

# **PRIVATE SECTOR HOUSING ENFORCEMENT POLICY**

This document is intended for information for landlords and other interested members of the public.

## **1.0 Introduction**

1.1 The Private Sector Housing Service Team is responsible for enforcing a wide range of statutory provisions relating to housing and environmental conditions affecting health and safety.

1.2 The objectives of the service are to:

- Improve the standards of homes in the private sector
- To assess local housing conditions
- To reduce the number of properties with serious risks to health and safety
- To reduce the number of vulnerable households living in non-decent homes
- To improve the energy efficiency and warmth of homes and to help reduce fuel poverty
- To improve standards in private rented accommodation
- To improve the standards in HMOs (houses in multiple occupation)
- To work closely with private sector landlords towards improving conditions and the standard of management of private rented housing
- To provide an excellent service that is accessible to anyone living in the private sector who may have poor living conditions

1.3 The Private Sector Housing works **reactively** and **proactively**.

**Reactively** the service will respond to:

- Private sector tenants who contact the Council with complaints about disrepair or poor conditions within their home.
- Complaints about properties that may be causing problems for neighbouring properties.
- Enquiries from owner occupiers or private tenants and landlords who would like advice about housing conditions.
- Enquiries for advice about the legal minimum housing standards, particularly HMOs (houses in multiple occupation)

**Proactively** the service will:

- Identify the general types and conditions of the private sector housing stock by carrying out surveys of the district
- Operate a risk assessment process to identify the risks in HMOs.
- Operate a programme of inspections of higher risk HMOs
- Take part in educational forums for landlords about the standards required for letting properties.

1.4 In exercising their duties and other functions, officers will seek to do so in a firm but fair, open and consistent and helpful way. Any enforcement action will be compliant with relevant legislation and guidelines in line with the principles of good enforcement outlined in the Enforcement Concordat.

- 1.5 This policy deals with the practical application of enforcement procedures that will be used to achieve statutory housing and environmental standards. It sets out what owners, landlords, their agents and tenants of private sector properties can expect from officers.
- 1.6 Enforcement, in the context of this policy is not limited to formal enforcement action such as prosecution, but includes for example, the inspection of premises for the purpose of checking compliance with legislation and the provision of advice.
- 1.7 This policy seeks to support the Council's corporate aims, objectives and strategies with respect to private sector housing and has to read in conjunction with the Council's General Enforcement Policy for Public Health and Licensing and the Council's Private Sector Renewal Policy.

## **2.0 Principles of Good Enforcement**

- 2.1 The Council has signed up to the Government's 1998 Enforcement Concordat – Principles of Good Enforcement. The Concordat sets out what business and others being regulated can expect from enforcement officers.
- 2.2 The aim of the policy is to ensure that all enforcement actions comply with the following 3 principles:

***Consistency***  
***Proportionality***  
***Openness***

- 2.3 **Consistency** means taking a similar approach in similar circumstances to achieve similar ends. It does not mean uniformity, as officers will take into account many factors such as the level of risk, the history of compliance and the attitude and actions of those involved.
- 2.4 **Proportionality** means relating enforcement action to the risks and severity of the breach of the law involved. This will ensure that the most serious risks are targeted first.
- 2.5 **Openness** means explaining our actions clearly in plain language and discussing compliance failures or problems with anyone experiencing difficulties. A clear distinction will be made between legal requirements (what must be done) and advice or guidance (what is desirable)

## **3.0 Legislation**

This section lists the legislation commonly enforced by the private sector housing service and outlines the provisions. It is not an exhaustive list and is not a full statement of the law – it is simply a summary.

- 3.1 The Council has a range of enforcement options to address hazards that exist in residential premises as follows:
  - Improvement Notices – section 11 and 12 Housing Act 2004
  - Prohibition Orders – section 20 and 21 Housing Act 2004
  - Hazard Awareness notices – section 28 Housing Act 2004
  - Emergency Remedial Action – section 40 Housing Act 2004
  - Emergency Prohibition Order – section 43 Housing Act 2004

- Demolition Order – section 265 Housing Act 1985 as amended
- Clearance Areas – section 289 Housing Act 1985 as amended

The first three options are available for both category 1 and category 2 hazards. The last four are not available for category 2 hazards:

The action the Council chooses to take must be the most appropriate course of action in relation to the hazard.

