



Housing Conditions and Supply Team

Private Sector Disrepair Policy

July 2017

POLICY

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## Document Location

This document is held by Tamworth Borough Council, and the document owner is Rob Barnes.

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## Revision History

Revision Date	Version Control	Summary of changes
25 <sup>th</sup> May 2017	1	This is a review of the existing policy around disrepair in use by the private sector housing team.

## Document Review Plans

This document is subject to a scheduled annual review. Updates shall be made in accordance with business requirements and changes and will be with agreement with the document owner.

## Distribution

The document will be available on the Intranet and the website.

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## **1. Introduction**

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. The legislation provides a range of actions for addressing identified hazards. It is a two-stage calculation combining the likelihood of an occurrence taking place and then the range of probable harm outcomes that might arise from that occurrence which would result in a numerical rating. This is repeated for each of the hazards present. The assessment is not based purely upon the risk to the actual occupant but upon the potential risk to any potential occupant of a member of the group most vulnerable to that particular risk (e.g. Children under 5yrs old) over a 12 month period of time.

Once scored, any action that is then considered will take into account the effect of that risk upon the actual occupant.

The scores for each hazard present are then banded from A to J. Bands A to C (ratings of 1,000 points and over) are the most severe, and are known as Category 1 hazards when considering action. Bands D to J, the less severe (rating less than 1,000 points) are known as Category 2 hazards.

HHSRS provides a combined score for each hazard identified and does not provide a single score for the dwelling as a whole. It is applied to all residential premises, whether owner-occupied or rented.

It is this HHSRS system that authorised Officers will use to assess disrepair in both single family dwellings and Houses in Multiple Occupation (HMOs).

Authorised Officers will serve Notices under the Housing Act 2004.

There is normally a right of appeal open to anyone in receipt of a Notice the 1<sup>st</sup> Tier Tribunal Service.

It may be more appropriate to exercise powers under alternative legislation for example The Environmental Protection Act 1990 to deal with a situation where the condition of one property is affecting another.

This Policy takes account of guidance provided by the Government, Tribunal decisions and best practice guidance, and sets out how the Council will use its powers and reach its decisions in relation to the Housing Health & Safety Rating System (Part 1 of the Housing Act 2004).

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 it is most appropriate to use.

The Council will exercise its discretion and consider individual cases and circumstances when deciding whether to take action in response to Category 2 hazards.

## **2. Choice of Appropriate Enforcement Action**

Unless there is an imminent risk to the health and safety of the occupant or visitors to the property, the Council will normally attempt to secure the required improvements informally and within a reasonable amount of time.

Where this approach fails, the Council will determine which of the specific enforcement options it will use, taking into account the facts and circumstances in each individual case and statutory enforcement guidance.

A statement of reasons will be provided with any Notice it serves, explaining why the Council has decided to take a particular course of action, rather than any other kind of enforcement action.

The enforcement options available to the Council are as follows:

- Improvement Notice (including Suspended Improvement Notice)
- Prohibition Order (including Suspended Prohibition Order)
- Hazard Awareness Notice
- Emergency Remedial Action or Emergency Prohibition Order

- Demolition Order
- Clearance Area

## **2.1 Improvement Notices**

It is anticipated that Improvement Notices will be an appropriate and practical remedy for most hazards. **We will use these to address both category 1 and category 2 hazards.**

Where the Council determines that an Improvement Notice should be served in respect of a Hazard(s), it will require works that will either remove the hazard entirely or will reduce its effect so that it ceases to be a Category 1 hazard, and will take whichever of these two options it considers appropriate, having considered the circumstances of the case.

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

Where the Council determines that an Improvement Notice should be served in respect of a Category 2 Hazard, it will require works it judges sufficient either to remove the hazard or reduce it to an appropriate degree, and will make these decisions having considered the circumstances of the case.

## **2.2 Suspended Improvement Notice**

The Council has the power to suspend an Improvement Notice once served and will consider this course of action, where it is reasonable, in all circumstances, to do so.

