a more significant penalty on the basis that they have yet to change their behaviour. A penalty amount adjustment relating to the offender's track record is therefore appropriate. This should help deter repeat offending.

10.50. We will review all relevant records to identify any previous evidence of legislative failings. However, only evidence relating to the five years immediately prior to the offence date will be taken into account. The evidence reviewed will include:

- Any previous convictions for housing related offences;
- Whether the offender has previously been subject to a financial penalty for a housing related contravention;
- Whether the offender has previously been subject to, or associated with, statutory enforcement action (e.g. Improvement Notice, Emergency Prohibition Order, etc.); and
- The number of genuine housing condition complaints received in respect of properties associated with the offender.

10.51. Following the review, the offender's track record will be classed as one of the following categories:

- Significant;

- Some;
- None or negligible

10.52. Significant

10.53. Where there is evidence of multiple enforcement interventions by our Housing & Health Team, together with evidence of non-compliance, the significant category will be used. In most cases, this category will also be used for any offender who has been successfully prosecuted for a housing offence or been subject to a housing related-financial penalty.

10.54. Some

10.55. This category will be used where the offender is associated with more evidence than would normally be expected of a good landlord or agent having regard to the size and nature of their portfolio. There is likely to be evidence of statutory enforcement action.

10.56. None or negligible

10.57. This category will be used if, following a review of our records, there is no relevant evidence associated with the offender. Any unsubstantiated housing condition complaints will be disregarded. We may also exercise our discretion to disregard any evidence where the issues were minor in nature and there was no reluctance on the part of the landlord or agent to resolve the issues within reasonable timescales.

10.58. The descriptor “Negligible” has been included to allow for a fair and reasonable review of evidence in respect of landlords and agents with larger portfolios. Therefore, if the evidence is negligible having regard to the size of the portfolio in our area, this category will be used.

10.59. **Portfolio size**

10.60. The size of an offender’s portfolio will be taken into account when determining the amount of financial penalty. While all landlords and agents are expected to be aware of their legal obligations, the larger the business is, the more proficient and professional the landlord or agent should be. Furthermore, offenders with a larger portfolio will have more assets and a higher rental income and as such, the penalty should have regard to their ability to pay.

10.61. Taking into account the size of the offender’s portfolio helps ensure that the penalty is set at a high enough level to have a real economic impact, such that it serves as an appropriate punishment as well as a deterrent.

10.62. The third step in determining the amount of financial penalty requires us to allocate a portfolio size. There are four size categories that relate to the number of units of accommodation the offender has ownership of, responsibility for, or association with. The size categories are:

- One unit of accommodation;
- Two to four units of accommodation;
- Five to nineteen units of accommodation;

- Twenty or more units of accommodation.

10.63. A unit of accommodation is a single dwelling house, a flat (whether self-contained or not) or a room or bedsit within a house in multiple occupation (“HMO”).

10.64. The common parts of a building containing one or more flats will also be counted as one unit of accommodation for the purposes of determining the portfolio size, if the landlord or agent concerned is only responsible for the common parts and not for any flats within the building. If the landlord or agent concerned is responsible for one or more flats within the building, the common parts will be disregarded.

10.65. Some offenders own properties directly; some are directors of companies which own property. It is also not uncommon for an offender to be strongly associated with the management of a rented property, but actual ownership, for whatever reason, is in the name of a husband, wife or partner. All units of accommodation that are clearly associated with the offender will be taken into account when determining the portfolio size.

10.66. We will determine which category to place the offender in using the information it already holds and any information it can reasonably obtain in making the assessment.

10.67. If we cannot ascertain any information as to whether the offender has any other properties, an assumption will be made, with the default position being two to four units of accommodation. However, if an agent is the offender, it will be assumed that they are responsible for 20 or more units of accommodation.

10.68. **Risk of harm**

10.69. The fourth step in determining the amount of financial penalty concerns the risk of harm associated with the offence. The nature of the exposure to a harmful occurrence is an important factor when considering the severity of an offence.

10.70. We will make an assessment of the risk of harm by having regard to the seriousness of the harm risked as well as the likelihood of that harm occurring. The offence will be placed into one of the following four categories:

- Level 1;
- Level 2;
- Level 3;
- Level 4

To assist in determining the level of risk, potential harm outcomes are classified as serious, severe or extreme and the likelihood classified as low, medium or high.

- 10.71. Level 1
- 10.72. This category will be used when the risk of harm does not fall within the Level 2, Level 3 or Level 4 categories.
- 10.73. Any offence associated with the operation of an unlicensed HMO will usually fall into this category if there is no particular risk of harm associated with the condition or management of the property concerned.
- 10.74. Level 2
- 10.75. The use of this category may infer that the offence was associated with an extreme harm outcome, but the likelihood of a harmful event occurring was low. This category may be used when the risk of harm related to a severe harm outcome and the likelihood of a harmful event occurring was medium. This category may also be used when the risk of harm related to a serious harm outcome and the likelihood of a harmful event occurring was high.
- 10.76. Level 3
- 10.77. The use of this category may infer that the offence was associated with an extreme harm outcome and the likelihood of a harmful event occurring was medium. This category may also be used when the risk of harm related to a severe harm outcome and the likelihood of a harmful event occurring was high.
- 10.78. Level 4
- 10.79. The use of this category will usually infer that the offence was associated with an extreme harm outcome and the likelihood of a harmful event occurring was high.
- 10.80. **Table of Financial Penalties**
- 10.81. Having made the four-step assessment described above, we will determine the starting point for the financial penalty using the Table of Financial Penalties set out on the next page.

