

## Bromsgrove District Council

### Overview & Scrutiny Board Report – Damp & Mould

13 March 2023

#### **1. Introduction**

This report has been prepared for the Council's Over & Scrutiny Board and provides details on damp and mould in the district and what powers the Council has regarding property standards and how BDHT, a local registered provider, are dealing with this issue. BDHT have approx. 86% of the social housing stock and there are several other providers within the district that will have the same responsibilities to the tenants of their stock in the District.

#### **2. Background**

The recent case and inquest into the death of Awaab Ishak found that the property rented by the family and its condition had brought about his death because of 'prolonged exposure he had to mould in his home environment'.

The Secretary of State for Levelling Up, Housing and Communities wrote to all local authorities on the 19<sup>th</sup> November 2022 regarding housing standards in rented accommodation. A letter was also sent by the Secretary of State on the 19<sup>th</sup> November to all providers of social housing regarding quality in social housing.

The Regulator of Social Housing also wrote to all social housing providers on 22<sup>nd</sup> November 2022 seeking assurance that they "have a clear understanding and strong grip on damp and mould issues" in their housing stock.

Census 2021 tenure data

	Owned	Social Rented	Private Rented	Owned (%)	Social Rented (%)	Private Rented (%)
Bromsgrove	32,452	4,417	4,395	78.7	10.7	10.7

The causes of damp and mould in both the private and social rented sectors are complex, and individual but some of the issues are:

- In a small number of cases, persistent leaks that penetrate the fabric of a building or poor build quality, allow moisture in that allows mould to grow
- In most cases, condensation from normal family living (cooking, bathing, drying clothes, occupancy levels) will result in seeing surface moisture within the home, and enabling mould growth

- Poor ventilation doesn't allow air movement or moisture to escape, compounding the issues. Also, the addition of thermal improvements within the home such as double glazing, external insulation, uPVC doors, and modern heating systems has seen more homes becoming 'sealed' homes creating more condensation problems
- Overcrowding is also an issue as more people living in a property produce more moisture
- The cost-of-living crisis means homes may be colder, and people will be even more reluctant to use heating systems or open windows and ventilate

There is no additional government funding at this point for issues of damp and mould. There is funding available through the Sustainable Warmth Competition to retrofit energy efficiency measures in properties to increase the energy performance of properties.

### **3. Housing Standards Enforcement**

The Private Sector Housing Team are responsible for housing standards complaints and enforcement action for all private rented and social housing properties under the Housing Act 2004 and the Housing Health and Safety Rating System (HHSRS). Having detailed information regarding private sector is difficult to obtain as there is no requirement for landlords to register properties as private rented. The Census 2021 data identifies that there are 4,417 social rented properties and 4,395 private rented properties in Bromsgrove. The English Housing survey data shows that within the West Midlands region around 10% of PRS properties suffer with damp and mould issues. Using this data would suggest that in Bromsgrove 440 properties in the private sector suffer with damp and mould.

Initial checks of our records show that the Private Sector Housing Team complete on average 62 HHSRS inspections per year in Bromsgrove.

2019/2020: 68

2020/2021: 49

2021/2022: 69

This shows that there are likely far more issues with damp and mould that are not reported to the Private Sector Housing Team and officers believe that standards are not reported due to fear of landlords serving notice and a lack of awareness of the service the team provides.

### **4. Enforcement of property standards**

The Housing Act 2004 and associated secondary legislation is the primary legislation that sets out the duties and powers that the Council has in relation to regulating property standards in its capacity as Local Housing Authority.

Powers are also contained in the Housing Act 1985 as amended and other legislation.

