



HOUSING COMPLIANCE (ASBESTOS) POLICY

Date of policy	April 2024 <u>2024</u>
Date for review	April 2024 <u>March 2027</u>
Policy owner	Director of Housing and Operations, Folkestone & Hythe District Council
Approved by	Pending
Risk register rating	High
Associated documents	FHDC Asbestos procedure , <u>Asbestos Management Plan</u>

Revision history (For FHDC officer use only)			
Version	Date	Revision description	Policy author
V1.0	March 2020	Document created	Lee Woods (Pennington Choices)
V2.0	March 2021	Re-branding; update of key roles and responsibilities in line with FHDC reporting structure	John Holman, Assistant Director (Housing); Jonathan Hicks, Policy & Performance Specialist
V2.1 (draft)	November 2023	Changes made to reflect current working practises.	Claire Wickens, Compliance Specialist; Jonathan Hicks, Performance Specialist

V2.2 (draft)	January 2024	3.4 updated to reflect new powers by the Regulator; 6.18/19 added Controlled Access.	Jonathan Hicks, Performance Specialist
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NEW POLICY / POLICY REVIEW

New policy	
Early review – change in legislation	
Early review – significant changes in practice	
Review due – significant changes	
Review due – minor changes	YES
Other reason	

Reason for new policy / summary of changes

To ensure the accountability for managing this policy reflects the current working practices of the housing and compliance team

CONSULTATION

List of people/roles who have been consulted	Date
TBC	

EQUALITY IMPACT ASSESSMENT

	Completed	Date
	Yes	22 April 2021

DISSEMINATION

Role	Awareness	Essential
Compliance team		YES
All housing staff	YES	

TRAINING

Role	Trainer	Date completed
Compliance Specialists	Compliance Senior Specialist	

MONITORING AND COMPLIANCE

Method	Responsibility	Frequency

Internal audit review	EK Audit partnership	Annually or as required
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1. Purpose of the Policy

- 1.1 The purpose of this policy is to ensure Folkestone & Hythe District Council (hereafter referred to as 'the Council') administers its duty to manage asbestos in its homes and buildings, and that this is done in accordance with The Control of Asbestos Regulations (CAR) 2012.
- 1.2 Breathing in air containing asbestos fibres can lead to asbestos-related diseases, mainly cancer of the lungs and chest lining. Asbestos is only a risk to health if asbestos fibres are released into the air and breathed in. Past exposure to asbestos currently kills around 5,000 people a year in Great Britain.
- 1.3 There is usually a long delay between first exposure to asbestos and the onset of the disease (15-60 years). Only by preventing or minimising these exposures now can asbestos-related disease eventually be reduced.
- 1.4 Any ~~c~~Council home or building built ~~or refurbished~~ before the year 2000 may contain asbestos. As long as the asbestos-containing material (ACM) is in good condition and is not going to be disturbed or damaged, there is negligible risk. However, if it is disturbed or damaged it can become a danger to health, because people may breathe in any asbestos fibres released into the air.
- 1.5 Workers who carry out repairs and maintenance work are at particular risk. If asbestos is present and can readily be disturbed, is in poor condition and not managed properly, others who may be occupying the homes or buildings could also be put at risk.
- 1.6 The Council is responsible for the maintenance and repairs ~~to homes, non-domestic (communal blocks) of its social housing portfolio and 'other' properties (e.g. offices, commercial buildings, depots, etc.), many~~ some of which ~~will~~ may have been constructed using asbestos-containing materials.

2. Policy Objectives and Scope

- 2.1 ~~Folkestone~~ The Council must establish a policy which meets the requirements of The Control of Asbestos Regulations (CAR) 2012, which came into force on 6th April 2012. The policy must provide assurance to the Council that measures are in place to identify, manage and/or mitigate risks associated with asbestos.
- 2.2 In addition, the Council must establish an Asbestos Management Plan (AMP), which outlines key information on roles and responsibilities, and the management of information, works, and ACMs.
- 2.3 The Council must also ensure that compliance with asbestos is formally reported to Cabinet, including the details of any non-compliance and planned corrective actions.
- 2.4 The policy is relevant to all Council employees, tenants, contractors and other persons or other stakeholders who may work on, occupy, visit, or use its premises, or who may be affected by its activities or services.