10.82. Table of Financial Penalties

Culpability	Track Record	Portfolio Size	Risk of Harm			
			Level 1	Level 2	Level 3	Level 4
Very High (100% Premium)	Significant	1	£7,500	£10,000	£12,500	£20,000
		2 to 4	£10,000	£12,500	£15,000	£22,500
		5 to 19	£15,000	£17,500	£20,000	£27,000
		20+	£17,500	£20,000	£22,500	£30,000
	Some	1	£5,000	£7,500	£10,000	£17,500
		2 to 4	£7,500	£10,000	£12,500	£20,000
		5 to 19	£12,500	£15,000	£17,500	£25,000
		20+	£15,000	£17,500	£20,000	£27,500
	None or negligible	1	£2,500	£5,000	£7,500	£15,000
		2 to 4	£5,000	£7,500	£10,000	£17,500
		5 to 19	£10,000	£12,500	£15,000	£22,000
		20+	£12,500	£15,000	£17,500	£25,000
High	Significant	1	£6,000	£8,000	£10,000	£16,000
		2 to 4	£8,000	£10,000	£12,000	£18,000
		5 to 19	£12,000	£14,000	£16,000	£22,000
		20+	£14,000	£16,000	£18,000	£24,000
	Some	1	£4,000	£6,000	£8,000	£14,000
		2 to 4	£6,000	£8,000	£10,000	£16,000
		5 to 19	£10,000	£12,000	£14,000	£20,000
		20+	£12,000	£14,000	£16,000	£22,000
	None or negligible	1	£2,000	£4,000	£6,000	£12,000
		2 to 4	£4,000	£6,000	£8,000	£14,000
		5 to 19	£8,000	£10,000	£12,000	£18,000
		20+	£10,000	£12,000	£14,000	£20,000
Medium	Significant	1	£4,500	£6,000	£7,500	£12,000
		2 to 4	£6,000	£7,500	£9,000	£13,500
		5 to 19	£9,000	£10,500	£12,000	£16,500
		20+	£10,500	£12,000	£13,500	£18,000
	Some	1	£3,000	£4,500	£6,000	£10,500
		2 to 4	£4,500	£6,000	£7,500	£12,000
		5 to 19	£7,500	£9,000	£10,500	£15,000
		20+	£9,000	£10,500	£12,000	£16,500
	None or negligible	1	£1,500	£3,000	£4,500	£9,000
		2 to 4	£3,000	£4,500	£6,000	£10,500
		5 to 19	£6,000	£7,500	£9,000	£13,500
		20+	£7,500	£9,000	£10,500	£15,000
Low	Significant	1	£3,000	£4,000	£5,000	£8,000
		2 to 4	£4,000	£5,000	£6,000	£9,000
		5 to 19	£6,000	£7,000	£8,000	£11,000
		20+	£7,000	£8,000	£9,000	£12,000
	Some	1	£2,000	£3,000	£4,000	£7,000
		2 to 4	£3,000	£4,000	£5,000	£8,000
		5 to 19	£5,000	£6,000	£7,000	£10,000
		20+	£6,000	£7,000	£8,000	£11,000
	None or negligible	1	£1,000	£2,000	£3,000	£6,000
		2 to 4	£2,000	£3,000	£4,000	£7,000
		5 to 19	£4,000	£5,000	£6,000	£9,000
		20+	£5,000	£6,000	£7,000	£10,000

- 10.83. **Determining adjustments of the penalty**
- 10.84. The level of financial penalty should, in a fair and proportionate way, meet the objectives of punishment, deterrence and the removal of gain. As such, we will, once the starting point has been determined, review the proposed financial penalty and consider whether there are any other mitigating or aggravating factors that should be taken into account when setting the amount of financial penalty. If there are none, no adjustment will be made to the starting point identified by the Table of Financial Penalties.
- 10.85. Some examples of mitigating and aggravating factors are given below. However, the list is not exhaustive, and we may take into account any factor deemed to be relevant.
- 10.86. **Hardship**
- 10.87. Landlord
- 10.88. If at this stage of the process, we are aware of the offender's personal situation and financial position, and we are of the view that there are exceptional circumstances, it may be appropriate to reduce the amount of financial penalty.
- 10.89. Tenant
- 10.90. If, owing to the imposition of a financial penalty on a landlord, the tenant will - through no fault of their own - experience hardship, we may consider reducing the amount of financial penalty, but only in exceptional circumstances.
- 10.91. **Previous offences**
- 10.92. While the Table of Financial Penalties takes into account the offender's track record, there may be circumstances in which the nature of previous offences require a more robust approach to punishment.
- 10.93. For example, if a historically non-compliant landlord persists in operating unlicensed premises, the starting point may not be sufficiently high enough in certain circumstances. Such circumstances could include when there are no significant hazards associated with the unlicensed premises. If a *Significant* track record category is already in use for a certain offender, repeated offences where the *Culpability* is very high would be restricted owing to the *Risk of Harm* categorisation. However, the repeated offences would be demonstrating a complete disregard for the law. Therefore, for any repeated offence so restricted, we may consider increasing the amount of financial penalty.
- 10.94. **Scale of exposure**
- 10.95. The greater number of people exposed to the risk of harm, the more significant the offence. While the Table of Financial Penalties takes into account the risk of harm, it does not take into account the number of persons exposed to that harm. Accordingly, if the number of persons

exposed is higher than average, we may consider increasing the amount of financial penalty.

10.96. A risk of harm associated with a typical family unit would not usually necessitate an increase. However, if the risk of harm was in an HMO or the common parts of a building occupied by numerous persons, an increase in the amount of financial penalty may be appropriate.

10.97. **Actual harm**

10.98. If actual harm has occurred, we may consider increasing the amount of financial penalty. If the harm outcome is of a serious nature, it is likely we will seek to review the financial penalty upwards.

10.99. **Adjustment range**

10.100. The adjustment range will be limited to an amount equal to 50% of the starting point. The maximum 50% variance may be above or below the initial starting point. For example, if the starting point is £9,000, the maximum 50% variance is £4,500. As such, the financial penalty could be reduced to an amount not lower than £4,500 or increased to an amount not greater than £13,500.

10.101. We will not, under any circumstances, vary the financial penalty by more than 50%, and increase it above the statutory maximum of £30,000.

10.102. **Decision making**

10.103. If we decide to vary the proposed financial penalty away from the starting point identified in the Table of Financial Penalties, we will make a record of our decision and notify the offender of the reasons for that decision.

10.104. To ensure fairness and transparency, the decision to vary a financial penalty will be subject to review by a senior manager. In the first instance, the variation will be proposed by the Housing & Health Manager. The proposal will be reviewed by the Head of Housing and Community Services, or an officer of similar or higher seniority, and a final decision made by that senior manager.

10.105. **Notice of Intent**

10.106. Before imposing a financial penalty, we must first give the offender notice of its intention to impose such a penalty. This type of notice is known as a "Notice of Intent".

10.107. The Notice of Intent must be served within six months of the offence date. However, if the offence is ongoing, the Notice of Intent may be served at any time while the conduct is continuing. If the conduct stops, the Notice of Intent must be served within six months of the date the conduct ceased.

10.108. For example, if a person fails to licence an HMO subject to mandatory licensing without reasonable excuse, we may at any time while the HMO remains unlicensed, serve a Notice of Intent. If such a person makes a valid licence application, we will still have the option to serve a Notice of

Intent, but if we choose to do so, we must serve the Notice of Intent within six months of the date the valid licence application was made.

10.109. **Right to make written representations**

10.110. Any person served with a Notice of Intent may make written representations to us about the proposal to impose a financial penalty. Any representations must be made within 28 days of the date the Notice of Intent was served. Written representations may be made in respect of any matter.

