

Maidstone Borough Council's

Fire and Building Safety Policy – Housing Service

This document sets out the Council's policy for governing how the Housing Service will fulfil its statutory duties in relation to regulations covering Fire and Building Safety.

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VERSION CONTROL INFORMATION

1. Statutory Background

- 1.1 Maidstone Borough Council (MBC) has a general duty to keep housing conditions in its area under review by virtue of Section 3 of the Housing Act 2004. This does not, however, impose a duty that MBC must review all housing proactively. To comply with its duty, MBC will, through its Housing Strategy, enable a general review of housing conditions and an ability to act when inadequate housing conditions are reported to them. *Responsibility for this activity is delivered through the Housing & Health Team.*
- 1.2 A guidance note on Local Authority Enforcement Powers was issued by the Ministry of Housing, Communities and Local Government in February 2019. It stated that where a local authority is aware of a high-rise residential building with potentially unsafe ACM cladding and there is no plan in place to remediate the building, it should undertake a HHSRS assessment to ascertain the risk of harm to an occupier that the cladding poses.
- 1.3 As part of future reforms, the Regulator of Social Housing's consumer regulation objective is to include safety explicitly. All landlords will be required to make a public nomination of the person responsible for Health & Safety (H&S). The Regulator of Social Housing will enter into a memorandum of understanding with the Health & Safety Executive (HSE), once the Building Safety Regulator is established, to ensure information can be shared effectively.

2. Regulatory Reform (Fire Safety) Order 2005 ("RRO")

- 2.1 Enforcement of the RRO within the MBC area is the responsibility of Kent Fire and Rescue Service (KFRS). The detail of the RRO is relevant for MBC because:
 - (a) MBC's Housing & Health Team will need to coordinate with KFRS in relation to private residential buildings, where MBC have responsibilities under the Housing Act 2004; and
 - (b) KFRS is the enforcing authority where MBC is the landlord.
- 2.2 Amendments introduced by the Fire Safety Act 2021, which came into force on 16 May 2022, confirm that external walls do fall within the remit of the RRO. The Act makes clear that where a building contains two or more residential units, the structure of the building, external walls and cladding systems, windows, balconies and flat entrance doors all fall within the scope of fire safety legislation, in addition to the common parts.
- 2.3 Kent local housing authorities have entered into an Interim Joint Working Protocol between themselves and Kent Fire & Rescue Service that sets out how each responsible authority will deliver their duties through co-operation and understanding. This important document is attached as Appendix A to this Policy document.
- 2.4 The Regulators' Code requires regulatory activity to be based on risk and an evidence-based approach to determining priority risks and the allocation of resources.

3. Housing Health and Safety Rating System

- 3.1 MBC's Housing & Health Team will exercise its general duty to keep housing conditions in our area under review in accord with Section 3 of the Housing Act 2004. Housing will be assessed using the Housing Health and Safety Rating System ("HHSRS") to determine whether the condition of the housing creates a hazard for residents or visitors. Fire is one of 29 hazards that are required to be assessed as part of the HHSRS. *Officers who have undertaken the relevant HHSRS training will carry out residential building assessments.*
- 3.2 The HHSRS is a risk-based assessment approach, which looks at evidence of hazards associated with residential property. The HHSRS applies to residential property of all tenures. It applies inside the demise of individuals' flats or homes, as well as to common parts of multi-occupied buildings.
- 3.3 An inspection under the HHSRS maybe triggered by a complaint from a tenant or occupier. The local housing authority may also receive information from another statutory agency that gives rise to the need to investigate further. In addition, the Council's Housing & Health Team can conduct inspections if they become aware of an issue.
- 3.4 In cases where MBC suspects there may be a hazard it has a duty to inspect the premises. If, while undertaking s.3 duties, MBC consider it would be appropriate for housing to be inspected with a view to determining whether a Category 1 or 2 hazard exists, then MBC must arrange for such an inspection to be carried out.
- 3.5 During the assessment the Housing & Health Officer (HHO) needs to determine whether there are any category 1 hazards (where a property contains potentially serious risks to the health and safety of the occupants). In such cases MBC has a duty to take an appropriate course of action that may require the landlord / building owner to rectify a defect to reduce the likelihood of harm occurring. Where there is a category 2 hazard (less serious risk) MBC has a power to take action but is not obliged to do so.
- 3.6 On 29 November 2018, the government announced that they were backing local authorities to take emergency remedial action where private sector building owners are refusing to remediate high-rise buildings with unsafe cladding. Where MBC identifies potentially unsafe ACM cladding and there is no plan in place to remediate the building, a HHSRS assessment will be undertaken to ascertain the risk of harm to occupiers that the cladding poses. The same set of legal criteria to apply in relation to low, medium and high-rise buildings.
- 3.7 *Officers will have regard to the Council's Housing Standards Enforcement Policy when determining the appropriate steps to be taken and authorisation required. Where works in default are being considered to remediate cladding work, the Housing & Health Manager must seek advice from the government's specialist adviser. Works in default exceeding £250,000 must be notified to the Head of Housing & Regulatory Services, who will seek approval by the Council's Executive before the remedial work is commenced.*