- 2.5 It should be used ~~by all~~ to ensure ~~they understand~~ the obligations placed upon the Council are fully understood, in order to maintain a safe environment for tenants and employees within the homes of each tenant, and within all communal areas of buildings and ~~‘other’~~ properties ~~{owned and/or managed by the Council}~~.

3. Legal/Regulatory Framework

- 3.1 **Regulatory Standards** - the application of this policy will ensure compliance with the regulatory framework and consumer standards (Home Standard) for social housing in England, which was introduced by the Regulator of Social Housing (RSH).

- 3.2 **Legislation** - the principal legislation applicable to this policy is The Control of Asbestos Regulations (CAR) 2012, which came into force on 6th April 2012. The Council has a legal obligation under Part 2, Section 4 Regulation 4 of the legislation (Duty to manage asbestos in non-domestic properties) and is the ‘Duty Holder’ for the purposes of the legislation.

The Council is the ‘duty holder’ by virtue of the fact that it owns and manages homes and buildings ~~that, house~~ ing tenants and leaseholders. The Council has obligations with regard to health and safety that are set out in the ~~through the tenancy and lease agreements.~~ s. obligations it has.

- 3.3 **Approved Codes of Practice and Guidance** – the principal approved codes of practice and guidance (as updated) applicable to this policy are:

- **ACoP L143** - ‘Managing and working with Asbestos’ (Second edition December 2013)
- **HSG264** - ‘Asbestos: The survey guide’ (Second edition 2012, this holds ACoP status)
- **HSG248** – ‘Asbestos: The analysts guide for sampling, analysis and clearance procedures’ (First edition 2006)
- **HSG247** - ‘Asbestos: The licensed contractors’ guide’ (First edition 2006)
- **HSG227** - ‘A comprehensive guide to managing asbestos in premises’ (First edition 2002)
- **HSG210** - ‘Asbestos Essentials – A task manual for building, maintenance and allied trades and non-licensed asbestos work’ (Fourth edition 2018)

3.4 Sanctions

- 3.4.1 The Council acknowledges and accepts its responsibilities in accordance with the regulatory standards, legislation, and approved codes of practice, and that failure to discharge these responsibilities properly could lead to a range of sanctions including prosecution by the Health and Safety Executive under the Health and Safety at Work Act 1974, and/or prosecution under the Corporate Manslaughter and Corporate Homicide Act 2007, ~~and via a serious detriment judgement from the Regulator of Social Housing (RSH).~~

3.4.2 In addition, the Regulator of Social Housing has powers to proactively intervene where landlords are performing badly on consumer issues (including non-compliance with building safety measures) and may conduct routine inspections to investigate systematic issues.

3.5 Tenants and ~~HRA Commercial~~ Leaseholders

The Council will use the legal remedies available within the terms of the tenancy and lease agreement should any tenant, leaseholder or shared owner refuse access to carry out essential asbestos related inspection and remediation works.

3.6 Additional Legislation

This asbestos policy also operates in the context of the following additional legislation:

- Health and Safety at Work etc Act 1974
- The Management of Health and Safety at Work Regulations 1999
- The Workplace (Health Safety and Welfare) Regulations 1992
- Personal Protective Equipment at Work Regulations 1992
- Hazardous Waste (England and Wales) Regulations 2005 (Amendment 2009)
- Control of Substances Hazardous to Health (COSHH) Regulations (as amended) 2002
- Construction (Design and Management) Regulations 2015
- Defective Premises Act 1972
- Landlord and Tenant Act 1985
- Data Protection Act 2018
- Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) 2013
- Homes (Fitness for Human Habitation) Act 2018
- The Asbestos (Licensing) (Amendment) Regulations 1998

4. Responsibility

4.1 The Council's Cabinet will have overall governance responsibility for ensuring the asbestos policy is fully implemented to ensure full compliance with the regulatory standards, legislation and approved codes of practice. The Council's Cabinet will formally approve this policy and review it every ~~two~~ three years (or sooner if there is a change in regulation, legislation or codes of practice).

