

SOUTH RIBBLE BOROUGH COUNCIL Private Sector Housing Enforcement Policy



September 2018

Appendix A

Introduction

This policy sets out South Ribble Borough Council's approach to its housing standards compliance and enforcement activities in relation to private sector housing conditions, including the owner-occupied, private rented and social rented sectors of the housing market.

It sets out the general principles the Council will follow in relation to regulation and more particularly enforcement of the Housing Act 2004 and other housing related legislation. It describes what property owners and tenants can expect if enforcement action is warranted and the circumstances that may lead to prosecution for non-compliance with legislation.

The Council has had regard to the Regulators Compliance Code and the Enforcement Concordat in developing this enforcement policy.

South Ribble Borough Council are committed to improving standards within the housing sector, ensuring that landlords are aware of the standard of property they should be offering, and that all properties are well managed, properly, maintained, habitable and safe.

The Council expect landlords to comply with the law and proactively manage their properties to ensure that the health and welfare of tenants is protected. Where individuals or companies are failing in their responsibilities and duties, the Council will take enforcement action.

The Council will provide advice and guidance to assist landlords in complying with their legal requirements to keep tenants safe and healthy. The council will seek to help with opportunities to develop their knowledge and understanding, which should reduce the risk of enforcement action being taken.

The enforcement of housing standards legislation is primarily undertaken by the Environmental Health Section at South Ribble Borough Council.

This document is divided into 3 sections:

Part A – Policy Aims and Objectives

Part B – Legislation and Guidance

Part C – General Enforcement Policies and Principles

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Part A

Policy Aims and Objectives

Aims

To explain the legal responsibilities, principles and priorities the Council will follow when enforcing legislation in relation to the private rented sector.

To protect public health and safety from housing and housing related activities,

To increase the public confidence in the private rented sector

To ensure Officers make a balanced and consistent enforcement decisions when carrying out their duties.

To ensure the Council meets its statutory duties as a public authority.

Objectives

To ensure that when brought to the Council's attention, tenants of a private landlord or registered social landlord live in homes free from hazards that pose risks to their health and welfare above the norm.

To ensure that satisfactory management of all rented properties including houses in multiple occupation (HMO's)

To ensure letting and management businesses are members of a Government registered Redress Scheme

To ensure all HMO's which require mandatory licensing are licensed when require, and that licensing conditions are met and the properties are safe.

To work with Lancashire Fire and Rescue Service to ensure satisfactory means of escape and means of detection and alarm are provided in rented accommodation.

In serious cases, to support owner occupiers who are living in homes which could be detrimental to their health and wellbeing.

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Part B

Legislation

Housing Act 2004, Part 1 – Housing Conditions

The Housing Act 2004 (the Act) is the significant piece of legislation enforced by the Environmental Health Team in relation to housing standards. The Act together with regulations made under it, prescribes the Housing Health and Safety rating System (HHSRS) as the means by which Local Authorities assess housing conditions and decide on the action to be taken to deal with poor housing. The HHSRS is a risk based assessment method which looks at how housing conditions effect the health of occupants. 29 hazards are assessed and scored for their severity. The scores for each hazard are ranked into Bands. Hazards falling into Bands A-C are more serious, and are classed as Category 1 hazards. Less serious hazards fall into bands D to J and are classified as Category 2 hazards.

The scoring is based on the risk posed to the most vulnerable potential occupant of the property over a 12 month period. In determining what action to take the Council will not only consider the score but will also take account of the duty to act, the view of the occupiers and the presence of other hazards along with any history of the relevant landlord.

The Council must take appropriate action in respect to Category 1 hazards and may do so in relation to Category 2 hazards. Generally appropriate action will be undertaken on high Category 2 hazards, i.e. those scoring bandings D & E. While action on lower Category 2 hazards will generally be considered when Category 1 and high category 2 hazards exist.

It is still permissible to take informal action unless there are indicators to the contrary such as a previous history of non-compliance or where it is known that the person responsible for the premises has been aware of the hazard and has not taken any remedial action. Informal action will be replaced by a statutory notice if at any time it appears that satisfactory progress to reduce or remove the hazard(s) is not being made.