4. Decent Homes Standard

- 4.1 The Decent Homes Standard is a government target to ensure all social housing meets certain standards of decency. The HHSRS is the statutory element of the Decent Homes Standard. Under this standard a decent home meets the following 4 criteria:
- (a) It meets the current statutory minimum standard for housing;
 - (b) It is in a reasonable state of repair;
 - (c) It has reasonably modern facilities and services; and
 - (d) It provides a reasonable degree of thermal comfort.
- 4.2 Government is considering enlarging the scope of the decent homes standard to include the private rented sector. This might mean that Local housing authorities will have to work with partner agencies to make all applicable private sector homes meet the standard where possible. Where these standards are not met, officers of the Council will have regard to its Housing Standards Enforcement Policy when determining the appropriate action to take.
- 4.3 MBC is a Registered Provider of social housing. It is a requirement of the home standard that Registered Providers of social housing will meet the standard set out in section 5 of the Government's Decent Homes Guidance. MBC will ensure that its dwellings are free of category 1 hazards under the HHSRS. The Regulator of Social Housing has enforcement powers where the home standard is not met. *Responsibility for ensuring MBC's residential stock meets the Decent Homes Standards is with the Housing Portfolio Manager.*

5. Houses of Multiple Occupation ("HMOs")

- 5.1 Under the Housing Act 2004 and associated Regulations, licences are required for HMOs. A Licensed HMO is now defined as a property which houses 5 people or more in 2 separate households, this is an expansion on the original definition and applies regardless of the number of storeys in the property.
- 5.2 The HMO licencing regime provides the procedures to assess the fitness of the person to be a licence holder, the management arrangements of the premises and suitability of the property for the number of occupants. It is a requirement on local housing authorities to satisfy themselves as soon as practicable and not later than 5 years from the date of receipt of the application that there are no part 1 functions (relating to assessment of categories 1 and 2 described above) under the HHSRS which need to be exercised.
- 5.3 MBC has a duty to effectively implement mandatory licencing in the area and must ensure applications for licences are determined within a reasonable time period. This includes a statutory requirement for MBC to satisfy itself that there are no housing condition functions which ought to be exercised under Part 1 of the Housing Act 2004. This is achieved through the HHO visiting premises to satisfy themselves that the property is compliant with the legislation or otherwise what action the landlord/owner must take. *Responsibility for HMO licencing and compliance sits with the Housing & Health Manager in the Housing & Health Team.*

6. Data Gathering

6.1 MBC has obligations to carry out reviews of housing in their area, making sure they inform Department for Levelling Up, Homes & Community (DLUHC) of any buildings over 18 metres in height. There are a limited number of buildings in the Maidstone area to which this might have applied. Where buildings are identified and remedial action must be taken by a landlord or building owner, then Local Housing Authorities are expected to utilise their powers to ensure this work is undertaken and if not, pursue the appropriate enforcement action.

6.2 Guidance on the precise details of the data that local authorities and building owners will need to retain is awaited from Government. Below is a summary of the data gathering requirements notified to date:

Low-Rise blocks of flats with up to four floors - owner:

(a) Identify blocks with ACM cladding and provide a sample.

Medium-Rise blocks of flats (five and six floors – 11m to under 18m from ground level) – owner.

(a) Identify blocks with ACM cladding and provide a sample.

High-Rise blocks of flats (18m or more from ground level) – local authority.

(a) Notify MHCLG of buildings of this height.

(b) Collect data as to the external wall and insulation materials.

(c) Identify blocks with ACM cladding and the owner to provide a sample.