The Council has the power of entry to properties at any reasonable time to carry out its duties under Section 239 of the Housing Act 2004. A notice is not required where entry is to ascertain whether an offence has been committed. If admission is refused, premises are unoccupied or prior warning of entry is likely to defeat the purpose of the entry then a warrant may be granted by a Justice of the Peace upon written application. A warrant under this section includes power to enter by force, if necessary. The Council also has power under Section 235 of the Housing Act 2004 to require documentation to be produced in connection with exercising its function and investigations as to whether any offence has been committed under Parts 1-4 of the Housing Act 2004. The Council also has powers under Section 237 of the Housing Act 2004 to use the information obtained above and Housing Benefit and Council Tax information obtained by the authority to carry out its functions in relation to these parts of the Act.

Particular regard must be made to the following 6 principles specified in the Statutory Code of Practice for Regulators made under Section 23 of the Legislative and Regulatory Reform Act 2006: -

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

**Inspections** - The Housing Act 2004 introduced the Housing Health & Safety Rating System (HHSRS). It is a calculation of the effect of 29 possible hazards on the health of occupiers and any visitors. These hazards are arranged in four main groups reflecting the basic health requirements. The four groups are sub-divided according to the nature of the hazards.

Hazard Groups

- A Physiological Requirements including – Hygrothermal conditions and Pollutants (non-microbial) – This group includes the damp & mould hazard
- B Psychological Requirements including – Space, Security, Light, and Noise
- C Protection against Infection including – Hygiene, Sanitation, and Water supply

- D Protection against Accidents including – Falls, Electric shock, Burns and Scalds, and Building related Collisions

The legislation provides a range of actions to address these hazards. The process of a HHSRS is two staged, the inspection and the subsequent calculations. Officers inspect a property against all 29 hazards not just issues that have been raised. HHSRS calculation provides a combined score for each hazard identified, however it does not provide a single score for the dwelling as a whole.

The scoring of any hazard combines the likelihood of an occurrence taking place (within 12 months) and then the range of probable harm outcomes that may arise from that occurrence. A numerical value is then provided which is then converted into bands (from A to J).

Bands A to C (ratings of 1,000 points and over) are considered to be the most severe and are known as Category 1 hazards. The Council has a duty to take appropriate action in response to a Category 1 hazard. When a Category 1 hazard is identified, the Council must decide which of the available enforcement options is the most appropriate course of action.

Bands D to J, are less severe (rating less than 1,000 points) and known as Category 2 hazards. This process is repeated for each of the hazards present within the dwelling. The Council has a power to act in response to Category 2 hazards. If the Council decides to take action for category 2 hazards, it will consider taking action in the following circumstances: -

- Where a Category 2 hazard falls within Band D or E and there is one or more Category 1 hazards
- Where the case involves a vulnerable person that would benefit from having Category 2 hazards addressed
- Cases in which a premises suffers from multiple Category 2 hazards, which when considered together, create a more serious situation,
- Any other exceptional case determined by the Head of Community & Housing Services

The assessment is not based upon the risk to the actual occupant but upon the group most vulnerable to that particular risk. Once scored, any action that is then considered will consider the effect of that risk upon the actual occupant.

**Enforcement Options** – The guidance on enforcement is built around a process of escalation therefore we will only prosecute in serious circumstances such as a deliberate, negligent or persistent breach of legal obligations. The following levels of enforcement actions are available: -

#### Stage 1 – Informal Action

- **Prevention:** The first step in enforcement is prevention, through raising awareness and promoting good practice. Methods of achieving this include the provision of advice and information at the earliest opportunity.

- **Advice and Guidance:** Where appropriate officers seek to resolve situations without issuing formal notices or taking legal action. This is used to reinforce advice and guidance where minor defects have been discovered but it not considered appropriate to take formal action. Examples of such may be where the consequences of non-compliance do not impose a significant risk to health and safety of the occupants or visitors, or where there is confidence that informal action will achieve compliance. Information is provided in a clear manner detailing any works that are required and over what timescale these should be completed. The legal requirements are clearly distinguished from recommended works, where applicable. If a landlord or owner agrees to start work officer wait before serving a notice unless the landlord or owner fails to carry out the works within an agreed timeframe.
- **Formal Letters:** This course of action is given prior to formal enforcement action taking place and will detail what works are required within the specified timescales. Follow-up visits are made within an agreed time period to ensure the problems have been rectified. This may follow an informal letter where there remains some confidence that compliance may be achieved prior to resorting to formal enforcement.