The following are situations in which it may be appropriate to suspend an Improvement Notice:

- The need to obtain planning permission (or other appropriate consent) that is required before repairs and/or improvements can be undertaken.

- Works which cannot properly be undertaken whilst the premises are occupied and which 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.

When deciding whether it is appropriate to suspend an Improvement Notice, the Council will have regard to:

- The level of risk presented by the hazard(s)
- The turnover of tenants at the property
- The response or otherwise of the landlord or owner
- Any other relevant circumstances (e.g. whether the vulnerable age group is present)

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

### **2.3 Prohibition Orders**

Prohibition Orders can be used in respect of both Category 1 and Category 2 hazards for all or part of a dwelling and are likely to be used; if repair and/or improvement appear inappropriate on grounds of practicality or excessive cost (i.e. the cost is unrealistic in terms of the benefit to be derived for example where several category 1 hazards exist). An example might include a dwelling or part of a dwelling where adequate natural lighting or adequate fire escape cannot realistically be provided or;

- In an HMO, to prohibit the use of specified dwelling units or of common parts. This might, for example, be used if the means-of-escape is unsatisfactory or
- To specify the maximum number of persons who can occupy a dwelling where it is too small for the household's needs, in particular, in relation to the number of bedrooms or



- In relation to premises lacking certain facilities but which are nonetheless suitable for a reduced number of occupants.

In addition to prohibiting all uses in relation to the whole or part of the premises in question (other than uses specifically approved by the Council), Prohibition Orders can prohibit specific uses (Section 22 (4)(b) Housing Act 2004); this option may be employed to prevent occupation by particular descriptions of persons. Use of this power may be appropriate in situations such as the following:

- Premises with steep staircases or uneven floors which make them particularly hazardous to elderly occupants.
- Premises with open staircase risers or widely spaced balustrades that make them particularly unsuitable for infants.

#### **2.4 Suspended Prohibition Order**

The Council has the power to suspend a Prohibition Order once served and will consider this course of action where it is reasonable to do so if the facts of a particular case appear to justify it (e.g. until the number of people in a current household will naturally decrease).

Suspended Prohibition Orders will be reviewed after a maximum of 12 months and then at intervals of not more than 12 months, but suspension will not normally exceed 6 months.

The Council will consider any written requests made for alternative uses of premises or part-premises which are subject to a Prohibition Order, and will not withhold its consent unreasonably. Any such consent will be confirmed in writing.

#### **2.5 Hazard Awareness Notice**

Hazard Awareness Notices may be served to notify owner-occupiers of the existence of hazards (for example where the risk from the hazard is mitigated by the long-standing nature of the occupancy). It might also be applicable where:

- It is judged appropriate to draw a landlord's attention to the desirability of remedial action
- To notify a landlord about a hazard as part of a measured enforcement response
- To advise an owner occupier around a desired course of action.

Hazard Awareness Notices do not have the same legal status as the other Notices under the Housing Act and cannot be 'breached' as such.

## **2.6 Emergency Remedial & Prohibition Action**

The situations in which Emergency Remedial Action and Emergency Prohibition Orders may be used are specified by Sections 40 to 45 of the Housing Act 2004. Specifically, the Council must be satisfied that:

- A Category 1 hazard exists, and that
- The hazard poses an imminent risk of serious harm to health or safety, and that
- Immediate action is necessary.
- Contact cannot be made with the owner/ landlord or there is no confidence that co-operation will be forthcoming.

If these conditions are met the Council intends to take appropriate emergency action, but it does not anticipate that this will be a frequent event. Situations in which emergency action may be appropriate include:

- Residential accommodation located above commercial premises and which lack a safe means of escape in the event of fire because there is no independent access.
- Risk of electrocution, fire, gassing, explosion or collapse.
- A HMO where category 1 hazards are present and the landlord cannot be contacted.

## **2.7 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 new method of hazard assessment and enforcement provisions.