10.111. **Financial position**

10.112. The offender may wish to submit information as to their financial position. If we are aware of the financial position of the offender before serving the Notice of Intent, we may have already made adjustments to the proposed financial penalty. However, this may not be the case and offenders are advised to use the 28-day period for submitting written representations to make us aware of their financial situation, particularly if they would have difficulties in paying the proposed financial penalty.

10.113. **False or misleading information**

10.114. It is important to note that any person who supplies information to us that is false or misleading, whether knowingly or recklessly, in connection with any proposed financial penalty, commits an offence and is liable on summary conviction in the Magistrates' Court to an unlimited fine.

10.115. **Review of representations**

10.116. We will carefully review any written representations received during the 28-day period before taking any further action. There is no statutory timeframe for the review process, but we will seek to make a decision as to our proposed course of action as soon as possible.

10.117. We will take one of the following courses of action:

- Withdraw the proposal to impose a financial penalty;
- Impose a financial penalty of an amount lower than that proposed in the Notice of Intent;
- Impose the financial penalty proposed in the Notice of Intent;
- Propose to impose a financial penalty of an amount higher than that specified in the Notice of Intent.

10.118. If we decide to withdraw the proposal to impose a financial penalty, we will confirm our decision in writing. If we decide to impose a financial penalty of a lower or equal amount to that proposed in the Notice of Intent, we will serve a Final Notice.

10.119. If the offender has provided written representations that increase the severity of the offence committed, we may seek to impose a higher financial penalty. If we decide to take that course of action, we will withdraw the original Notice of Intent and serve a revised Notice of Intent proposing an

increased financial penalty. The offender would then receive an additional 28 days in which to make further written representations.

10.120. **Reduction of financial penalty**

10.121. A reduction in the amount of financial penalty to be imposed may arise from us altering the starting point on the Table of Financial Penalties.

10.122. Whether we decide to alter the starting point or not following any written representations, we will not reduce the financial penalty by more than 50% of the finalised starting point.

10.123. If we decide not to alter the starting point after a review of any written representations received, and we have already used our discretion to make the maximum 50% reduction from that starting point prior to serving the Notice of Intent, no further reduction will be made.

10.124. **Decision making**

10.125. To ensure fairness and transparency, every decision to impose a financial penalty will be subject to review by a senior manager. In the first instance, the imposition of a financial penalty will be proposed by the Housing & Health Manager, who will provide an assessment of any written representations received. The proposal will be reviewed by the Head of Housing and Community Services, or an officer of similar or higher seniority, and a final decision made by that senior manager.

10.126. **Final Notice**

10.127. If we decide to impose a financial penalty following a review of any written representations received, we will serve a "Final Notice" on the offender which will set out:

- The amount of the financial penalty;
- The reasons for imposing the penalty;
- Information about how to pay the penalty;
- The period for payment of the penalty;
- Information about rights of appeal; and
- The consequences of failure to comply with the notice

10.128. The period in which a financial penalty must be paid has been determined by statute. All financial penalties must be paid within 28 days of the date the Final Notice was served.

10.129. **Appeals**

10.130. A person on whom a Final Notice has been served may appeal to the First-tier Tribunal against the decision to impose the financial penalty or the amount of the financial penalty.

10.131. Appeals should be made within 28 days of the date the Final Notice was served. Once an appeal has been lodged, the Final Notice is suspended until the appeal has been finally determined or withdrawn.

- 10.132. The First-tier Tribunal have the power to confirm, vary (reduce or increase), or cancel the Final Notice. If the First-tier Tribunal decides to increase the financial penalty, it may only do so up to the statutory maximum of £30,000.
- 10.133. **Multiple offences**
- 10.134. When considering imposing more than one financial penalty on an offender as a consequence of that offender committing more than one offence, we will carefully consider whether the cumulative financial penalty would be just and proportionate in the circumstances having regard to the offending behaviour as a whole.
- 10.135. Taking into account the principle of totality ensures that the cumulative effect of any sanctions imposed by us does not constitute an unjust and disproportionate punishment.
- 10.136. **Determining a just and proportionate punishment**
- 10.137. We will initially determine the amount of financial penalty that should be imposed in respect of each offence having regard to this policy. We will then add up the financial penalties and make an assessment as to whether the cumulative total is just and proportionate.
- 10.138. If we consider the cumulative total to be just and proportionate, we will normally impose a financial penalty for each offence.
- 10.139. However, if we consider the cumulative total to be unjust and disproportionate, we will take one or both of the following actions to ensure that the cumulative total is reduced to an amount that does constitute a just and proportionate punishment.
- 10.140. **Reduction of financial penalty**
- 10.141. We may use discretion to reduce the amount of a financial penalty at the review and adjustment stage, irrespective of whether or not there are other mitigating or aggravating factors. Any reduction would be similarly limited to an amount equal to 50% of the starting point identified in the Table of Financial Penalties. The additional reduction may be applied to one or more of the offences under consideration.
- 10.142. **Decision not to impose a financial penalty**
- 10.143. We may use discretion not to impose a financial penalty in respect of every offence under consideration. If we decide to take this course of action, the offence or offences disregarded will usually be of a lower severity.
- 10.144. **Rent Repayment Orders**
- 10.145. In consideration of totality, we will also take into account any proposal to pursue a Rent Repayment Order in respect of the same behaviour.

10.146. **Unpaid financial penalties**

10.147. We will take robust action to recover any financial penalty (or part thereof) not paid within 28 days of the date the Final Notice was served.

10.148. An application for an order of the County Court will be made in respect of all unpaid financial penalties. A certificate signed by the Chief Finance Officer stating that the financial penalty (or part thereof) has not been paid will be accepted by the Court as conclusive evidence of that fact, in accordance with Paragraph 11 of Schedule 13A to 2016 Act (breaches of banning orders).

10.149. In taking Court action, we would seek to recover interest and any Court expenses incurred, in addition to claiming the full amount of unpaid financial penalty.

10.150. **Enforcement**

10.151. If an offender does not comply with an order of the court, we will make an application to enforce the judgement. The type of enforcement action pursued would depend on the circumstances of the case and the amount owed. The most likely types of enforcement action are shown below.

10.152. **Court bailiffs**

10.153. A court bailiff will ask for payment. If the debt is not paid, the bailiff will visit the offender's home or business address to establish whether anything can be seized and sold to pay the outstanding debt.

10.154. **Charging order - Order of sale**

10.155. We can apply to place a charging order on any property owned by the offender. If a debt remains outstanding after a charging order has been registered, we can make an application for an order of sale. The property would then be subject to an enforced sale and the proceeds used to settle the debt owed to us.

10.156. **Attachment to earnings order**

10.157. If the offender is in paid employment, we can apply to the Court for an attachment of earnings order. Such an order would require the offender's employer to make salary deductions. Amounts would be deducted regularly at the direction of the Court until the debt owed to us has been fully discharged.