### **3.1.1 Improvement Notices to deal with premises affected by category 1 and category 2 hazards**

An improvement notice under section 11 or 12 Housing Act 2004 may be served in response to a category 1 or category 2 hazard. Under section 11, action must, as a minimum remove the category 1 hazard but may extend beyond this.

An improvement notice must specify the nature of the hazard, the deficiency giving rise to the hazard the nature of the remedial action, and a time in which to do the necessary work. The notice must also contain information about the right to appeal.

Should the notice not be complied with, the Council can carry out the works in default and recharge the person upon whom it was served. Not complying with a notice is a criminal offence and the Council is able to prosecute the person who received the notice if he failed to comply with it.

Normally an improvement notice becomes operative 21 days after service of the notice. However, the Council may suspend the action specified in the notice and can specify an event that triggers the end of the suspension.

### **3.1.2 Prohibition Order to deal with premises affected by category 1 and category 2 hazards**

A prohibition order under section 20 or 21 Housing Act 2004 may be served in response to a category 1 or category 2 hazard. It may prohibit the use of part or all of the premises for some or all purposes, or occupation by particular numbers or descriptions of people.

A prohibition order must specify the nature of the hazard, the deficiency giving rise to the hazard, the premises or part of the premises to which prohibitions are imposed and any remedial action that would result in the order being revoked. The order must also contain information about the right to appeal.

Using premises or permitting premises to be used, knowing that a prohibition order has become operative is a criminal offence and the Council is able to prosecute for non-compliance.

Normally a prohibition order becomes operative 28 days after service. However, the Council may suspend the action specified in the order and can specify an event that triggers the end of the suspension.

### **3.1.3 Emergency Remedial Action to deal with premises affected by category 1 hazards**

The Council has the discretion to take emergency remedial action against category 1 hazards which present an imminent risk of serious harm to the occupier. The action will consist of whatever remedial action the Council considers necessary to remove an imminent risk or serious harm.

The Council must serve a notice of emergency remedial action within seven days of taking action. The notice must specify the nature of the hazard, the deficiency giving rise to the hazard and the date when the action was or is to be started. The notice must also contain information about the right to appeal.

#### **3.1.4 Emergency Prohibition Order to deal with premises affected by category 1 hazards**

The Council has the discretion to make an emergency prohibition order against category 1 hazards which present an imminent risk of serious harm to the occupiers. The order may prohibit the use of all or any part of a premise with immediate effect.

The Order must specify the nature of the hazard and any remedial action which would result in the order being revoked. The order must also contain information about the right to appeal.

#### **3.1.5 Hazard Awareness Notice to deal with premises affected by category 1 and category 2 hazards**

In certain circumstances the Council may determine that advisory action only is needed in respect of a hazard, and may serve a hazard awareness notice.

A hazard awareness notice must specify the nature of the hazard, the deficiency giving rise to the hazard and details of any remedial action which the Council considers would be practicable and appropriate to take.

This procedure does not require further action by the person served with the notice and therefore there is no appeal provision.

#### **3.1.6 Demolition Orders to deal with premises affected by category 1 hazards**

Demolition orders are available under part 9 of the Housing Act 1985 as amended as a possible response to a category 1 hazard. A demolition order requires the property to be vacated within a specified time and subsequently demolished. It is a criminal offence to allow a premise to be occupied after a demolition order has come into effect. Should the building not be demolished the Council can demolish it and recharge the person upon whom the notice was served.

#### **3.1.7 Clearance Areas to deal with premises affected by category 1 hazards**

A clearance area is an area to be cleared of all buildings. A clearance area under Part 9 of the Housing Act 1985 can be declared if the Council is satisfied that each of the residential buildings in the area contains one or more category 1 hazard (or that the buildings are dangerous or harmful to the health or safety of the occupiers as a result of their bad arrangement or the narrowness or bad arrangement of the streets) and any other

buildings in the area are dangerous or harmful to the inhabitants. The Council is required to consult on the declaration of a clearance area and publish its intentions.

### **3.1.8 Power to Charge for Enforcement Action**

Section 49 of the Housing Act 2004 allows the Council to make a reasonable charge as a means of recovering expenses incurred in taking enforcement action. The expenses are in connection with the inspection of the premises, subsequent consideration of any action to be taken, and the service of notices.