~~4.2 The Council's Cabinet will receive reports in respect of asbestos management performance and ensure compliance is being achieved. They will also be notified of any non-compliance issue identified.~~

- 4.32 The Council's Director of Housing and Operations has strategic responsibility for the management of asbestos and ensuring compliance is achieved and maintained. ~~The Director will oversee the implementation of the Asbestos Policy.~~
- 4.34 The Council's ~~Assets Lead Manager~~Lead Specialist ~~Director of Housing and Operations~~ will be responsible for overseeing the delivery of the agreed survey domestic and communal inspection programmes and the prioritisation and implementation of any works arising from the surveys. The day-to-day operational delivery will be delegated to the housing compliance team.
- 4.4 The Housing and Corporate Leadership Teams will receive reports in respect of asbestos management performance and ensure compliance is being achieved. They will also be notified of any non-compliance issue identified.
- 4.4 The housing teams will provide key support in gaining access into properties where access is proving difficult and use standard methods to do so. ~~They will also facilitate the legal process to gain access as necessary.~~
- 4.5 The Council's ~~Director of Housing and Operations~~Chief Officer for Housing will be responsible for ensuring the policy is reviewed every ~~two~~three years, and will notify The Council's Corporate Leadership Team and operational team (s) responsible for the delivery of the compliance programme, of the upcoming review.

4.6 Competent Persons

- 4.6.1 The Council will ensure that the manager with lead responsibility for operational delivery is suitably qualified and experienced, holding one of the following as a minimum:
- P405 qualification;
 - Level 4 qualification in a related subject such as Level 4 VRQ Diploma in Asset and Building Management Compliance; and/or
 - Level 4 NEBOSH National Certificate/Diploma in health and safety;
- 4.6.2 Where the appropriate qualification has not yet been obtained, the Council will seek assistance from a relevant external consultant, until the Council employee(s) has obtained the qualification(s). The most appropriate qualification will be obtained within 12 months of the approval of this policy, or within 12 months of the start of employment for any new operational leads, where the employee does not already hold it.
- 4.6.3 The Council will ensure that competent contractors (as per HSG264) are procured and appointed to deliver asbestos management surveys.
- 4.6.4 The Council will ensure that competent licensed asbestos removal contractors are appointed for all notifiable non-licensed work or licensed works.

4.6.5 The operational team with responsibility for delivery will check the relevant qualifications of employees working for these contractors on an annual basis and evidence this appropriately.

The Policy

5. Obligations

5.1 The duty to manage asbestos is included in The Control of Asbestos Regulations (CAR) 2012. The duty requires ~~t~~The Council to manage the risk from asbestos by finding out if there is asbestos present and identifying its location and condition.

5.2 The Council has an obligation to do this, in the homes and buildings it own~~ed~~ and manage~~s, d by the Council (or~~in practice this means assessing if asbestos-containing materials are liable to be present and making a ~~presumption~~an assumption that materials may contain asbestos, unless ~~the Council~~it has strong evidence that they do not).

5.~~32~~ The Council must also identify ~~its~~the location of any asbestos-containing material (ACM) and identify what condition it is in. If the home or building was built prior to the year 2000 the Council will assume asbestos is present. If the home or building was built after the year 2000 asbestos is unlikely to be present and no further action will be required.

5.~~43~~ The Council must make~~establish~~ and keep an up-to-date record (referred to as the 'asbestos register') of the location and condition of the asbestos-containing materials (ACMs) or presumed asbestos-containing materials in the homes and buildings it own~~ed and managed by the Councils and manages,~~ andin order to:

- Assess the risk from the asbestos-containing materials found~~;~~
- Prepare an Asbestos Management Plan that sets out in detail how the Council is going to manage the risk from the asbestos-containing materials, and taking ~~the~~ steps ~~needed~~ to put the asbestos management plan into action.

5.~~54~~ The Council must also review and monitor the asbestos management plan and the arrangements made to put it in place; and set up a system for providing information on the location and condition of the asbestos-containing materials to anyone who is liable to work on or disturb these materials.

5.~~65~~ Anyone who has information on the whereabouts of asbestos in homes and buildings is required to make this available to the Council as the 'duty holder', but the Council then has to assess its reliability.