The Council will liaise with Lancashire Fire and Rescue Services in relation to fire safety within all properties to ensure satisfactory means of escape and means of detection and alarm are provided in rented accommodation, specifically when considering enforcement action.

Enforcement Options

The statutory notices for category 1 hazards can include:

- Improvement Notice
- Prohibition Order
- Hazard Awareness Notice
- Emergency Remedial Action
- Emergency Prohibition Order
- Demolition Order
- Declaration of a Clearance Area

The statutory notices for category 2 hazards can include:

- Hazard Awareness Notice
- Improvement Notice
- Prohibition Order

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Standard of Remedial Work

As a minimum, category 1 hazards should be reduced to category 2 hazards assessed below a band F. Regard will be had to the extent of the work that is reasonable in order to reduce the hazard(s) significantly without incurring excessive costs.

A “patch and mend” approach should be avoided wherever possible. The works should be substantial and specified to be effective for a minimum of five years.

Powers of Entry

Authorised Officers have powers of entry to carry out a survey and examination of any residential premises to determine whether any action under the Act should be taken or whether any offence has been committed.

Where ever possible, when occupiers and owners will be given at least 24 hours’ notice, usually in writing of an intended inspection.

It is a criminal offence to obstruct an Authorised Officer from inspecting a house.

Authorised Officers will be wearing photographic identification and carry a letter of authorisation signed by the Environmental Protection Manager or the Private Rented Sector Manager.

If entry to a property is refused the Council will consider applying to the Magistrates Court for a Warrant to authorise entry especially where the Council believe serious hazards exist at the property.

Powers to Require Documents

Section 235 of the Act allows the Council to require documents from a person to assist the Council undertaking their duties in relation to the Act of for the purpose of investigating whether any offence has been committed.

Owner Occupiers

As explained in the introduction to this policy the Council will in the main deal with the private rented properties, however occasions will arise whereby Category 1 hazards are identified in owner occupied properties. The duty to take action still applies although it would not generally be in the public interest to enforce compliance unless the health and safety of the public or visitors was being endangered by the hazard.

Offences

Failure to comply with an appropriately served enforcement notice or order is a criminal offence. The Council will determine whether a prosecution case should be taken in cases where there are serious or repeated breaches of license conditions. Any decision to authorise a prosecution or impose civil penalties will be made by the ‘Director of Neighbourhoods and Development’ or another senior manager within ‘Regeneration and Growth’ in consultation with the Council’s Legal team.

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Housing Act 2004, Part 2 – Licensing of Houses in Multiple Occupation

South Ribble Borough Council does not have many Houses in Multiple Occupation (HMO's) but they are an important part of the private sector housing market. They are recognised as higher risk accommodation in relation to fire, inadequate facilities, overcrowding and poor management.

Sections 254-259 of the Act define what an HMO is, although not an extensive explanation a HMO means a building or part of a building which:

- Is occupied by more than two households, in which amenities are shared
- Is occupied by more than two households which is a converted building which does not comprise of self-contained flats
- Is a building comprises of converted self-contained flats which do not meet the standards required by the 1991 Building Regulations.

Part 2 and provisions in Part 7 of the Act require certain mandatory licensing of HMO's by the authority. At the time of writing this is restricted to 3 storey properties occupied by 5 or more households. However from the 1st October 2018 this will be extended to any property with 5 or more households.

The Act places the following duties on Council's:

- **To effectively implement a licensing regime** – a regime is in place and requires the owner of a licensable HMO to apply for a license. Details are contained on the council's website.
- To determine licence applications within a reasonable time – the Council will work towards determining all HMO licence applications within 90 days of a valid application being received. To be valid the application must:
 - Be fully completed with all required signatures and dates
 - Have all associated documentation attached e.g. gas safety certificates, electrical certificates
 - Payment of the correct fee
 - A plan of the property
 - Any other information requested by the Council to assist in determining the application

If the above is not received within 90 days the application will be determined as invalid.

Mandatory licenses last for a period of 5 years from the date of issue. Where non-compliance with the Licensing conditions has been identified a number of enforcement options are available to ensure risks to the health and safety of the occupants are reduced to acceptable levels.