The Council will recover costs when formal action is taken i.e. the service of Housing Act Notices, where it is reasonable to expect the owner to pay the charges. The full cost of an officer's time including overheads and any relevant expenses will be charged. There is discretion to waive the charge when it is not reasonable to expect a person to pay the charges for enforcement.

Landlords seeking to comply with the law will not be charged for enforcement action whilst bad landlords will be charged.

Where charges for enforcement action are levied they will be registered as a local land charge against the property.

## **3.2 Houses in Multiple Occupation (HMOs)**

In addition to the previously mentioned enforcement options the Council has further powers to ensure adequate standards in HMOs are met and maintained.

The Housing Act 2004 introduced a mandatory scheme to licence HMOs. Licensing is intended to apply only to larger high risk HMOs of 3 or more stories occupied by 5 or more people, comprising 2 or more households.

The HMO licensing regime provides procedures to assess the fitness of a person to be a licence holder, potential management arrangements of the premises and suitability of the property for the number of occupants, including the provision of relevant and adequate equipment and facilities at the property.

It is a criminal offence if a person controlling or managing a HMO does not have the required licence. Breaking any condition of a licence is also an offence.

The Housing Act 2004 also addresses the on-going management of unlicensed or problem HMOs, with view to protecting occupiers and those in the vicinity and, where possible getting properties licensed and properly managed. This is achieved by way of Management Orders.

### **3.2.1 Interim Management Orders (IMO)**

The Council must make an IMO in respect of a licensable HMO which is not licensed if it is satisfied that there is no reasonable prospect of the property being licensed in the near future or it is necessary to protect the health, safety or welfare of occupiers of the property or properties in the vicinity.

An IMO is in force for 12 months and allows the Council to manage the property with all the rights of a landlord and to collect rent and expend it on work to the property.

An IMO ceases to have effect if a licence is granted. There are provisions to vary, revoke and appeal against an IMO.

### **3.2.2 Final Management Order (FMO)**

The Council must make FMO where, on expiry of an IMO, the property requires to be licensed but the Council considers it is still unable to grant a licence.

A FMO is similar to an IMO in that the Council continues to manage the property with all the rights of the landlord, but they must be reviewed from time to time.

As with IMOs, there are provisions for varying, revoking and appealing the making of a FMO.

### **3.2.3 Management Regulations**

Management Regulations made under the Housing Act 2004 impose duties on landlords and managers of HMOs (whether or not subject to licensing). There are no notice serving powers under the Management Regulations but the Council can prosecute for breach of the regulations.

### **3.2.4 Overcrowding Notices**

Overcrowding notices apply to HMOs that are not required to be licensed. The effect of an overcrowding notice is that the person served must comply with the terms of the notice and if they fail to do so they commit an offence for which the Council can prosecute.

An overcrowding notice must either prohibit new residents or limit the number of people sleeping in the HMO.

## **3.3 Empty Properties**

The Housing Act 2004 introduces Empty Dwelling Management Orders (EDMO) in order to unlock the potential of empty houses and to get them back into use as houses as quickly as possible. EDMOs are designed as a backup to voluntary leasing arrangements and an alternative to enforcement action under other legislation.

There are two types of order, Interim EDMO and Final EDMO. EDMOs allow the Council to secure the occupation and proper management of privately owned houses and flats that have been unoccupied for a specified period (at least six months).

### **3.3.1 Interim EDMOs**

In order to make an interim EDMO the Council must apply for authorisation from Residential Property Tribunal (RPT). The property must have been empty for at least six months and there must be a reasonable prospect that the property will become occupied if an interim EDMO is made.

An Interim EDMO comes into force as soon as it has been authorised and can last for 12 months. Once an Interim EDMO is in force the Council must take steps to secure occupation and proper management of the property. However the Council may only grant a tenancy with the consent of the owner.

### **3.3.2 Final EDMO**

The Council may make a Final EDMO to replace an interim EDMO or a previous Final EDMO if the Council considers the property would otherwise remain unoccupied.

The Council does not need to obtain authorisation from the RPT to make a Final EDMO. Once a Final EDMO is in force the Council must review its operation and take steps to secure occupation of the dwelling.

