

Rossendale

BOROUGH COUNCIL

Enforced Sales Policy and Procedure July 2018

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ROSSENDALE BOROUGH COUNCIL
Enforced Sales Policy and Procedure

Section 1

1.0 Purpose

The purpose of this document is to set out the Council's policy on Enforced Sales and the procedure is set out in Appendix 1.

1.2 Aims

In producing this policy document we aim to:

Provide a service which is consistent and transparent, targeting long term empty properties in order to:

- Bring empty properties back into useful housing stock,
- Reduce debt owed to the Council,
- Improve property standards which will reduce the negative impact on neighbouring properties and their occupants.

Section 2

2.0 Explanation of an Enforced Sale

Enforced Sale Procedure (ESP) is primarily designed to enable Local Authorities to recover outstanding debts created by actions that result in a land charge against a property. For example, many statutes allow a Local Authority to serve a notice on an owner of property calling on the owner to carry out works. It may be, for example, that works are needed to deal with the dangerous or untidy condition of the property. Sometimes failure to comply with a notice amounts to an offence, and the Local Authority may have the right to carry out the works in default and to recover the cost. Statute provides that the cost of carrying out the works in default is a charge on the property. It is the latter scenario that provides the basis for the enforced sale procedure. In essence the local authority exercises the power of sale conferred by the charge to recover the money that is owed for carrying out the work in default.

Once a land charge is registered, the Council can then ask for the debt to be paid in full. Where the owner fails to pay the debt, the Council can enforce the sale of the property. The Council will recover reasonable costs out of the proceeds from the sale and the rest of the monies will be held in trust for the owner. Once the ownership of the property has been resolved, the funds will be transferred to the owner. The procedure may ultimately be thwarted by payment of the outstanding debt; however this will mean the owner will have taken notice and hopefully encouraged them to take action, not to mention the benefit of the associated debt recovery to the Council.

This policy does not cover the right to sell a property because of Council Tax arrears, as that requires an application to court and an order for sale, whilst an ESP requires no court action.

2.1. Legislation consideration

The power to carry out an enforced sale sits within the Law of Property Act 1925. Set out below is a list of some of the most common statutes which enable a charge to be placed on a property in the event of works being carried out in default by the Council. Also identified below are some differences between the various statutes. If the relevant statute results in a charge on the property, it confers a power of sale

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under the Law of Property Act 1925 enabling the Enforced Sales Policy to be used. The following list is not exhaustive.

Statute	What notice is used for	Type of charge	Comments
Section 4 Prevention of Damage by Pests Act 1949	Requiring land to be kept free of rats and mice	On the premises and on all estates and interests therein	Charge arises from date of completion of work. Reasonable interest can be claimed from date of service of demand for costs.
Section 79 Building Act 1984	Requiring works to remedy ruinous and dilapidated buildings and neglected sites	On the premises and on all estates and interests therein	Charge arises from date of completion of work. Reasonable interest can be claimed from date of service of demand for costs.
Section 80 Environmental Protection Act 1990	Requiring abatement of statutory nuisance	On the premises	Charge arises 21 days after service of demand under s81A (unless an appeal is made against the notice, when the period is extended). Reasonable interest can be claimed.
Section 215 Town and Country Planning Act 1990	Requiring steps to be taken for the purpose of remedying the adverse effect on amenity caused by detrimental condition of land and buildings	Binding on successive owners of the land	Charge arises from date of completion of the works.
Sections 11 and 12 Housing Act 2004	Requiring the taking of action to deal with category 1 or 2 hazards in residential premises	On the premises	Charge arises 21 days after service of demand (unless an appeal is made against the notice, when the period is extended). Reasonable interest can be claimed.

In most cases, the Council's charge will take priority over any earlier charges, including a mortgagee's charge. However the primacy of the charges will need to be considered at the outset because, if the Council's charge does not take priority then pursuing an enforced sale may not be financially viable.