6. Statement of Intent

- 6.1 The Council recognises that the main hazard in relation to asbestos is the non-identification of ACMs, and as such will protect those persons potentially exposed to asbestos as far as is reasonably practical by minimising the exposure through the use of appropriate control measures and working methods.
- 6.2 The Council accepts that asbestos is likely to be present in the majority of its properties built prior to the year 2000 and will therefore manage these properties accordingly.
- 6.3 In order to fully comply with the legislation ~~the~~ The Council will have a Cabinet-approved Asbestos Policy. In addition the Council will have an Asbestos Management Plan and develop an Asbestos Register which will hold records of the assets which have asbestos-containing materials in them.
- 6.4 The Council will hold accurate records against each property it owns or manages, identifying whether the property has had its initial asbestos management survey and when the next re-inspection is due.
- 6.5 Survey and re-inspection dates, details of ACMs and asbestos management survey reports will be held electronically.
- 6.6 The Council will employ competent external contractors (in line with HSG264) to undertake asbestos management surveys. Licensed asbestos removal operatives and/or contractors will be employed to carry out licensed remediation works (where necessary) to non-domestic (communal blocks/ 'other' properties) and domestic properties as outlined in section 8 of this policy.
- 6.7 The Council will employ suitably competent persons to undertake asbestos re-inspections and the removal of non-licensed asbestos.
- 6.8 The Council will also undertake an intrusive refurbishment and demolition (R&D) survey to domestic and non-domestic properties as and when required as per HSG264. This will also be in accordance with the criteria set out in the Council Asbestos Management Plan, which should be read in conjunction with this policy.
- 6.9 The Council considers good communication essential in the safe delivery of asbestos management and will therefore ensure that information about asbestos-containing materials (known or suspect) is provided to every person liable to disturb it, accidentally or during the course of the work. This includes employees and tenants.
- 6.10 The Council will ensure that all contractors' employee and public liability insurances are up to date on an annual basis.

- 6.11 The Council will ensure contracts/service level agreements are in place with the contractors responsible for delivering the compliance service.
- 6.12 The Council will ensure there are effective contract management arrangements in place, in the form of client-led meetings taking place regularly, with standard agendas and minutes produced, key performance indicators analysed and programmes and performance scrutinised.
- 6.13 The Council will provide leaseholders and tenants with an asbestos survey report on request.
- 6.14 The Council will provide tenants with information about asbestos via their website that will: tell them of possible asbestos-containing materials (ACMs) in their home, advise them what to do if they wish to carry out DIY or employ a contractor to undertake work, and advise them who to contact if ACMs are accidentally disturbed.
- 6.15 The Council will generally not use asbestos labelling in domestic premises, however, in non-domestic premises and common areas of domestic blocks, labelling will be used where practicable.
- 6.16 The Council will implement a robust process to deal with all changes to stock, including new property acquisitions, disposals and stock transfers, in order to ensure that properties are not omitted from the compliance programme, and to ensure the programme remains up-to-date.
- 6.17 The Council will ensure that there is a robust process in place for the management of immediately dangerous situations identified from any asbestos related works undertaken on ~~t~~he Council's properties.

6.18 The Council will have a robust controlled access procedure in place should any tenant refuse access to carry out essential safety related inspection and/or remediation works. The Council will make every effort to obtain access giving reasonable notice, and before the inspection/certificate is due to expire. However, if access has still not been granted, or in cases of emergency, we will take enforcement action to gain entry to the property if necessary. This may mean undertaking a 'controlled entry'.

6.19 Where a controlled entry is required, a locksmith appointed by the Council will gain entry to the property and change the lock. Work will be completed with or without the tenant's presence and the tenant will be recharged for the work.

7. Compliance Risk Assessment/Inspection Programmes

- 7.1 **Non-Domestic (communal) Stock** – The Council will review existing asbestos management survey information prior to carrying out any repairs or planned

maintenance works which may involve working on, or adjacent to, any asbestos-containing materials within a non-domestic (i.e. communal) block, ~~or 'other' properties (e.g. offices, commercial shops, depots, etc.).~~