Subject to any appeal, a Final EDMO comes into force no earlier than the day after the period for appealing has expired and last for the period specified in that order, which can be up to seven years.

### **3.4 Caravan Sites**

The Use of land as a caravan site usually requires a caravan site licence under the Caravan Sites and Control of Development Act 1960 and the Council may impose site licence conditions. The Council has adopted conditions based on the current model standards. The Council is able to take enforcement action should a site be operating without a licence or where site licence conditions are not being met.

### **3.5 Other Legislative Provisions**

The Private Sector Housing Service is also responsible for enforcing the provision of other legislation including Public Health Acts 1936 and 1961, Building Act 1984 and Environmental Protection Act 1990

## **4.0 Enforcement**

4.1 The actions available to the Private Sector Housing Service to improve the standards of private sector housing are broadly divided into two categories:

- Informal action
- Formal action

4.2 The sanctions available, should people not comply with legislative requirements, include:-

- Work in default
- Formal caution
- Prosecution

4.3 Private Sector Housing Officers are authorised to operate the service according to this policy and prepare enforcement work on behalf of the Council. Authorisation to approve Enforcement Action is delegated by the Council to the Head of Public Health and Licensing.

### **4.4 Enforcement Action**

#### **4.4.1 Informal Action**

Informal action will include verbal advice given by Officers, and advisory letters.

The Private Sector Housing Services is very willing to offer help and advice and will explain the reasons for the Council's involvement and what should be done to improve the particular housing conditions. The preferred approach is to work with people to help to prevent the need for official enforcement.

It should be noted that it is not always possible to adopt an informal approach especially where the legislation requires formal action to be taken straight away.

#### **4.4.2 Formal Action**

Formal action involves the service of Enforcement Notices. Most Notices served by the Private Sector Housing Service require the recipient of the Notice to commence and complete specified works within specified time limits.

All Notices are accompanied by notes that explain the effect of the Notice and the recipient's right of appeal. Officers will always be willing to discuss the works specified in the Notice and the reason for the service of the Notice.

#### **4.5 Sanctions**

If the recipient of a Notice does not comply with the Notice, the Council has various sanctions it can impose. Depending on the type of Notice served, non-compliance can be:

- Not doing any work at all,
- Not starting the work by the time specified within the Notice,
- Starting the work but then not making reasonable progress, or
- Starting the work and then not finishing it.

##### **4.5.1 Works in Default**

Work in default is a power given to the Council, to ensure work is carried out to a property. If the recipient of the Notice does not do the work required by the Notice, the Council may employ a contractor to enter the property and carry out the work itself. The Council will charge the appropriate person for the cost of the works together with the costs involved in arranging for the work to be done.

It should be noted that carrying out the work in default does not exclude the council from either issuing a formal caution or prosecuting the offender. The council is entitled to ensure that the work is carried out and to consider if it is appropriate to take further action.

There are various methods by which the Council can recover the costs incurred in carrying out work in default, dependent on the type of Notice that has been served:-

- **Sundry debtor method**

Using this method the Council will send the appropriate person an invoice requesting payment. If this is not paid within one month, a reminder invoice is sent requesting payment immediately. If the invoice is not paid within two weeks of the reminder being sent, the matter, depending on the size of the debt, will be referred to the Council's Legal Section for possible County Court action.

- **Charge on the property**

The Council can put a charge on a property. The charge remains in place until the Notice is complied with and, in the case of the Council carrying out and paying for works in default, until the debt is cleared. If the property comes up for sale a Local Authority search will show the outstanding Notice and trigger the repayment from the proceeds of the sale.

- **Sequestrating rents**

The Council is entitled to serve a Notice on the appropriate person to reclaim the costs of the work in default. In some cases, if this Notice is not complied with (i.e. the costs are not paid) the Council can then serve a Notice on the tenant requiring him to pay the rent direct to the Council until such time as the costs are recovered.

- **Forcing sale of the property**

The ultimate method by which the Council can reclaim its costs is to bring about the sale of the property. The proceeds of the sale will be given to the owner less the amount owed for the work in default and less the amount incurred by the Council in selling the property.

#### **4.5.2 Formal Caution**

An alternative to prosecuting is a Formal Caution. A Formal Caution is where an offender is given written details of the offence and he or she signs to say that he or she admits the offence. .