Additional Licensing

Section 56 of The Act permits Council's to extend the licensing of HMO's beyond the scope of the mandatory licensing regime. Additional Licensing is not currently in place within South Ribble.

Housing Act 2004, Part 3 – Selective Licensing

There are currently no selective licensing areas within South Ribble. The Council may in the future declare areas of the Borough as selective licensing designation areas. A license will be required for each rented dwelling within these areas.

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Offences

Failure to apply for a license if one is required is a criminal offence. Any decision to authorise a prosecution or impose civil penalties will be made by the 'Director of Neighbourhoods and Development' or another senior manager within 'Regeneration and Growth' in consultation with the Council's Legal team.

Failure to comply with a license condition is a criminal offence. The Council will determine whether a prosecution case should be taken in cases where there are serious or repeated breaches of license conditions. Any decision to authorise a prosecution or impose civil penalties will be made by the 'Director of Neighbourhoods and Development' or another senior manager within 'Regeneration and Growth' in consultation with the Council's Legal team.

Failure to obtain a licence for a licensable house or a HMO can have serious financial consequences for the landlord. If the landlord is found guilty of an offence for failing to apply for a licence the Council will consider pursuing a **Rent Repayment Order (RRO)**. Such an order is made to the Residential Property Tribunal requiring the landlord to repay the housing benefit received during the time the house was not licensed.

Management Orders

The Local Authority will use Management Orders to take over the control of problematic properties:

- When there is no reasonable prospect of the property being licensed;
- To protect the health, safety or welfare of the tenants;
- To protect the health, safety or welfare of other occupiers or landowners in the neighbourhood of the property.

Variation of licences

The Council can vary the terms of a licence with or without the agreement of the licence holder if the circumstances regarding the relevant HMO or other property have changed.

Revocation of licences

The Council may have to revoke a licence. The grounds for revoking a licence include:

- A request of revocation from the owner
- Where the Council believes that the licence holder is no longer a fit and proper person
- As a result of the number of occupants or other current standards that apply the HMO would not have been licensable under its current conditions.

Temporary Exemption Notice

The Council may serve a temporary exemption notice where a person who is required to be licensed notifies the Council that they propose to take steps to ensure the property is no longer required to be licensed. The notice is served on this person and exempts that property from being licensed for a period of 3 months.

In exceptional circumstances the Council may serve a second temporary exemption notice that lasts a further 3 months. No further notice can be served after the expiry of the second.

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The Council can refuse to serve a temporary exemption notice which allows a right of appeal. Such circumstances where the Council may refuse to serve a temporary exemption notice is where the owner has failed to supply clear evidence showing that they are taking steps to exempt the HMO or other property from the criteria for licensing.

Licence Appeals

The applicant or any relevant person may appeal to the First Tier of the Lands Tribunal against a decision by the Council to:

- Refuse or grant a licence
- Grant a licence
- To vary or revoke a licence
- To refuse to vary or revoke a licence.

Public Registers

Section 232 of the Housing Act 2004 requires every housing authority to establish and maintain a register of:

- all licenses granted under Part 2 and 3 of the Act (HMO and selective licensing);
- all temporary exemption notices served and
- all management orders made.

The register may be in such a format as the authority consider necessary subject to requirements prescribed in regulations.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

The regulations require private rented sector landlords, to have:

1. At least one smoke alarm installed on every storey of their rental property which is used as living accommodation.
2. A carbon monoxide alarm in any room used as living accommodation where solid fuel is used.
3. The landlord must make sure the alarms are in working order at the start of each new tenancy.

Failure to comply with these regulations will result in a remedial notice being served. Failure to comply with the remedial notice could result in a penalty fine not exceeding £5,000. The Council's statement of principles for determining the financial penalties in relation to this legislation is available on the Council's website.

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014

It is a legal requirement for all lettings agents and property managers in England to join one of three Government-approved redress schemes.

Whilst the majority of lettings agents and property managers provide a good service there are a minority who offer a poor service and engage in unacceptable practices. This requirement will mean that tenants and landlords with agents in the private rented sector and leaseholders

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and freeholders dealing with property managers in the residential sector will be able to complain to an independent person about the service they have received. Ultimately the requirement to belong to a redress scheme will help weed out bad agents and property managers and drive up standards.