If the Statute(s) does not create a charge then, it will be necessary to consider whether Section 7 of the Local Land Charges Act 1975 can be applied. If the Act can be applied, the policy may still be used as the charge will be registered on the Local Land Charge Register but this may **not** take priority over existing charges. As noted above, the existence of any prior charges and the nature of the offending party's title are major considerations when deciding whether to use the policy in such circumstances.

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If none of the above applies then the procedure cannot be used and consideration will be given to be making a Compulsory Purchase or continuing to pursue the matter via the Council's normal debt recovery process.

2.3 Human Rights Act 1998

Consideration of the provisions of the Human Rights Act 1998 must be taken by the Council when considering ESP. In particular, Part 1, Article 8 “the right to respect for... private and family life..., home and... correspondence”, and Protocol 1, Article 1 “peaceful enjoyment of possessions”, need to be balanced against the general benefits and rights of neighbours and the surrounding community.

A statement that the intended action of the Council in exercising its power of sale is considered to be proportionate, in accordance with the Act, should be included in letters to the Owner and Charges placed on the property. This will be covered by correspondence issued by Legal Services.

2.4 The Limitations Act

The power to utilise the enforced sales policy is time limited by section 20 of the Limitations Act 1980. This states that no action can be brought to recover a sum of money secured by a charge on the property after a period of 12 years from the date on which the right to receive the money accrued, so anytime 12 years after the date when the expense has occurred prohibits enforced sale action being taken

Section 3

3.0 Criteria for enforcing the sale of a long term empty property

Enforcing the sale of the property will generally only be pursued by the Council if the following if all the following criteria are met:

- The owner owes outstanding monies, of £500 or more, to the Council following the carrying out of remedial works,
- The property has been empty for 1 or more years or appears to have been abandoned and/or has been a source of frequent complaints received by the Council,
- The necessary Enforcement Notices and documentation have been served.

The following criteria would also be considered and add weight to a decision regarding whether or not to carry out ESP:

- The property is likely to attract more cost to the Council to ensure it is kept secure,
- The property is likely to deteriorate and attract more complaints, becoming detrimental to the amenity,
- The owner is absent, uncooperative, and the property is uninhabitable.

To assess whether a vacant property is potentially one that could be the subject of ESP the following needs to be checked:

- Land Registry registration. This can be done online via <http://www.landreg.gov.uk>
- Debt. The file will contain details of Works in Default and number of any Land Charge debts.

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It is important to liaise with all relevant departments to consider whether they have any outstanding debts on the property and to take those into account as well, in particular, Planning, Building Control and Environmental Services.

The Empty Property Officer will identify if there is a Land Charge against the property by contacting the Land Charges Department.

Additionally, the following will need to apply in order to instigate the procedure:

- The statutory notices must have been served correctly. Refer to the relevant statute for the requirements relating to service. All copy notices must have been stamped and signed by the serving officer. This procedure cannot be employed if the notices have not been served in the correct manner
- The serving officer must complete a 'Record of Service of Notice' form on service of the statutory notice.
- There should be no proposed CPO action within a 2 year period.
- The property must not be the subject of any bankruptcy action. (This would usually be noted on the title or highlighted through Council Tax Records).

3.1 Pre-action to Enforced Sale

Other, more appropriate, types of action must always be considered prior to pursuing an ESP. The use of ESP should be seen as a last resort. It is expected that all informal and formal action will have been taken and exhausted by the Council in order to recover the debt and to resolve the existence of the empty property and its associated problems, prior to this action. The first priority should always be to try and trace owners of a vacant property or site and to make contact with them. Every effort needs to be made to try and engage with the owners and to offer them advice and assistance in getting their property back into use. It is also important to check the charge has not been paid off, and where it hasn't, write to the owner telling him or her of the existence of the charge and if it is not paid off the Council will be taking steps to sell the property