Demolition Orders are a possible response to 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.

## **2.8 Clearance Areas**

The Council can declare an area to be a Clearance Area if it is satisfied that each of the premises in the area is affected by one or more Category 1 hazards (or that they are dangerous or harmful to the health and safety of inhabitants as a result of a bad arrangement or narrowness of streets). 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) and having had regard to relevant Government guidance on Clearance Areas and all the circumstances of the case.

## **3. Tenure**

The HHSRS applies equally to all tenures. Further, it does not specify that particular approaches or solutions should be used on the basis of ownership or the occupier's status. All of the enforcement options are available to the Council regardless of whether the premises in question are owner-occupied, privately rented or belong to a Registered Social Landlord (RSL). However, the Council considers that owner-occupiers are usually in a position to take informed decisions concerning maintenance and improvement issues that might affect their welfare and are then able to set their financial priorities accordingly; whereas tenants are not usually able to do so.

For this reason the Council judges that it is appropriate for its powers to be used differently according to tenure, as follows:

### **3.1 Owner-Occupiers**

The Council anticipates that Hazard Awareness Notices will frequently be the appropriate course of action. However, the use of Improvement Notices, Prohibition Notices and their emergency equivalents will be considered in cases involving:

- 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.

Unless an identified hazard is judged to pose an imminent risk of serious harm, the Council will contact the owner to confirm its involvement, explain the nature of the hazard and confirm the action it is intending to take. The Council will take account of any proposals or representations made by, or on behalf of the owner. The Council will solicit and take account of the opinion of the relevant Welfare Authority in considering both the vulnerability and capability of such persons as well as in determining what action it will then take.

### **3.2 Social Landlords**

The Council will not normally take formal action against an RSL unless it is satisfied that the problem in question has been properly reported to the RSL and upon the RSL failing to take appropriate action, the complainant has followed the RSLs internal complaint procedure.

If the Council determines that it is appropriate to take action, it will then notify the RSL that a complaint has been received and/or a hazard identified and seek the RSLs comments and proposals.

Only in cases where it judges that an unsatisfactory response has been received, will the Council take further action and will then determine which of the available

enforcement options is the most appropriate, taking into account the facts of the case.

### **3.3 Private Landlords**

The Council will have regard to the principles of the Regulators' code, enforcement guidance and decisions from the 1<sup>st</sup> Tier Tribunal and will initially seek to proceed informally.

Formal action will be initiated immediately if a hazard in question is judged by the Council:

- To pose an imminent risk of serious harm to any person (whether or not immediate action is required, and whether the hazard(s) in question is likely to affect a tenant, an employee or a member of the public), or
- The landlord in question is known to have failed, on a previous occasion, to take appropriate action in response to an informal approach.

Where an inspection is arranged, the Council will write to the landlord (or his/her relevant agent) to confirm their involvement and the time and date of the visit. Following the inspection, the Council will explain the nature of the hazard(s) in writing and seek the landlord/agent's proposals for remedying the problem.

Unless the Council already holds the required information, a Requisition for Information Notice may also be served at this point (section 16 local Government Miscellaneous Provisions Act 1976). It is an offence not to comply with a section 16 notice and Tamworth Council will look to prosecute for non-compliance.

Following the inspection, if the Council considers that satisfactory proposals and timescales for the work to be carried out are received and agreed within 14 days, and provided matters then proceed to a satisfactory conclusion, the Council will not normally need to take any further action to discharge its duties.

Landlords are expected either to provide any agent acting for them with sufficient authority to act on their behalf, in the event that they are contacted by the Council, or to ensure that they maintain appropriate communication with their agent in order that appropriate decisions and responses can be provided to the Council. The failure of

an agent to respond to communication from the Council or any failure to take appropriate action may be treated as a failure by the landlord. If the Council receives:

- No response from the landlord/agent or
- A response it judges inadequate or
- Proposals that were judged acceptable but which are not then followed through (for example if works fail to start when agreed, fail to make proper progress or are completed to an inadequate standard)

It will proceed with formal action by taking whichever of the various available enforcement actions it judges to be the most appropriate in accordance with this Policy.