### Stage 2 – Formal Action

Where practicable, decisions to serve formal enforcement notices is taken by the authorised officer in consultation with the Private Sector Housing Manager/Strategic Housing Services Manager. If it is necessary to serve a formal notice under the Housing Act 2004 a reasonable charge is made to recover administrative and other expenses incurred.

The following formal notices are available to officers when dealing with substandard properties: -

- a) **Hazard Awareness Notices:** This is an informal notice that ensures the relevant person(s) are aware of the hazards that are present within the property, these Notices are often used where the landlord/owner is currently or proposing to undertake works. The service of this notice does not prohibit the Local Authority from taking additional action if works are not carried out.
- b) **Improvement Notices:** - These specify the contraventions and detail the works or actions required within a specified timescale. These notices are essential when considering the improvement of a property. Where the officer determines that an Improvement Notice should be served in respect of a Category 1 Hazard, it will require works to be undertaken to either remove the hazard entirely or reduce its effect.

If the Council determines that the hazard can only be reduced to a Category 2 hazard rather than it being removed, it will require works to be carried out as far as is reasonably practicable to reduce the likelihood of harm.

- c) **Suspended Improvement Notices:** We have the power to consider serving a suspended Improvement Notice. The following is a list of situations in which it may be deemed appropriate to suspend such Notices: -
- The need to obtain planning permission (or other appropriate consent) that is required prior to repairs and/or improvements being undertaken.
  - Works which cannot properly be undertaken whilst the premises is occupied and which a notice can be deferred until such time as the premises falls vacant or temporary alternative accommodation can be provided.
  - Personal circumstances of occupants, for example, temporary ill-health, which suggests that works should be deferred.

Suspended Improvement Notices will be reviewed after a maximum of 12 months and then at regular intervals, but the suspension of a notice will not normally exceed 6 months.

- d) **Prohibition Orders:** These are required where there is a significant risk to the health and safety of the occupant. They can be used in respect of either Category 1 or Category 2 hazards for prohibiting the use of all or part of a dwelling. This action is likely to be used if repairs and/or improvement are deemed inappropriate on grounds of practicality or excessive cost. An example of a Prohibition Order might include part or whole of a dwelling being prohibited as a result of inadequate escape in the event of a fire. The Council has the power to suspend a Prohibition Order once it has been served and we consider this course of action where it is reasonable to do so. A Suspended Prohibition Order will be reviewed after a maximum of 12 months and then at regular intervals, but suspension will not normally exceed 6 months.

- e) **Emergency Remedial and Prohibition Action:** There may be situations in which Emergency Remedial Action and Emergency Prohibition Orders are appropriate. The Council must be satisfied of the following: -

- A Category 1 hazard exists,
- The hazard poses an imminent risk of serious harm to health or safety of the occupant, and that;
- Immediate action is necessary

If these conditions are met the Council may take appropriate emergency action. Situations in which emergency action may be appropriate include where there is an imminent risk of electrocution, fire, explosion or collapse. The costs incurred for carrying out emergency remedial action including administrative charges are recoverable from the recipient.

- f) **Demolition Orders:** The Housing Act 2004 has retained the power to make Demolition Orders but has amended Section 265 of the Housing Act 1985 to align it with the HHSRS and enforcement provisions. Demolition Orders are considered as part of the enforcement process when dealing

with a Category 1 hazard (where they are judged the appropriate course of action). In determining whether to issue a Demolition Order the Council will take account of Government guidance and will consider all the circumstances of the case.