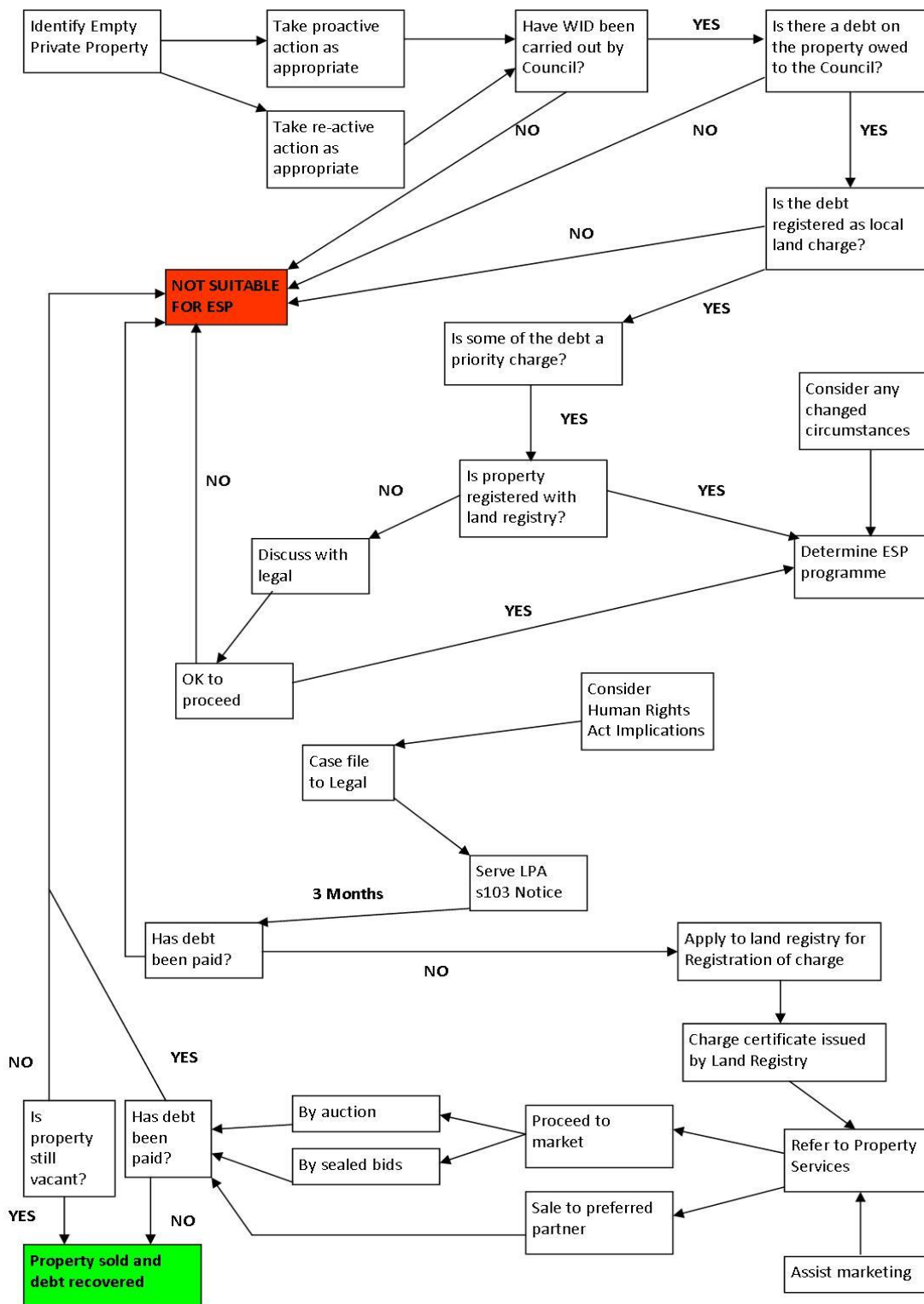
If the Owner appears, or is known to be, vulnerable or disadvantaged, then officers will consider whether other agencies could assist in the case and will also carefully consider the impact of using the enforced sale procedure, whether the enforced sales approach is necessary and proportionate in the circumstances and if so, whether there are any steps they could take to mitigate the effect of using this method. Due regard will be had to the Council's obligations under the Equality Act 2010.