Appendix 11: Electrical Safety Standards

- 11.1. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 came into force on 1st June 2020 and apply to tenancies which start after 1st June 2020 and to existing tenancies from 1st April 2021 apart from excluded tenancies.
- 11.2. Landlords must ensure that electrical safety standards are met when the property is occupied, the electrical installation is tested at least every five years and provide a copy of the report to the tenant. They must also give the report to a prospective tenant or to us when asked for it.
- 11.3. We must serve a notice where there has been a breach. We may withdraw the remedial notice or if the notice has been breached arrange for the work to be undertaken. The landlord may appeal the notice within 28 days of service.
- 11.4. We may recover costs from the landlord which are reasonably incurred in taking remedial action or urgent remedial action by serving a demand for recovery of costs notice. The landlord has the right to appeal the demand within 21 days of service.
- 11.5. **Urgent remedial action**
- 11.6. Where an electrical report indicates urgent remedial action is required and the landlord has failed to undertake the investigation or work we may arrange to undertake the urgent remedial work and serve notice on the landlord.
- 11.7. **Financial penalties**
- 11.8. Where we are satisfied, beyond reasonable doubt, that a landlord has breached the duties, we may impose a financial penalty (or more than one penalty in the event of a continuing failure) in respect of the breach. The financial penalty may be any amount we determine but not greater than £30,000. In determining the amount of financial penalty we will use the same principles as for a Financial penalty as an alternative to prosecution.
- 11.9. **Appeals**
- 11.10. A landlord may appeal a final notice to the First-tier tribunal against our decision to impose a financial penalty, or the amount of penalty, within 28 days of the service of the final notice. The First-tier tribunal may confirm, quash or vary the final notice.
- 11.11. **Recovery of financial penalty**
- 11.12. If the landlord fails to pay all or part of the financial penalty we may recover the penalty or part on order of the County Court as if it were payable under an order of that Court. For relevant enforcement of unpaid financial penalties see Financial penalty as an alternative to prosecution above.

Appendix 12: Community Protection Notices

- 12.1. The Anti-social Behaviour, Crime and Policing Act 2014 replaced a number of powers that have been available to the Council and Police for dealing with anti-social behaviour within communities. Under this legislation we have the power to serve a Community Protection Notice on an individual, business or organisation responsible for anti-social behaviour.
- 12.2. The purpose of these notices is to stop a person (over 16), a business or an organisation committing anti-social behaviour which spoils the community's quality of life. We will work with our partners in the Community Protection Team in determining cases using this legislation.
- 12.3. **Warning**
- 12.4. If the behaviour has a detrimental effect on the quality of life of those in the locality, is of a persistent and continuing nature and is unreasonable a warning may be issued informing the perpetrator of the problem behaviour, requesting them to stop and advising of the consequences if it does not stop.
- 12.5. **Notice**
- 12.6. If the behaviour continues a notice may be issued, which will specify what is to be stopped or undertaken in order to avoid further anti-social behaviour. We will review the notice 12 months from the date of service and make a decision as to whether or not it should remain in place.
- 12.7. **Remedial Action**
- 12.8. If the perpetrator fails to comply with the notice we may decide to take remedial action to address the issue. If we decide that remedial action is needed we will establish what works are required to put the situation right.
- 12.9. When it has been decided what works are required we will specify what work we intend to carry out and the estimated cost. Once the work has been completed we will give details of the work completed and the final amount payable. In determining a 'reasonable' charge we will ensure the costs are no more than is necessary to the standard specified in the notice. Such costs may include officer time, use of cleaning equipment, and administration costs relating to the clearance itself.
- 12.10. **Appeal**
- 12.11. The person who was served a Community Protection Notice may appeal it at the Magistrates' Court within 21 days.
- 12.12. **Fine / Prosecution**
- 12.13. A breach of the notice is a criminal offence and therefore we may issue a fixed penalty of £100 and/or prosecute the offender. If the offender is prosecuted they may be fined up to £2,500 (or up to £20,000 if they are a business) at the Magistrates' Court.

Agenda Item 16

Communities, Housing and Environment Committee

6 April 2021

Update on progress of Access to Service Review

Final Decision-Maker	Communities, Housing and Environment Committee
Lead Head of Service	Angela Woodhouse, Head of Policy, Communications and Governance
Lead Officer and Report Author	Orla Sweeney, Equalities and Corporate Policy Officer Anna Collier, Policy and Information Manager
Classification	Public
Wards affected	All

Executive Summary

This report provides an update on the progress of the Access to Services review being undertaken by the Task and Finish Panel appointed by the Communities, Housing and Environment Committee.

Purpose of Report

Noting

This report makes the following recommendations to this Committee:

1. To note progress on the Access to Services Review and emerging recommendations as detailed in Appendix 2.

Timetable

Meeting	Date
Communities, Housing and Environment Committee	6 April 2021

Update on progress of Access to Service Review

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	<p><i>The four Strategic Plan objectives are:</i></p> <ul style="list-style-type: none"> • Embracing Growth and Enabling Infrastructure • Safe, Clean and Green • Homes and Communities • A Thriving Place <p>We do not expect the recommendations will by themselves materially affect achievement of corporate priorities. However, the review will support the Council's overall achievement of its aims through the delivery of a final report and recommendations.</p>	Head of Policy, Communications and Governance
Cross Cutting Objectives	<p><i>The four cross-cutting objectives are:</i></p> <ul style="list-style-type: none"> • Heritage is Respected • Health Inequalities are Addressed and Reduced • Deprivation and Social Mobility is Improved • Biodiversity and Environmental Sustainability is respected <p>The report supports the achievements of 'Health Inequalities are Addressed and Reduced' and 'Deprivation and Social Mobility are Improved' cross cutting objectives by proposing actions which support their delivery.</p>	Head of Policy, Communications and Governance
Risk Management	Please refer to paragraph 5.1 in the report.	Head of Policy, Communications and Governance
Financial	The proposals set out in the recommendation are all within already approved budgetary headings and so need no new funding for implementation.	Policy & Information Manager

Staffing	No current implications but the proposed recommendation would be delivered within our current staffing.	Head of Policy, Communications and Governance
Legal	Accepting the recommendations will help fulfil the Council's duties under the Public Sector Equalities Duty. Failure to accept the recommendations without agreeing suitable alternatives may place the Council in breach of Equality Act 2010.	Policy & Information Manager
Privacy and Data Protection	No current implications but accepting the recommendations will increase the volume of data held by the Council. We will hold that data in line with our retention schedules.	Policy and Information Team
Equalities	The recommendations do not propose a change in service therefore will not require an equalities impact assessment.	Policy & Information Manager
Public Health	We recognise that the emerging recommendations will have a positive impact on population health or that of individuals.	Policy & Information Manager
Crime and Disorder	No impact identified.	Policy & Information Manager
Procurement	No impact identified.	Policy & Information Manager

2. INTRODUCTION AND BACKGROUND

- 2.1 Following a Councillor request made to Communities, Housing and Environment Committee to revisit the Access to the Council's Services for disabled people Overview and Scrutiny Review carried out in 2006, it was agreed by the Communities, Housing and Environment Committee that a Task and Finish panel would be formed to review Access to Council Services.
- 2.2 The Access to Services review was scoped and agreed by the Communities, Housing and Environment Committee. It outlined three key areas for review: Digital Accessibility, Communications and Buildings (the physical environment).