The requirement is enforced by the Council who can impose a fine of up to £5,000 where an agent or property manager who should have joined a scheme has not done so.

HOUSING ACT 1985 (as amended)

Section 265 - Power to make Demolition Order

A demolition order is an option for the Council to use to deal with the existence of Category 1 hazards on a residential premises. A demolition order requires the property to be vacated within a specific time and subsequently demolished. It is a criminal offence to allow the property to be occupied after the demolition order has come into effect. If the person upon whom the order has been served does not demolish the building, the Council can demolish it instead and recharge the person accordingly. Should the Council be required to demolish the property, and the demolition leaves an adjacent terrace property party wall exposed, then the Council will construct a new gable wall and will recover the cost from any compensation monies owing to the owner.

Section 289 - Declaration of clearance area

A clearance area is an area that is to be cleared of all buildings. Where Category 1 hazards exist on a residential premises, the Council can declare a clearance area. If this is chosen as the most appropriate enforcement action. The Council is required to consult on the declaration of a clearance area and publish its intentions. Owners and in certain cases occupiers of properties are compensated accordingly.

Section 324 – Overcrowding

A property is overcrowded when the number of persons sleeping in the dwelling contravenes either the specified room or space standard. It is an offence for either an occupier or landlord to cause or permit overcrowding. The Council can prosecute the person causing such an offence. Where a dwelling is found to be overcrowded the Council may serve notice on the occupier, in writing requiring him to abate the overcrowding within 14 days from the date of service of notice.

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LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

Section 16 - Requisition for Information

When the Council need to obtain information about a property in respect of which we are proposing to take enforcement action we will serve a requisition for information on the occupier and/or any person who has a legal interest in it, or who directly or indirectly receives rent, or is authorised to manage or to arrange for its letting.

It will always indicate the Act and section of the Act that it is proposing to enforce. Generally speaking a Requisition for Information is served at an early stage to ensure that it is corresponding with the correct person(s) but where the Council feel that urgent enforcement action is necessary it may be served at the same time as a formal Notice.

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Part C

General Enforcement Policies and Principles

The Regulators' Compliance Code

The Council are required by the Legislative and Regulatory Reform Act 2006, to have regard to The Regulators' Compliance Code.

This Enforcement Policy is compliant with the Code in that it aims to promote efficient and effective approaches to regulatory inspection and enforcement, thereby improving regulatory outcomes without imposing unnecessary burdens upon property owners and occupiers. Any departures from the Code will be properly reasoned, documented and based upon material evidence.

The Code does not however apply to actions under Part 1 of the Housing Act 2004 relating to the HHSRS. Actions under Part 1 will therefore continue to be subject to the principles of the Enforcement Concordat.

Human Rights Act 1998

All enforcement activity will be undertaken with due regard to the provisions of the above legislation, which derives from the European Convention on Human Rights especially:

Article 6 – the right to a fair trial;

Article 8 – the right to respect for private and family life;

Article 1 of the First Protocol, which relates to the protection of property.

Data Protection Act 1988

In the course of their work Officers will comply with the Data Protection Act. All information and evidence gathered during the course of carrying out the duties will be treated confidentially. Confidential information will not be divulged unless required by law or by some other significant reason that is in the public interest.

Intervention

The Council will work both proactively and reactively to improve the conditions and management of private sector housing.

Proactively

Proactively we will

- Identify houses in multiple occupation (HMOs) by carrying out surveys of the borough
- Inspect licensed HMOs to assess hazards under the HHSRS, to ensure compliance with the licence conditions and the management regulations
- Inspect properties in priority areas and selective licensing areas to assess hazards under the HHSRS and to ensure compliance with the licencing scheme and the associated licence conditions

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- Inspect property portfolios in the ownership or management of a particular landlord or managing agent where serious concerns over management standards or condition are identified in any one of the properties in the portfolio.