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APPENDIX 1

Section 4

4.0 Summary Flow Chart of Procedure



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APPENDIX 2

5.0 Detailed Procedure

Stage 1 – Empty Property Group / Case officer to identify potential properties for enforced sale procedure

Proactive

Review of outstanding charges on Land Register and CTAX records.

Reactive

Follow on to previous enforcement work through non compliance by owner

Stage 2 – Check that the property is suitable for enforced sales procedure.

Is the property empty?

Is the property registered at the land registry?

If not registered need to check for other interested parties. Checks on:-

- Council Tax Records / Business Rates
- Sending or affixing a letter to the property concerned
- Make enquiries with neighbours
- Make enquiries with other departments who may have been involved with the property

Does the property have financial local land charges registered against it (at least £500)

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Stage 3 – Compile case file.

- This file needs to contain copies of:-
- All statutory notices served prior to the Council carrying out the necessary works in default together with the details of how the notices were served.
 - The Record of Service of Notice form.
 - The work instructions to the contractor for the work to be carried out.
 - All invoices from the contractors along with a detailed breakdown of labour and material charges.

These documents are filed in reference number, together with an account summary sheet which shows what is in the file, the notice number(s) and the amount of financial charge(s), excluding interest, in each case.

Also in the file are copies of any ownership details, local land charge details (Prepare a list of charges sheet at the beginning file) and any correspondence sent or received relevant to the property.

Stage 4 – Case file review. Legal Services with support from the case officer will then agree whether or not to progress the case further as an Enforced Sale.

Insufficient evidence or incorrect service of previous notices – look at rectifying Notices if officers still at Council or review of alternative options such as CPO.

If correctly evidenced – proceed to Stage 5.

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Stage 5 – Re-service of Notices

All the notices originally served and notices of demand for payment are reserved on the property. This will ensure that an owner or interested party is made aware of the debt and also ensures that there is adequate evidence available. Notices will be served by the following methods:-

- One must be served on the listed owner or owners by first class post, or by hand, or by affixing it to the property and
- One must be posted to any other address(es) shown on the Land Registry and to any other interested party of which the Council is aware.
- Copies must be stamped and signed by the serving officer.
- A 'Record of Service of Notice' form must be completed for each by the serving officer.
- A photograph must be taken as evidence of any notices affixed to the property and weekly visits should be made in order to replace any notices that have been torn down.

Also at this point any notices needed to be served under section 81A Environmental Protection Act 1990 are also served

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Stage 6 - Section 103 notice.

After a period of 28 days if no appeal (as to the Section 81A notice) or payment is made, a notice pursuant to Section 103 of the Law of Property Act 1925 is then served. This notice gives the owner **three months** to repay the debt.