A record of the caution is kept by the Council for a period of three years and it may subsequently influence a decision to instigate proceedings should the offender break the law in the future. It may also be cited if the Council takes legal action for a subsequent offence.

#### **4.5.3 Prosecution**

Non-compliance with any of the Notices referred to in this policy document is generally a criminal offence. The Council is the prosecuting authority for such offences and as they are criminal in nature, proceedings are taken in the Magistrates Court.

### **4.6 Shared Enforcement Responsibility**

In circumstances where enforcement responsibility is shared between enforcement agencies, the Private Sector Housing Section will have regard to procedures agreed with other enforcement agencies, particularly where memoranda of understanding exists.

In some cases, enforcement powers will rest with another agency (for example the Health and Safety Executive has responsibility for enforcement of gas safety in domestic property). In these situations, the Private Sector Housing Section will act to ensure that the case is transferred to the enforcing agency promptly and in accordance with any agreed procedures.

## **5.0 Taking Action and Imposing Sanctions**

The decision to take informal or formal action will be made by the officer in charge of the case in consultation with the Principal Environmental Health Officer (Housing) or Head of Public Health and Licensing. The decision to execute works in default will be made to The Head of Public Health and Licensing.

In deciding whether to issue a formal caution or proceed with a prosecution, the initial decision will be made by the officer in charge of the case in consultation with the Principal Environmental Health Officer (Housing) or Head of Public Health and Licensing. Having prepared the case and collected the evidence, officers will then consult the Council's Legal Section to discuss the merit of the action proposed. If the sanction is agreed, the Legal Service Section will be requested to commence legal proceedings or, where appropriate, a formal caution will be issued.

### **5.1 When we will take Enforcement Action**

Notices are not served lightly. They are issued when there is no alternative and when all other reasonable attempts have been made to achieve the necessary action voluntarily.

In determining whether or not to serve a notice each case is looked at individually and the following factors are taken into account:

- The effects of the situation on the health and safety of those affected;
- The intentions of both the landlord and the tenant in respect of the letting of the property;
- Any previous complaints about the owner of the property or his agent;
- The future life of the property;
- The willingness of the owner to put right any problems without the need for formal enforcement action.

Where Private Sector Housing Officers are required to serve certain formal Notices under the Housing Act 2004, the Council may change the recipient of the Notice in order to recover reasonable administrative expenses incurred in serving the Notice.

In some cases, the Council is required to consult with other bodies when taking enforcement action. An example of this is where we take action to

improve fire safety in a house in multiple occupation and are required by law to consult with the Fire Authority.

## **5.2 When will sanctions be imposed?**

In all cases where an offence is committed, consideration will be given as to whether a sanction should be imposed and if so, which one. In some cases it may be appropriate to impose two sanctions for example, carrying out work in default and also prosecuting the offender.

## **5.3 Work in Default**

When determining if work in default is appropriate, officers will consider the following, this is not an exhaustive list and other factors may be taken into account:

- The reason for non compliance to the original Notice,
- 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.

## **5.4 Caution or Prosecution**

The decision to either offer a formal caution or take a prosecution is one that is not taken lightly. Officers recognise that their decision is significant and could have far reaching consequences upon the alleged offender and others.

Each case is unique and must be considered on its own facts. However, there are general principles that apply to the way in which Officers decide whether an action should be applied and if so which one. The decision to offer a formal caution or to take a prosecution will be made by The Head of Public Health and Licensing in consultation with the Council's Legal Department.

There are two overarching tests used by this Service in determining whether to impose a sanction. These are the evidential test and the public interest test.

### **5.4.1 The Evidential Test**

Private Sector Housing Officers must be satisfied that there is enough evidence to provide a realistic prospect of conviction. This is an objective test and means that a court is more likely than not to convict the offender of the charge alleged.

In deciding whether there is a realistic prospect of conviction, consideration is given to matters such as:

- Is the evidence admissible in court? There are certain legal rules that might mean that evidence that seems relevant might not be used at a trial.

- Is the evidence reliable? Officers have to consider whether there is evidence that may detract or support any admission by the offender. Equally, Officers have to consider the witness they may use and whether there are concerns about their accuracy or credibility.