- 2.3 Five members of the Committee put themselves forward to form the Task and Finish panel, Councillors Burton, Mrs Joy, Mortimer, Powell and Mrs Rose.
- 2.4 Members agreed a complete calendar of meetings (Appendix 1) at the outset which set a clear direction and enabled progress to be monitored.
- 2.5 Through the series of meetings so far, the panel have gained a firm understanding of what accessibility means to the Council, where it is performing well, the challenges it faces and the work it still needs to do in order to meet the needs of our residents. The panel are gathering an evidence base by selecting officers and expert witnesses to inform them on each topic and this is underpinned by research and best practice.
- 2.6 The pandemic and the impact this has had on resident's ability to access Council services has been an explicit consideration and concern of the review so far and will remain so as lockdown restrictions are lifted, and we enter a recovery phase.

Digital Accessibility

- 2.7 The first of three meetings on Digital Accessibility took place on 7 September 2020. The panel were tasked to evaluate the accessibility of the website for users, the services provided and the way in which digital processes support frontline services delivered by Customer Services in the Link.
- 2.8 The first meeting focused on website accessibility and was arranged before the deadline for EU Government and EU accessibility targets for public sector websites on 23 September 2020. This was to ensure that the Task and Finish panel had an opportunity to fully understand the challenges and the work that was being undertaken, at a point where they could have a meaningful input.
- 2.9 A presentation was given by Gary Hunter, Transformation and Digital Services Manager, and Ethan McDowell, Digital Services Officer, which outlined the legislation and regulations the Council are now required to meet and how they had achieved this.
- 2.10 The panel were impressed by what had been achieved, and the full implication of what an accessible website meant in terms of ensuring the Council's services and content could now be used and understood as widely as possible.
- 2.11 However, they were concerned about how this standard would be maintained and how the principles and processes for ensuring that website content and documents produced by Officers across the Council were accessible.
- 2.12 The second meeting on Digital Accessibility included a presentation by Gary Hunter, Transformation and Digital Services Manager, Paul O'Grady, Digital Services Team Leader, and Carly Benville, Senior Business Analyst.

- 2.13 The presentation provided the panel with an overview of the Council's website and its evolution to date.
- 2.14 Members were informed that there were now over 100 services available online, and statistics for 2019/20 showed that there had been 1.4 million visits to the websites, and online payments totalling approximately £18 million were received.
- 2.15 The panel felt that Councillors as a whole were not as well informed as they could be about the availability of services online and would like Councillors to be better equipped to inform residents of ways to access services other than in person or by telephone. It was recognised that this route was preferential to many residents and businesses.
- 2.16 The third meeting focused on Digital Inclusion and included a presentation by Gary Hunter, Transformation and Digital Services Manager, and Paul O'Grady, Digital Services Team Leader.
- 2.17 The panel were given an overview of what it means to be Digitally Included and the detrimental impact of digital exclusion. The barriers and the types of groups that were likely to be most affected were also considered.
- 2.18 The panel considered the local picture and how that compared with the national picture. They were updated on the work that the Digital team were doing with local partners and a recent survey that has been undertaken by KCC libraries.
- 2.19 The panel identified that information on digital inclusion needed to be readily available to residents in terms of signposting to resources. The panel were supportive of a webpage but felt that this should be complimented by an article in Borough Insight that would reach all households. It would help inform them as well as directing them to the support available. Launching a webpage without this backing would be counterintuitive to the issues faced.

Communication

- 2.20 The Panel have progressed to the second phase of the review – Communication. They are tasked with reviewing the Council's communication channels to understand their purpose and use.
- 2.21 This phase of the review will involve a series of three meetings, covering the Council's Corporate Communication channels, Council Services (an evaluation of all points of access and where this information is publicly available) and a session with all Councillors which will be informed by a pre survey on the role Councillors play in terms of communication.
- 2.22 The first meeting was held on 8 March 2021. Involve were invited to attend to inform the panel on its Service Level Agreement with the Council which includes running a number Community Group Forums and maintaining a repository of Community Groups.

- 2.23 Communication and engagement are fundamental to ensuring the Council's services are accessible to its residents. The services provided by Involve assist it in its ability to communicate widely, particularly with harder to reach groups, and provides a two-way communication channel between the Council and its residents and wider community.
- 2.24 The panel's experience of working closely with resident and community groups during the pandemic reinforced the importance and need for the Community Group Repository to be as complete as possible and reviewed on a regular basis.
- 2.25 It was identified that the current Community Group Repository provided by Involve was incomplete. Therefore, the Policy and Information team have undertaken a piece of work to incorporate all organisations from a number of lists held by the Council as part of its recent work on the Community Hub. The Involve list has already been developed into a more meaningful database that identifies the ward that the organisation or group is in and whether or not this is parished or non parished.
- 2.26 The next meeting of the Access to Services Review will focus on the Council's Corporate Communication channels to understand their purpose and use. This will include all methods that the Council utilises to reach its residents; from billboards to social media, banners on the website to press releases.

Conclusions and next steps

- 2.27 A number of valuable recommendations are beginning to emerge, and the Panel have identified a number of actions that can be progressed as it continues to gather evidence and evaluate its findings. These are detailed in full at Appendix 2.
- 2.28 As outlined above, the panel will continue to explore Communications and supporting workstreams are already in progress. Surveys, for example, are in the process of being designed as a method of gathering evidence on the options for communication individual services provide to customers and where this information is available (i.e., in a letter, on a webpage etc). A survey is also being designed to understand the way in which ward Councillors communicate with residents.
- 2.29 The review will then move on to consider Buildings. The physical access of Council buildings will be subject to COVID-19 restrictions.
- 2.30 The Task and Finish panel will also have the opportunity to revisit Digital Inclusion as part of a revision to the Digital Strategy.
- 2.31 Regular updates will be provided to the Committee prior to a final report and recommendations.