Reactively

Reactively we will respond to:

- Requests for advice and assistance from owners and residents of all tenures on housing condition and the management of those houses.
- Private sector tenants who contact the Council complaining about disrepair in the properties they live in.
- Registered Social Landlord (RSLs) tenants who contact the Council about disrepair in the properties they live in.
- An official complaint from a MP, local Councillor or Officers in other partner agencies such as Social Services, the Fire Brigade or the Police explaining that hazards may exist in a residential premises.
- Inspect any property within the borough where a 'Bond guarantee' scheme application has been made to the Council

Ensuring Compliance with the Legislation

As detailed in this policy there are a variety of tools available to the Council to ensure the required standards are met and improved in Private Sector Housing.

Advice and Guidance

We will provide advice on appropriate housing standards, HMO standards, fire safety, legislation and legal procedures to stakeholders within the private housing sector. We cannot however give specific legal advice on a particular matter.

Advice and guidance is an essential part of the work that we do to raise standards within the private rented sector. The following methods will be used to provide advice:

- The posting of information on the Council's website,
- Verbal advice,
- Written advice, guidance, information leaflets, dissemination of official good practice guidance,
- The provision of training for landlords and managing agents through Landlord Development Days
- Attending meetings of professional bodies regarding the private rented sector
- Ensuring officers undertaking Housing Inspections are appropriately qualified, trained and receive adequate updates of private sector housing enforcement matters

No Action

The assessment may conclude that some cases cannot be resolved by the range of powers detailed in this policy. In such cases the decision to take no action will be confirmed in writing and where appropriate sign posted to other units within the Council or to other organisations.

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In other cases it may not be appropriate to pursue action. This can be where the cost of the remedial action to ensure compliance far outweighs the detrimental impact of the contravention.

Pre-Enforcement Action

Through the referral of a complaint or request for inspection, officers will review the information held and contact the subject to discuss the issues to hand. Where appropriate a visit will be arranged to vet the property to determine if an inspection is required.

Where an inspection of the property is required a letter will be sent to the Landlord detailing the identified works required and requesting they contact the department within 7 days to discuss the works. An offer of an accompanied inspection of the property will be made at this time.

The Council reserves the right to make a charge for requests to inspect from letting agents, landlords or other bodies.

In considering whether pre-enforcement action is appropriate in particular cases, consideration will be given to the track record (if any) of the person (or company). In particular, Officers will consider whether any enforcement notices have had to be served in the past, the recipient's response to them and the ability and willingness of the recipient to keep to agreed timetables of work.

It should be noted that it is not always possible to use pre-enforcement action especially where the legislation requires formal action to be taken straight away and on occasion the risk posed by the hazards identified will be so great that emergency works will be required. However, even though advice has been given initially, the Council reserves the right to proceed to formal action where the property owner is clearly not going to carry out the repairs within a timescale acceptable to the Council.

Formal Action

Formal action involves the serving of enforcement notices and orders. Most notices and orders served require the recipient of the notice or order to commence and complete specified works within the specified time limits.

The decision regarding when to serve a notice or order depends upon whether there is a duty or a power to take such action and will take into account the following:

- Where the pre-enforcement action has not resulted in compliance with the legislation,
- There is a lack of confidence that the recipient of the notice or order will comply,
- There is a history of non-compliance,
- The consequences of non-compliance have a serious risk of harm to the health, safety or welfare of the public.
- The owner/person having control is unknown or unable to be contacted,
- The owner/person having control is incapable of undertaking the required works (Usually owner occupied property).

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All notices and orders have notes with them that explain the effect and the recipient's right of appeal. Officers will always be willing to discuss the works specified in the notice or order and the reason for the service.

Statutory notices and orders are legal documents. Once served failure to comply with them has serious implications, normally resulting in one or more of the following sanctions. Any extensions of time limits for compliance with a statutory notice or order, once served must be justified, recorded and confirmed in writing to all recipients of the notice or order.

Charging for enforcement activity

Section 49 of the 'Act' allows for Council's to make a charge for certain enforcement activities to recover the costs involved in those actions. In line with the requirements of this section of the act the Council will generally make a charge when we:-

- Serve an improvement notice
- Make a prohibition order
- Take emergency action
- Make an emergency prohibition order, and
- Make a demolition order

The authority will not normally charge for making a serving a hazard awareness notice. The council reserves the right not to invoice or to waive the charge for enforcement action in exceptional circumstances with each case being considered on its own merits. This decision will be made by the Director of Neighbourhoods and Development.