### **3.4 What is expected of Tenants?**

Before considering taking any action in respect of a tenanted property, the tenant(s) will be required to contact their landlord about the problems first in writing. This can be a letter, email, text message or message through social media.

Copies of correspondence between the landlord and tenant should be provided for Officers. Tenants are responsible for keeping Officers informed of any contact they have had with their landlord (or the landlord's agent or builder, etc.) which may affect the action the Council is taking or considering taking.

Tenants should also consider seeking independent legal advice about their own individual powers to resolve any dispute with their landlord.

### **4. Situations where a Service may not be provided**

Where any of the following situations arise, consideration will be given to either not providing a service or ceasing to provide a service. In all instances when a service is either not provided or ceased approval shall be sought from the Head of Strategic Housing.

- Where the tenant(s) unreasonably refuse access to the landlord, managing agent or landlord's builder, to arrange or carry out works.

- Where the tenant(s) have, in the opinion of the Council, clearly caused the damage to the property they are complaining about, such damage does not present an imminent risk to health and safety, and there are no other items of disrepair.
- Where the tenant's only reason for contacting the Private Sector Housing Service, in the opinion of the Council, is in order to get re-housed.
- Where the tenant(s) have requested a service and then failed to keep an appointment and not responded to a follow up letter or appointment card.
- Where the tenant(s) have been aggressive, threatening, verbally or physically abusive towards Officers.
- Where there is found to be no justification for the complaint, on visiting the property.
- Where the tenant unreasonably refuses to provide the Council with relevant documentation or information.

## **5. Powers of Entry and Power to Require Information**

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 provided that:

- The Officer has written authority from an appropriate Officer stating the particular purpose for which entry is authorised.
- The Officer has given 24 hours' Notice to the owner (if known) and the occupier (if any) of the premises they intend to enter.

No Notice is required where entry is to ascertain whether an offence has been committed under Sections 72 (offences in relation to licensing of HMOs), 95 (offences in relation to licensing of houses) or 234(3) (offences in relation to HMO Management Regulations).

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 magistrate on written application. A warrant under this section includes power to enter by force, if necessary, Tamworth Council will use this provision if necessary. Agreement will

normally be sought from the Head of Strategic Housing before a warrant is applied for.

The Council also has power under Section 235 of the Housing Act 2004 to require documentation to be produced in connection with:

- Any purpose connected with the exercise of its functions under Parts 1-4 of the Housing Act 2004.
- Investigating 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.

## **6. Power to Charge for Enforcement Action**

The Local Authority has the power under Section 49 of the Housing Act 2004 to make a reasonable charge as a means of recovering certain administrative and other expenses incurred in serving an Improvement Notice, Hazard Awareness Notice, making a Prohibition, Emergency Prohibition or Demolition Order or taking Emergency Remedial Action. A typical Charge for the service of an Improvement Notice is about £200.

### **6.1 Charges for Notices & Orders**

Where a charge is made, the Council can recover a reasonable amount for expenses incurred in connection with time spent gaining entry, visiting and inspecting the premises to determine appropriate action and the administration costs for the production of a Notice, Order or Remedial Action.

Costs incurred carrying out Work in Default or Remedial Action will be charged separately.

When the charge demand becomes operative, the sum recoverable will be a local land charge.



## **7. Failure to Comply with Notices**

If a Notice is complied with, no further action will be taken.

However if A Notice is not complied with, the Council will consider the following options: (it may be appropriate to undertake a combination of options)

- Simple caution
- Prosecution
- Civil penalty ( brought in by the Housing and Planning Act 2016 from April 2017)
- Carrying out the works in default;

Failure to comply with an Improvement Notice or a Prohibition Order is an offence punishable by a fine of up to Level 5. Following conviction, it is an offence to carry on using the premises in breach of the Prohibition Order, attracting a daily fine.