- g) **Clearance Areas:** The Council can declare an area to be a 'Clearance Area' if it is satisfied that each of the premises in that area is affected by one or more Category 1 hazards (or that they are dangerous or harmful to the health and safety of inhabitants.) In determining whether to declare a Clearance Area the Council will act only in accordance with Section 289 of the Housing Act 1985 (as amended), have regard to the relevant Government guidance on Clearance Areas and all the circumstances of the case.
- h) **Statutory Nuisance Notices Served under the Environmental Protection Act 1990:** The vast majority of statutory nuisances are eliminated using the enforcement provisions under the Housing Act 2004 and Housing Health and Safety Rating System. However, where this is not possible consideration is given to the service and enforcement of Section 80 abatement notices where a statutory nuisance exists.

### Stage 3 – Non-Compliance

We always look to the relevant responsible person(s) to resolve matters of concern. Where a Formal Notice is served and the specified works have not been carried out in compliance with the notice, the Council has a variety of actions it may take to deal with non-compliance, these are as follows: -

1. **Works in Default:** This is considered where it is in the interests of the health and safety of the occupants. The works in default will be carried out only after the service of a notice e.g. Improvement Notice. Any works undertaken will be recharged or placed as a local land charge on the property.
2. **Simple caution:** This may be considered for less serious breaches of formal notices and statutory requirements. Under certain circumstances, a simple caution may be used as an alternative to prosecution and will usually be considered before making a decision to prosecute. The procedure adopted and the content of the caution will be in accordance with current LGR (Local Government Regulation) guidance and relevant Home Office Circular.

A caution is a serious matter and may be used to influence a decision as to whether or not to prosecute, should another offence be committed. Simple cautions remain on record for a period of 3 years. The decision whether to offer a formal caution will be made by the Head of Community & Housing Services in consultation with the Private Sector Housing Manager and Strategic Housing Manager. Cautions are intended to:-

- Deal quickly and simply with certain, less serious offences;
- Avoid unnecessary appearance in criminal courts;

- Reduce the chance of offenders re-offending.

Before issuing a caution the following matters are taken into account when deciding whether a caution is appropriate:-

- There must be evidence of sufficient guilt;
- The offender must understand the significance of the formal caution and admit the offence by signing a declaration.
- The seriousness of the offence. As a caution is not suitable for serious offences.

Where an individual chooses not to accept a formal caution the Council will automatically consider a prosecution. In instances where a caution is accepted the assessment of the premises is reviewed and the inspection frequency may be increased as a result. The decision to issue a caution will be notified to all known interested bodies, including tenants, managers, freeholders, leaseholders and mortgagees.

3. **Civil Penalties:** In April 2017 powers to impose civil penalties as an alternative to prosecution for certain specified offences came into force under Section 126 and Schedule 9 of the Housing and Planning Act 2016. A civil penalty may be imposed as an alternative to prosecution for the following offences under the Housing Act 2004:

- Failure to comply with an Improvement Notice (section 30);
- Offences in relation to licensing of Houses in Multiple Occupation (section 72);
- Offences in relation to licensing of houses under Part 3 of the Act (section 95);
- Offences of contravention of an Overcrowding Notice (section 139); and
- Failure to comply with Management Regulations in respect of Houses in Multiple Occupation (section 234).

4. **Prosecution:** The Council uses discretion in deciding whether to bring a prosecution and generally only commence proceedings when it is considered to be in the public interest. Before deciding to prosecute there must be sufficient evidence for a realistic prospect of conviction, taking account of any defence that may be available. In certain circumstances prosecution without prior warning may take place. The officer will ensure that a decision to prosecute and the results of any legal proceedings will be notified to all known interested bodies, including tenants, managers, freeholders, leaseholders and mortgagees. The decision to prosecute will be taken by the Head of Community & Housing Services in consultation with the Strategic Housing Services Manager with the support of the Council's Legal Officers.



## 5. Tenure

The HHSRS applies equally to all tenures, therefore all enforcement options are available to the Council regardless of whether the premise in question is owner occupied, privately rented or a Registered Providers (RP) property.