- 7.2 This is to ensure that any asbestos-containing materials likely to pose a risk are identified prior to works commencing and the details passed onto the relevant operatives or external contractors and managed in an appropriate way. Where required a new hybrid R&D/management survey will be commissioned prior to work commencing.
- 7.3 The Council will ensure that all non-domestic (communal blocks) ~~and 'other' properties in ownership or management~~ have an initial asbestos management survey carried out. All surveys comply with the CAR 2012 legislation and are therefore dated after 6th April 2012 when the legislation came into effect.
- 7.4 Thereafter all non-domestic (communal blocks) ~~and 'other' properties where ACM has been identified (but deemed safe to leave in place) will be recorded on the Council's Asset Management system, and~~ will have a re-inspection survey and an assigned re-inspection date where applicable. This date will be in accordance with the specific needs of the building. It will either be annually or at a period dictated by the previous survey/re-inspection. Re-inspection dates may change following the re-categorisation of a property or a building.
- 7.5 The Council will not need to re-inspect any non-domestic (communal blocks) ~~or 'other' properties~~ built after the year 2000, or where the initial asbestos management survey confirms that there are no asbestos-containing materials present.
- 7.6 **Domestic Stock** – The Council will review existing asbestos management survey information prior to carrying out any void repairs, day to day repairs, or planned maintenance works which may involve working on or adjacent to any asbestos-containing materials within a domestic property.
- 7.7 This is to ensure that any asbestos-containing materials likely to pose a risk are identified prior to works commencing, and the details passed onto the relevant operatives or external contractors and managed in an appropriate way.
- 7.8 Where there is no previous asbestos-related information in respect of a domestic property which requires an asbestos survey ahead of void repairs, day-to-day repairs or planned maintenance work, a survey will be undertaken and the scope of the survey agreed in accordance with the works due to be carried out. If the void only requires the standard safety checks (gas, electric and EPC) and there is no intrusive repair work, an asbestos survey is not required.

- 7.9 The Council will not need to re-inspect any domestic properties built after the year 2000, or where the initial asbestos management survey confirms that there are no asbestos-containing materials present.
- 7.10 **Refurbishment Work** – The Council will undertake an intrusive refurbishment and demolition (R&D) survey to domestic, non-domestic (communal blocks) and ‘other’ properties prior to planned maintenance works taking place to the areas of the property that are likely to be disturbed as part of the proposed works. This will be in accordance with the criteria set out in ~~the~~ The Council’s Asbestos Management Plan, which should be read in conjunction with this policy.
- 7.11 **Garages** – The Council will carry out asbestos management surveys on garages prior to any work being carried out.

~~7.12 **Commercial Stock Assigned to the HRA** – The Council will ensure they have records of an asbestos management survey where properties they own or manage are managed by people or organisations other than The Council and Hythe District Council (i.e. are managed by managing agents). These properties will also be included on the Council’s asbestos programme, so an asbestos re-inspection survey can be requested from the managing agent prior to the existing one expiring. If the managing agent fails to carry out an initial asbestos management survey or re-inspection survey, The Council will step in and carry out the test and re-charge the managing agent for the cost of this work.~~

8. Compliance Follow-up Work

- 8.1 The Council will ensure there is a robust process in place for the management of any follow-up works required following the completion of an asbestos management survey.
- 8.2 Where asbestos is positively identified and, as a result of a risk assessment (conducted in accordance with published guidance), removal, sealing or encapsulation is recommended, this will be carried out as follows:
- Non-licensed works – as defined in regulation 2 of CAR 2012 – by specifically trained contractors with appropriate equipment and working procedures in place which are sufficient to comply with the CAR 2012;
 - Notifiable non-licensed works – as defined in regulation 2 of the CAR 2012 – by a licensed asbestos removal contractor (LARC) licensed by the Health and Safety Executive in compliance with the CAR 2012; or

- Licensed works - as defined in regulation 2 of the CAR 2012 – by a LARC, licensed by the Health and Safety Executive in compliance with the CAR 2012.

Key controls and reporting

9. Asbestos Surveys

- 9.1 The Council will establish and maintain a programme of non-domestic (communal blocks) and ‘other’ property surveys and re-inspections, and an Asbestos Register of all the asbestos-containing materials by type, address, location and condition.
- 9.2 Survey and re-inspection dates, details of ACMs and asbestos management survey reports will be held electronically.
- 9.3 Spreadsheets will be used to record the details of all asbestos surveys undertaken on The Council’s non-domestic (communal), domestic and other properties. This will include the date and type of the most recent survey and/or re-inspection where applicable.
- 9.4 The findings from the asbestos survey, including any ACMs and remediation works identified and subsequently completed (including evidence of removal and encapsulation) should also be recorded on the spreadsheets.
- 9.5 Appropriate asbestos information will be made available to all interested stakeholders as required.