(A landlord/ agent convicted of an offence will from October17 find them-selves on the 'Rogue' landlord database or even subject to a banning order).

The Council will take action to recover its costs in connection with works in default. The Council will also take action to recover the costs incurred in carrying out works associated with Emergency Remedial Action.

### **7.1 Simple Caution**

The use of a Simple Caution (previously known as a Formal Caution) may be considered where it is felt a prosecution is not appropriate. A decision to offer a Simple Caution will be in accordance with the Home Office Guidance on the use of Simple Cautions.

The following factors will be considered in deciding when to offer a Simple Caution:

- The case does not fully meet the Public Interest Test (as set out below).
- The defendant has made a clear and reliable admission of the offence.

A decision to offer a Simple Caution will be if the case is as robust as for a prosecution and will not be considered in cases where the evidence will not give the likely prospect of success in prosecution. If the offer of a Simple Caution is declined the Council **will** take legal proceedings or issue a civil penalty in line with the Housing and Planning Act 2016.

A Simple Caution will not be offered to the same person or company for the same offence within the expiry period. If further offences are committed, prosecution or a civil penalty action will be taken and any details of previous Cautions will be placed before the Court where appropriate.

If a Simple Caution is accepted, the details of the offence will be fully recorded and a copy of the documentation held on the relevant national database.

## **7.2 Prosecution**

Where statutory powers exist to prosecute, they shall only be undertaken where the evidential test and the public interest test has been met, in line with the guidance set out in “The Code for Crown Prosecutors”. The Code for Crown Prosecutors has been issued by the Director of Public Prosecutions under section 10 of the Prosecution of Offences Act 1985 and updated in January 2013.

As of April 2017 it has become possible to offer a civil penalty as an alternative to prosecution in certain circumstances (please see separate Policy document on the Housing and Planning Act 2016). The ‘tests’ to be satisfied before issuing a penalty are the same as those for Prosecution so the information contained in this policy pertains to both options.

Prosecution is a discretionary power and any decision to prosecute will not be taken lightly and based on the circumstances of each case taking into account any defence that may be available. An alternative option to prosecution will be considered in all cases. However, in certain circumstances prosecution action may be taken without prior warning.

A breach of legislation will not automatically result in the instigation of legal proceedings or a civil penalty. The circumstances which are likely to warrant a such action may be characterised by one or more of the following criteria:

- There is a serious breach of the law such that the occupants or the public health, safety or well-being is put at risk, or there is a serious offence under housing standards legislation.
- There is a failure to comply in full or part with a Statutory Notice or Order or there is an offence under the House in Multiple Occupation (HMO) Management Regulations.
- There is a failure to apply for a licence for an HMO or Park Home that is required to be licensed or there has been a breach of condition(s) of HMO licensing or Park Home site licences.
- There is a serious offence under the Protection from Eviction Act 1977 and evidence suggests harassment or illegal eviction from a residential premises or a permanent residential park home.
- There have been breaches of legal requirements in a residential premises and it appears management is unwilling or unable to deal adequately with them.
- The failure by an offender to correct an identified serious potential risk to safety after having been given a reasonable opportunity to do so.
- The offender has failed to accept a Simple Caution or the offence is too serious to offer a Simple Caution.
- A Simple Caution has been issued for a similar offence.

The decision to instigate legal proceedings does not preclude the issue of statutory notices or other enforcement action. Investigation and decision-making will not be unduly prolonged or delayed. It will be in accordance with the principles laid out in the following Acts:

- Human Rights Act 1998
- Police and Criminal Evidence Act 1984
- Regulation of Investigatory Powers Act 2000 and guidance updated May 2015

### **7.3 Test for Prosecution**

In deciding whether a prosecution is necessary, the following tests will be satisfied:

- Evidential Test
- Public Interest Test

#### **7.4 Evidential Test**

There must be sufficient evidence to provide a realistic prospect of conviction against each defendant and on each charge before a prosecution is authorised. This is an objective test and means that a jury or bench of Magistrates, properly directed in accordance with the law, is more likely than not to convict each defendant on each charge. If the case does not pass the evidential test, it will not go ahead, no matter how important or serious it may be.