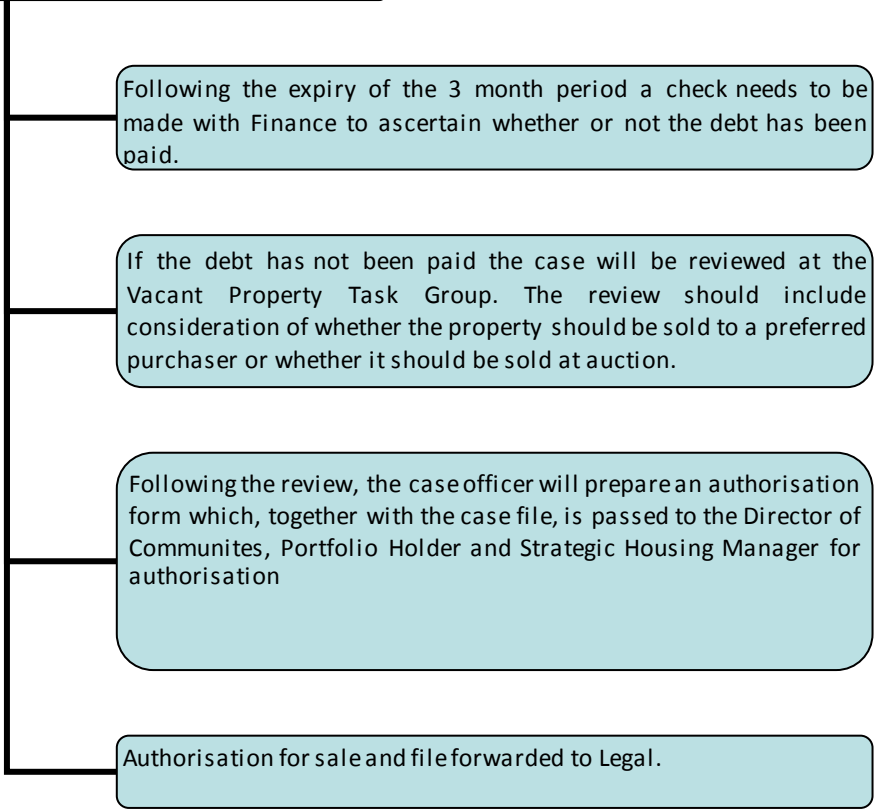
The property cannot be sold until the Section 103 notice has expired, but during this time the procedure is progressed through the various stages as far as possible. The Section 103 Notices are divided into 2 categories:

- Where notices pursuant to Environmental Protection Act 1990 have been served.
- Where **no** notices pursuant to Environmental Protection Act 1990 have been served.

When serving the s103 notice, a photograph is taken of the property and copies of all the notices served on the property and confirmation of the method of service are attached to the property file