#### **5.4.2 The Public Interest Test**

If the evidential requirements are met, Officers must then consider whether the public interest requires a prosecution. It is not the case that Officers will prosecute simply because an offence has been committed. There should generally be a public interest in bringing such an offence to Court.

The following are examples of factors taken into account when determining public interest:

- The seriousness of the offence. In housing terms, this will mean Officers looking at the effect of not complying with a Notice for example.
- Whether there was violent or intimidating behaviour on the part of anyone involved during the time of committing the offence.
- The vulnerability of the victim of the offence. This is a particularly important consideration when harassment or unlawful eviction has also occurred and the victims are elderly, suffering ill health or disability or it has affected young children.
- Whether the offence was motivated by discrimination. Consideration as to the nature of the sanction imposed will be determined by whether the offender was motivated by any form of discrimination against the victim's ethnic or national origin, sex, religious beliefs, political views or sexual orientation.
- The history of the offender. In particular, Officers will have regard to whether Notices have been served in the past, the response to those Notices and any previous housing based convictions.
- The likely penalty. Consideration will be given to whether the offence is such that it would only attract a nominal penalty from the Courts.
- Reason for the offence occurring. Although there may be, on the face of it, a breach of the law, there may be a statutory defence available in housing offences. For example, failure to comply with a Notice may only be an offence if the person intentionally failed to comply with it. Other factors will also be considered. For example, if the offence results from genuine mistake or misunderstanding these may be factors against prosecution but would be balanced against the seriousness of the offence.

In addition to the two tests there are certain conditions that must exist before a caution can be administered, such as:

- There must be evidence of the offender's guilt sufficient to give a realistic prospect of conviction,
- The offender must admit the offence,
- The offender must understand the significance of the caution and give his informed consent to accepting the caution.

If any of the above criteria are not met, the Council will not consider issuing a formal caution. Above all, a caution will not be used as a substitute for a prosecution that would otherwise be unsustainable.

## **6.0 Service Complaints**

### **6.1 How to complain if you are unhappy with our service**

If you are dissatisfied with the service you have received, please let us know. We are committed to providing quality services and your suggestions and criticisms about any aspect of our service will help us to do this. We will deal with any complaint you have in strict confidence.

### **6.2 What we will do**

Wherever possible we will attempt to resolve your complaint informally through the case officer or Principal EHO (Housing). If we cannot do this, we aim to respond in writing to you within 10 working days of receiving your complaint. We will keep you regularly updated of progress until your complaint is resolved.

### **6.3 If you are still not happy**

If you are still unhappy with the outcome, please tell us and we will make sure your complaint is brought to the attention of the management who will arrange for the case to be reviewed. Our Corporate Complaints procedure is available on request.

### **6.4 The Local Government Ombudsman**

If you think that you have been unfairly treated by us, you can ask the Local Government Ombudsman to investigate.

### **6.5 How to contact us**

#### *By telephone*

You can use the telephone number given on any correspondence we have sent you, or you can contact John Batchelor on 01403 215417

#### *In person*

Public Health & Licensing Department,  
Park House, North Street, Horsham, West Sussex, RH12 1RL

#### *By writing*

Public Health & Licensing Department,  
Park North, North Street, Horsham, West Sussex, RH12 1RL

#### *By e-mail*

publichealth.licensing@horsham.gov.uk

## **7.0 Confidentiality**

- 7.1 The Council will at all times strive to maintain the confidentiality of persons requesting our service. However, in the case of prosecution and witness statements, it may be required to reveal the names and addresses of both parties involved in a nuisance complaint.

## **8.0 Monitoring the Policy**

- 8.1 It is essential that in setting a policy for Officers to follow, it should be followed. To ensure that Private Sector Housing Officers comply with this enforcement policy, cases will be monitored by the Principle Environmental Health Officer (Housing) who will check files to ensure that the necessary considerations have been given to a case and that the appropriate documentation is in place on the file.

## **9.0 Policy Review**

- 9.1 The policy will be reviewed at least annually by the Head of Public Health and Licensing. Views on the policy and its implementation will be sought to ensure it continues to meet the principles of good enforcement.
- 9.2 This policy was adopted by the Council at the meeting of the Cabinet held on 11<sup>th</sup> May 2006 and reviewed and confirmed by the Cabinet Member with responsibility for Housing and Community Development on 30<sup>th</sup> April 2009