Sanctions

Failure to comply with a statutory notice or order will normally result in the Council seeking to prosecute, issue a civil penalty and/or undertake the work in default. Alternatively some of the statutory provisions impose monetary penalties for failing to comply.

Work in Default

Work in default is a power contained in several types of statutory notice. The legislation authorises the Council, to employ a contractor to enter the property and carryout the work required to ensure compliance. If the Council has to do this, it will charge the appropriate person for the cost of the works, together with the costs involved in arranging for the work to be done. These costs will be added to those already incurred in serving the original notice.

The Council has a duty to ensure that the works are carried out a fair price and to an adequate standard. However the Council has to undertake the works in a short timescale. This can be expensive as contractors carrying out emergency works often do so at a premium rate. It is usually cheaper for the landlord or manager to organise their own remedial work.

It should be noted that carrying out 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 Officers will then also consider if it is appropriate to take further action.

Rent Repayment Orders

Where housing benefit has been paid to a landlord and the Council is satisfied that the landlord has committed one or more specific offence, the Council can apply for a Rent Repayment Order. Where

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the landlord is convicted of one of the relevant offences, the Council is under a duty to consider applying for a Rent Repayment Order. The Specific offences are:

- Failure to comply with an Improvement Notice
- Failure to comply with a Prohibition Order
- Offences in relation to licensing of HMO's
- Offences in relation to licensing of HMO's under Part 3 of the 'Act'
- Breach of a Banning order
- Using violence to secure entry to a property
- Illegal eviction or harassment of the occupiers

The Council will usually apply for the full amount that can be recovered and lesser amounts will only be sought in exceptional cases.

Cautions

An alternative to prosecuting a person is the issuing of a formal caution. A formal caution is where an offender is given written details of the offence and he/she signs to say that he/she admits the offence. It is not a form of sentence.

A record of the caution will be kept at 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.

The service of a formal caution will be considered when the circumstances of the offence satisfy the criteria detailed below:

- The offence is sufficiently serious to warrant prosecution; and
- It is a first offence; and/or
- The offence occurred through ignorance and the offender has expressed remorse and a willingness to comply with the law in future; and
- The officer believes that a formal caution will prevent repeat offences.
- A formal caution may only be issued if the following criteria are satisfied:-
 - There is sufficient evidence of the offender's guilt to give a realistic prospect of conviction.
 - The offender admits that they are guilty.
 - The offender will accept the formal caution and understands its significance.
 - It is in the public interest to issue a formal caution rather than instigate prosecution proceedings.

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Prosecution

The Council recognises that the decision to prosecute is important. In making a decision to prosecute, a two stage test is applied:

- The first stage is the evidential test, which requires that there must be sufficient, admissible and reliable evidence that an offence has been committed by an identifiable individual or company, that there is a realistic prospect of conviction. If the case does not pass this test, it must not proceed, no matter how serious or important it may be
- Secondly, a decision must be made as to whether a prosecution would be in the public interest.

A prosecution will normally be pursued in the following circumstances:

- Where an individual or company has deliberately, negligently or persistently breached legal obligations
- Where an individual or company has deliberately or persistently ignored written warnings or formal notices and / or orders
- Where an individual or company has endangered the health, safety or wellbeing of occupiers, visitors or the public to a serious degree
- Where an individual has assaulted or obstructed an Officer in the course of their duties
- Where a HMO or house is required to be licensed and has been operating without a licence.

Any decision to authorise a prosecution or impose civil penalties will be made by the 'Director of Neighbourhoods and Development' or another senior manager within 'Regeneration and Growth' in consultation with the Council's Legal team.

All prosecutions will be brought without unavoidable delay, and there is a requirement to lay information with the Courts within six months of the identified date that the offence was committed.

Banning Orders

Where a landlord has been successfully prosecuted for a banning order offence, the Council can apply to the First-Tier Tribunal (Property Chamber) for a banning order against the landlord. A banning order will last for at least 12 months and means that the subject of the order cannot:

- Let housing in England;
- Engage in English letting agency work
- Engage in English property management work;
- Hold a license under Part 2 or Part 3 of the Housing Act 2004.

"Banning order offence" refers to an offence of a description specified in regulations made by the Secretary of State.