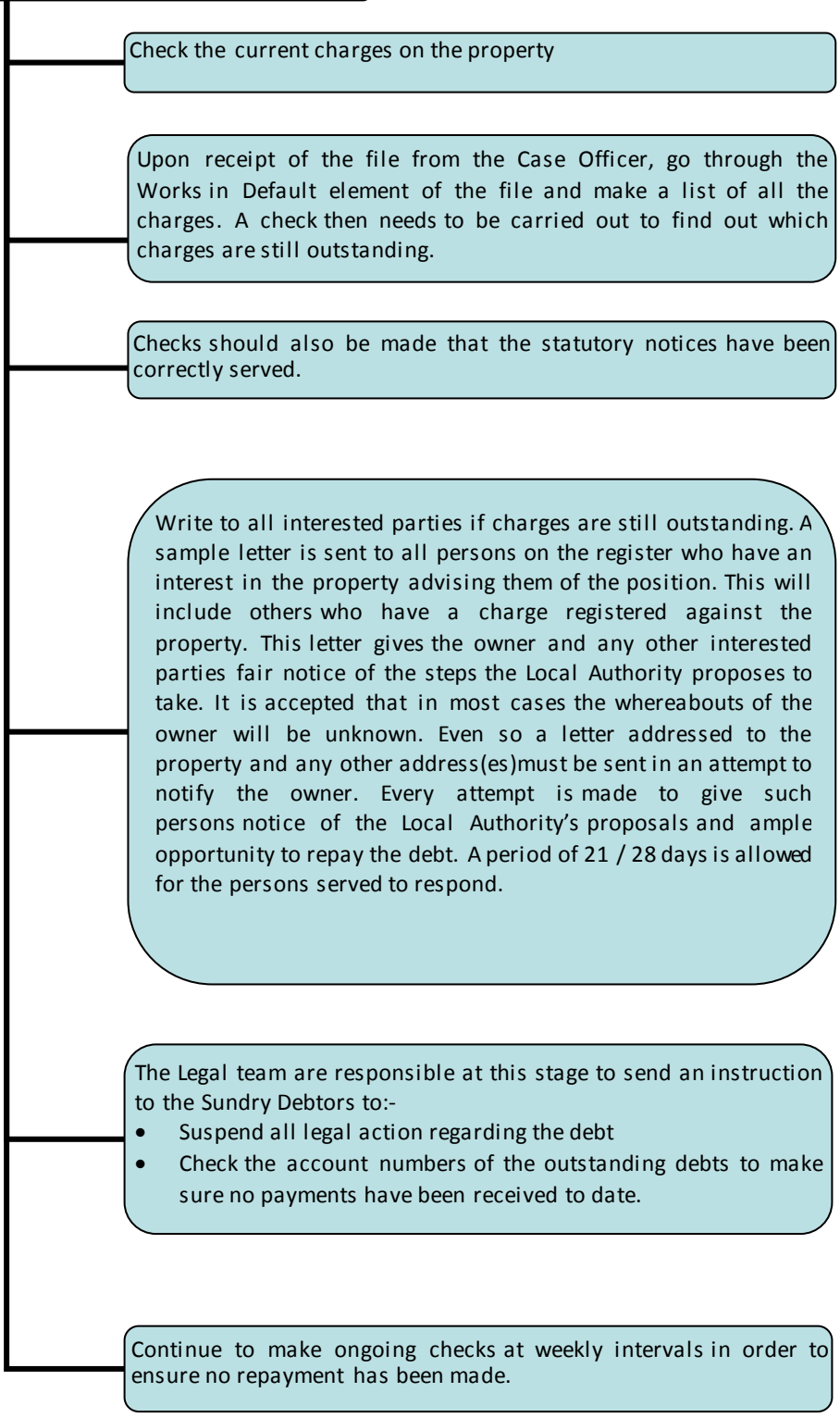
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Stage 7 - Authorisation



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Stage 8 – Legal and Exchequer



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GO TO STAGE 12 IF PROPERTY NOT REGISTERED AT THE LAND REGISTRY

Stage 9 - Registration of charge

If there is no response to the letter and no debts have been repaid then a charge must now be registered with the Land Registry.

A resolution for the relevant charge(s) must be prepared and be sealed by the Council . This must record:-

- The statutory provisions.
- The service of the necessary notices.
- What work was done and when.
- The registration of the charge in the register of local land charges and claims priority over all estates and interests.
- A certificate made by the council that it has all the necessary rights and powers to make the application for registration of the charges and that it has taken all appropriate steps in accordance with the relevant statute.

An application Form AP1 (Application to register) must be prepared for registration of the charge. Per charge provided each charge does not exceed £100,000. (In practice it is only necessary to register a single charge and there may be benefit in so doing since there is a cost of £40 per charge registered. On the other hand, if the owner elects to repay the debt, then he is only bound to pay the charge that has been registered).