6.3 Local housing authorities must also take steps to identify residential buildings over 18m that are clad in Aluminium Composite Material (ACM) but to date no buildings have been found in Maidstone to be clad with ACM. *The Housing & Health Manager has responsibility for ensuring compliance with the data gathering requirements.*

MBC Role as a Landlord

7. Building Safety Act 2022

7.1 The Building Safety Act 2022 imposes extensive reforms for England. The heart of this new regime is the safety of residents in high rise buildings. The regime will carry criminal sanctions which will be enforced by the HSE, as the new Building Safety Regulator. The Building Safety Act will be gradually brought into force over the next 18 months. It will have a phased implementation for existing buildings, all of which will come into scope by October 2028.

7.2 For higher risk buildings, a new set of roles and responsibilities will be allocated throughout the lifecycle of a building. Initially, the new regime will apply to buildings of at least 7 storeys or 18 metres with a residential element.

7.3 MBC is a stock transfer council and at the current time does not have any buildings of more than ground plus 4 storeys in its portfolio and therefore not all of the aspects of the Building

Safety Act will apply to the Council at present. The scope of the Act is also likely to expand over time and therefore it is important that this Policy is kept under review as and when the regulations are amended.

- 7.4 However, some aspects of the wider reforms will apply to MBC when they come into force because they impact on all buildings. These regulations relate to the development and refurbishment of property and are outside the scope of this Strategy. *The Housing Portfolio Manager is responsible for ensuring the operational and strategic compliance with the regulations.*

8. Fire Safety (England) Regulations 2022

- 8.1 These new regulations should not be confused with the Fire Safety Act 2021, which clarifies that of the FSO applies to the structure, external walls (including balconies, doors and windows) and the flat entrance doors in multi-occupied residential buildings and came into force on 1 October 2021. They implement many of the Grenfell Phase 1 recommendations:

In high-rise residential buildings, responsible persons will be required to:

(a) Building Plans: provide their local Fire and Rescue Service with up-to-date electronic building floor plans and to place a hard copy of these plans, alongside a single page building plan which identifies key firefighting equipment, in a secure information box on site.

(b) External Wall Systems: provide to their local Fire and Rescue Service information about the design and materials of a high-rise building's external wall system and to inform the Fire and Rescue Service of any material changes to these walls. Also, they will be required to provide information in relation to the level of risk that the design and materials of the external wall structure gives rise to and any mitigating steps taken.

(c) Lifts and other Key Fire-Fighting Equipment: undertake monthly checks on the operation of lifts intended for use by firefighters, and evacuation lifts in their building and check the functionality of other key pieces of firefighting equipment. They will also be required to report any defective lifts or equipment to their local Fire and Rescue Service as soon as possible after detection if the fault cannot be fixed within 24 hours, and to record the outcome of checks and make them available to residents.

(d) Information Boxes: install and maintain a secure information box in their building. This box must contain the name and contact details of the Responsible Person and hard copies of the building floor plans.

(e) Wayfinding Signage: to install signage visible in low light or smoky conditions that identifies flat and floor numbers in the stairwells of relevant buildings.

In residential buildings with storeys over 11 metres in height, responsible persons will be required to:

(a) Fire Doors: undertake annual checks of flat entrance doors and quarterly checks of all fire doors in the common parts.

In all multi-occupied residential buildings with two or more sets of domestic premises, responsible persons will be required to:

(a) Fire Safety Instructions: provide relevant fire safety instructions to their residents, which will include instructions on how to report a fire and any other instruction which sets out what a resident must do once a fire has occurred, based on the evacuation strategy for the building.

(b) Fire Door Information: provide residents with information relating to the importance of fire doors in fire safety.

9. Emergency Evacuation Information Sharing (EEIS+)

- 9.1 On the 18th May 2022 the Government published its conclusions to the consultation on personal emergency evacuation plans (PEEPs) for vulnerable residents in residential buildings. Concerns around practicality, proportionality, and the safety case have led the government to conclude that mandating PEEPs as described in the consultation would have a detrimental effect on those with certain protected characteristics: in particular, disabled individuals, the elderly, and those who are less mobile due to pregnancy or maternity. The report further concluded that compelling RPs to administer PEEPs at this point could prove counterproductive because it could increase the risks posed to vulnerable people.
- 9.2 The Government concluded that a requirement to mandate RPs to acquire and store this information should not proceed at this time and will be consulting further. In the interim, MBC considers it good practice to have in place PEEPs for those residential buildings that may be accommodating vulnerable clients. This includes Trinity, 1 Marsham Street and Aylesbury House. *The Housing & Inclusion Manager is responsible for ensuring that PEEPs for these properties are kept current and are accessible to the emergency services.*
- 9.3 The type of information that will be contained in the PEEP includes:
- (a) A requirement for vulnerable residents to self-identify with the responsible person.
 - (b) For those who self-identify, the responsible person will need to offer a person-centred fire risk assessment and connect the residential with a home fire safety visit from the local fire and rescue service.
 - (c) Details of mobility impaired residents to be shared with the local fire and rescue service and in the premises information box.
 - (d) Guidance will be published to help responsible persons judge what measures it is practical to put in place to support the person-centred fire risk assessment.