10. Training

- 10.1 The Council will ensure that all operatives working for, or on behalf of, the organisation have the relevant training required for their role. This will be managed via periodic assessments of training needs and resulting programmes of internal and/or external training.

11. Performance Reporting

- 11.1 Robust performance indicator measures will be established and maintained to ensure the Council is able to report on performance in relation to asbestos.
- 11.2 Performance measures will be produced and provided at Corporate Leadership Team (CLT) and Cabinet as part of the reporting cycle, as required. As a minimum these measures will include reporting on:

- Communal properties with a valid asbestos check. This is the level of compliance expressed as a number and/or as a percentage;

11.3 In addition, performance reporting may include (where necessary):

- Domestic properties with a valid asbestos check. This is the level of compliance expressed as a number and/or as a percentage;
- Written narrative on the current position, corrective action applied, and/or progress on follow-up works.

~~11.3 Data – the total number of:~~

- ~~• Properties – split by non-domestic properties (communal blocks) and ‘other’ properties;~~
- ~~• Properties on the asbestos management/re-inspection programme;~~
- ~~• Properties not on the asbestos management/re-inspection programme;~~
- ~~• Properties with a valid ‘in date’ survey/re-inspection. This is the level of compliance expressed as a number and a percentage;~~
- ~~• Properties where the survey/re-inspection has expired and is ‘out of date’. This is the level of non-compliance expressed as a number and a percentage; and~~
- ~~• The percentage of domestic stock with full asbestos data.~~

~~11.4 Narrative – an explanation of the:~~

- ~~• Current position;~~
- ~~• Corrective action required;~~
- ~~• Anticipated impact of corrective action; and~~
- ~~• Progress with completion of follow-up works.~~

~~11.5 In cases of a serious non-compliance issue The Council’s Corporate Leadership Team and Monitoring Officer will consider whether it is necessary to disclose the issue to the Regulator of Social Housing in the spirit of co-regulation, or any other relevant organisation such as the HSE, as part of the Regulatory Framework.~~

12. Quality Assurance

12.1 The Council will require external contractors to provide the results of their own ~~5 per cent quality~~ assurance audit checks, on a minimum of 5% of inspections (or a percentage determined through agreed contractual arrangements), as required by UKAS, on a monthly basis.

12.2 The Council will commission an independent audit of asbestos at least once every ~~two~~ three years. This audit will specifically test for compliance with the

regulation, legislation and codes of practice and identify any non-compliance issues for correction.

13. Non-Compliance/Escalation Process

- 13.1 The definition of non-compliance in relation to this policy refers to any incident which results in a potential breach of legislation or regulatory standard, or which causes or has the potential to cause a significant a risk to health or safety.
- 13.2 Any non-compliance issue identified at an operational level will be formally reported to ~~t~~The Council's Director of Housing and Operations as part of the monthly reporting cycle.
- 13.3 Where necessary ~~t~~The Council's Director of Housing and Operations will agree an appropriate course of corrective action with the relevant operational teams in order to address any non-compliance issue.
- 13.4 The Council's Director of Housing and Operations will ensure the appropriate Cabinet Member ~~(s) for Housing, Transport and Special Projects~~ is made aware of any non-compliance issue.

14 Equality and Diversity

- 14.1 An Equality Impact Assessment has been carried out to determine whether the policy would have an impact on any member of staff, tenants or contractor workforce, which unfairly discriminates or disadvantages them in the context of the Equality Act 2010. Adherence to the policy provides the same level of protection for all building users and no impacts have been identified that would adversely affect one group more than any other.
- 14.2 Provision has been made to record any tenant vulnerability issues that are known or identified, and therefore taken account of, when gaining access to properties to undertake necessary safety checks. However, ensuring we can gain timely access to any property in order to be compliant with this policy and safeguard the wellbeing of the tenant and/or other building occupants, is the Council's primary concern.