In determining whether to apply for a banning order the Council will have due regard to the guidance '*Banning Order Offences under the Housing and Planning Act 2016 Guidance for Local Housing Authorities*' issued by the Ministry of Housing Communities & Local Government and the South '*Ribble Borough Council Private Sector Housing Banning Order Policy*' .

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Civil penalties

The Housing & Planning Act 2016 introduced civil penalties as an alternative to prosecution for certain offences under the Housing Act 2004. Council's may serve notices imposing Civil Penalties, of up to a maximum of £30,000 in respect of the following offences:

- Failure to comply with an Improvement Notice
- Failure to license or other licensing offences relating to Houses in Multiple Occupation (HMOs)
- Failure to licence or other licensing offences under the Council's Selective Licensing Scheme
- Failure to comply with an Overcrowding Notice
- Failure to comply with a regulation in respect of an HMO
- Breaching a Banning Order

The Council will determine, on a case by case basis, whether to instigate prosecution proceedings or to serve a civil penalty in respect of any of the offences listed above.

Prior to issuing a civil penalty the local authority must serve a notice of intention on the person committing the offence, inviting them to make representation before the final notice is issued.

The person issued with a civil penalty has the right of appeal through the first-tier Tribunal against:

- The decision to impose the penalty, or
- The amount specified in a notice of intent or a final notice.

Burden of Proof

The criminal burden of proof, i.e. beyond all reasonable doubt must be satisfied before a Civil Penalty can be issued as an alternative to prosecution. The Council must satisfy itself that there would be a realistic prospect of conviction, applied objectively, to the evidence available.

In assessing the evidence regard must be given to the Code for Crown Prosecutors and when deciding whether there is sufficient evidence to prosecute consideration must be given as to whether the evidence can be used and is reliable.

Due regard must be given to any potential defences available and in certain circumstances the Local Housing Authority may decide to conduct an interview under caution in accordance with PACE codes of practice to assist in determining whether the issue of a Civil Penalty is appropriate or not.

Factors in deciding whether to issue a Civil Penalty

Each case will be decided upon its own merits taking into account all the evidence available.

Where the Council considers that a Housing Act offence has been committed it must decide whether to prosecute or to issue a civil penalty as an alternative to prosecution. The following factors, whilst not exhaustive, are examples of where it would be appropriate to consider the issuing of a Civil Penalty:-

- No previous convictions recorded

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- No evidence of previous non-compliance with appropriate legislation
- Not in the public interest to prosecute
- Offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence)
- Prosecution is likely to have a serious adverse effect upon an individual's e.g. a landlord physical or mental health, always bearing in mind the seriousness of the offence.

In circumstances where the Council has determined that it would be appropriate to issue a civil penalty as an alternative to prosecution, the level of the penalty would be calculated using the methodology detailed within the "*South Ribble Borough Council Private Sector Housing Civil Penalties Enforcement Guidance*".

This methodology has been developed having regard to the statutory guidance issued under Schedule 9 of the Housing and Planning Act 2016.

Factors in determining the level of Civil Penalty

In order to ensure that the civil penalty is set at an appropriate level the following factors will be considered

- The seriousness of the offence, determined by harm caused and culpability of the offender
- The history of compliance of the offender
- The punishment of the offender for the offence
- The deterrent from repeating the offence
- The deterrent from others committing similar offences
- Removing any financial benefit obtained from committing the offence

Harm Caused

In determining the level of harm the Local Housing Authority will have regard to

- The individual i.e. physical injury, damage to health, psychological distress
- To the community i.e. economic loss, harm to public health
- Other types of harm i.e. public concern/feeling over the impact of poor housing condition on the local neighbourhood

The nature of the harm will depend on the personal characteristics and circumstances of the victim e.g. tenant.