10. Accommodation Team

- 10.1 Maidstone Borough Council's Accommodation Team has responsibility for managing housing stock across the range of its portfolio, including temporary accommodation, affordable housing and on behalf of Maidstone Property Holdings Ltd.
- 10.2 The Accommodation Team has a suite of documents to support the management of the portfolio and guide staff when complying with the various regulations governing housing management. Below is an extract from the 'Health and Safety – Housing Services Policy'

4.6 Fire Safety

4.6.1 Fire safety and compliance is an essential part of H&S adherence. There are many aspects to fire safety including fire risk assessments, alarm and call point testing and smoke detectors. It is the responsibility of the Accommodation Team to ensure fire safety is compliant across our stock.

4.6.2 All our shared accommodation will have a Fire Risk Assessment conducted every two years by a qualified assessor. These assessments will highlight the actions required to ensure compliance and safety and these actions will need to be completed in a required timeframe as set out in the assessment.

4.6.3 All our self-contained units will have as a minimum an annual internal inspection by a qualified fire contractor.

4.6.4 Many properties within our portfolio have varying requirements – some have shared communal space but still self-contained, so will need more frequent checks, than a completely self-contained street properties. The matrix of requirements of all our properties is found in Fire Safety Inspection Matrix or Appendix 1.

10.3 An annual review of the documents will be undertaken by the Housing Portfolio Manager to ensure that the documents are maintained and kept up to date with current regulations.

Interim Joint Working Protocol between Kent Fire and Rescue

Authority and Local Housing Authorities

1. Purpose

To create a strong working relationship and to allow both authorities to work together effectively and in a structured way in order to achieve the best outcome in matters relating to the Housing Act 2004 (HA 2004) and the Regulatory Reform (Fire Safety) Order 2005 (FSO).

When working together each authority will take the role of 'lead' authority, or 'supporting authority', dependent on the criteria set out below.

2. Key principle

Both authorities will support each other in providing technical advice and support beyond the requirements of the HA2004 and the FSO, when the lead authority's work (see below) will be complemented by the supporting authority'.

3. Which Authority Should Take the Lead Enforcing Role for Fire Safety?

The legal powers of the lead authority should act as a starting point when considering taking action regarding a property. However, where it may be more appropriate for an issue to be dealt with by the legal powers of the supporting authority, this should be considered.

Both authorities, whether they are a lead or a supporting authority, retain their statutory responsibilities and powers such as the power of entry. It should not be assumed that all inspections of such properties will be undertaken by the lead authority as this will depend on their resources.

The table below lists the authority that will normally take the lead in inspection and enforcement action in different types of property.

- a) Single dwellings, including shared housing (Fire Risk assessment not required under RRO) LHA**
- b) All Houses in Multiple Occupation (HMO) whether or not subject to mandatory, selective or additional licensing LHA**
- c) All self-contained flats, whether purpose built or converted¹ LHA**
- d) Premises with mixed commercial and associated residential accommodation and sheltered housing² KMFRA**
- e) Hostels / B&B / Hotels³ KMFRA**

Note

¹ Local Housing Authorities (LHAs) will normally take the lead role; however, Kent and Medway Fire and Rescue Authority (KMFRA) will take the primary role in enforcement matters within the common parts, as defined by the FSO, of converted commercial property to residential, and purpose-built blocks of flats that are six floors or more, or over 18 meters, or where there is an engineered solution as can be found in BS9999 or BS7974. This also includes where rising mains are installed.

² Where there is clear and adequate fire resisting separation and separate entrances, the Local Housing Authority (LHA) will take responsibility for the residential premises (unless owned by the LHA) and the FRA will take responsibility for the commercial premises.

³ (a) Hostels generally require residents to have a particular need or dependency and do not provide permanent accommodation.

(b) B&B and hotels are meant (in the context of this Protocol) to be types of premises which are put to commercial use.