3. AVAILABLE OPTIONS

- 3.1 This update report details the progress being made on the Access to Services review. The decision to undertake the review was made by the Communities, Housing and Environment Committee. The review forms part of the Council's Equalities Action Plan. It is essential that the Council responds positively and demonstrates through its Equalities Action Plan. Not reporting progress on the review would reduce the Council's formal activities to meet its Equality Duty.
- 3.2 The Council could decide to do nothing, this course of action is not recommended because the Council has a legislative responsibility under the Public Sector Equality Duty.
- 3.3 Note the progress of the Access to Services review to enable the organisation to continue to improve on the way in which it fulfils the Public Sector Equalities Duty.
-

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 To note the progress of the Access to Services review and emerging recommendations detailed in Appendix 2.
-

5. RISK

- 5.1 The report is an information report, providing an update on the progress made on actions agreed by Committee. The emerging recommendations made are natural next steps to workstreams already being undertaken by the Council. They have arisen from the sessions held by the Task and Finish panel in which they have acted in the capacity of the 'critical friend' – raising the profile and complementing streams of work that have already been agreed.

6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

None.

7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

None.

8. REPORT APPENDICES

- Appendix 1: Access to Services Review Calendar of Meetings
 - Appendix 2: Access to Services Review Recommendations
-

9. BACKGROUND PAPERS

None

Access to Services Review

Calendar of Meetings

Meeting	Date
Digital Accessibility – To evaluate the accessibility of the website for users, the services provided and the way in which digital processes support frontline services delivered by Customer Services in the Link.	
Website Accessibility	7 September 2020, 6pm (Skype)
Digital Services	9 November 2020, 6pm (Skype)
Digital Inclusion	25 January 2021, 6pm (Skype)
Communications – To review the Council’s communication channels and understand their purpose and use. To include written, online, telephone and ward Councillors (email, postal, Facebook, Twitter, Instagram, LinkedIn).	
Communication and Engagement (Review of Involve’s repository of Community Groups and Forums)	8 March 2021, 6pm (Skype)
Development of Community Group repository	29 March 2021, 6pm (Skype)
Corporate Communication channels	April 2021
Council Services (Survey to inform session - evaluation of all points of access and where this information is publicly available)	June 2021

Ward Councillors (Survey to inform session)	August 2021
Council buildings – To review the physical access (subject to COVID-19 restrictions)	
Meetings TBC	TBC
Digital Inclusion (as part of the Council’s Digital Strategy)	
Meetings TBC	TBC

Access to Services Review – Emerging Recommendations

Review strand	Reason for recommendation/action	Recommendation /action	Timescale	Responsible Officer
Digital Accessibility - Website Accessibility	There is no clear process for residents who require help with digital accessibility via the website. An established process for this type of feedback would put the Council in a better position to respond to resident's needs.	The Digital Team to establish a digital process on the website for users to report issues or seek assistance and advice with online accessibility.	June 2021	Gary Hunter/Digital Team
Website Accessibility	The website has met the EU and Government standards for accessibility for Public Sector websites but in order to maintain this standard the website content and documents produced by officers across the Council need to adhere to the appropriate standards. There is no guidance available to Officers to support this change.	The Task and Finish panel (with support from the Policy and Information team) to develop a guidance document for Officers that outlines the standards required to ensure all written communications meet accessibility standards. This includes the use of Plain English, PDFs and the presentation of graphical and pictorial information.	May 2021	Task and Finish Panel (with support from Policy and Information team)
Digital Services	The Council has 100 transactional services available to it. The way in which residents access services has changed considerably in the past 10 years and perhaps most significantly in the past year. It is often the most vulnerable in our community that need to be better	The Digital Team to produce an electronic leaflet for Councillors, providing a directory of the online processes and transactional services available via the Council's website.	May 2021	Gary Hunter/Digital Team

	informed on how services can be accessed from home or from a mobile device. Councillors would like to be better equipped to respond and advice residents.			
Digital Services	A presentation given by the Digital Team on the evolution of the Council's website and online service offer was hugely informative. The Task and Finish Panel would like all Councillors to be given the presentation.	The Digital Team to arrange an all Councillor session to deliver the presentation on Digital Services.	July 2021	Gary Hunter/Digital Team
Digital Inclusion	A Digital Inclusion page is under development on the Council's website. This will include details of the resources, support and advice available in Maidstone. This is being developed by the Digital Team with partner organisations as part of a local action plan to support Digital Inclusion. It was identified that the awareness of such a resource needed to be communicated widely so that those who needed it most could access it.	The Digital Team to launch its Digital Inclusion webpage with an appropriate Communication Plan in place, this should include a feature in the Borough Insight which will reach every household in Maidstone.	June 2021	Gary Hunter/Digital Team
Communication - Communication and Engagement	Involve, as part of a Service Level Agreement (SLA) with the Council are responsible for running a number of Community Group Forums and maintaining a Community Group Repository. It was identified that the listings of	The Policy and Information team will redesign the Community Group repository to detail the area the group is based, who it supports and whether the area is parished or non parished. All Community Groups and organisations known to the Council	Completed	Involve/Policy and Information Team

	<p>Community Groups in Maidstone was incomplete; it did not detail where the group was based, the area it supported and did not distinguish between parished and non parished areas. There was also no agreed process in place for regular revisions or for this to be made available to the Council. The Task and Finish Panel will review and send a revised document back to Involve and a process for review is to be put in place.</p>	<p>will be incorporated into the list. The Repository will also be mapped for ease of use.</p> <p>The Task and Finish Panel will review the complete listing of Community Groups and identify any groups that are missing. This version will be sent to Involve.</p> <p>Involve will review the Community Group Repository on a quarterly basis and a review meeting will be put in place with the Council to allow for the Council's input (this could include other aspects of the SLA).</p>	<p>March 2021</p> <p>Agreed</p>	

Communities, Housing & Environment Committee

6 April 2021

Declaration of Local Nature Reserves

Final Decision-Maker	Communities, Housing & Environment Committee
Lead Head of Service	William Cornall, Director Regeneration & Place
Lead Officer and Report Author	Andrew Williams .Parks & Open Spaces Manager
Classification	Public
Wards affected	<i>Fant, Bridge, Boxley, South, Bearsted, Downswood and Otham</i>

Executive Summary

Six new Local Nature Reserves will be formally declared following the Natural England protocol namely; Fant Wildlife Area, Hayle Place Nature Reserve ,Weaving Heath , Five Acre and Wents Wood, Spot Lane Nature Area and Allington Millennium Green.