In the case of owner occupiers unless the hazard is deemed to pose an imminent risk of serious harm, the Council will contact the owner to explain the nature of the hazard and confirm the action intending to be taken by the owner. The use of Improvement Notices, Prohibition Orders and their emergency equivalents are only considered in the following circumstances:

- Vulnerable elderly people who are judged not-capable of making informed decisions about their own welfare
- Vulnerable individuals who require the intervention of the Council to ensure their welfare is best protected
- Hazards that might reasonably affect persons other than the occupants
- Serious risk of life-threatening harm such as electrocution or fire
- Any other exceptional case determined by the Head of Community & Housing Services in consultation with the Strategic Housing Services Manager.

Registered Providers of Social Housing (RP) role is to provide suitable and properly managed and maintained accommodation for their tenants. They are managed by Boards (which typically include tenant representatives) and their performance is also scrutinised by the Regulator of Social Housing and complaints regarding service comes under the remit of the Housing Ombudsman.

The Council will not normally take formal action against an RP unless it is satisfied that the problem in question has been properly reported and the RP has then failed to take appropriate action. If officers determine that it is appropriate to take action, they will notify the RP that a complaint has been received and will seek the RP's comments and proposed action. Only in cases where it has been deemed that an unsatisfactory response has been received will the Council take further action and review what enforcement options are available in order to determine the most appropriate course of action.

The English Housing Survey a continuous national survey commissioned by the Department for Levelling Up, Housing and Communities shows that tenants in the private rented sector are more likely to be in poorer quality housing. In dealing with complaints, the Council will have regard to all relevant guidance for enforcement action and guidance from the Residential Property Tribunal decisions. Action will be taken in accordance with the aforementioned duties and powers.

## 6. **Registered Providers - BDHT Information**

Officers contacted BDHT for confirmation of what action they were taking in relation to quality of accommodation and damp and mould issues. While they are the largest provider of social housing in the District, they are not the only

provider and all providers are under the same duty to report to the Regulator of Social Housing their process for identifying and dealing with damp and mould.

BDHT introduced specific processes for damp and mould following the issuing of the Housing Ombudsman findings in relation to damp and mould complaints in 2021 before the coroner's report in the Awaab Ishak case and subsequent direction from the Government. BDHT take a holistic approach in the management of damp and mould cases. Surveyors are able to refer to the other teams within the organisation if they feel the customers require budgeting support, housing application assistance or other support services.

A presentation was made to the Board by the CEO at a strategic away day in November 2022 outlining BDHT's approach to damp and mould management. The Board provides a critical oversight to their damp, mould and condensation processes and updates and key performances indicators are reported at every Board meeting and Executive Team meeting.

Their process allows for customers to contact the organisation to report damp, mould and condensation issues within their properties and two way communication with the tenant plays a key part of this. It also allows for all bdht staff to report back into the organisation (appendix 1). Training sessions have been held with all staff on damp, mould and condensation ensuring all staff are aware of the processes and their responsibility to deal with the issue. A damp and condensation leaflet has been produced to advise tenants (appendix 2)

If a report is received and it is the first or second report within a period of 18 months then a repair is raised for an operative to attend, inspect and complete a damp and mould treatment, if required. If this is a third or more report, or if the operative upon first attendance thinks it is a larger issue such as extreme condensation, structural or penetrating damp a referral is made to surveyors to deal with as a case. The surveyor reviews the property history for previous repairs and information, and then arranges to inspect the issues with the customer and collect details on occupants vulnerabilities. Following the appointment, the surveyor organises the relevant works required at the property. If required, further independent expert advice is sought from a retained independent surveyor, who will provide a report and recommendations for improvements. A monthly a report is used to monitor cases of damp and mould and used for trend analysis to formulate programmes of works required to properties.

BDHT has engaged with all strategic partners and local GP practices explaining their approach to damp and mould management, how they can help and urging them to contact BDHT directly should they have any concerns. BDHT has been proactive in working in partnership with the Council's Private Sector Housing Team and meetings have taken place and our officers have conducted a review of a sample of BDHT cases using the HHSRS.

BDHT have advised that should members have constituents with damp and mould issues in their BDHT property that contact is made with BDHT without delay.