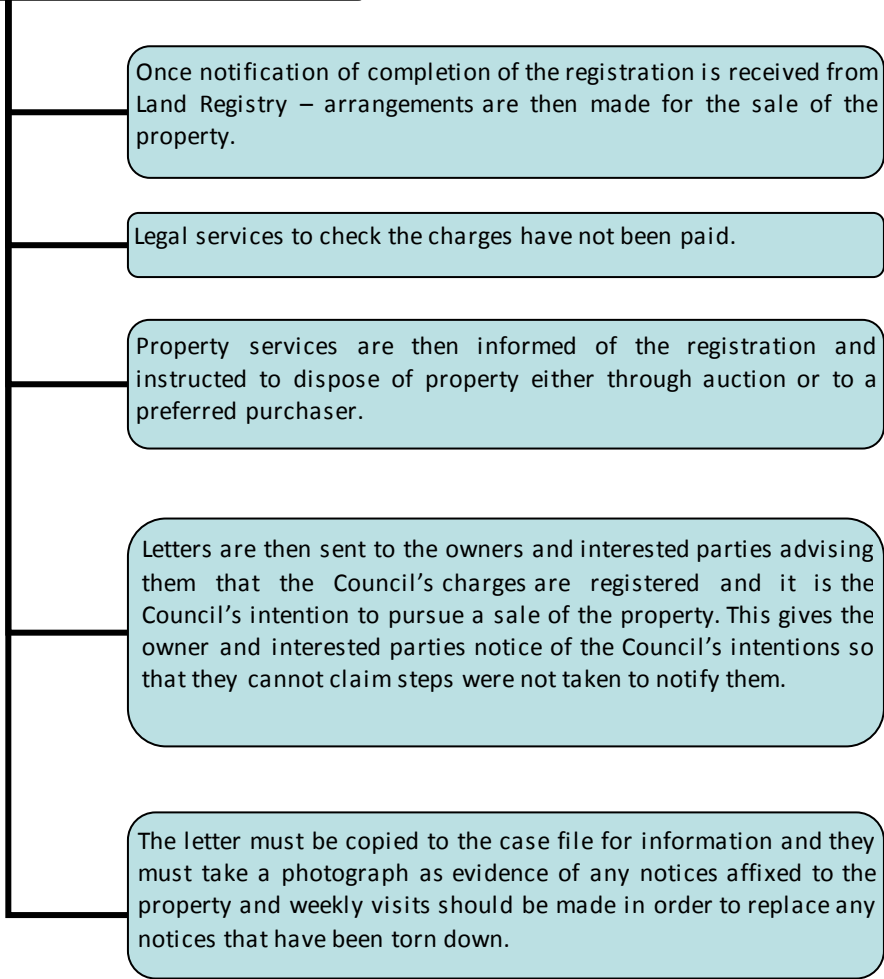
Form SC (Statutory Charge noting the overriding priority) must also be completed in order to claim priority in favour of the council's charge over any existing charge registered against the title.

The completed application must be sent to Land Registry. This comprises of:-

- A covering letter
- The sealed and dated resolutions together with a certified copy of each resolution.
- The land/charge certificate or copies of the correspondence requesting the same.
- Completed SC form.

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Stage 10 – Charges are registered



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If a Property is **NOT** registered at Land Registry

Stage 11 – Check charges

Upon receipt of the file from the Case Officer, Legal need to go through the Works in Default file and make a list of all the charges. A check then needs to be carried out to find out which charges are still outstanding.

This is done as there are many ways debts can be paid and there is little point in undertaking work where a charge has been repaid.

Checks should also be made that the statutory notices have been correctly served.

Stage 12 Check that the property is not registered

A search of the index map must be undertaken at the Land Registry to ensure that the property is not registered. The search must also include the adjoining properties. This might reveal what incumbrances affect the property and also the extent/limits of the title of the property in question.

The extent of the property bound by the charge and that can be sold is ascertained by applying the facts to each case, and the particular statutory provisions that have given rise to the Local Land Charge. The position is clear in the case of charges which arise under the following legislation, therefore, enforced sales should be able to proceed in these cases:-

- Public Health Act 1936, Section 291
- Prevention of Damage by Pests Act 1949
- Building Act 1984, Section 107

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Stage 13 - Ascertain incumbrances affecting the property

Using any information found during this investigation and any information available as to the name(s) of the owner, the purported owner or any other interested party, a Land Charges Act 1972 search must then be carried out against the name of any such person(s) and the property concerned. This may produce clues as to incumbrances affecting the property e.g. easements, covenants and charges.

