

# Private Sector Housing Enforcement – Damp and Mould

## Housing Committee Tuesday, 24 January 2023

Report of: Executive Head of Communities

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Purpose: For information

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Publication status: Information

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Wards affected: All

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### Executive summary:

This report has been put forward primarily because of the Coroner's finding in November 2022 after investigating the tragic death of a two year old boy called Awaab Ishak in December 2020. The Coroner found his death was as a direct consequence of high levels of damp and mould growth in the housing association property he called home. The Coroner concluded that the tragic circumstances leading to the boy's death were wholly avoidable.

In environmental health, complaints received from tenants renting privately concerning damp and mould growth already make up the single biggest area of complaint work in terms of the volume of disrepair reports received from private renters. It is anticipated that the prevalence of damp and mould complaints will soar to new heights this winter because of Awaab's tragic death but also because of the cost of living crisis with households having to make tough decisions regarding energy use. The strain this will have on the environmental health shared service to deal with service requests in a timely fashion should not be underestimated, the shared service are already bracing themselves for the inevitable increase in complaints. In recognition that their resources are finite, they will continue to prioritise to the best of their ability to cover the important role they play in regulating the privately rented sector.

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### This report supports the Council's priority of:

Creating the homes, infrastructure and environment we need.

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## **Recommendation to Committee:**

It is recommended to Committee that the contents of this report are noted.

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## **Reason for recommendation:**

To provide information of the work undertaken by the environmental health shared service in response to concerns about damp and mould in properties within the private rented sector.

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## **Introduction and background**

Private sector housing plays a significant part in the available housing provision within the Council area. The supply of good quality, affordable, privately rented accommodation is essential to meeting local housing need, with the sector representing 14% of the total housing stock in the District. The Council has a legal duty under Section 3 of the Housing Act 2004 (The Act) to keep housing conditions in its area under review and to identify any action that may need to be taken to deal with unsatisfactory housing that presents a health and safety hazard to the occupiers.

Whilst this report has been written in the context of damp and mould growth, the inspection process and the associated possible enforcement measures Officers can take are in relation to all hazards that can be identified in residential property and outlined in more detail below.

### **1.0 Method of Assessment for Residential Property**

- 1.1 The enforcement tools available to Officers to tackle damp and mould growth, as well as other hazards found in residential properties are outlined under part 1 of The Housing Act 2004. The Act introduced the assessment procedure for residential properties, called the Housing Health and Safety Rating System (HHSRS), which came in to force in April 2006. The HHSRS is a statistical method of relating the hazards caused by defects in a dwelling to the actual health and safety of the occupants. Hazard scores are classed as either category 1 or category 2, where category 1 is the most serious. A HHSRS assessment is applicable to cover a 12 month period, to take into account seasonal changes. For example, an Officer might inspect a property on the hottest day of the year, but identify the hazard of excess cold because of a lack of suitable available fixed heating provision.
- 1.2 The HHSRS, covers 29 potential hazards that may be identified and subsequently assessed in residential properties and is tenure neutral. The types of hazards that can be present are categorised with examples as follows:

- i) **Hygrothermal** – damp & mould growth, excess cold and excess heat;
- ii) **Pollutants** – asbestos, carbon monoxide and radiation;
- iii) **Space, security, light and noise** – crowding and space, entry by intruders and noise;
- iv) **Hygiene, sanitation and water supply** – food safety, water supply for domestic purposes and personal hygiene, sanitation and drainage;
- v) **Falls** – Falls on level surfaces, falls between levels and falls associated with stairs and steps;
- vi) **Electric shocks, fires burns and scalds** – electrical hazards and fire safety;
- vii) **Collisions, cuts and strains** – explosions, structural collapse & falling elements and ergonomics.

1.3 Whilst this report is primarily concerned with the specific hazard of damp and mould growth, there are other considerations that must be taken into account, such as the hazard of excess cold as mentioned above. Damp and mould growth and excess cold hazards are commonly identified together when carrying out assessments.

## 2.0 Enforcement

- 2.1 The type of action taken to deal with a property presenting hazards will vary according to the area of legislation being applied. In some cases, taking enforcement action is a statutory duty, provided certain criteria are met. In other cases, Officers have the discretion to use informal action as a first option and this approach is the one adopted by this Council wherever possible. Informal action includes working with property owners, tenants and others to provide advice and information to help them to comply with housing legislation and make their property a safe place to live.
- 2.2 In January 2022, the Housing Committee approved the shared service's Private Sector Housing Enforcement Policy (the Policy) which outlines the Council's approach to ensuring that standards are met, good practice is maintained, and all properties let as residential dwellings, those in private ownership, and properties under registered provider control throughout the District are of good quality and are well managed. (The full Policy is provided at Appendix 'A' to this report.)
- 2.3 The Policy details how the Council will regulate standards in private sector housing in the District. It provides an overview of the legislation and guidance under which the Council operates and the enforcement powers available to the Council to ensure the private sector housing in the District is well maintained.
- 2.4 The Policy aims to set out in one place the Council's approach to enforcement and the wide range of enforcement options available to Officers under multiple pieces of legislation. It ensures that enforcement action is transparent and the approach consistent.

- 2.5 The aim is to raise standards in private sector housing throughout the District, working with owners, landlords, letting agents and tenants to achieve this. However, it is recognised that if the law is broken, then enforcement action may be necessary to protect the public and the environment.