(c) Where there is a long-term stay, containing otherwise homeless residents which in housing terms may be a house in multiple occupation (HMO), closer communication between KFRS and LA should take place. If the property is determined as an HMO (licensable or otherwise) the LA should take the lead.

4. What will Local Housing Authorities do?

LHAs will undertake inspections of the premises identified in Section 3 of this protocol in line with their statutory responsibilities. They will enforce fire safety standards in accordance with the provisions of the HA, having regard to relevant documents published by the Government including the statutory operating and enforcement guidance on the HHSRS and in accordance with any guidance jointly agreed with KMFRA e.g. LACoRS Housing Fire Safety document.

LHAs will, when taking enforcement action under the HA, have regard to the principles and requirements of the FSO. Although LHAs may offer a suitable means of complying with fire safety requirements, they will also:

- a) Ensure that guidance for landlords of relevant multi occupied properties on undertaking their own fire risk assessments in accordance with the FSO accompanies all statutory notices
 - I. **All multiple-occupied accommodation that is owned or managed by the LHA**
KMFRA 7 Single unit caravan sites and those caravan sites solely occupied by family groups for permanent residential use LHA
 - II. **Holiday caravan sites and those permanent residential caravan sites that do not fall into item 7 above. KMFRA**
- b) Ensure that the owner/landlord is afforded in writing the opportunity to bring forward alternative means of complying with the fire safety requirements in accordance with their own fire risk assessment. In most cases it is expected that this will be discussed within the owner/landlord prior to the service of any statutory notice.
- c) Where such alternatives are brought forward by the owner/landlord, the Local Housing Authority will consult with KMFRA. They will undertake consultation with KMFRA in line with the criteria detailed in Section 6 of this protocol.

They will provide KMFRA with relevant, timely and comprehensive data in an agreed format to enable those authorities to maintain adequate property and risk-based data sets. LHAs will consider the use of the full range of powers under the HA, including Emergency Prohibition Orders, where appropriate.

LHAs will provide KMFRA with suitable out of hours contact details for their homelessness unit so that where appropriate consideration is given to ensure vulnerable persons are not left homeless as a result of emergency enforcement action. Conduct training with KMFRA Building Safety Teams twice a year to provide a better understanding of one another's legislation and technical application.

5. What will Kent & Medway Fire & Rescue Authority do?

KMFRA will undertake, in line with their risk-based inspection strategy, monitoring and auditing of premises, identified in Section 3 of this protocol, which fall under the scope of the FSO.

They will enforce fire safety standards in accordance with the FSO having regard to relevant documents published by the Government including: HM Government Fire Safety Risk Assessment - Sleeping Accommodation and in accordance with any guidance jointly agreed with the LHA, e.g. LACoRS Housing Fire Safety document.

They will undertake consultation with LHAs in line with the criteria detailed in Section 6 of this protocol.

They will provide LHAs with relevant, timely and comprehensive data to enable those authorities to maintain adequate property and risk-based data sets.

They will provide LHAs with information, within their scope of competency, of serious matters that may need to be addressed by those authorities. (This may include such information as apparent overcrowding, poor management or unsafe practises by tenants).

KMFRA will undertake to inform LHAs of any significant fire incident within premises covered by this protocol.

KMFRA is an emergency organisation which provides twenty-four hour cover. Information about dangerous fire safety conditions may come via complaints or post incident and may occur outside normal working hours. KMFRA is under an obligation to take action in such situations. Where possible, and especially outside of normal office hours, efforts will be made to mitigate the dangerous conditions and LHAs will be informed as soon as practicably possible.

KMFRA will, in principle, be willing to support LHAs at First-tier Tribunal hearings by offering professional opinion on fire safety matters.

Conduct training with LHA Housing Teams twice a year to provide a better understanding of one another's legislation and technical application.

6. Consultation

Statutory

Formal consultation between authorities should take place in accordance with the requirements of the Housing Act 2004 Section 10 and the Regulatory Reform (Fire Safety) Order 2005 Article 46 and responded to within 7 days of being notified.

Non-Statutory

In Emergency situations communication should take place between local LHA and FRA teams where possible to discuss the best way to deal with the situation considering both authorities legislative powers.

Day-to-day

Local teams should be actively encouraged to support one another with technical advice and support where it will add value.

7. Data Exchange

Each LHA and KMFRA will exchange information.

8. Regular Review Meeting

A meeting will be held every quarter to review the effectiveness of the protocol and share good practice.