Where no actual harm has resulted from the offence the Local Housing Authority will consider the relative danger that persons have been exposed to as a result of the offenders conduct, the likelihood of harm occurring and the gravity of harm that could have resulted

Factors that indicate a higher degree of harm include:

- Multiple victims
- Especially serious or psychological effect on the victim
- Victim is particularly vulnerable

Culpability

In determining culpability the Local Housing Authority will have regard to 4 levels of culpability

Where the offender

- Has the **intention** to cause harm, the highest culpability where an offence is planned

Appendix A

- Is **reckless** as to whether harm is caused i.e. the offender appreciates at least some harm would be caused but proceeds giving no thought to the consequences even though the extent of the risk would be obvious to most people
- Has **knowledge** of the specific risks entailed by his actions even though he does not intend to cause the harm that results
- Is guilty of **negligence**

Determining the Civil Penalty Amount

This will be undertaken in line with the above mentioned enforcement guidance document published in conjunction with the policy. This guidance sets out the methodology the council will use to determine the level of civil penalty to apply on a case by case basis, taking into the account the circumstances of each case, and individual offender to ensure that the civil penalties awarded are fair and appropriate In line with this policy.

Appendix A

Recovering Costs

The Council will recover all costs incurred in enforcing housing related legislation.

When a charge is imposed under section 49 of the 'Act' or by completing works in default, the sum recoverable becomes a local land charge on the premises concerned. Costs will include officer time in determining whether to serve a notice/order and serving a notice/order. In addition for works in default full contractor costs incurred and time for arranging and overseeing the contractors work plus an administrative cost will be charged.

If enforcement action has been taken against a named person or legal entity the Council will seek to recover the charge by invoice. If the debt is not recovered by payment of an invoice all outstanding debts will be registered with the Local Land Charges Registry as a financial charge. Once registered, interest will be added to the debt at a compound interest rate of 8%* starting on the date the charge became applicable until the debt is settled in full.

The Council may recover the costs incurred in carrying out work in default by one of the following methods:-

Invoice, followed by county court action	for debts less than £500.00 where debtor has sufficient means to settle the debt where other forms of debt recovery are not possible
Charge placed on property (compound interest of 8% *in exceptional circumstances the interest rate may be reduced)	Where owner occupies are unable to settle the debt Where landlords are unable to settle the debt and mortgage repayments make sequestering the rent unviable Where the responsible person cannot be traced
Sequestering the rent – by serving notice on the tenant requiring them to pay rent directly to the Council until costs are recovered	Where the property is tenanted and there are no or low mortgage repayments.
Enforced sale – under the Law and Property Act 1925 the Council can force the sale of the property through the Courts and recover the costs from the proceeds of the sale	Where the property is empty Where the property is tenanted but there are multiple debts on the property and the landlord is not maintaining the property

Miscellaneous

Targeted Enforcement Action

From time to time the Council may want to take enforcement action on a targeted basis. Where this is done it will be as a response to a particular problem or there will be a valid reason that led to the need for pro-active work.

The types of issues that may trigger targeted action are:-

- Concerns about unlicensed HMOs in an area
- Concerns about concentrations or increases in numbers of empty properties
- Concerns about concentration of HMOs in an area
- Low quality housing in an area predominantly in the private rented sector
- Checking HMO license conditions

Appendix A

- Concerns about properties owned by a portfolio landlord where some properties have fallen significantly below legal standards or have Category 1 hazards present
- Investigating whether or not to introduce selective or additional licensing.

Working with Other Regulatory Bodies

Where other regulatory bodies have enforcement powers to investigate housing related matters referrals will be made to those bodies. Officers will liaise with that other body to ensure effective co-ordination, avoid inconsistencies, and ensure that contraventions of legal requirements are investigated by the most appropriate agency. These agencies include:

- Health and Safety Executive.
- Transco
- Lancashire Fire & Rescue Service.
- Police
- UK Border Agency
- Lancashire Social Care and Health
- South Ribble Borough Councils Revenues and Benefits Departments
- HMRC

Authorisation of officers

Decisions on enforcement action are a matter of professional judgement and officers will need to exercise discretion. However officers will be properly trained to ensure consistency in the decisions made.

The Delegated Officer under the Council's Scheme of Delegations will only authorise officers under the Housing Act 2004 that have been adequately trained and have suitable experience of HHSRS; officers must pass the "HHSRS Practitioners" course accredited by Warwick University, or equivalent course, prior to being authorised.

Other authorisations will be determined by other qualifications or relevant experience. Officers will carry this authorisation when inspecting premises and will produce the document when asked.