### **3.0 Available Enforcement Options**

- 3.1 As detailed in the Policy, where the Council is satisfied that hazards exist at a residential premises and action should be taken in respect of those hazards, for the health and safety of the occupants, once informal resolutions has proved fruitless; the following possible courses of action are considered before reaching a decision:
- 3.2 **Hazard Awareness Notices** – are served on an owner/landlord to inform that a hazard requires attention under section 28 or 29 of The Act, but further formal action is unlikely to be taken unless conditions worsen or further hazards arise. A hazard awareness notice is usually served so the local authority can discharge its legislative responsibility, it will not appear on the register of local land charges and there is no appeal against the notice.
- 3.3 **Improvement Notices** – are served under sections 11 & 12 of The Act. The improvement notice requires the person on whom it is served to carry out the work to rectify the identified hazards within a specific time. A copy of the notice must be served on the person legally required to rectify the hazards, further copies of the notice must be given to anyone else who has an interest in the dwelling, such as a mortgagee and tenant. An improvement notice will be registered as a local land charge and can be appealed against to the First Tier Tribunal (Property Chamber).
- 3.4 **Prohibition Orders** - A prohibition order is made under sections 20 and 21 of The Act, and imposes prohibitions on the use of a residential premises or part of, whether for all purposes or for any particular purpose. For example, a prohibition order may prohibit a certain room within a property from being occupied or it could extend to the whole dwelling. The order becomes operative 28 days after it is made and can be appealed against to the First Tier Tribunal (Property Chamber) before the operative date. The order is indefinite in terms of duration and remains operative until such a time an authorised officer revokes the order under section 25 of The Act. Where applicable, displaced tenants can make a claim for compensation from the local authority.
- 3.5 **Emergency Prohibition Order** – Served under section 43 of The Act, the nature of the hazards presented in a residential property must pose an imminent risk to the health and safety of the occupants before this type of action can be taken. An emergency prohibition order is not taken lightly and can only be served where one or more category 1 hazard is present.
- 3.6 Other available Enforcement options include carrying out emergency remedial works and making a demolition order.

#### **4.0 Enforcement Action Taken at TDC**

- 4.1 Between November 2021 and November 2022 there were 51 complaints received by the environmental health shared service relating to issues of disrepair from tenants in the private rented sector. Of the 51 complaints, 47% were for issues concerning damp and mould growth.
- 4.2 During the same period, 12 separate Improvement Notices were served on property owners for various items of disrepair. Nine of these Improvement Notices included the hazard of damp and mould growth. Additionally, the shared service issued three prohibition orders during the same period, all of which included the hazard of damp and mould growth.

#### **5.0 Penalties for Failure to Comply**

- 5.1 If a landlord does not comply with a Housing Act notice, the Council will consider the reasons for non-compliance and consider taking the following options:
- Take no action (for example, where non-compliance is not the fault of the landlord i.e. the tenant refusing access)
  - The issue of a simple caution
  - Prosecution
  - Carrying out the works in default
  - Carrying out the works in default and prosecution
  - Issue a Civil Penalty
- 5.2 Failure to comply with an Improvement Notice or a Prohibition Order is an offence for which an unlimited fine may be administered by the courts. Where a landlord is prosecuted for non-compliance with a Prohibition Order, it is an offence to carry on using the property in breach of the Prohibition Order, attracting a daily fine.

#### **Other options considered**

There are no other options to be considered in this instance as there is no requirement for the committee to make a decision.

#### **Consultation**

There is no requirement to carry out a public consultation in respect of the work detailed in this report.

#### **Key implications**

##### **Comments of the Chief Finance Officer**

The report has no additional recommendations and therefore no additional revenue account costs, however the report does note that there may be an

increase in activity as complaints increase. This may put a strain on the team who deal with the service and may lead to resources having to be reallocated from other teams to assist with the additional volumes.

## **Comments of the Head of Legal Services**

It appears that not all private landlords take their legal responsibilities seriously and provide decent well-maintained homes. Notably, there are some who knowingly flout their legal obligations and rent out accommodation that is substandard, unsafe, unlicensed and/or has poor energy efficiency levels.

The Report sets out the enforcement activities that the Council may use to tackle the majority of these concerns, which, in turn, supports good landlords to flourish. Clearly, prevention is better than cure and that an Enforcement Officer's role therefore involves actively working with residents or landlords to advise on and assist with compliance.

Under Section 49 of the Housing Act 2004, the Council can make such reasonable charges as considered appropriate to recover administrative and other expenses incurred in taking enforcement action in relation to private rented accommodation. This is seen as another tool to help the Council work with those in breach of related legislation informally before considering the service of a notice. It must be noted that this is not a penalty charge, but a charge for Officers' time to put a notice together.

## **Equality**

It is considered that there are no equality implications for the Committee to consider in respect of this report. However, effective enforcement in relation to private rented accommodation is likely to improve the life chances of the local population generally and particularly those with protected characteristics such as the elderly, those with disabilities and families with children.

## **Climate change**

There are no environmental / sustainability implications associated with this report.

## **Appendices**

Appendix 'A' - Private Sector Housing Enforcement Policy

## **Background papers**

Found in appendix 'A'

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