- Note: where the statutory charge binds all the estates and interests in the property, any registered charges will be of little significance, other than for the purpose of giving notice to any chargee as to the Council's intentions. However, where this is not the case, then it would probably be inadvisable to proceed unless it is certain that there are no prior charges and that the statutory charge binds the freehold or a long lease.
- As stated above, if any of the adjoining properties are registered, it may be possible to ascertain what incumbrances affect the same. This may give a purchaser some clues as to the matters affecting the property and make the property more marketable. The alternative is that no such steps are taken and the purchaser is made aware, via the contract terms, that such is the case. In both cases though, the contract for sale will need to contain special conditions covering the position.

Stage 14 Write to all interested parties

If the searches provide any information as to the identity or whereabouts of the owner(s) or other interested parties, or such information is already available, a letter is now sent to all persons having an interest in the property in order to advise them of the position. This will include others who have a charge registered against the property. The owners copy must be:-

- Delivered to the Owner or Owners by post, or by hand or should be affixed to the property and
- Must be posted to any other address(es) shown on the Land Registry.

The letter must be copied to the Case Officer for information, who must take a photograph of any notices affixed to the property and carry out weekly visits in order to replace any notices that may have been torn down.

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Stage 15 Enquiries are completed

If either:-

- No information is found as to the identity or whereabouts of the owner(s) or other interested parties; or
- There is not reply within 21 days to the letter above the property is then put forward for sale. The contract for sale will need to contain special conditions.

Selling the empty property – Property Services

Stage 16 – Selling the empty property or land

Once everyone has been advised that the charges have been registered against the title and/or that the property can be put forward for sale, then Property Services will be instructed accordingly. Other than where there is particular justification, sale at auction will be the preferred option.

If choosing sale by private treaty to a preferred purchaser then an independent valuation of the property will need to be commissioned.

Whatever the method of sale a red book valuation is required for the Council's records.

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Stage 17 – Contract

For a registered property the contract for sale will be the same as any contract for sale by a mortgagee.

In the case of an unregistered property there will probably be no deeds or details of any incumbrances affecting the property and the contract for sale need to reflect this.

- In such cases the form of the resolution prepared in respect of registered land is incorporated into the contract as a recital
- On completion of the sale the Land Registry require the Council to provide a letter containing a certification by the Council that it has all the necessary rights and powers to dispose of the property and that it has taken all appropriate steps in accordance with the relevant statute
- It will be necessary to make the purchaser's solicitor aware that the letter must be submitted with their client's application for first registration.
- As far as the incumbrances are concerned, the Land Registry will probably make a 'protective entry' on the register to the effect that the property is subject to such incumbrances as affect the same at the date of the registration, no details having been provided on first registration.

Stage 18 – Title

Where the title deeds have not been recovered the following should be borne in mind:-

- Registered titles: copies can be obtained of the documents referred to on the title from the Land Registry. Where they are not available, include an appropriate clause in the contract to cover the position.
- Unregistered titles: There will probably be no deeds or details of the incumbrances affecting the property.

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Stage 19 – Check Charges

Immediately prior to auction/exchange of contracts a further check is made to ascertain whether the charges have been repaid.

Stage 20 – Post Sale

The post-sale procedure is to be generally the same as that for a normal sale.

- The following deductions will be made from the proceeds of the sale:-
- Any auctioneer’s fee.
 - Surveyor / Valuation fee.
 - Legal fee.
 - RBC Administration fee
 - Outstanding charges.

If the debts are greater than the proceeds of sale, consider whether the fees are to have first call on the proceeds or not. The auctioneer’s fees will have to be paid in any event and the other fees should also have first call on the proceeds. Any remaining debt is taken off the property and placed against the former owner as a personal debt, to be pursued in the normal manner if economically viable.

If any balance remains from the proceeds of the sale and the whereabouts of the owner/the person first entitled is known, then the balance is paid in the normal way.

If, as is most likely, the owner’s whereabouts are not known, then the balance must be paid into an interest bearing account or law Courts. If no claim is then made within a period of 12 years, the money reverts to the Council.

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