In considering the evidence, the factors taken into consideration will be the reliability of an admission made in an interview, for example, a defendant's age and the reliability of any witness.

#### **7.5 Public Interest Test**

There are a number of factors which will determine whether a prosecution is in the public interest and a balance in favour or against will be made between these factors. The following list of factors is not exhaustive but positive answers will tend towards prosecution being sought:

- The seriousness of the offence and if a conviction is likely to result in a significant sentence.
- Evidence that the offence was committed deliberately or maliciously.
- Evidence that the defendant intimidated or harassed those affected.
- The defendant was in a position of authority or trust.
- The previous history of the defendant and evidence of on-going offences of a similar type.
- Likelihood of repeated offence which may be deterred by prosecution.
- The offence is widespread in the area in which it was committed and a prosecution would be of public benefit.

## **7.6 The Housing and Planning Act 2016**

This Act has amended a number of provisions of the Housing Act 2004 including those around non – compliance of Improvement Notices.

A civil penalty can be issued instead of undertaking a prosecution.

The ‘burden of proof’ for issuing a civil penalty is the same as for taking a prosecution.

We will be using this new provision to issue civil penalties.

Please see the separate Policy Document on the Housing and Planning Act 2016.

If the Private Sector Housing team have reasonable cause to suspect that an offence has been committed an initial meeting will need to be undertaken with the line management to try and reach a decision as to whether or not a civil penalty or prosecution is appropriate and the relevant a procedures followed.

## **8. Revocation and Variation of Notices**

The Council must revoke an Improvement Notice once the Notice has been complied with.

If part of the work required within the Notice is carried out, then the Notice can be varied.

## **9. Works in Default**

Work in default refers to the discretionary powers given to the Council under specific legislation to carry out works required in a statutory Notice that has not been complied with. Works carried out in an emergency situation must be where an imminent risk to the health and safety of the public has been identified. In both situations the approval of The Strategic Housing Manager or their authorised deputy

must be sought before arrangements can be made to carry out the works. In considering WID the following issues will be taken into account:

- The effects of not carrying out the work on the health and safety of the occupant of the property concerned.
- The wishes of the tenant where the Notice has been served in respect of a rented property.
- The reason for the work not being carried out in the first place.
- Any other factors that are specific to individual properties.
- The Council will normally seek to recover all of the costs associated with undertaking work in default (including time spent by its Officers, administrative costs, contractors costs, the cost of any specialist reports, supervisory costs etc.)
- In the case of Officer time, the Council will calculate costs as follows:
  - The actual time spent by Council Officers on the chargeable activities and recorded using file notes and database.
  - Time spent will be converted into a monetary figure using the appropriate hourly rate set for the Officer(s) concerned.

The expenses are to be recovered from the person(s) on whom the Notice or Order is/are served (“the relevant person”). Where the relevant person receives the rent on behalf of another, the expenses are also to be recovered from that other person. The expenses will carry interest from the date of service until payment of all sums due under the demand at a rate of 1% over the Bank of England Base Rate. The recoverable expenses, together with interest accrued on them, are a charge on the premises.

## **10. Policy Revision**

The Policy will be reviewed regularly and will take account of any changes to Legislation, Guidance and Procedure. Minor changes to policy delivery may be required from time to time, and will be undertaken with the agreement of the Corporate Director of Communities, Partnerships and Housing.

## **11. Complaints**

Tamworth Borough Council has an established corporate complaints procedure for dealing with complaints. Information on how to make a complaint is outlined in a complaints leaflet that is available at all Tamworth Borough Council Offices and on the website. (The 'tell us system')

## **12. Further information**

If you would like further information about this policy, please contact Tamworth Borough Councils Housing Conditions and Supply Team

In writing

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