Purpose of Report

For noting

This report makes the following recommendations to this Committee:

1. Note the planned work and sites that will be progressed

Timetable

Meeting	Date
CHE Committee	6 April 2021

Declaration of Local Nature Reserves

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	Accepting the recommendations will materially improve the Council's ability to achieve a Safe Clean & Green borough	William Cornall Director of Regeneration & Place
Cross Cutting Objectives	The report recommendations supports the achievement of the 'Biodiversity and Environmental Sustainability is respected' <i>cross cutting objective by encouraging and celebrating the environmental categories within the competition</i>	Andrew Williams, Parks & Open Spaces Manager
Risk Management	<i>No additional risk following recommendations</i>	William Cornall Director of Regeneration & Place
Financial	£12000 has been made available to progress this work with detailed management plans, ecological survey, maintenance plans, legal fees and signage costs. All sites can be progressed within budget.	Andrew Williams, Parks & Open Spaces Manager
Staffing	We will deliver the recommendations with our current staffing, Legal Department, Communications Team and procuring specialist advice on ecological evidence and site management plans.	Andrew Williams Parks & Open Spaces Manager
Legal	The statutory provisions of the National Parks and Access to the Countryside Act 1949 sections 19 and 21 provide for the declaration process. The purpose of the Communities, Housing and Environment Committee is to take the lead in ensuring the Council delivers its strategic objectives with regard to parks, green spaces and biodiversity. As such it is for the Communities, Housing and Environment Committee to note the report and consider the recommendations	Team Leader (Corporate Governance), MKLS
Privacy and Data Protection	No additional privacy data will be held by the Council	Andrew Williams, Parks & Open Spaces Manager
Equalities	The recommendations do not propose a	Andrew

	change in service therefore will not require an equalities impact assessment	Williams, Parks & Open Spaces Manager
Public Health	<i>Suggested :</i> We recognise that the recommendations will not negatively impact on population health or that of individuals and access to well managed natural spaces has the potential to make a positive contribution to wellbeing & mental health.	Paul Clarke, Senior Public Health Officer
Crime and Disorder	The recommendation will have no negative impact on crime & disorder	Andrew Williams, Parks & Open Spaces Manager
Procurement	No procurement activity following recommendation/outcome	Andrew Williams, Parks & Open Spaces Manager

2. INTRODUCTION AND BACKGROUND

- 2.1 During 2019 a comprehensive evaluation of potential nature reserves was undertaken in the borough. The evaluation considered 38 sites that were suggested by Members and officers. The evaluation considered each site's natural value in species & habitats and opportunity for biodiversity, public value such as access, education and levels of community interest and existing and potential management structures and security.
- 2.2 The results of the evaluation were presented to Communities , Housing and Environment Committee meeting on the 16 December 2019 where the priority list of 8 mixed ownership sites was agreed and a further 4 Council owned sites should opportunities for management plan re-writes and revisions become available.
- 2.3 Progression with the above was conditional on securing funding. Funding of £12000 has been made available to progress a number of the priority sites. This report outlines the six areas that can be brought forward to offer the very best combination of site quality, scale , affordability and prospect of a successful outcome.

3. AVAILABLE OPTIONS

- 3.1 Do not progress LNR declaration : If Members decide not to progress a programme for LNR sites it means that sites which fulfil the criteria for an LNR, identified as a natural resource with wildlife or geological features of special local interest and making an important contribution to biodiversity are not formally recognised and their long term prospects are not assured.
- 3.2 Endorse workplan to declare six Local Nature Reserves : A review of the priority sites has considered land ownership, legal issues and what can be

achieved within budget. During 2021-22 we will declare the following 6 sites as Local Nature Reserves under the statutory designation made under Section 21 of the National Parks and Access to the Countryside Act 1949.

Site Name	Description	Size (Approx)	Ward
Fant Wildlife Area	Site owned by MBC & managed by Fant Wildlife Group. Strong community engagement. Ponds , wet grasslands, meadow and carr. Good reptile habitat.	4 ha	Fant
Allington Millennium Green	Community owned & manage by Allington Millennium Green Trust . Meadow, cobnut coppice and native hedges.	0.9ha	Bridge
Weaving Heath	Mix of amenity and recreational space ; small areas of relic semi-natural ancient woodland, areas of damp woodland and small stream. Good community interest.	8 ha	Boxley
Five Acre and Wents Wood	Within 60 metres of Weaving Heath ; Sweet chestnut coppice, with some hazel, elder,ash and holly. South western area on formerly ancient woodland. Good community interest.	2.3 ha	Boxley
Hayle Park (possibly to inc Dean Street*)	Diverse site of mixed habitats. Strong community involvement and voluntary management team. Opportunity to include further area of Dean Street*.	13.5 ha (+11 ha*)	South
Spot Lane Nature Area	A small area of semi-natural woodland in the Len Valley. The site is in the Greensand and Gault Biodiversity Opportunity Area. Mixed native woodland of alder, ash, sycamore and field maple, hawthorn and occasional elm. Records of water vole and white clawed crayfish in the area. Good access to site,	3.2ha	Bearsted, Downswood and Otham
	Total Area	32 ha (43ha*)	

3.3 Site maps are shown in Appendix 1

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

4.1 Endorse option 2 shown at paragraph 3.2

5. RISK

5.1 No financial risk

6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

6.1 *None*

7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

7.1 If the recommendation is supported the project to declare nature reserves will commence immediately.

8. REPORT APPENDICES

Appendix 1 LNR site location maps

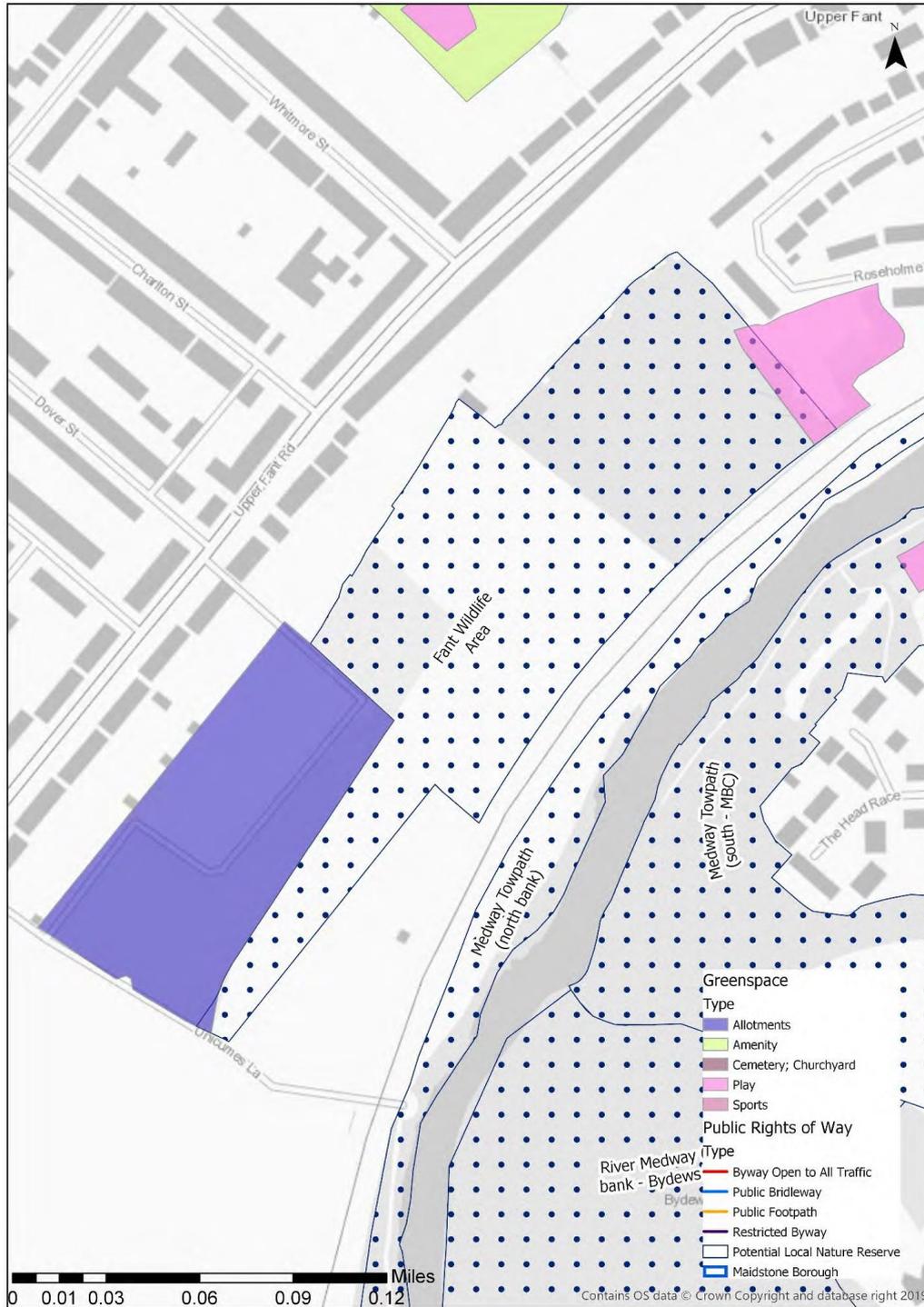
9. BACKGROUND PAPERS

None

APPENDIX 1 : LNR SITE LOCATION MAPS

(potential LNR's shown with dots)

Fant Wildlife Area



Allington Millennium Green



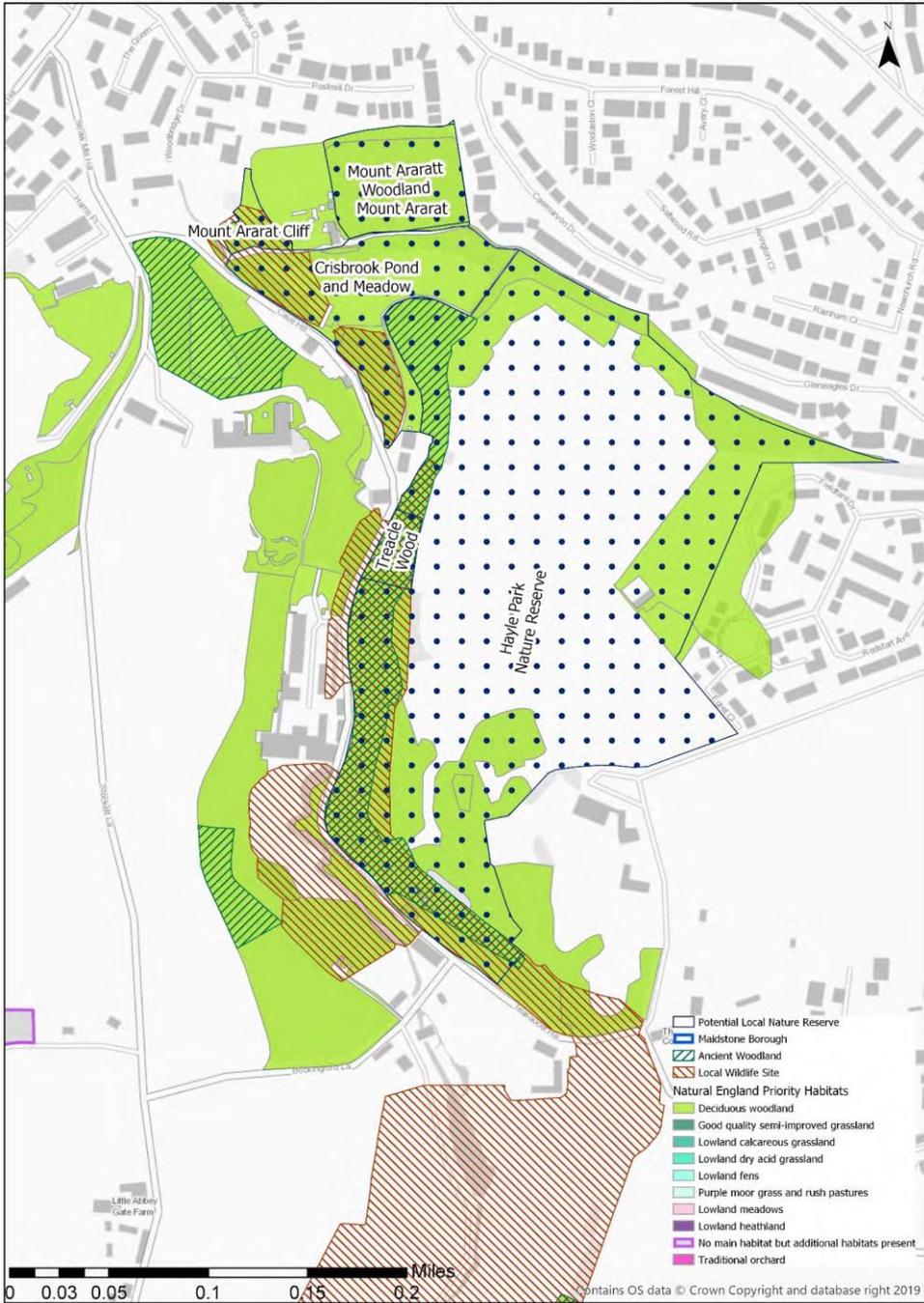
Weaving Heath



Five Acres & Wents Wood



Hayle Park Nature Reserve (& Dean Street)



Agenda Item 19

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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